

PUBLIC WORKS CONTRACTS
MODEL FORMS

30 January 2008

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Text in green italics identifies items to be filled-in by the Employer when these forms are included in Works Requirements.

MODEL FORM 1
FORM OF TENDER

[Date]

To [Name and address of Employer]
For the attention of [contact person identified in tender documents]

[Name of Contract]

A Dhaoine Uaisle

We have examined and understand the [insert full name of selected contract form], the Works Requirements, the Pricing Document, [Novated Design Documents] all as amended by any supplemental information, for the above contract. Terms used in this Tender that are defined in those documents have the same meaning in this Tender. We submit with this Tender the completed Pricing Document and Schedule [and Works Proposals listed in the attached Schedule Part 2], which form part of this Tender. [We adopt the Novated Design Documents as our Works Proposals].

We offer to complete the Works on the terms of and in conformity with the documents referred to in the preceding paragraph for the lump sum of euro including VAT, as adjusted in accordance with the Contract.

In preparing this Tender we have taken account of the obligations relating to employment protection and working conditions that are in force in the place where the works are to be carried out, including the Contract requirements.

We agree that this offer will remain open for your acceptance at any time until the latest of:

- the end of the period specified in your invitation to tender
- expiry of at least 21 days written notice to terminate this Tender given by us.

Your acceptance of this Tender within that time will result in the Contract being formed between us.

We agree that you are not bound to accept the lowest or any tender you may receive.

Is sinne, le meas

Given under the tenderer's common seal

affix common seal

.....

.....
(signatures of persons authorised to authenticate the seal)

OR Signed, sealed and delivered by

..... (name of attorney)

as lawful attorney of the tenderer

under a power of attorney dated

.....
(signature of attorney)

affix attorney's personal seal

in the presence of

.....(signature of witness)

.....(name of witness)

.....(witness' occupation)

.....(witness' address)

OR (if the tenderer is an individual)

Signed, sealed and delivered by

.....(name of tenderer)

.....
(signature of tenderer)

in the presence of

.....(signature of witness)

.....(name of witness)

.....(witness' occupation)

.....(witness' address)

affix Contractor's personal seal

Note: If the tenderer is a partnership or joint venture, execution must be by each member, using the blocks below.

Joint venture member 1

Given under the common seal of

..... (name of joint venture member 1)

affix common seal

.....

.....

(signatures of persons authorised to authenticate the seal)

OR Signed, sealed and delivered by

..... (name of attorney)

as lawful attorney of

(name of joint venture member 1)

under a power of attorney dated

.....
(signature of attorney)

affix attorney's personal seal

in the presence of

.....(signature of witness)

.....(name of witness)

.....(witness' occupation)

.....(witness' address)

Joint venture member 2

Given under the common seal of

..... (name of joint venture member 2)

affix common seal

.....

.....

(signatures of persons authorised to authenticate the seal)

OR Signed, sealed and delivered by

..... (name of attorney)

as lawful attorney of

(name of joint venture member 2)

under a power of attorney dated

.....
(signature of attorney)

affix attorney's personal seal

in the presence of

.....(signature of witness)

.....(name of witness)

.....(witness' occupation)

.....(witness' address)

Joint venture member 3

Given under the common seal of

..... (name of joint venture member 3)

affix common seal

.....
.....

(signatures of persons authorised to authenticate the seal)

OR Signed, sealed and delivered by

..... (name of attorney)

as lawful attorney of

(name of joint venture member 3)

under a power of attorney dated

.....
(signature of attorney)

affix attorney's personal seal

in the presence of

.....(signature of witness)

.....(name of witness)

.....(witness' occupation)

.....(witness' address)

[SCHEDULE TO BE APPENDED –

PART 1 TO BE COMPLETED BY EMPLOYER IN ISSUED DOCUMENTS

PART 2 TO BE COMPLETED BY TENDERER AND SUBMITTED WITH TENDER]

MODEL FORM 2
FORM OF BID BOND

[Date]

TO [Name and address of Employer]

[Name of Contract]

[Name and address of bidder] (the **Bidder**) proposes to submit a tender to you for the above contract. It is a requirement for submitting the tender that a bond, in these terms and in the amount of [10]% of the amount of the tendered contract sum, be submitted with the tender.

BY THIS BID BOND, we,[Name and address of Surety] guarantee to you that, if you accept the bidder's tender, the bidder will, within the time required by the contract formed by that acceptance, execute under seal and deliver the Agreement referred to in that contract and give you the fully executed and delivered performance bond and other documents required under clause 9.1 of the Conditions of that contract, all in compliance with the contract. If the bidder fails to do so, or otherwise repudiates its tender, we will, subject to this bond, pay all the loss you sustain as a result, up to the maximum of €.....

This bond will expire on [[120] days after the last date for receipt of tender], when we will be released of liability under it, unless you have before that date notified us that the bidder has defaulted in any of the obligations guaranteed by this bond.

We will not be released in any way or discharged by time, indulgence, waiver, alteration, release or compromise or any other circumstances that might operate as a release of a guarantor at law or in equity.

This bond is governed by and construed according to Irish law and we submit to the jurisdiction of the Irish courts to determine all matters concerning it.

We appoint of as our agent for the service of legal proceedings. We confirm that the named agent has been irrevocably appointed and the agent's failure to notify us of receipt of a document will not invalidate any proceedings or the service of the document. 1

Given under our common seal

1 An address in Ireland is required when the Surety does not have a registered office in Ireland

MODEL FORM 3

FORM OF LETTER TO APPARENTLY UNSUCCESSFUL TENDERERS

[Date]

To [Name and address of unsuccessful tenderer]

[Name of Contract]

A Dhaoine Uaisle

I write to inform you that we have assessed the tenders received for the above contract and have determined that the most economically advantageous tender was submitted by.....

It is our intention [subject to the approval of *[funding department]*] to enter into the contract with that tenderer. It is anticipated that a letter of acceptance will issue to them not earlier than [14] days from the date of this letter.

I would like to thank you for the interest you have shown in this competition.

Please acknowledge receipt of this letter.

Is mise, le meas

Signed:

On behalf of the Employer

MODEL FORM 4
FORM OF LETTER OF INTENT

[Date]

To [Name and address of bidder]

[Name of Contract]

Subject to Contract/Contract Denied

A Dhaoine Uaisle

I refer to your tender for the above contract.

I write to inform you that we intend to issue a Letter of Acceptance to you within 14 days after receiving the following items:

- Performance Bond in the form included in the Works Requirements
- evidence of the insurances required by the contract
- Tax Clearance Certificate
- *[add any other conditions, e.g. funding approval, manager's order, board approval, parent company guarantee, collateral warranties]*

If any of the above listed items are not provided within [•] days of the date of this letter, we may proceed to award the Contract to another tenderer.

This is not the Letter of Acceptance. The Employer has not accepted your tender.

Please return a copy of this letter acknowledging receipt as indicated below.

