# Tender and Schedule

for

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| *The Project* |       |

using the

 **Public Works Contract for Early Collaboration**

Office of Government Procurement

Tender and Schedule for Public Works Contract **for Early Collaboration**

Document Reference FTS11 v.1.3

30 June 2016

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Department of Public Expenditure and Reform
Government Buildings
Upper Merrion Street
Dublin 2.

# Tender[[1]](#footnote-1)

|  |  |  |
| --- | --- | --- |
| **To** | *The Employer* |       |
|  | *Address of Employer* |       |
|  | *For the attention of* | Name of contact person identified in tender documents |
| **Date:** |  |  |

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| **Regarding:** | *The Project* |       |

A Dhaoine Uaisle

We have examined and understand the **Public Works Contract for Early Collaboration** (which consists of 12 Conditions and 12 Schedules), Original Employer’s Brief, the Pricing Document, the Tender Proposals and [list any other documents isssued at tender stage that will be included in the contract] 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, the completed Schedules (as appropriate) and Tender Proposals which form part of this Tender.

We offer to complete the Early Services and the First Task, or the First Task and any Additional Tasks, on the terms of and in conformity with the documents referred to in the preceding paragraph for:

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| 1. The lump sum for **Early Services** of:……………………………………………………………………………………………………………………………………………………………………….euro [[2]](#footnote-2),2. The lump sum Target Price for the **First Task** of:…………………………………………………………………………………………………………………………………….euro [[3]](#footnote-3), and3. The fee percentage on the Target Price for the **First Task** : ……………………………%4. *[include tendered amounts for any additional Tasks required]* |

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.

In consideration of your providing us with the contract documents, we agree not to withdraw this offer until the later of:

 (a)       days[[4]](#footnote-4) after the end of the last day for submission of this Tender

(b) expiry of at least 21 days written notice to terminate this Tender given by us, which may not issue

 prior to the expiry of the period at (a)

Your acceptance of this Tender within that time will result in a contract being formed between us for the Early Services. We will also be committed to contract with you for the First and any Additional Tasks following your acceptance of the Guaranteed Price Offer under clause 2.2.5.

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

We agree that if any contract formed by acceptance of this Tender is determined to be void, voidable, unenforceable, or ineffective, any damages for which you may be liable will not exceed the amount that would have been payable under clause 12.6 of the Conditions of the contract on termination under clause 12.5 of the Conditions of the contract.

We also agree that should a dispute arise under any contract formed by acceptance of this Tender that is referred to arbitration, to the extent permitted by law, under the Arbitration Act 2010 and a sealed offer has not been made, or where a sealed offer has been made and the Contractor’s award is greater than the sealed offer[[5]](#footnote-5), then each party will bear their own costs in relation to the arbitration proceedings.

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| ***Signed on behalf of the Tenderer*** |
| *Name of Tenderer* |  |
| *Signatures of authorised person:* |  |
| ***In the presence of*** |
| *Signature of witness* |  |
| *Witness’s address* |  |
| OR |  |
| **Given under the Tenderer’s common seal:** |
| *Affix Tenderer’s seal* |  |
| *Signatures of Director:* |  |
| *Signatures of Director/Secretary* |  |
|  |  |
| *Tenderer’s address* |  |

**SCHEDULE 1**

**MEANING**

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| **PART 1: INTERPRETATION** |
| 1 | The Conditions are sub-divided into clauses (e.g. 1.1) and sub-clauses (e.g. 1.1.1).  |
| 2 | References in the Schedules to clauses and sub-clauses are to the clauses and sub-clauses in the Conditions, unless the context indicates otherwise.  |
| 3 | Singular words include the plural and plural words include the singular except where the context indicates otherwise. |
| 4 | Words in a gender include all genders. |
| 5 | Reference to a law include amendments and replacements. |
| 6 | The terms **including**, **such as**,and **in particular** and similar terms are not to be read to limit, but may extend, the generality of the provisions they relate to. |
| 7 | No rule of legal interpretation of this contract 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 a Party’s benefit. |

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| **PART 2: DEFINITIONS** |
| When used in this contract these words and phrases have the meaning given opposite them unless the context indicates otherwise: |
| Adjudication | * means adjudication under the Construction Contracts Act 2013
 |
| Adjustment | * an increase or decrease of a Key Amount1 or
* an extension or advancement of a Milestone Date1
 |
| Adjustment Event | * a Change Order or
* a breach of this contract by the Employer
 |
| Change Order | an instruction of the ER changing the Early Services or a Task (or extending the time to accept a Guaranteed Price Offer1) |
| Claim | claim, demand, proceedings, or liability |
| Consent | planning permission, order, approval, certificate, fire certificate, environmental impact statement, or other permission required by law for the Early Services or a Task, or identified as a Consent in Schedule 6 or the Employer’s Brief |
| Contractor | named in Schedule 12 |
| Contractor’s Data | Tender Proposals12, Design Documents1, Supply Chain Documents7, reports, and other Data1 the Contractor is to provide under this contract, |
| Contractor’s Personnel | people and organisations working for the Contractor for the Early Services or a Task, including—* workers (defined in sub-clause 7.3.2)
* the Contractor’s management people referred to in Schedule 4
* the Supply Chain1 and people and organisations working for it
 |
| Contractor’s Things | equipment, facilities, temporary works, and other things that the Contractor or Contractor’s Personnel1 provide and use to execute the Works and not to be included in the Works |

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| Cost Breakdown | a full breakdown of a Guaranteed Price Offer1, complying with this contract |
| Data | information and media recording information, including documents, pictures, drawings, sketches, calculations, models, electronic media, computer software, written and electronic communications, and recordings |
| Day | a period from midnight to midnight 24 hours later |
| Deduction | * a Temporary Performance Deduction or Permanent Performance Deduction under part 3 of Schedule 3 or
* Retention1 or
* another deduction, withholding, or set-off from payment to the Contractor under this contract
 |
| Direction | an instruction of the ER, given according to this contract, that is not a Change Order; **Direct, Directs** and **Directed** are construed accordingly |
| Defect | Works, or Things for the Works1, that do not comply with this contract |
| Defects Certificate | the ER’s certificate that the Defects Date1 has passed |
| Defects Date | the last day of the period stated in Schedule 8, as may be extended under sub-clause 5.10.1 |
| Design Document | Data1 recording Contractor’s design |
| ER | the individual1 or organisation appointed by the employer to perform the role of ER |
| Early Services | the work described as the Early Services in Schedule 2 or the Employer’s Brief or both |
| Early Services Fee | the accepted early services fee stated in part 1 of schedule 3 as may be adjusted under this contract |
| Early Works | Works or temporary works to be executed as part of the Early Services, as described in the Employer’s Brief |
| Employer | named in Schedule 12, includes also an assignee or transferee where the context allows |
| Employer’s Brief | the Original Employer’s Brief identified in Schedule 12 as may be changed by Change Order |
| Employer’s Personnel | * the ER and its representatives
* the employer’s employees, agents, and consultants for this contract when acting on the Employer’s behalf and not exercising authority under law
* other contractors working for the Employer on the Site under clause 6.3
* others that the ER notifies the Contractor in writing are Employer’s Personnel
 |
| Fee Percentage | an Accepted Fee Percentage stated in part 1 of Schedule 3 as may be adjusted under this contract |
| Guaranteed Price | the amount of a Guaranteed Price Offer as may be adjusted under this contract |
| Guaranteed Price Offer | an offer under clause 2.2 |

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| Guaranteed Price Portion | a portion of the Guaranteed Price1 for a Task to which a discrete part of the Task is allocated under clause 2.3 |
| **Guarantor** | a guarantor or surety in a bond or guarantee under this contract |
| Individual | a human person |
| Intellectual Property | copyright, patents, trade marks, service marks, design rights, database rights, know-how, and other similar rights |
| Key Amount | any of the following amounts:* the Early Services Fee1
* an amount in part 1 of Schedule 3 for Early Works1
* a Target Price1
* a Guaranteed Price1
* a Task Lump Sum1
* a Fee Percentage1
 |
| Milestone Date | an Original Milestone Date in part 3 of Schedule 3 as may be adjusted under this contract |
| Model Form | in the corresponding form included in the Employer’s Brief or, if not there, most recently issued in the Department of Public Expenditure and Reform *Model Forms for use with the Public Works Contact for Early Collaboration*current at the date of this contract12, or if not in either, a form approved by the Employer |
| Notice of Early Use | an Employer’s notice under sub-clause 5.9.3 |
| Party | the Employer or the Contactor |
| Retention | amounts held by the Employer under sub-clause 3.4.1 |
| Site | places—* where Works or temporary works for the Works are to be executed or Things for the Works1 are to be delivered according to this contract or
* provided by the Employer for the Works or
* where the Contractor is to operate or maintain Employer’s facilities under this contract or
* identified as part of the Site in, or by measures under, Schedule 6
 |
| Substantial Completion | completion of Works so they can be used, occupied, and operated for their intended purpose and have no Defect other than—* Defects1 accepted under sub-clause 5.7.5 or
* minor Defects that do not, and whose rectification will not, prevent the safe and convenient use, occupation, and operation of the Works

with everything required by this contract to be done before Substantial Completion (including tests passed and Contractor’s Data1 and things delivered) done |
| Supply Chain | organisations that contract with the Contractor (or with another Supply Chain member below the Contractor) to perform part of a Task such as Works, Design, or supplying Things for the Works1 |
| Target Price | an Accepted Target Price in part 1 of Schedule 3 as may be adjusted under this contract |

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| Task | work described as a Task in Schedule 2 or the Employer’s Brief or both |
| **Task Lump Sum** | a lump sum agreed under sub-clause 3.2.3 |
| Task Price | defined in sub-clause 3.2.2 |
| Things for the Works | anything intended to be included in the Works |
| working day | a day other than Saturday or Sunday, a public holiday established under the Organisation of Working Time Act 1997, Good Friday, or Christmas Eve |
| Works | work to be completed and handed over to the Employer or others as part of Early Works1 or a Task |

**SCHEDULE 2**

**EARLY SERVICES AND TASKS**

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| Early Services and each Task includes the Contractor’s management services in Schedule 4 |
|  | *Identification of Task* | *Scheduled latest date for Employer to accept a Guaranteed Price Offer*1 *[sub-clause 2.2.5]* |
|  |  |  |
| Early Services | [As discribed in the Employer's Brief, section .........................................................................................................................................................................................] | Not Applicable |
|  |  |  |
| First Task | [Complete the design, execute and complete the Works referred to in the Employer's Brief] ..................................................................................................................................................................... | [90 days after Employer receives the Guaranteed Price Offer] ................................................................................................................................................................................................. |
|  |  |  |
| *Add any additional Tasks* |       |       |
|  |  |  |
|       |       |       |
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|       |       |       |
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|       |       |       |

**SCHEDULE 3**

**PAYMENTS**

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| **PART 1: AMOUNTS** |
| **1. Early Services Amounts** |
| Accepted Early Services Fee | €  |  |
|  |  |  |
|  | *Stage* | *Percentage* |
| interim advances of the Early Services Fee1 payable on completion of stages— |       | ......% |
|  |       | ......% |
|  |       | ......% |
|  |       | ......% |
| completion of Early Services, including delivery of Guaranteed Price Offer1, Cost Breakdown1 and all other Early Services deliverables |  | 100% |

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| **2. First Task Amounts** |
| Accepted Target Price | €  |  |
| Accepted Fee Percentage | ......% |  |
| Performance bond amount [sub-clause 2.2.7] | ...... % of the Guaranteed Price1 |  |
| Guaranteed Price Portion1 of Target Price1 allocated to Substantial Completion of Works [clause 2.3] | ......% |  |
| intervals for interim advance for Task [sub-clause 3.2.4] | [each calendar month] |  |

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| Initial Saving Share for this Task |      % of the result of subtracting the Guaranteed Price1 accepted by the Employer from the Target Price1 |
|  |  |
|  | *Stage* | *Percentage* |
| Initial Saving Share for this Task payable on completion of stages of this Task — |       | ......% |
|  |       | ......% |
|  |       | ......% |
|  |       | ......% |
|  |       | ......% |
| Saving Share for this Task  | ......% of the result (if positive) of subtracting the Guaranteed Price1 from the sum of the Defined Cost and Fee Percentage1 ascertified under sub-clause 3.8.2 |
| Retention percentage [clause 3.4] | ......% |
| retention-free amount | € .............................................. |
| limit of retention | € .............................................. |

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| *[Add a further version of this table [as below] for each other Task]* |
| **2(a) Additional Task Amounts** |
|  | *Stage* | *Percentage* |
|       |       |       |
|       |       |       |

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| **3. Early Works Amounts** |
| payment for Early Works | [monthly, the value of completed Early Works1according to the Pricing Document12, less Deductions1]or[monthly, Defined Cost of completed Early Works1, less Deductions1] |
| Retention percentage for Early Works1 | .......% |  |

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| **4. Annual Payment Limits** |
| If there are Annual Payment Limits for a calendar year in the table below, the maximum amount payable to the Contractor in any calendar year is as follows:  |
|  |

|  |  |
| --- | --- |
| calendar year | Annual Payment Limit |
| 20...... | € .............................................. |
| 20...... | € .............................................. |
| 20...... | € .............................................. |
| 20...... | € .............................................. |
| 20...... | € .............................................. |

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| **5. Time for Payment and Interest Rate** |
| Time for payment of Contractor invoices[clause 3.9.1] | [14 days] after Employer receives invoice |
| Rate of interest on late payments[clause 3.9.2] | The reference rate referred to in the European Communities (Late Payment in Commercial Transactions) Regulations 2002 plus 2% per year. |

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| **PART 2: DEFINED COST** |
| **1.** | **Defined Cost** is—* the lump sum fixed price due under a Supply Chain1 contract (made according to Schedule 7) for a completed Work Package7, as may be adjusted for Adjustment Events1 only, and
* the Elements of Defined Cost3.2 of the cost of completing other work in a Task (regardless of whether done by the Contractor itself or the Supply Chain)

less Excluded Cost3.2. |
| **2.** | For Work Packages7, interim instalments under this contract include the Supply Chain1 member’s Elements of Defined Cost of completing the Work Package, up to the lump sum fixed price of the Supply Chain contract made according to Schedule 7. |
| **3.** | **Excluded Cost** is cost—* not justified by the Contractor’s records or
* paid to a Supply Chain1 member or other when not due under its contract or
* incurred because the Contractor did not comply with this contract, including in particular Condition 4 or
* incurred in correcting Defects1 after Substantial Completion or
* resulting from events for which this contract requires the Contractor to insure or
* paid by insurers.
 |
| **4.** | The **Elements of Defined Cost** are the following: |
| 4.1. | Payments to Individuals1 executing the Works or temporary works on the Site, together with an allowance for PRSI and benefits |
| 4.2. | The number of hours worked by Individuals1 designing the Works or temporary works multiplied by—* 180% of the portion of their basic salary allocable to those hours, unless there are rates for them in the Pricing Document or
* the rates in the Pricing Document for their category, if there are any.