Is mise, le meas

Signed:
On behalf of the Employer

We acknowledge receipt of this letter on

Signed:
On behalf of the Contractor

MODEL FORM 5

FORM OF LETTER OF ACCEPTANCE

[Date]

To [Name and address of Contractor]

[Name of Contract]

A Dhaoine Uaisle

I refer to your tender for the above Contract dated (the **Tender**). Terms used in this letter that are defined in the Conditions of that Contract have the same meaning in this letter.

I write to inform you that [name of Employer] accepts the Tender. This is the Letter of Acceptance referred to in the Conditions.

The contract formed by this acceptance consists of the following documents:

- This Letter of Acceptance
- The Agreement
- The Conditions of [insert full name of the selected form of public works contract]
- The Schedule appended to this Letter of Acceptance
- The Works Requirements identified in the Schedule
- The Pricing Documents identified in the Schedule
- The Works Proposals identified in the Schedule (including any Novated Design Documents identified in the Schedule)
- The following post-tender clarifications:

.....
.....
.....
.....

The Contract Sum is euro, including VAT.

I draw attention to your obligations in clause 9.1 of the conditions about documents to be provided before the Starting Date.

Please return to me a copy of this letter acknowledging receipt as indicated below.

Is mise, le meas

Signed:
On behalf of the Employer
Duly authorised to accept the Tender

We acknowledge receipt of this letter on

Signed:
On behalf of the Contractor

SCHEDULE TO BE APPENDED

MODEL FORM 6
FORM OF PERFORMANCE BOND
(Clause 1.5)

Model Form 6 is displayed separately under item 14 on the website.

MODEL FORM 7
FORM OF PARENT COMPANY GUARANTEE
(Clause 1.6)

THIS GUARANTEE is made on

BETWEEN:-

1.,
whose registered office is at (the **Contractor**)
2.,
whose registered office is at(the **Guarantor**) and
3. *[name of Employer]* whose principal office is at *[insert]* (the **Employer**)

BACKGROUND

- A By a Contract (the **Contract**) the Contractor has been or will be appointed by the Employer for *[name of Contract]*
- B The Guarantor has agreed to guarantee the Contractor's performance of the Contract.

IT IS AGREED AS FOLLOWS:

1. Guarantee

The Guarantor irrevocably and unconditionally:

- 1.1. guarantees to the Employer that the Contractor will punctually perform all its obligations under the Contract and
- 1.2. undertakes to the Employer to fully perform the Contractor's obligations under the Contract if the Contractor fails to perform them.

2. Indemnity

If the Contractor's obligations under the Contract are or become void or unenforceable then, as between the Guarantor and the Employer (but without affecting the Contractor's obligations), the Guarantor will as principal obligor indemnify the Employer against any resulting loss and be liable to the Employer for the same amount as the Guarantor would have been liable for if the obligations had not been void or unenforceable.

3. Contractor's failure to perform

- 3.1. If the Contractor goes into liquidation, administration, examinership or receivership or becomes subject to any other form of insolvency proceedings, or if the Contractor's obligation to complete the Works is lawfully terminated under sub-clause 12.1 of the Conditions of the Contract, any such event will be conclusive evidence, for the purposes of this Guarantee, that the Contractor has failed to perform the Contract.
- 3.2. The decision of a court or arbitrator or an agreement between the Contractor and the Employer will be binding on the Guarantor in relation to any failure by the Contractor to perform the Contract.

4. Guarantee is in addition to other security

The Guarantor's obligations are in addition to and independent of any other security the Employer may at any time hold for the Contractor's obligations under the Contract.

5. Continuing guarantee

The Guarantor's liability will continue until the Contractor has performed all its obligations in full, and will not be satisfied or diminished by any payment or recovery of an amount due from the Contractor to the Employer.

6. Guarantor's liability not impaired

The Guarantor's liability under this Guarantee is as principal obligor and not merely as surety. Neither the Guarantor's liability under this Guarantee nor the Employer's rights under it will be affected by any of the following, whether or not known to any of the parties:

- 6.1. the Contractor's obligations under the Contract being or becoming illegal, invalid or unenforceable, if it would not be illegal for the Guarantor to fulfil the obligation
- 6.2. bankruptcy, insolvency, liquidation, examinership, dissolution, amalgamation, winding up, reorganisation or any similar proceeding concerning the Contractor
- 6.3. change in the status, function, control or ownership of the Contractor
- 6.4. death or incapacity of the Contractor
- 6.5. amendment to the Contract or change to the works to be done under it (whether or not the amendment or change increases the Guarantor's liability)
- 6.6. time being given to the Contractor
- 6.7. a concession, arrangement, waiver or other indulgence being granted or made or agreed to be granted or made by the Employer
- 6.8. anything that the Employer or the Contractor do or fail to do, including without limitation:
 - (1) asserting or pursuing (or failing or delaying to assert, perfect or enforce) rights or remedies or
 - (2) giving security or releasing, modifying, or exchanging security or
 - (3) having or incurring any liability
- 6.9. assignment of the benefit of the Contract
- 6.10. whole or partial discharge (whether of the Contractor's obligations or security for them or otherwise) or arrangement made on the faith of payment, security or other disposition that is avoided or must be repaid on bankruptcy, liquidation or otherwise
- 6.11. rights against third parties that the Employer may have relating to performance of the Contractor's obligations
- 6.12. a reduction in, or other arrangement relating to, the Contractor's liability to the Employer as a result of an arrangement or composition under the Companies (Amendment) Act, 1990 or any similar provision
- 6.13. any other act, event, fact, circumstance, rule of law, or omission.

7. Guarantor not to claim against or in competition with the Employer

For as long as the Contractor has actual or contingent obligations or liability under the Contract, the Guarantor shall not:

- 7.1. be entitled to share in the Employer's rights under the Contract or any other rights or security of the Employer or

7.2. in competition with the Employer, seek to enforce any rights concerning the Guarantor performing or having obligations under this Guarantee

and if the Guarantor receives money from the Contractor in relation to a payment of the Guarantor under this Guarantee, the Guarantor will hold the money in trust for the Employer as long as the Guarantor has any liability (contingent or otherwise) under this Guarantee.

8. No preconditions upon Employer

The Employer may enforce this Guarantee without exercising rights against the Contractor or anyone else.

9. Assignment

The Employer may assign the benefit of this Guarantee without the Guarantor’s or Contractor’s consent. The Employer shall give notice to the Guarantor within 28 days after any assignment.

10. Partial invalidity

If at any time any part of this Guarantee is or becomes illegal, invalid or unenforceable, the rest of this Guarantee will remain legal, valid and enforceable.

11. Law and Jurisdiction

This Guarantee is governed by and construed according to Irish law and the parties submit to the jurisdiction of the Irish courts to determine all matters concerning it.

12. Notices

Any communication given in connection with this Guarantee must be in writing and delivered to, or sent by pre-paid registered post to the relevant party’s address at the top of this Guarantee, or the Guarantor’s agent’s address in clause 13 below, or another address notified in writing by the relevant party. Pre-paid registered post is taken to have been received 2 days after it was sent.