Basic salary excludes bonuses, overtime premium, expenses, benefits, and employer PRSI and other contributions.  |
| 4.3. | Net payments at competitive open market rates for Things for the Works1 included in the Works (less amounts previously included under paragraphs 4.4 or 4.5 below) |
| 4.4. | ......% of net payments at competitive open market rates for Things for the Works1 delivered to and suitably stored at the Site that the Contractor has proven to the ER are completed and substantially ready to be included in the Works, with title vested in the Employer, and not delivered prematurely (less amounts previously included under paragraph 4.5 below) |
| 4.5. | ......% of net payments at competitive open market rates for Things for the Works1 listed inparagraph 4.6, about which the Contractor has proven to the ER all of the following—* they are completed and substantially ready to be included in the Works
* title to them is vested in the Employer
* they are stored suitably and set aside and marked to show clearly that their destination is the Site and they are the Employer’s property
* they are insured as required by this contract, and will be so insured while in transit
* the Contractor has given the Employer a Model Form1 bond, executed by a surety approved by the Employer, for the amount to be paid.
 |
| 4.6. | The Things for the Works1 to which paragraph 4.5 applies are [none]                |
| 4.7. | Net payments at competitive open market rates for Contractor’s Things1 consumed in executing the Works at the Site. |
| 4.8. | The following elements of the cost of Contractor’s Things1 used to execute the Works or temporaryworks at the Site* the cost of hiring the Contractor’s Things (not listed below) at competitive open rates on an arm’s length basis from organisations unrelated to the Contractor
* the fair market rental rate of the Contractor’s Things (not listed below) owned by the Contractor or a related organisation for the amount of time for which they are required
* the rate listed below for Contractor’s Things listed below multiplied by the amount of time for which they are required

|  |  |  |
| --- | --- | --- |
| Item | € | Per |
|       |       |       |
|       |       |       |
|       |       |       |
|       |       |       |
|       |       |       |

 |
| 4.9. | If, according to part 5 of this Schedule, the Key Amounts1 include VAT at the standard rate (as defined there), VAT chargeable at the standard rate only. |
| 4.10. | Payments to public authorities and utility providers of charges for services they are entitled to make in respect of the Works. This does not include taxes. |
| **5.** | In paragraph 4: |
| 5.1. | **Individuals executing the Works or temporary works** includes only—(a) craftspersons, semi-skilled and unskilled labour, and drivers and operators of plant and(b) forepersons, charge-hands and other persons who supervise while performing duties within (a) above, but only for a wage rate no more than the standard wage rate paid to others performing those duties and expenses applicable to those duties and 50% of their total hours worked.Other people (such as site agents, managers, other full-time supervisors and administrators, architects, engineers, surveyors, timekeepers, clerical staff, safety health and welfare staff, and security staff) are excluded. |
| 5.2 | **Contractor’s Things**1 **used to execute the Works or temporary works** excludes, for example—* hand tools and
* passenger and utility vehicles and
* vehicles and other things used by those who are not people executing the Works or temporary works and
* facilities for management and administration and general site facilities such as
	+ site offices and their facilities and
	+ safety, health, and welfare facilities and
	+ security facilities and
	+ computers, telephones, and other communications facilities.
 |
| 5.3. | **Temporary works** includes only temporary works required for the Works. |
| **6.** | Discounts, rates, and taxes that can be recovered are deducted in figuring Defined Cost. |
| **7.** | Defined Cost incurred when a currency other than euro is converted into euro at the reference rates published by the European Central Bank on (or, if not on, most recently before) the date of the ER’s certificate. |

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| **PART 3: PERFORMANCE GOALS** |
| **1.** | The **Performance Goals** are as stated in the **Performance Goals Table** below.  |
| **2.** | Each **Temporary Performance Deduction** and **Permanent Performance Deduction** applies if the Performance Goal to which it applies is not achieved, according to the Performance Goals Table below. |
| **3.** | Permanent Performance Deductions apply at the rate given in the Milestones Table for each day after its Milestone Date1 that the Contractor has not achieved a **Milestone** in the Milestones Table. |
| **4.** | Permanent Performance Deductions stop accruing on termination of the relevant Task (or, as applicable, Early Services), but Permanent Performance Deductions for the period before termination stand. |
| 5 | Permanent Performance Deductions do not apply for failing to achieve a Milestone by its Milestone Date1 to the extent caused by loss or damage of the Works (not caused by the Contractor’s breach of this contract or the negligence of the Contractor or Contractor’s Personnel1). |
| 6 | If there is a **Bonus** in the Milestone Table for a Milestone, and the Contractor achieves the Milestone before its Milestone Date1, the Bonus is payable to the Contractor at the rate stated for each day before the Milestone Date that the Contractor achieves the Milestone. |

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| **Performance Goals Table** |
| Performance Goal | Temporary Performance Deduction | Permanent Performance Deduction |
| Completing each Milestone by its Milestone Date in the Milestones Table |  | As stated in the Milestones Table  |
| Providing Supply Chain1 collateral warranties required by Schedule 7 | As stated in Schedule 7 |  |
| Submitting programme and updates as required by Schedule 4 | 25% of each payment until achieved |  |
| Submitting reports required by Schedule 4 | 25% of each payment until achieved |  |
|       |       |       |
|       |       |       |
|       |       |       |
|       |       |       |
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| **Milestones Table** |
| **1. Early Services** |
| Milestone | Original Milestone Date1 | Permanent Performance Deduction [clause 3.5.3] | Bonus | Longstop Date[clause 12.3.1] |
|       | .......................[days after Employer orders Contractor to begin Task] | €     per day | [none] | [none] |
|  |  |  |  |  |
|       | .......................[days after Employer orders Contractor to begin Task] | €     per day | [none] | [none] |
|  |  |  |  |  |
|       | .......................[days after Employer orders Contractor to begin Task] | €     per day | [none] | [none] |
|  |  |  |  |  |
|  |  |  |  |  |
| completion of Early Services | .......................[days after Employer orders Contractor to begin Task] | €     per day | €     per day/ [none] | [180 days after the Milestone Date] |