13. Agent for Service

[The Guarantor appoints of as its agent for service of legal proceedings. The Guarantor confirms that the named agent has been irrevocably appointed and the failure of the agent to notify the Guarantor of receipt of a document will not invalidate any proceedings or the service of the document.]¹

14. Representations and Warranties

The Guarantor represents and warrants to the Employer that:

- 14.1. the execution, delivery and performance of this Guarantee by the Guarantor has been duly and validly authorised by all requisite corporate action by the Guarantor and
- 14.2. this Guarantee is the Guarantor’s legal, valid and binding obligation in accordance with its terms and
- 14.3. no approval or consent from any governmental entity or any other person or entity is required in connection with the execution, delivery or performance of this Guarantee by the Guarantor.

Given under the Guarantor’s common seal

.....

.....

¹ An address in Ireland is required when the Guarantor does not have a registered office in Ireland

Given under the Contractor's common seal

.....

.....

Signed on behalf of the Employer

.....

in the presence of

.....

MODEL FORM 8

FORM OF NOVATION AND GUARANTEE DEED

(To be used when the Contract is to be novated to a joint venture company)

THIS DEED is made on

BETWEEN:-

1.,
whose registered office is at (the **Contractor**)
2.,
whose registered office is at
.....,
whose registered office is at
.....,
whose registered office is at

(together, the **Guarantors**) and
3. *[name of Employer]* whose principal office is at *[insert]* (the **Employer**)

BACKGROUND

- A. By a Contract (the **Contract**) the Guarantors have been appointed by the Employer for *[name of Contract]*
- B. The Guarantors have formed the Contractor as their subsidiary for the purpose of completing the Contract.
- C. This deed is for the Contract to be novated from the Employer and the Guarantors to the Employer and the Contractor, and for the Guarantor jointly and severally to guarantee the Contractor's performance of the Contract.

IT IS AGREED AS FOLLOWS:

1. **No amount due**

The Guarantors acknowledge that no amount is due to them under the Contract on the date of this Deed.
2. **Novation**

The Contract is novated from the Employer of the one part and the Guarantors of the other to the Employer of the one part and the Contractor of the other.
3. **Contract affirmed**
 - 3.1. Subject to this Deed, the Contract remains in effect.
 - 3.2. The Contractor is bound and treated as if always bound to perform the Contractor's obligations and observe the Contract as if the Contractor were and always had been named as "the Contractor" in the Contract in place of the Guarantors.

- 3.3. The Employer is bound and treated as if always bound to perform the Employer's obligations and observe the Contract for the benefit of the Contractor as if the Contractor were and always had been named as "the Contractor" in the Contract in place of the Guarantors.

4. Warranty

The Guarantors and the Contractor represent and warrant to the Employer that the Contractor's duties and obligations under the Contract have been performed in accordance with the Contract.

5. Guarantee

The Guarantors irrevocably and unconditionally:

- 5.1. guarantee to the Employer that the Contractor will punctually perform all its obligations under the Contract and
- 5.2. undertake to the Employer to fully perform the Contractor's obligations under the Contract if the Contractor fails to perform them.

6. Indemnity

If the Contractor's obligations under the Contract are or become void or unenforceable then, as between the Guarantor and the Employer (but without affecting the Contractor's obligations), the Guarantor will as principal obligor indemnify the Employer against any resulting loss and be liable to the Employer for the same amount as the Guarantor would have been liable for if the obligations had not been void or unenforceable.

7. Contractor's failure to perform

- 7.1. If the Contractor goes into liquidation, administration, examinership or receivership or becomes subject to any other form of insolvency proceedings, or if the Contractor's obligation to complete the Works is lawfully terminated under sub-clause 12.1 of the Conditions of the Contract, any such event will be conclusive evidence, for the purposes of this Deed, that the Contractor has failed to perform the Contract.
- 7.2. The decision of a court or arbitrator or an agreement between the Contractor and the Employer will be binding on the Guarantors in relation to any failure by the Contractor to perform the Contract.

8. Guarantee is in addition to other security

The Guarantors' obligations are in addition to and independent of any other security the Employer may at any time hold for the Contractor's obligations under the Contract.

9. Continuing guarantee

The Guarantors' liability will continue until the Contractor has performed all its obligations in full, and will not be satisfied or diminished by any payment or recovery of an amount due from the Contractor to the Employer.

10. Joint and several liability

The Guarantors' liability under this Deed is joint and several.

11. Guarantor's liability not impaired

The Guarantor's liability under this Guarantee is as principal obligor and not merely as surety. Neither the Guarantors' liability under this Deed nor the Employer's rights under it will be affected by any of the following, whether or not known to any of the parties:

- 11.1. the Contractor's obligations under the Contract being or becoming illegal, invalid or unenforceable, if it would not be illegal for the Guarantor to fulfil the obligation

- 11.2. bankruptcy, insolvency, liquidation, examinership, dissolution, amalgamation, winding up, reorganisation or any similar proceeding concerning the Contractor
- 11.3. change in the status, function, control or ownership of the Contractor
- 11.4. death or incapacity of the Contractor
- 11.5. amendment to the Contract or change to the works to be done under it (whether or not the amendment or change increases the Guarantors' liability)
- 11.6. time being given to the Contractor
- 11.7. a concession, arrangement, waiver or other indulgence being granted or made or agreed to be granted or made by the Employer
- 11.8. anything that the Employer or the Contractor do or fail to do, including without limitation:
 - (1) asserting or pursuing (or failing or delaying to assert, perfect or enforce) rights or remedies or
 - (2) giving security or releasing, modifying, or exchanging security or
 - (3) having or incurring any liability
- 11.9. assignment of the benefit of the Contract
- 11.10. whole or partial discharge (whether of the Contractor's obligations or security for them or otherwise) or arrangement made on the faith of payment, security or other disposition that is avoided or must be repaid on bankruptcy, liquidation or otherwise
- 11.11. rights against third parties that the Employer may have relating to performance of the Contractor's obligations
- 11.12. a reduction in, or other arrangement relating to, the Contractor's liability to the Employer as a result of an arrangement or composition under the Companies (Amendment) Act, 1990 or any similar provision
- 11.13. any other act, event, fact, circumstance, rule of law, or omission.

12. Guarantors not to claim against or in competition with the Employer

For as long as the Contractor has actual or contingent obligations or liability under the Contract, the Guarantors shall not:

- 12.1. be entitled to share in the Employer's rights under the Contract or any other rights or security of the Employer or
- 12.2. in competition with the Employer, seek to enforce any rights concerning the Guarantor performing or having obligations under this Deed

and if a Guarantor receives money from the Contractor in relation to a payment of the Guarantor under this Guarantee, the Guarantor will hold the money in trust for the Employer as long as the Guarantor has any liability (contingent or otherwise) under this Guarantee.

13. No preconditions upon Employer

The Employer may enforce this Deed without exercising rights against the Contractor or anyone else.

14. Assignment

The Employer may assign the benefit of this Guarantee without the Guarantors' or Contractor's consent. The Employer shall give notice to the Guarantor within 28 days after any assignment.

15. Partial invalidity

If at any time any part of this Deed is or becomes illegal, invalid or unenforceable, the rest of this Guarantee will remain legal, valid and enforceable.

16. Law and Jurisdiction

This Deed is governed by and construed according to Irish law and the parties submit to the jurisdiction of the Irish courts to determine all matters concerning it.

17. Notices

Any communication given in connection with this Deed must be in writing and delivered to, or sent by pre-paid registered post to the relevant party's address at the top of this Guarantee, or a Guarantor's agent's address in clause 18 below, or another address notified in writing by the relevant party. Pre-paid registered post is taken to have been received 2 days after it was sent.

18. Agent for Service

[The Guarantors appoint of as its agent for service of legal proceedings. The Guarantors confirm that the named agent has been irrevocably appointed and the failure of the agent to notify the Guarantor of receipt of a document will not invalidate any proceedings or the service of the document.]¹

19. Representations and Warranties

The Guarantors and the Contractor represent and warrant to the Employer that:

- 19.1. The Guarantors own the entire beneficial interest in the share capital and issued share capital of the Contractor and no-one else is entitled to appoint members of the Contractor's board of directors or to vote at meetings of the members of the Contractor.
- 19.2. the execution, delivery and performance of this Guarantee by the Guarantors and the Contractor has been duly and validly authorised by all requisite corporate action by the Guarantors and the Contractor and
- 19.3. this Deed is the Guarantors' and the Contractor's legal, valid and binding obligation in accordance with its terms and
- 19.4. no approval or consent from any governmental entity or any other person or entity is required in connection with the execution, delivery or performance of this Deed by the Guarantors or the Contractor.

Given under the Guarantors' common seals

.....

¹ An address in Ireland is required when the Guarantor does not have a registered office in Ireland

Given under the Contractor's common seal

.....

.....

Signed on behalf of the Employer

.....

in the presence of

.....

MODEL FORM 9

FORM OF APPOINTMENT OF PROJECT SUPERVISOR FOR CONSTRUCTION STAGE ONLY

THIS DEED is made on

BETWEEN

- 1. (the **Client**) and
- 2.
whose registered office is at (the **Project Supervisor**)

BACKGROUND

- A By a contract (the **Contract**) made on or about (date of letter of acceptance) the Client, as employer, has appointed [the Project Supervisor or] as contractor (the **Contractor**), for [*name of Contract*] (the **Works**).
- B. This Deed is collateral to the Contract.

IT IS AGREED AS FOLLOWS:

- 1. The Client appoints the Project Supervisor as project supervisor for the construction stage according to the Safety, Health and Welfare (Construction) Regulations 2006, and any amendment to them (the Construction Regulations) for the project comprising the Works [and – *specify any additional scope for which this Project Supervisor is to be appointed project supervisor for construction stage, for example a process installation*] (the **Project**).
- 2. The Project Supervisor's appointment starts on the date of this Deed and continues for as long as, under the Construction Regulations, the Client is required to have a project supervisor for the construction stage for the Project, unless the appointment is terminated earlier.
- 3. The Project Supervisor accepts the appointment.
- 4. The Project Supervisor shall perform all of its duties under the Construction Regulations as project supervisor for the construction stage for the Project.
- 5. The Project Supervisor represents and warrants to the Client that the Project Supervisor is and will continue to be a competent person to carry out its duties under this Deed and the Construction Regulations and has allocated and will allocate sufficient resources to enable itself to comply with the requirements and prohibitions imposed on the Project Supervisor by this Deed and under the relevant statutory provisions. In this Deed, **competent person** and **relevant statutory provisions** are construed according to section 2 of the Safety, Health and Welfare at Work Act 2005, and any amendment to it.
- 6. The Project Supervisor represents and warrants to the Client that the time allowed by the Contract for the completion of the Works is appropriate and sufficient to enable the Project Supervisor to perform its duties under this Deed and the Construction Regulations.
- 7. The Project Supervisor represents and warrants to the Client that the information provided by the Client to the Project Supervisor about the state or condition of the Site (as defined in the Contract) and any premises on it is appropriate and sufficient to enable the Project Supervisor to perform its duties under this Deed and the Construction Regulations.
- 8. The Project Supervisor shall ensure that it is insured by insurances in the same terms as the insurances the Contractor is required to have under clauses 3.6 and 3.7 of the Conditions of the Contract, and that those insurances comply with all the requirements of the Contract, and are kept in force for the same period as required by the Contract, and include cover for death or injury resulting from the Project Supervisor's performance or non-performance of its duties under this Deed and the Construction Regulations.
- 9. If the Project Supervisor breaches its obligations or warranties under this Deed, or if the Contractor's

obligation to complete the Works is terminated under the Contract, the Client may terminate the Project Supervisor's appointment under this Deed.

10. Without limiting its obligations under the Construction Regulations, the Project Supervisor shall give the Client all documents it prepares in the course of and for the purpose of performing its duties under this Deed (**Project Supervisor's Documents**). If the Project Supervisor's appointment under this Deed terminates, the Project Supervisor shall give all Project Supervisor's Documents to the Client immediately. Ownership of and copyright in the Project Supervisor's Documents shall become the Client's when the Project Supervisor delivers them to the Client, or the appointment is terminated, whichever is earlier. The Project Supervisor shall indemnify the Client against any liability resulting from the use or copying of the Project Supervisor's Documents infringing the property (including intellectual property) rights of any person.
11. This Deed is governed by and construed according to Irish law. The parties submit to the jurisdiction of the Irish courts in relation to all matters concerning it.

Given under the Client's seal

Given under the Project Supervisor's common seal

MODEL FORM 10

**FORM OF APPOINTMENT OF
PROJECT SUPERVISOR FOR CONSTRUCTION STAGE AND DESIGN PROCESS**

THIS DEED is made on

BETWEEN

1. (the **Client**) and
2.
whose registered office is at (the **Project Supervisor**)

BACKGROUND

By a contract (the Contract) made on or about (date of letter of acceptance), the Client, as employer, has appointed [the Project Supervisor or] as contractor (the **Contractor**), for [*insert name of Contract*] (the **Works**).

This Deed is collateral to the Contract.