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| **2. First Task** |
|       | .......................[days after Employer orders Contractor to begin Task] | €     per day | [none] | [none] |
|  |  |  |  |  |
|       | .......................[days after Employer orders Contractor to begin Task] | €     per day | [none] | [none] |
|  |  |  |  |  |
|       | .......................[days after Employer orders Contractor to begin Task] | €     per day | [none] | [none] |
|  |  |  |  |  |
| Substantial Completion of Works in Task as certified by the ER | .......................[days after Employer orders Contractor to begin Task] | €     per day | [none] | [180 days after the Milestone Date] |
|  |  |  |  |  |
| [tests to be done after Substantial Completion passed]  | .......................[days after Substantial Completion of Task certified by ER] | €     per day |  [none] | [180 days after the Milestone Date] |

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| *[Add a further version of this table [as below] for each other Task]* |
| **2(a) Additional Task** |
|       |       |       |       |       |
|       |       |       |       |       |

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| **PART 4: CHARGES** |
| *[insert details of any charges, such as for occupying road lanes or parts of the Site, or non-availability of facilities to be operated by the Contractor during Tasks]* |

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| **PART 5: VALUE-ADDED TAX** |
| *[Select one of these options. If 1 is selected, the Employer pays all VAT in addition to the amounts in the contract, (under clause 3.10). If option 2 is selected, the Employer pays VAT at the lower rate in addition to the amounts in the contract(under clause 3.10), but standard rate VAT is included in, for example, the Early Services Fee, the Guaranteed Price1and the Fee Percentage, and VAT at the standard rate is included in Defined Cost (under paragraph 8 of part 2 of this Schedule3.]* |
| **Option 1** |
| 1. All amounts in this contract exclude VAT, unless otherwise stated.2. The Employer must pay the Contractor (or the Revenue Commissioners if required by law or their practice) any VAT arising on the supply under this contract. |
| **Option 2** |
| The key Amount1 include VAT chargable at the standard rate. |

**SCHEDULE 4**

**MANAGEMENT**

|  |
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| **PART 1: COMMUNICATIONS** |
| ER’s name |       |
| ER’s address for written notices |      For the attention of: |
|  |
| *[other ER details for written and electronic communications]* |
|  |
| Employer’s contact details for written notices | in Schedule 12 |
| *[other Employer details for written and electronic communications]* |
|  |
| Contractor’s contact details for written notices | in Schedule 12 |
| *[other Contractor details for written and electronic communications]* |
|  |
| *[other joint arrangements for written and electronic communications, such as Project extranets]* |
| *[This should be adopted to suit the Project]* |

|  |  |
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| **1.** | **Notices** |
|  | Notices under this contract must be given in writing and hand-delivered or sent by registered post, with postage paid, to the address in the above table or Schedule 12 or an address updated by the relevant Party or ER on written notice to the others. Notices sent by registered post are taken to have been received two working days after posting.  |

|  |  |
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| **2** | **Meetings and Workshops** |
|  | 2.1 | The ER should convene a start-up workshop within 14 days after the date of this contract and within 14 days after the Contractor is ordered to proceed with a Task. The purpose of the workshop is to facilitate co-operation under clause 4.1 and to assess risks to the timing, cost, or quality of the Project. |
|  | 2.2 | In addition to the measures described in sub-clause 4.1.3, the ER should convene monthlymeetings to review—* progress of the work under this contract
* communications
* resolution of notified Adjustments1 and other issues or disputes
* safety and health issues
* Defects1, testing and quality
* issues affecting the environment and the Project’s12 neighbours
* achieving Performance Goals3.3
* projected Defined Cost3.2
* risks to timing, cost, or quality
* loss or damage and insurance issues
* public and labour relations
* other issues concerning the Project raised in advance by the ER or the Contractor that they consider may benefit from co-operation under clause 4.1
 |
|  | 2.3 | Within 21 days after Substantial Completion of all the Works has been certified, the ER shouldconvene a close-out workshop to review—* the workshop participants’ performance on the Project12
* resolution of any outstanding Adjustments1 and other issues or disputes
* completion of any outstanding work
 |
|  | 2.4 | The Parties must ensure that the most appropriate people on behalf of the Contractor and the ERattend meetings and workshops. The Employer may attend. The Parties should agree inadvance of meetings and workshops who will attend, and the agenda. The Parties should agreemethods of making an agreed record of meetings and workshops. Each Party must bear its owncost of meetings and workshops. |

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| **PART 2: CONTRACTOR’S MANAGEMENT SERVICES** |
| *[This should be adapted to suit the Project]* |
| **1** | **Contractor’s Representative and Supervisor** |
|  | 1.1 | The Contractor must have—* a representative with full authority to act on its behalf in all matters concerning this contract, from the date of this contractto the date the ER issues the Defects Certificate1 and
* a full-time supervisor of all the Contractor’s activities on the Site, with full authority to receive instructions and other communications on behalf of the Contractor in all matters concerning this contract, while the Contractor is executing the Works or temporary Works on the Site.
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|  | 1.2 | The representative and the supervisor may, but need not, be the same person. They must be Individuals1. |
|  | 1.3 | If the Contractor’s representative or supervisor or other management people are named in Tender Proposals12, the Contractor must assign the Individuals1 named to the jobs for which they are named. If the representative or supervisor are not named in Tender Proposals, or named management people are changed, the Contractor must submit details to the ER under the appropriate procedure in Schedule 5. If any of the management people so named or submitted dies or becomes incapable of performing their roles or is no longer available to the Contractor, the Contractor must appoint a suitable replacement, submitting details to the ER under Schedule 5.  |
| **2** | **Quality and Environmental** **Management** |
|  | 2.1 | The Contractor must implement quality and environmental management systems to demonstrate its (including Contractor’s Personnel’s1) compliance with this contract.  |
|  | 2.2 | The Contractor’s quality management system must comply with the most recent version of ISO 9001 or an equivalent generally recognised standard. |
|  | 2.3 | The Contractor’s quality management systems must be recorded in a quality plan prepared according to the most recent version of ISO 10005 or an equivalent generally recognised standard and submitted to the ER within 21 days after the date of this contract under the appropriate procedures in Schedule 5. The Contractor must update its quality plan as necessary and first submit the updates to the ER under the appropriate procedures in Schedule 5.  |
|  | 2.4 | The quality plan must identify the Contractor’s Data1 and any other items that are to besubmitted to the ER under Schedule 5. |
|  | 2.5 | The Contractor’s environmental management system must comply with the most recent version of ISO 14001 or an equivalent generally recognised standard. |
|  | 2.6 | The Contractor must maintain independent certification and registration with an accredited certification body of its compliance with the most recent version of ISO 9001 and ISO 14001, or equivalent generally recognised standards, from the date of this contract to the Defects Date1. |
|  | 2.7 | The Contractor must ensure that all Contractor’s Personnel1 comply with the Contractor’s quality and environmental management systems and quality plan in performing this contract. |
|  | 2.8 | The Contractor must give the ER copies of all reports prepared under its quality and environmental management systems |
|  | 2.9 | The ER may monitor, spot check, and audit the Contractor’s and Contractor’s Personnel’s1implementation of the Contractor’s quality and environmental management systems and compliance withthe Contractor’s quality plan. |
| **3** | **Budgeting** |
|  | 3.1 | From when the Employer orders the Contractor to start the Early Services until Substantial Completion of the Works in all ordered Tasks, the Contractor must prepare and give the ER forecasts of the Defined Cost3 of each Task [every 120 days].  |
|  | 3.2 | Each forecast must be accompanied by an explanation of changes since the previous forecast. |
|  | 3.3 | Each Guaranteed Price Offer1 must be accompanied by an explanation of changes since the most recent forecast. |