IT IS AGREED AS FOLLOWS:

1. The Client appoints the Project Supervisor as project supervisor for the design process and the construction stage according to the Safety, Health and Welfare (Construction) Regulations 2006, and any amendment to them (the **Construction Regulations**) for the project comprising the Works [*and – specify any additional scope for which this Project Supervisor is to be appointed project supervisor for construction stage, for example a process installation*] (the **Project**).
2. The Project Supervisor's appointment starts on the date of this Deed and continues for as long as, under the Construction Regulations, the Client is required to have a project supervisor for the design process or the construction stage for the Project, unless the appointment is terminated earlier.
3. The Project Supervisor accepts the appointment.
4. The Project Supervisor shall perform all of its duties under the Construction Regulations as project supervisor for the design process and construction stage for the Project.
5. The Project Supervisor represents and warrants to the Client that the Project Supervisor is and will continue to be a competent person to carry out its duties under this Deed and the Construction Regulations and has allocated and will allocate sufficient resources to enable itself to comply with the requirements and prohibitions imposed on the Project Supervisor by this Deed and under the relevant statutory provisions. In this Deed, **competent person** and **relevant statutory provisions** are construed according to section 2 of the Safety, Health and Welfare at Work Act 2005, and any amendment to it.
6. The Project Supervisor represents and warrants to the Client that the time allowed by the Contract for the completion of the Works is appropriate and sufficient to enable the Project Supervisor to perform its duties under this Deed and the Construction Regulations.
7. The Project Supervisor represents and warrants to the Client that the information provided by the Client to the Project Supervisor about the state or condition of the Site (as defined in the Contract) and any premises on it is appropriate and sufficient to enable the Project Supervisor to perform its duties under this Deed and the Construction Regulations.
8. The Project Supervisor shall ensure that it is insured by insurances in the same terms as the insurances the Contractor is required to have under clauses 3.6 and 3.7 of the Conditions of the Contract, and that those insurances comply with all the requirements of the Contract, and are kept in force for the same period as required by the Contract, and include cover for death or injury resulting from the Project Supervisor's performance or non-performance of its duties under this Deed and the Construction Regulations.

9. If the Project Supervisor breaches its obligations or warranties under this Deed, or if the Contractor's duty to complete the Works is terminated under the Contract, the Client may terminate the Project Supervisor's appointment under this Deed.
10. Without limiting its obligations under the Construction Regulations, the Project Supervisor shall give the Client all documents it prepares in the course of and for the purpose of performing its duties under this Deed (**Project Supervisor's Documents**). If the Project Supervisor's appointment under this Deed terminates, the Project Supervisor shall give all Project Supervisor's Documents to the Client immediately. Ownership of and copyright in the Project Supervisor's Documents shall become the Client's when the Project Supervisor delivers them to the Client, or the appointment is terminated, whichever is earlier. The Project Supervisor shall indemnify the Client against any liability resulting from the use or copying of the Project Supervisor's Documents infringing the property (including intellectual property) rights of any person.
11. This Deed is governed by and construed according to Irish law. The parties submit to the jurisdiction of the Irish courts in relation to all matters concerning it.

Given under the Client's seal

Given under the Project Supervisor's common seal

MODEL FORM 11

FORM OF APPOINTMENT OF PROJECT SUPERVISOR FOR DESIGN PROCESS ONLY

THIS DEED is made on

BETWEEN

1. (the **Client**) and
2.
whose registered office is at (the **Project Supervisor**)

BACKGROUND

By a contract (the **Contract**) made on or about (date of letter of acceptance), the Client, as employer, has appointed [.....] as contractor (the **Contractor**), for [*insert name of Contract*] (the **Works**).

This Deed is collateral to the Contract.

IT IS AGREED AS FOLLOWS:

1. The Client appoints the Project Supervisor as project supervisor for the design process according to the Safety, Health and Welfare (Construction) Regulations 2006, and any amendment to them (the **Construction Regulations**) for the project comprising the Works [*and – specify any additional scope for which this Project Supervisor is to be appointed project supervisor for the design process, for example a process installation*] (the **Project**).
2. The Project Supervisor's appointment starts on the date of this Deed and continues for as long as, under the Construction Regulations, the Client is required to have a project supervisor for the design process for the Project, unless the appointment is terminated earlier.
3. The Project Supervisor accepts the appointment.
4. The Project Supervisor shall perform all of its duties under the Construction Regulations as project supervisor for the design process for the Project.
5. The Project Supervisor represents and warrants to the Client that the Project Supervisor is and will continue to be a competent person to carry out its duties under this Deed and the Construction Regulations and has allocated and will allocate sufficient resources to enable itself to comply with the requirements and prohibitions imposed on the Project Supervisor by this Deed and under the relevant statutory provisions. In this Deed, **competent person** and **relevant statutory provisions** are construed according to section 2 of the Safety, Health and Welfare at Work Act 2005, and any amendment to it.
6. The Project Supervisor represents and warrants to the Client that the time allowed by the Contract for the completion of the Works is appropriate and sufficient to enable the Project Supervisor to perform its duties under this Deed and the Construction Regulations.
7. The Project Supervisor represents and warrants to the Client that the information provided by the Client to the Project Supervisor about the state or condition of the Site (as defined in the Contract) and any premises on it is appropriate and sufficient to enable the Project Supervisor to perform its duties under this Deed and the Construction Regulations.
8. The Project Supervisor shall ensure that it is insured by insurances in the same terms as the insurances the Contractor is required to have under clauses 3.6 and 3.7 of the Conditions of the Contract, and that those insurances comply with all the requirements of the Contract, and are kept in force for the same period as required by the Contract, and include cover for death or injury resulting from the Project Supervisor's performance or non-performance of its duties under this Deed and the Construction Regulations.
9. If the Project Supervisor breaches its obligations or warranties under this Deed, or if the Contractor's

duty to complete the Works is terminated under the Contract, the Client may terminate the Project Supervisor's appointment under this Deed.

- 10.** Without limiting its obligations under the Construction Regulations, the Project Supervisor shall give the Client all documents it prepares in the course of and for the purpose of performing its duties under this Deed (Project Supervisor's Documents). If the Project Supervisor's appointment under this Deed terminates, the Project Supervisor shall give all Project Supervisor's Documents to the Client immediately. Ownership of and copyright in the Project Supervisor's Documents shall become the Client's when the Project Supervisor delivers them to the Client, or the appointment is terminated, whichever is earlier. The Project Supervisor shall indemnify the Client against any liability resulting from the use or copying of the Project Supervisor's Documents infringing the property (including intellectual property) rights of any person.
- 11.** This Deed is governed by and construed according to Irish law. The parties submit to the jurisdiction of the Irish courts in relation to all matters concerning it.

Given under the Client's seal

Given under the Project Supervisor's common seal

MODEL FORM 12

FORM OF PROFESSIONAL INDEMNITY INSURANCE CERTIFICATE

(Clause 3.9.6)

[Date]

To [Employer]
Re [Name of Contract]

A Dhaoine Uaisle

We refer to the above Contract.

We are the insurance brokers/underwriter in relation to the Contractor's professional indemnity insurance. We confirm that the details of the Contractor's professional indemnity insurance set out below are true and accurate in all respects.

1. Insurance Company
2. Policy No.(s)
3. Retroactive Date(s)
4. Renewal Date(s)
5. Occupation as stated in the policy(ies)
6. Limit of Indemnity
(a) Any One Claim €
(b) Any One Period €
7. The insurance includes legal liability in respect of
(a) death, bodily injury or disease to persons (other than employees): YES/NO
(b) damage to third party property:
resulting from breach of the Contractor's professional duties YES/NO
8. (a) The insurance covers claims arising out of the sub-contracting of design or supervision activities, if any, to sub-contractors/sub-consultants: YES/NO
(b) The adequacy of the professional indemnity insurances arranged by such sub-contractors/sub-consultants has been investigated and confirmed: YES/NO
9. The insurance includes:
(a) Liability as project supervisor for:-
(i) design process: YES/NO
(ii) construction stage: YES/NO
(b) Liability under Collateral Warranties or Duty of Care Agreements: YES/NO
10. The insurance provides full policy cover in respect of:-
(a) Date Recognition / Year 2000 problems: YES/NO
(b) Pollution / contamination: YES/NO
(c) Composite panels: YES/NO
(d) Asbestos: YES/NO
11. The amount of Policy Excess, if any, is: €
12. (a) Territorial Limits in relation to the insurance are:
(b) Jurisdiction is limited to:

13. Restrictive endorsements/warranties on the policy:-

.....
.....

Is mise, le meas

SIGNED:-

(Insurer & Insurance broker)

MODEL FORM 13
FORM OF COLLATERAL WARRANTY
(Clause 5.5)

THIS DEED is made on

BETWEEN

1.,
whose registered office is at (the **Contractor**)
2.,
whose registered office is at(the **Specialist**) and
3. *[Insert Employer's name]*.....
whose principal office is at *[insert]*.....(the **Employer**).

BACKGROUND

- A The Employer has entered or is about to enter into a contract by which the Contractor will undertake to [name of the Contract] (the **Works**) on behalf of the Employer. Terms defined in that contract have the same meaning in this Deed.
- B By written agreement dated (the **Contract**) the Contractor has appointed the Specialist to (description of contract works or services or supply) in connection with the Works.
- C The total amount to be paid by the Contractor to the Specialist under the Contract for completing the Specialist's obligations under the Contract is €.....

IT IS AGREED as follows in consideration of the payment of €1 by the Employer to the Specialist (receipt of which the Specialist acknowledges):

1. Specialist's Undertakings to the Employer

- 1.1. The Specialist warrants and undertakes to the Employer that it has not broken and will not break any express or implied term of the Contract.
- 1.2. The Specialist covenants with the Employer that, in carrying out the Contract, [the Specialist has exercised and will continue to exercise the standard of skill, care and diligence reasonably to be expected of properly qualified persons providing works, services or supply comparable in value, size, scope, complexity and quality to that required under the Contract]/[that the part of the Works to be undertaken by the Specialist, when complete, will be fit for its intended purpose as described in the Contract]¹.

2. Insurance

- 2.1. The Specialist shall maintain professional indemnity insurance in the amount of at least €.....
[[covering the Specialist's obligations under this Deed for each and every claim or series of claims arising from the same originating cause] if the Specialist is not a consultant, the following minimum level of professional indemnity insurance may be used €..... [which may be an annual aggregate limit]] until a date no earlier than six years from the date Substantial Completion of the Works is certified under the Contract. The maximum excess shall be €.....

¹ Delete appropriate option. Specialists should be required to covenant fitness for purpose when a works item they are to provide is to be fit for its intended purpose.

- 2.2. When it is reasonably requested to do so by the Employer, the Specialist shall produce for inspection satisfactory documentary evidence that its professional indemnity insurance is being maintained.
- 2.3. The Specialist shall immediately notify the Employer of any cancellation, non-renewal or material reduction in the insurance.

3. Copyright

- 3.1. [Ownership of and copyright in all Contractor's Documents provided or produced by or on behalf of the Specialist will transfer to the Employer when the Employer receives them.2]
- 3.2. The copyright in all drawings, designs, reports, specifications, calculations and other similar documents and written information (including all information stored on any disk, computer or processing facility) obtained or provided by or on behalf of the Specialist in connection with the Works, [other than Contractor's Documents]3 (**Design Information**) will remain vested in the Specialist.
- 3.3. The Specialist grants to the Employer, and all those authorised by it, an irrevocable royalty free non-exclusive licence to copy and use Design Information and to reproduce the designs contained in them for any purpose related to the Works including, but without limitation, to construct, complete, maintain, extend, let, sell, promote, advertise, reinstate and repair the Works.
- 3.4. The Specialist will not be liable for any use by the Employer of the Contractor's Documents or Design Information for any purpose other than that for which the Specialist prepared and provided them.
- 3.5. The Specialist shall pay and indemnify the Employer against all royalties and other sums for the supply and use of any patented or copyrighted articles, processes, information or investigations required to perform its duties under the Contract.
- 3.6. The Specialist shall, on reasonable demand, produce to the Employer a copy of all the Contractor's Documents and Design Information.
- 3.7. The Specialist shall indemnify the Employer against losses, liability, damages, claims, proceedings and costs suffered or incurred by reason of the Specialist infringing or being held to have infringed any copyright or other intellectual property rights in any Contractor's Documents or Design Information.

4. Assignment

The benefit of this Deed is assignable.

5. Step In

- 5.1. The Employer has no authority under this Deed to issue any instruction to the Specialist in relation to the Specialist's duties under the Contract, unless and until the Employer has given notice under sub-clause 5.3 below.
- 5.2. The Specialist agrees that it will not, without first giving the Employer at least 28 days written notice, exercise any right of termination of the Contract, or treat the Contract as having been repudiated, or discontinue carrying out the Contract. The notice to the Employer must be accompanied by all of the information referred to in sub-clause 5.5 below. The Specialist's rights of termination (and the like) will cease if, within the 28 day period, the Employer gives notice to the Specialist under sub-clause 5.3 below.
- 5.3. The Specialist agrees that, if the Employer gives notice requiring the Specialist to accept the Employer's instructions to the exclusion of the Contractor, the Specialist will deal with and accept instructions solely from the Employer in substitution for the Contractor as if the Employer had appointed the Specialist originally on the terms of the Contract.
- 5.4. Only if the Employer gives notice under sub-clause 5.3 above, the Employer will become liable for payment of the amounts payable to the Specialist under the Contract (except for amounts due for work

2 Include if required under the main contract (Schedule, part 1C)

3 Only Include if assignment of copyright required

for which the Employer has already paid the Contractor) and for performance of the Contractor's other obligations under the Contract, but the Employer's liability will not exceed the amounts particulars of which were given in the notice under sub-clause 5.2 above.

- 5.5. The Specialist and the Contractor shall, if so required by the Employer at any time, give the Employer a copy of the Contract, particulars of the amounts paid to the Specialist under the Contract, particulars of amounts due and unpaid to the Specialist, particulars of amounts remaining to be paid to the Specialist under the Contract but not yet due, and any information requested by the Employer that is relevant to these amounts.
- 5.6. If the Contractor's obligation to complete the Works is terminated under the contract between the Employer and the Contractor for the Works, and the Employer so requires, the Specialist shall enter into a contract with the Employer or a replacement contractor for the Specialist to complete its obligations under the Contract, in the same terms as the Contract with all necessary changes.
- 5.7. The Contractor releases the Specialist from any obligation to inquire about whether the Employer's rights under this clause have become exercisable, and from any liability to the Contractor for complying with this clause.