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| **4** | **Progress Reports** |
|  | The Contractor must give the ER a progress report for each calendar month from the date of this contract until the Defects Certificate1 is issued. The Contractor must give each progress report within 7 days after the end of the calendar month it relates to. Each progress report must be in a form agreed by the ER, and include details of all of the following:* progress of the work under this contract against the Contractor’s current programme
* the names of key Supply Chain1 and progress of procedures under Schedule 7
* progress and the location of design, manufacture, fabrication, delivery, installation, testing, and commissioning of the Works and Things for the Works1
* status of preparation and review of Design Documents1
* copies of quality assurance documents and test results and certificates
* details of when anything required of the ER or the Employer under this contract will be required, and any that are outstanding
* any Adjustments Events1 that have occurred during the period or are unresolved
* details of any accidents, injuries, hazardous incidents, environmental incidents, labour relations problems and public relations problems concerning or affecting the Project12
* details of other risks to timing, cost, or quality of the Project, and proposed steps to reduce the risks
* anything else that the Contractor or the ER considers relevant to a progress report.
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| **5** | **Programme** |
|  | 5.1 | The Early Services include preparing programmes for the Early Services and the Tasks. Within 14 days after the Employer orders the Contractor to proceed with a Task, the Contractor must submit an updated programme for the Task. |
|  | 5.2 | The Contractor’s programmes must be sufficiently detailed to permit effective monitoring of progress ofthe Task, and must include details of all of the following: * when the Contractor will require anything required of the Employer or the ER under this contract
* the order in which and times at which the Contractor proposes to perform the Task, including details of design, procurement, manufacture, delivery, installation, construction, testing, commissioning, and trial operation and the sequencing and timing of inspections and of tests
* procedures under Schedule 7
* when Contractor’s Data1 will be submitted to the ER
* the Contractor’s working methods for the Works and temporary works
* the Contractor’s estimate of each category of Contractor’s Personnel1 and Contractor’s Things1 expected to be on Site for each period
* work at the Site by Employer’s Personnel1 and others as provided in or under this contract
* current critical path, critical resources, floats, and other flexibility
* details of last review made of programme logic and durations, and of the purposes of any changes.

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|  | 5.3 | The Contractor’s programme must allow reasonable periods of time for the Employer and theER to comply with their obligations under this contract and must take account of limitations inthe contract affecting when the Contractor may occupy and use parts of the Site and when theEmployer or ER are to comply with their obligations. |

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|  | 5.4 | If the Contractor’s programme does not correctly show planned or actual progress, or progress complying with this contract and the Performance Goals3.3, the Contractor must submit a new programme complying with this contract, correctly showing planned and actual progress, and showing planned progress to comply with this contract and the Performance Goals, or if that is not possible, showing completion of each Milestone as early as possible. |
|  | 5.5 | When a programme is to be submitted, it must be submitted to the ER under the appropriate procedure in Schedule 5. |

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| **6** | **Risk Log** |
|  | 6.1 | At the start-up workshop the ER and the Contractor should agree a risk log, listing identified risks to timing, cost or quality of the Project, and agreed actions to reduce the risks. The Contractor must draw up and maintain the risk log. The ER and the Contractor should notify each other of any other such risks that come to their attention as soon as possible and the Contractor must add them to the risk log. The Contractor must note on the risk log actions agreed at regular meetings or otherwise to reduce the risks. The Contractor must also note on the risk log when it is agreed that a risk has passed. |
|  | 6.2 | The risk log does not affect the Parties’ rights or obligations.  |

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| **7** | **Documents on Site** |
|  | While Works are being executed the Contractor must keep on the Site:* A full up-to-date set of the contract documents, the Employer’s Brief, Directions, Change Orders, and Contractor’s Data1
* A log of Directions, Change Orders, and Contractor’s Data, showing dates of issue and of revisions
* All publications mentioned in the Employer’s Brief and the Contractor’s Data
* Wage records, including time sheets and copies of all pay slips, applicable to all workers (defined in sub-clause 7.3.2).

The Contractor must give the ER, and any person authorised by the ER, access to these at all reasonable times |

 **SCHEDULE 5**

**SUBMITTALS**

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| *[This schedule should be adapted to suit the Project. There may be different procedures for different types of submittals.]* |
| **PART 1: PROCEDURES** |
| Whenever this contract requires that a document or proposed course of action be submitted under the appropriate procedure in this Schedule, the following applies: |
| **1.** | The Contractor must give the document or a statement of the proposed action and all necessary supporting information to the ER. |
| **2.** | The ER may, but is not bound to, make a written objection to a Contractor’s submission, givingreasons. |
| **3.** | The ER may request additional information. |
| **4.** | The ER’s period for objection is 21 days from when the ER has received from the Contractor enough information to make a purposeful review of the matter submitted should it wish to make one. |
| **5.** | The Contractor may apply in writing for any reduction of the period that it considers desirable in the interests of the Project12, which the ER may agree if it thinks fit. |
| **6.** | The ER may alter or withdraw an objection. |
| **7.** | The Contractor must not implement any submission before the period has ended, or contrary to any outstanding objection given within the period. |
| **8.** | The Contractor must make a new submission to meet any objection given within the period. |
| **9.** | The Contractor must also make new submissions as necessary to perform its duties under this contract, whether or not it has received any objection.  |
| **10.** | The ER may object on the grounds that to proceed according to the submission—* would not comply with this contract or
* would have an adverse effect on the Employer or the public interest or
* would impose an obligation on the Employer that this contract does not require the Employer to bear or
* would be contrary to law or
* would have an adverse effect on the Contractor’s ability to comply with this contract

The ER may also object on any other ground stated in this contract. |
| **11.** | Neither the ER’s rights to object, nor objections or their absence, reduce any of the ER’s other powers, orreduce any of the Contractor’s responsibilities. |

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| **PART 2: CERTIFICATES** |
| The Contractor must submit Model Form1 certificates under this Schedule as follows:* design interim certificates with each submittal of Design Documents1
* design certificates for each of the following **Design Elements**: *[list design elements requiring certificates]*
* interim and final design check certificates as stated in the Employer’s Brief [*or specify here*]
* test certificates for each Design Element
* interim execution certificates with each statement for an interim advance under sub-clause 3.2.4
* a final execution certificate before Substantial Completion is certified
* an interim defects rectification certificate for each calendar month (or part of a month) from the date the certificate of Substantial Completion is issued until the Defects Certificate1 is issued
* final defects rectification certificate before the Defects Certificate is issued

other certificates as required in the Employer’s Brief *[or specify here]** *or specify here*]
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| **PART 3: COMPLETION DATA** |
| *[Specify as-constructed records, operation and maintenance manuals and other documents to be provided on completion. Specify which information is to be provided before Substantial Completion and which is to be provided before the Defects Date,* *or a different date. This should not be repeted here if dealt with in the Employer's Brief.]*  |