6. Notices

Any notice to be given under this Deed must be in writing and will be considered given if delivered by hand or sent by prepaid registered post to the address of the relevant party at the top of this Deed, or at any other address the relevant party may specify by written notice to the other parties. A notice will be taken to have been received on the day of delivery if delivered by hand, or 48 hours later if sent by prepaid registered post.

7. Common Law Rights

Nothing in this Deed limits the Employer's rights at law.

8. Law

This Deed is governed by and construed according to Irish law. The parties submit to the jurisdiction of the Irish courts in relation to all matters concerning it.

9. Joint and Several Liability

The obligations in this Deed of the persons comprising the Specialist are joint and several.

Given under the Contractor's common seal

.....

.....

Given under the Specialist's common seal

.....

.....

Signed on behalf of the Employer

by

in the presence of

.....

MODEL FORM 14
FORM OF NOVATION AGREEMENT
(Clause 5.4)

THIS DEED is made on

BETWEEN

1.,
whose registered office is at (the **Contractor**)
2.,
whose registered office is at(the **Specialist**) and
3. *[Insert Employer's name]*.....
whose principal office is at *[Insert]*.....(the **Employer**).

BACKGROUND

- A. By written agreement dated *[insert]* (the Specialist Contract) the Employer has appointed the Specialist to [description of works, services or supply] in connection with *[name of main Contract]*.
- B. The Employer has appointed the Contractor to do Works, which include what the Specialist is to do under the Specialist Contract
- C. The parties to this Deed have agreed to the novation of the Specialist Contract from the Employer and Specialist to the Contractor and Specialist.

IT IS AGREED as follows:

1. Payment

The Specialist confirms that all money due under the Specialist Contract to the date of this Deed has been paid in full.

2. Novation

The Specialist Contract is novated from the Employer and the Specialist to the Contractor and the Specialist.

3. Affirmation of Subcontract

- 3.1. Subject to this Deed, the Specialist Contract remains in effect.
- 3.2. The Specialist is bound, and considered always to have been bound, to perform the Specialist's obligations for the benefit of the Contractor, as if the Contractor were and always had been named as "the Employer" in the Specialist Contract in place of the Employer.
- 3.3. Similarly, the Contractor is bound, and considered always to have been bound, to perform the Employer's obligations for the benefit of the Specialist as if the Contractor were and always had been named as "the Employer" in the Specialist Contract in place of the Employer.

4. Warranty

The Specialist warrants to the Contractor that it has not breached any of its obligations under the Specialist Contract.

5. Release from Obligations

- 5.1. The Specialist will no longer owe any obligation to the Employer under the Specialist Contract. This does not affect any collateral warranty between the Specialist and the Employer.
- 5.2. Similarly, the Employer will no longer owe any obligation to the Specialist under the Specialist Contract.

6. Law

This Deed is governed by and construed according to Irish law. The parties submit to the jurisdiction of the Irish courts in relation to all matters concerning it.

Given under the Employer's seal

Given under the Contractor's common seal

.....

.....

Given under the Specialist's common seal

.....

.....

MODEL FORM 15

**FORM OF RATES OF PAY AND CONDITIONS OF EMPLOYMENT CERTIFICATE
certificate to be submitted with each interim statement under Clause 11.1**

[Date]

To [Name of Employer]

[Name of Contract]

(Period of interim statement):

A Dhaoine Uaisle

We refer to the above contract. Terms used in this letter that are defined in the Conditions of the Contract have the same meaning in this certificate.

The Contractor certifies that, in respect of the work to which the interim statement referred to above relates, clause 5.3 of the Contract has been observed by the Contractor and the employers of all work persons on the Site. This certification includes, but is not limited to, the following:

- the rates of pay and the conditions of employment (including in relation to pension contributions) of each work person comply with all applicable statutory provisions, and those rates and conditions have been no less favourable than those for the relevant category of work person in any employment agreements registered under the Industrial Relations Acts 1946 to 2004
- all wages and other money due to each work person have been paid in accordance with the Payment of Wages Act 1991 and have not been more than 1 month in arrears or unpaid
- payments due to be paid on behalf of each work person (including pension contributions, where applicable) have been paid
- all pension contributions and other amounts due to be paid on behalf of each work person, have been paid
- all deductions from payments to work persons required by law have been made and paid on, as required by Law
- in relation to the employment of work persons on the Site, the Safety, Health and Welfare at Work Act, 2005 and all employment law including the Employment Equality Act 1998, the Industrial Relations Acts 1946 to 2004, the National Minimum Wage Act 2000, regulations, codes of practices, legally binding determinations of the Labour Court and registered employment agreements under those Laws have been observed.

Is mise, le meas

Signed:

Contractor's Representative

[Date]

MODEL FORM 16

FORM OF BOND – UNFIXED WORKS ITEMS

(Clause 11.2)

Bond No.....
BOND AMOUNT: €.....

THIS BOND (the Bond) is made on

BETWEEN

1.,
whose registered office is at (the **Contractor**)
2.,
whose registered office is at(the **Surety**) and
3. *[Insert Employer's name]*.....
whose principal office is at *[insert]*.....(the **Employer**).

BACKGROUND

- A. The Contractor has been appointed by the Employer for *[name of contract]* (the Contract).
- B. The Contractor has agreed to furnish this bond to the Employer as a condition of payment for certain offsite Works Items.
- C. Terms defined in the Contract have the same meaning in this Bond.

IT IS AGREED AS FOLLOWS:

1. The Surety guarantees to the Employer that if the Contractor breaches the Contract or the Contractor's obligation to complete the Works is terminated under clause 12.1 of the Conditions the Surety will, subject to this Bond, pay all amounts for which the Contractor is liable under or as damages for breach of the Contract, as established under the Contract, taking into account all sums due to the Contractor under the Contract.
2. The maximum liability of the Surety under this Bond will not exceed €..... When the Employer's Representative notifies the Employer:
 - 2.1. that any of the off-site Works Items referred to in recital B above have been delivered to the Site and title in them vested in the Employer and
 - 2.2. the amount that the Contractor is entitled to be paid for that delivery and vesting under the Contract in the absence of this Bondthe Surety's maximum liability will be reduced by the amount so notified.
3. No alteration in the Contract or in the extent or nature of the Works, and no allowance of time under the Contract, and no forbearance or forgiveness concerning the Contract by the Employer, will in any way release the Surety from liability under this Bond.
4. The Surety will be released from its liability under this Bond on certification of Substantial Completion of the Works, except in relation to any breach by the Contractor or termination that has occurred before that date, written notice (including particulars of the breach or termination) of which the Employer has given the Surety within 4 weeks after this expiry date.
5. The Contractor undertakes to the Surety to perform its obligations under the Contract. This undertaking does not limit any rights or remedies of the Employer or the Surety.

- 6. The Contractor must promptly, and the Employer may, provide to the Surety by registered or hand-delivered letter to the Surety's registered office given above or to the agent named in clause 12 below a copy of any notice that the Contractor gives to or receives from the Employer under clause 12 of the Conditions. Breach by the Contractor of this obligation or failure to give notice will not give any defence to a call on this Bond.
- 7. The decision of a court or arbitrator in a dispute between the Employer and the Contractor will be binding on the Surety as to all matters concerning a breach of the Contract, termination under the Contract, and the Contractor's liability.
- 8. If the Surety is called on to pay the Employer's loss following a termination under clause 12.1 of the Conditions, the Surety may suggest a completion contractor to the Employer, but the Employer has no obligation to accept the suggestion.
- 9. The Surety will not be liable under this Bond for a breach or termination caused solely and directly by war, invasion, act of foreign enemies, hostilities (whether war is declared or not), civil war, rebellion, revolution or military or usurped power.
- 10. The Employer may assign the benefit of this Bond, without the Surety's or the Contractor's consent, by giving written notice to the Surety.
- 11. This Bond is governed by and construed according to Irish law and the parties submit to the jurisdiction of the Irish courts to determine all matters concerning it.
- 12. [The Surety appointsofas its agent for service of legal proceedings. The Surety confirms that the named agent has been irrevocably appointed and the failure of the agent to notify the Surety of receipt of a document will not invalidate any proceedings or the service of the document.]¹
- 13. Money payable by the Surety under this Bond will be paid in euro in Ireland.

Given under the Contractor's common seal

Given under the Surety's common seal

Signed on behalf of the Employer

.....
in the presence of

.....

¹ An address in Ireland is required when the Surety does not have a registered office in Ireland

MODEL FORM 17
FORM OF RETENTION BOND
(Clause 11.3)

[Date]

TO: [Employer's name and address]

..... (the **Contractor**) has entered into a contract dated(the **Contract**) with you for [name of Contract].

In consideration of you making payment to the Contractor of sums that would otherwise be retained by you under the Contract, WE, having our registered office at undertake to pay to you, without further proof or conditions and without deduction or set-off, any amount or amounts up to €..... on receipt of your demand in writing.

Unless a demand has been made, our liability under this Bond will expire on [90 days after the end of the Defects Period].

Any demand must be in writing addressed to and must be accompanied by your declaration that:

- the Contractor has failed to perform its obligations under the Contract or
- the Contractor's obligation to complete the Works has been terminated under the Contract or
- any of the events listed in clause 12.1 of the conditions of the Contract have happened

You may make one or more drawings under this Bond.

No alteration in the Contract or in the extent or nature of the works to be done under it, and no allowance of time under the Contract, and no forbearance or forgiveness concerning the Contract by the Employer, will in any way release us from liability under this Bond

[We appointof as our agent for the service of legal proceedings. We confirm that the named agent has been irrevocably appointed and the failure of the agent to notify us of receipt of a document will not invalidate any proceedings or the service of the document.]¹

This Bond is governed by and construed according to Irish law and the parties submit to the jurisdiction of the Irish courts to determine all matters concerning it.

Given under our common seal:

¹ An address in Ireland is required when the Surety does not have a registered office in Ireland

MODEL FORM 18

**FORM OF CONCILIATOR'S AGREEMENT
(Clause 13.1)**

This agreement is made between

1. [name] (the **Employer**)
2. [name] whose registered office is at [address] (the **Contractor**) and
3. [name] of [address] (the **Conciliator**)

Whereas:

- D. The Employer and Contractor have entered into a contract dated [date] (the **Contract**) for [*insert description of Works*].
- E. The Contract provides for the appointment of a conciliator for the resolution of disputes.

NOW IT IS HEREBY AGREED as follows:

1. The Conciliator shall act in accordance with the terms of the Contract.
2. For all purposes related to this agreement the Employer's, Contractor's and Conciliator's addresses are as follows:
 - 2.1. The Employer []
 - 2.2. The Contractor []
 - 2.3. The Conciliator []
3. The Employer and the Contractor shall pay the Conciliator's fees [and expenses] as follows: [*set out agreed terms or refer to separate letter*].
4. As between themselves, the Contractor and the Employer shall each pay one half of amounts due to the Conciliator under this agreement. As between the Conciliator and the other parties, the Employer and the Contractor are jointly and severally liable to the Conciliator. If one party pays the other's share of an amount due to the Conciliator, that party is entitled to reimbursement from the other.
5. This agreement remains in effect for as long as the Conciliator continues to act in that capacity.
6. This agreement is governed by and construed in accordance with the laws of Ireland.
7. Any dispute or claim arising out of or in connection with this agreement shall be settled by arbitration in accordance with the arbitration rules referred to in the Contract, amended as required.

Signed for and on behalf of
the Employer

in the presence of

Signed for and on behalf of
the Contractor

in the presence of

Signed by the Conciliator

in the presence of

MODEL FORM 19

FORM OF BOND – CONCILIATOR'S RECOMENDATION

(Clause 13.1)

[Date]

TO: [Name and address of beneficiary]

..... has entered into a contract dated(the **Contract**) with for [name of Contract]. A dispute has arisen under the Contract and the appointed conciliator has recommended that €..... (the **Award Amount**) be paid to

Clause 13.1.11 of the conditions of the Contract provides that if a conciliator recommends payment of money, the party concerned must pay the amount recommended if the other party first provides a bond. This is that bond.

In consideration of your paying the Award Amount to the [Contractor/Employer] WE, having our registered office at, undertake to pay to you, without further proof or conditions and without deduction or set-off, any amount or amounts up to the Award Amount on receipt of your demand in writing.

Unless a demand has been made, our liability under this Bond will expire on the earlier of:

- when you confirm to us in writing that the dispute that was the subject of the adjudication has been finally determined by an arbitrator or court, which has finally determined that the [Contractor/Employer] is entitled to the Award Amount net of any amounts owed to you
- the date 550 days after the date of this Bond.

Any demand must be in writing addressed toand either:

- be accompanied by your declaration that as a result of the award of an arbitrator or decision of a court, the [Contractor/Employer] is not entitled to the Award Amount net of any amounts owed to you or
- be made more than 500 days after the date of this Bond.

You may make one or more drawings under this Bond.

This Bond will become operative on payment by you of the Award Amount.

We will not be released in any way or discharged by time, indulgence, waiver, alteration, release or compromise or any other circumstances that might operate as a release of a guarantor at law or in equity.

This Bond is governed by and construed according to Irish law and the parties submit to the jurisdiction of the Irish courts to determine all matters concerning it.

[We appointof as our agent for the service of legal proceedings. We confirm that the named agent has been irrevocably appointed and the failure of the agent to notify us of receipt of a document will not invalidate any proceedings or the service of the document.]¹

Given under our common seal:

¹ An address in Ireland is required when the Surety does not have a registered office in Ireland