**SCHEDULE 6**

**LANDS AND CONSENTS**

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| *[This Schedule either gives details of the Area Provided by the Employer, or of the measures for establishing them, and when they are to be established during the Early Services [sub-clause 6.1.1]. It can also be used to give details of, or measures for establishing:* *- Employer's and others' early use of the works or Site [sub-clauses 5.9.2, 6.1.5]* *- limitations on the Contractor's use of the Site [6.1.4]* *- works on the Site by others [6.3]* *- working times [6.5]* *- Employer Consents [10.3.1] and changes [10.3.3]* *- extending the Site]* |

**SCHEDULE 7**

**SUPPLY CHAIN**

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| **PART 1: TENDER PROPOSALS** |
| The Contractor must ensure that the Supply Chain1 and other Contractor's Personnel1 named in Tender Proposals12 are assigned to the jobs for which they are so named. The Contractor may change themonly with the ER’s approval. |

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| **PART 2: WORK PACKAGES** |
| **1.** | **Work Package** means one of the following parts of the Works. |
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|  | **Supply Chain Documents** means detailed documentation to call tenders and make a contract with a Supply Chain1 member for a Work Package7. |
| **2.** | For Work Packages included in Early Services or a Task that the Contractor has been ordered to design or execute or both: |
|  | 2.1 | The Contractor must ensure that the Work Packages7 are designed or executed or both (as applicable) by Supply Chain1 selected according to this part. |
|  | 2.2 | The Contractor must prepare Supply Chain Documents for the Work Package, complying with this contract, and submit them to the ER under the appropriate procedure in Schedule 5. |
|  | 2.3 | The contract for each Work Package7 must state a lump sum fixed price to be paid by the Contractor for the Work Package with provision for that price to be changed for Adjustment Events1. |
|  | 2.4 | The Contractor must, according to this part *—** conduct a tender competition for the Work Package complying with paragraph 7 below and
* make a contract for the Work Package with the winning bidder.
 |
| **3.** | A tender competition for a Work Package7 must comply with the following rules: |
|  | 3.1 | The Contractor must submit to the ER under the appropriate procedure in Schedule 5 details of at least 3 candidates (or a different number Directed by the ER) from whom the Contractor proposes to invite tenders, including details of their qualifications and capacity |
|  | 3.2 | The Contractor must invite bids from at least 3 candidates (or a different number Directed by the ER), details of which have been so submitted with no objections outstanding, by means of Supply Chain Documents7 (which have been submitted to the ER as required by paragraph 2.2 above with no objections outstanding). |
|  | 3.3 | The award criterion for the tender competition will be lowest compliant bid, unless another award criterion is specified in the Employer’s Brief1. |
|  | 3.4 | The Contractor must conduct the tender competition according to any Directions of the ER. |
|  | 3.5 | After bids are received the Contractor must submit to the ER, under the applicable procedure in Schedule 5, a report of the competition, including details of each bid received, the extent to which it was compliant, any communications with bidders before or after bids were received, the identity of the winning bidder, and a copy of the contract (based on submitted Supply Chain Documents7) the Contractor proposes to enter with the winning bidder. |
|  | 3.6 | The Contractor must provide any further details about the tender competition Directed by the ER. |
|  | 3.7 | After the Contractor has submitted the details required by paragraph 3.5 above and any further details Directed under paragraph 3.6 above, and there are no outstanding objections, the Contractor must make a contract for the Work Package with the winning bidder, on the terms submitted under paragraph 3.5. |

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| **PART 3: SUPPLY CHAIN TO BE SUBMITTED** |
| The Contractor must submit to the ER under the appropriate procedure in Schedule 5 details of its proposed Supply Chain1 (including details of qualifications and capacity) for the following work: |
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| Part 4: Novated Supply Chain |
| If a novation agreement is listed in Schedule 10, the Contractor must execute a Model Form1 (or other form referred to in Schedule 10) novation agreement with the Employer and the counterparty named, and the counterparty then becomes a member of the Supply Chain1. The Contractor is liable for the work of novated Supply Chain1, whether before or after novation. |

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| **PART 5: COLLATERAL WARRANTIES** |
| The Contractor must give the Employer Model Form1 collateral warranties in favour of the Employer executed by the Supply Chain1 where so listed in the following table, by the date indicated. This is a Performance Goal3.3.  |
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| *Area of Work* | *Date for collateral warranty* | *Temporary Performance Deduction if collateral warranty not provided by that date* |
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**SCHEDULE 8**

OTHER PARTICULARS

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| Sanctioning Authority [sub-clause 3.5.6] |       |
| The ER [should] [should not] give the certificate(s) of Substantial Completion before the scheduled Milestone Date(s)1 for Substantial Completion. [sub-clause 5.8.1] |
| Defects Date  | [730] days after Substantial Completion of the Works required in all ordered Tasks. |
| Additional purposes for which the Employer may use Data1 [sub-clause 8.4.2] |       |
| Property including Intellectual Property1 rights in the following transfers to the Employer [sub-clause 8.4.3] |       |
| Indexation Date [sub-clause 11.1.8] |       |
| Percentage of the difference between total payments to the Contractor for a Task and its Guaranteed Price1 or Task Lump Sum1 to be paid to the Contractor if a Task is terminated without default and the Employer proceeds within 365 days [sub-clause 12.5.2] |      % |

**SCHEDULE 9**

INSURANCE

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| *[This schedule should be adapted to suit the Project, on the basis of the advice of professional insurance advisers for the Project. It may be completely re-written to provide for the Employer to arrange some insurances.]* |
| The Contractor must insure as provided for in the following table and the rest of this Schedule. |
| *Insurance* | *Duration* | *Persons covered* | *Minimum cover or indemnity limit* | *Maximum excess* |
| The Works, temporary works, Things for the Works1, Contractor’s Things1 and Contractor’s Data1 | From when the Employer orders the Contractor to start a Task or the Contractor starts Early Works1, until certified Substantial Completion of the Works or Early Works concerned | The Contractor, the Employer and anyone else the Employer requires | Full reinstatement value of the Works, temporary works, Things for the Works1, Contractor’s Things1 and Contractor's Data1, including cost of demolition, removal of debris, delivery, professional fees, inflation occurring during the construction and reinstatement periods, and profit | €10,000 |
| Liability for –- death, injury or illness of any person and- loss of or damage to any physical property and- obstruction, loss of amenities, nuisance, trespass, stoppage of traffic and infringement of light, easement or quasi-easement resulting from an accident arising from or in the course of performance or non-performance of this contract except to the extent covered by the Employer’s indemnities in clause 9.4 or sub-clause 8.2.2  | From the date of this contractuntil the date the Defects Certificate1 is issued | The Contractor and the Employer | €6,500,000 for any one event, but this limit may be on an annual aggregate basis for products liability, collapse, vibration, subsidence, removal and weakening of supports, and sudden and accidental pollution | €6,500 |
| Liability for death, injury or illness of Contractor’s Personnel1  | From the date of this contract until the date the Defects Certificate1 is issued | The Contractor. This policy must include a provision that indemnifies the Employer against any liability for which the Contractor would be entitled to an indemnity, including costs, charges, and expenses | €13,000,000 for any one event | €6,500 |
| Liability for design and other professional services | From the date of this contractuntil 6 years after the Defects Certificate is issued. | The Contractor | €....................[for any one event][annual aggregate limit] | €50,000 |

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| *Insurance* | *Only permitted exclusions, unless agreed by the Employer* | *Required terms and extensions* |
| All required insurances | - 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 Personnel1- terrorism - asbestos  | - when the Employer is required to be insured, the term “insured” to apply to each insured person as if a separate policy had been issued to each of them, but without the overall limit of indemnity being increased as a result, and non-compliance by the Contractor or any other insured will not affect the Employer’s rights  |
| The Works, temporary works, Things for the Works1, Contractor’s Things1 and Contractor’s Data1 | .- use or occupation of the Works by the Employer except in connection with the Works - cost of making good Defects in the Works but not damage caused by such Defects to other sound parts of the Works - wear, tear, normal upkeep or normal repair or gradual deterioration- inventory losses- loss of use or any consequential loss of any nature including penalties for delay, non-completion or non-compliance- failure of information technology- mechanical or electrical breakdown but not resulting damage- cessation of the Works for more than 3 months |  |
| Liability for –- death, injury or illness of any person and- loss of or damage to any physical property and- obstruction, loss of amenities, nuisance, trespass, stoppage of traffic and infringement of light, easement or quasi-easement | - persons under a contract of service or apprenticeship with the insured- property of the insured or in the insured’s custody or control other than existing premises and their contents temporarily occupied for the purposes of the Works- defective workmanship or materials but not resulting damage- mechanically propelled vehicles within the meaning of the Road Traffic Acts - loss or damage due to [design for a fee or for which a fee would normally be charged] [defective workmanship, materials or design but including its consequences]- gradual pollution or contamination- territorial limits- aircraft and waterborne craft - fines, penalties, liquidated damages | - cross liability clause |
| Liability for death, injury or illness of Contractor’s Personnel1.  | - offshore work- liability compulsorily insurable under the Road Traffic Acts |  |

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| *Insurance* | *Only permitted exclusions, unless agreed by the Employer* | *Required terms and extensions* |
| Liability for design and other professional services | - persons under a contract of service or apprenticeship with the insured. - ownership, use, occupation, or leasing of mobile or immobile property - effecting or maintenance of insurance of or in connection with the provision of finance or advice on financial matters - dishonest, malicious, criminal or deliberate illegal acts - libel and slander - insolvency - fines, penalties, liquidated damages or any penal, punitive, exemplary, non-compensatory or aggravated damages - failure of information technology - contractual liability that would not apply in the absence of the contract | - retroactive cover to when the Contractor’s design for the Project started |

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| *[The following provision is optional and should only be included when the Works involve alteration of execution of existing facilities.It will, if included, be an exception to the Contractor's indemnity in sub-clause 9.3.1].* |
| [To the extent that the Works involve alteration or extension of existing facilities owned by the Employer, the Employer bears the risk of loss and damage of those facilities and their contents owned by the Employer, caused by any of the following perils, as defined in standard fire and specified perils insurance policies available in Ireland:- 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 Personnel1to the extent (and up to the limit) required to be insured by the Contractor's liability insurance.] |
| **Other Insurance Requirements**  |
| **1.** | The insurance required by this contract must be placed with reputable insurers approved in advance by the Employer. |
| **2.** | The Contractor must comply with the terms of the required insurance policies. |
| **3.** | Within 14 days of being requested to do so, the Contractor must give the Employer evidence to the Employer’s satisfaction that the required insurances are in effect, including copies of policies and receipts for premiums. For professional indemnity insurance, a Model Form1 certificate signed by the broker or underwriter may be given instead of a copy of the professional indemnity policy. |
| **4.** | The Contractor must not make any material reduction to the required insurance policies’ cover unless approved inadvance in writing by the Employer.  |
| **5.** | The Contractor must promptly notify the Employer of any cancellation, renewal, non-renewal, or material reduction by the insurer of any required insurance policy. |

**SCHEDULE 10**

OTHER DOCUMENTS

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| *[This schedule should be adapted to suit the Project requirements. For example, if the Contractor is to accept novation of a contract with the Employer, a novation agreement can be added to this list]* |
| **1.** | Schedule 12 (Deed of Agreement) |
| **2.** | A Model Form1 performance bond in favour of the Employer from a surety approved by the Employer in the amount of € ................  |
| **3.** | A Model Form1 parent company guarantee in favour of the Employer, if so provided in TenderProposals12, from the parent company named there |
| **4.** | A Model Form1 appointment of the Contractor, or the Contractor’s nominee named as such in Tender Proposals, by the Employer as project supervisor for the design process and project supervisor for the construction stage for the Project12 |
| **5.** | Evidence that the insurances required by the contract are in effect |
| **6.** | Any collateral warranties required under Schedule 7 on (or within 14 days after) the date of this contract |
| **7.** | If any of the documents is executed by a company or other legal person that is not an Irish company: alegal opinion that the legal person executing it is an entity duly incorporated in its place ofincorporation, capable of being sued in its own name; is validly existing; has the necessary power andauthority (and all necessary action has been taken for it to) to execute, deliver and perform thedocument; and has duly executed and is bound by the document; that no steps have been or are beingtaken to wind it up or appoint a liquidator, receiver, examiner, administrator or similar officer to it; andthat a judgment of an Irish court will be enforceable against it in its place of incorporation.  |
| **8.** | The Contractor’s tax clearance certificate from the Irish Revenue Commissioners. |

**SCHEDULE 11**

DISPUTE RESOLUTION

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| **PART 1: NEUTRAL ADVISOR** |
| *[This part is omitted if a neutral advisor is not required.]* |
| **1.** | The name and contact details of the neutral adviser are—*...............................................................................................................................................................................................................................................................* |
| **2.** | If the neutral adviser is not named in this part, the Parties should jointly appoint a neutral adviser within 28 days after the date of this contract12. If a named neutral adviser ceases or becomes unable to act before the ER issues the Defects Certificate1, the Parties should jointly appoint a new neutral adviser. Failing agreement in either case the person or body named below should nominate an Individual1 as neutral adviser on the application of either Party.*...............................................................................................................................................................................................................................................................* |
| **3.** | When the neutral adviser is named above, agreed, or nominated, the Parties must enter into a Model Form1appointment of the neutral adviser, or another form agreed between the Parties and the neutral adviser. |
| **4.** | The neutral adviser’s functions are—* to facilitate co-operation between the Parties and with the ER in ways agreed by the Parties and the neutral adviser
* to assist the Parties and the ER in resolving disagreements in ways agreed by the Parties and the neutral adviser
* to act as conciliator for disputes under part 2 of this Schedule unless another is agreed
 |
| **5.** | The Parties and the neutral adviser should agree and implement measures, such as providing information and scheduling meetings and Site visits, for the neutral adviser to become and remain familiar with the Tasks. |
| **6.** | The neutral adviser may do any of the things a conciliator may do under paragraph 7 of part 2. |
| **7.** | If agreed between the Parties, the neutral adviser should facilitate co-operation measures under clause 4.1.3 andworkshops under Schedule 4. |
| **8.** | The Parties must share equally the neutral adviser’s fees and other expenses. If there is a fee for nominating the neutral adviser, the Parties must share it equally. If one Party pays the other’s share of the neutral adviser’s or nominator’s fees or expenses, it is entitled to reimbursement of that share from the other Party on demand. Each Party bears its own costs under this part. |

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| **PART 2: CONCILIATION** |
| **1.** | If a dispute arises under this contract, either Party may, by notice to the other, refer the dispute for conciliation under this part. |
| **2.** | Unless a conciliator has been appointed under part 1, within 14 working days after a Party refers a dispute to conciliation, the Parties should jointly appoint a conciliator. If the conciliator ceases or becomes unable to act, the Parties should jointly appoint a new conciliator for the dispute. Failing agreement in either case the person or body named below should nominate an Individual1 as conciliator on the application of either Party. *...............................................................................................................................................................................................................................................................* |
| **3.** | When the conciliator is agreed or nominated, the Parties must enter into a Model Form1 appointment of theconciliator, or another form agreed between the Parties and the conciliator.  |
| **4.** | 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 as to 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. |
| **5.** | The Parties must make available to the conciliator all information, documents, access to the Site, and appropriate facilities that the conciliator requires. |
| **6.** | The conciliator should consult with the Parties to help them resolve the dispute by agreement. |
| **7.** | The conciliator may do any of the following, or any combination of them:* meet the Parties separately from each other or together and consider documents from one Party not sent or shown to the other
* do investigations in the absence of the Parties or the presence of one or both
* make use of specialist knowledge
* with the Parties’ agreement, obtain technical or legal advice
* establish the procedures to be followed in the conciliation.
 |
| **8.** | The conciliator is not an arbitrator and the Arbitration Act 2010 and the law relating to arbitration do not apply to the conciliation. |
| **9.** | If the dispute is not resolved by agreement within 42 days after the conciliator was appointed, or a longer period agreed by the Parties, the conciliator should, if the parties so agree, give both Parties a written recommendation by that date, based on the conciliator’s assessment of the Parties’ rights and obligations under this contract. Whether or not a recommendation is given the conciliation ends 42 days after the conciliator was appointed or a later date agreed by the parties and the conciliator. The Parties are free to accept or reject the recommendation. |
| **10.** | The Parties must share equally the conciliator’s fees and other expenses. If there is a fee for nominating the conciliator, the Parties must share it equally. If one Party pays the other’s share of the conciliator’s or nominator’s fees or expenses, it is entitled to reimbursement of that share from the other Party on demand. Each Party bears its own costs under this part. |

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| **PART3: ARBITRATION** |
| **1.** | Any dispute under this contract that is not resolved within 42 days after referral to conciliation under part 2 is to be resolved by arbitration. The arbitration rules are the Capital Works Management Framework (CWMF) *Arbitration Rules for use with Public Works and Construction Services Contracts* (AR1) published on <http://constructionprocurement.gov.ie/arbitration-rules/> on the date 10 days before the latest date for submission of Tenders for this contract (disregarding any amendments posted on that date). |
| **2.** | The person or body to nominate if the Parties do not agree (or a Party does not make a required appointment)[[6]](#footnote-6) is—*...............................................................................................................................................................................................................................................................* |
| **3.** | An arbitrator appointed under this part has power to revise the actions of the ER that this contract provides that the ER should perform acting independently. |
| **4.** | Despite the existence of a dispute the Parties must continue to perform this contract. |

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| **PART4: ADJUDICATION** |
| **1.** | The parties have recourse to Adjudication in accordance with the Construction Contracts Act 2013 |
| **2.** | The person to appoint the adjudicator, if not agreed by the parties, is THE Chairperson of the Panel of Adjudicators. |
| **3.** | Where an adjudicator reaches a decision on a dispute referred under the Construction Contracts Act 2013, that same dispute shall not be referred to the Neutral Advisor or conciliation under the Contract. |
| **3.** | If a dispute between the Parties is referred to Adjudication, any actions undertaken by the Neutral Advisor or 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 adjourned actions of the Neutral Advisor or conciliation from the date the dispute was referred to Adjudication. In the event that a decision is reached by the adjudicator, the actions of the Neutral Advisor relevant to that dispute or conciliation for that dispute shall be terminated. |

**SCHEDULE 12**

# Deed of Agreement

**THIS DEED OF AGREEMENT** is made on [date] **BETWEEN**

|  |  |
| --- | --- |
| *The Employer:* |        |
| *Principal office of Employer:*  |       |

**AND**

|  |  |
| --- | --- |
| *The Contractor:* |        |
| *Registered office / principal place of business of Contractor:* |       |

**THE EMPLOYER AND THE CONTRACTOR AGREE** to comply with their respective obligations in the contract which consists of the following documents:

|  |
| --- |
| * the 12 conditions and 12 schedules, including this deed, in this volume 1
* the Original Employer’s Brief for this contract, volume 2
* the Pricing Document for this contract, volume 3
* the Tender Proposals for this contract, volume 4

*[add any other documents making up the contract]* |

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| ***The Employer[[7]](#footnote-7)*** |
| **Given under the Employer’s seal:** |
| *Affix Employer’s seal* |  |
| *Signatures of persons authorised to authenticate the seal:* |  |
| *Employer’s address for written notices* |  |
| *For the attention of:*  |  |

|  |
| --- |
| ***The Contractor*** |
| **Given under the Contractor’s common seal:** |
| *Affix Contractor’s seal* |  |
| *Signatures of Director:* |  |
| *Signatures of Director/Secretary**:* |  |
| *Contractor’s address for written notices:* |  |
| *For the attention of:*  |  |
| *Contractor’s agent in the Republic of Ireland for service:* |  |

1. If the tenderer is not incorporated in Ireland, execution will be in accordance with the law of its jurisdiction of incorporation for execution in Ireland [↑](#footnote-ref-1)
2. Please refer to [www.revenue.ie](http://www.revenue.ie) for details of current rates of VAT [↑](#footnote-ref-2)
3. Please refer to [www.revenue.ie](http://www.revenue.ie) for details of current rates of VAT [↑](#footnote-ref-3)
4. If not otherwise specified, read as 180 days [↑](#footnote-ref-4)
5. If an award is equal to or less than the sealed offer the Contractor is liable for the costs of both parties in relation to the arbitration proceedings. [↑](#footnote-ref-5)
6. If left blank the following defaults apply:

*Civil Projects – The President, Engineers Ireland;*

*Building Projects – The President, The Royal Institute of the Architects of Ireland* [↑](#footnote-ref-6)
7. Execution in accordance with the legislation governing the authority, or articles of association if a company [↑](#footnote-ref-7)