



A5 WTC

Western Transport Corridor

Section 1

New Buildings to South of Strabane

Volume 1

Part 2

Conditions of Contract Construction

**Form of Agreement and Contract
Conditions**

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EXECUTED AS A DEED BY THE EMPLOYER

*.....
by affixing his common seal in the presence of

(the Employer)

*or by

(name of Chief Executive)

.....

(signature of Chief Executive)

and.....

(name of Director)

.....

(signature of Director)

AND AS A DEED BY THE CONTRACTOR

acting by

(name of Director)

.....

(signature of Director)

and

.....

(name of Director or Company Secretary)

.....

(signature of Director or Company Secretary)

CONTRACT DATA

Part one – Data provided by the *Employer*

Completion of the data in full, according to the Options chosen, is essential to create a complete contract.

Statements given in all contracts

1. General

- The *conditions of contract* are the core clauses and the clauses for main Option C, dispute resolution Option **W2** and secondary Options **X2, X4, X5, X7, X13, X15, X16, Y(UK)2, Y(UK)3 and Z** of the NEC3 Engineering and Construction Contract (June 2005) incorporating amendments dated June 2006).
- The *works* are
A5WTC Section One
- The *Employer* is
Name **Department for Regional Development – Roads Service**
Address **Clarence Court, 10 – 18 Adelaide Street, Belfast BT2 8GB**
- The *Project Manager* is
Name **To be advised**
Address **To be advised**
- The *Supervisor* is
Name **To be advised**
Address **To be advised**
- The *Adjudicator* is
Name
Address
- The Works Information is in
To be established during Phase 1
- The Site Information is in
To be established during Phase 1
- The *boundaries of the site* are
To be established during Phase 1

- The *language of this contract* is **English**
- The *law of the contract* is the law **applicable to Northern Ireland subject to the jurisdiction of the Courts of Northern Ireland**
- The *period for reply* to a communication is **2 weeks**.
- The Adjudicator nominating body is **ICE Northern Ireland**
- The tribunal is **Arbitration**
- The following matters will be included in the Risk Register
.....
.....
.....
.....

3. Time

- The *starting date* is **To be Agreed during Phase 1**
- The access *dates* are

| Part of the Site | Date |
|-----------------------|---------------------|
| 1 To be Agreed | To be Agreed |
| 2 | |
| 3 | |
- The *Contractor* submits revised programmes at intervals no longer than **4 weeks**

4. Testing and Defects

- The *defects date* is **52 weeks** after Completion of the whole of the *works*
- The *defect correction period* is **4 weeks** except that
 - The defect correction period forisweeks
 - The defect correction period forisweeks.

5. Payment

- The *currency of this contract* is the **Pound Sterling**
- The *assessment interval* is **4 weeks** (no more than five)




6. Compensation events

- ~~The place where weather is to be recorded is~~
.....
- ~~The *weather measurements* to be recorded for each calendar month are~~
 - ~~the cumulative rainfall (mm)~~
 - ~~the number of days with rainfalls more than 5mm~~
 - ~~the number of days with minimum air temperature less than 0 degrees Celsius~~
 - ~~the number of days with snow lying at hours GMT and these measurements:~~
.....
.....
- ~~The *weather measurements* are supplied by~~
.....
- ~~the weather data are the records of past *weather measurements* for each calendar month which were recorded at and which are available from~~
.....
.....
.....

~~Where no recorded data are available~~

- ~~Assumed values for the ten year return *weather data* for each *weather measurement* for each calendar month are:~~
.....
.....
.....
.....
.....

8. Risks and insurance

- The minimum limit of indemnity for insurance in respect of loss of or damage to property (except the *works*, Plant and Materials and Equipment) and liability for bodily injury to or death of a person (not an employee of the *Contractor*) caused by activity in connection with this contract for each and every event is

- The minimum limit of indemnity for insurance in respect of death of or bodily injury to employees of the

Contractor arising out of and in the course of their employment in connection with this contract for each and every event is [REDACTED]

Optional Statements

- The arbitration procedure is **The Arbitration Rules of The Chartered Institute of Arbitrators.**
- The place where arbitration is to be held is **Belfast**
- The person or organization who will choose an arbitrator
 - if the Parties cannot agree a choice or
 - if the arbitration procedure does not state who selects an arbitrator is **The President of The Institute of Arbitrators**

If the *Employer* has decided the *completion date* for the whole of the *works*

- [REDACTED]

~~**If the *Employer* is not willing to take over the *works* before the *Completion Date***~~

- ~~• The *Employer* is not willing to take over the *works* before the *Completion Date*.~~

If no programme is identified in part two of the Contract Data

- The *Contractor* is to submit a first programme for acceptance within **2** weeks of the Contract Date

If the *Employer* has identified work which is to meet a stated condition by a key date

- The *key dates* and *conditions* to be met are

| condition to be met | key date |
|---------------------|----------|
| 1. | |
| 2. | |
| 3. | |

~~If the period in which payments are made is not three weeks and Y(UK)2 is not used~~

~~• The period within which payments are made is
.....~~

~~If Y(UK)2 is used and the final date for payment is not 14 days after the date when payment is due~~

~~• The period for payment is
.....~~

~~If there are additional compensation events~~

~~• These are compensation events
1.....
2.....
3.....~~

If there are additional *Employer's* risks

• These are additional *Employer's* risks
1...**To be agreed during Phase 1**
2.....
3.....

~~If the *Employer* is to provide Plant and Materials~~

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

**~~If the *Employer* is to provide any of the insurances
stated in the Insurance Table~~**

~~• The *Employer* provides these insurances from the
Insurance Table
1. Insurance against
Cover/indemnity is.....~~

The deductibles are

2. Insurance against.....
Cover/indemnity is

3. Insurance against.....
Cover/indemnity is

If additional insurances are to be provided

~~• The Employer provides these additional insurances~~

~~1. Insurance against.....
Cover/indemnity is~~

~~• The Contractor provides these additional insurances~~

~~1. Insurance against.....
Cover/ indemnity is~~

• **The Contractor's share percentages and the share ranges are**

| Share range | Contractor's share percentage |
|----------------------|--------------------------------------|
| ████████████████████ | ████████████████████ |
| ████████████████████ | ████████████████████ |
| ████████████████████ | ████████████████████ |
| ████████████████████ | ████████████████████ |
| ████████████████████ | ████████████████████ |

• **The Contractor prepares forecasts of Actual Cost for the works at intervals no longer than 12 weeks**

- ~~The exchange rates are those published in~~
~~..... on (date)~~

If Option X1 is used

- ~~The proportions used to calculate the Price Adjustment Factor are~~

0linked to the index for.....
 0
 0
 0
 0
 0
 0non adjustable
 =====
 1.00

- ~~The base date for indices is~~
- ~~The indices are those prepared by~~

If Option X5 is used

- The completion date for each section of the works is

| Section | Description | Completion date |
|---------|---|-----------------|
| 1 | To be advised during Phase 1 | |
| 2 | | |
| 3 | | |
| 4 | | |
| 5 | | |

If Option X5 and X6 are used together

- ~~The bonuses for the sections of the works are~~

| Section | Description | Amount per day |
|-----------------------------|-------------|----------------|
| 1 | | |
| 2 | | |
| 3 | | |
| 4 | | |
| 5 | | |
| Remainder of the works..... | | |

If Option X5 and X7 are used together

- Delay damages for the sections of the works are

| Section | Description | Amount per day |
|---------|---|----------------|
| 1 | To be advised during Phase 1 | |
| 2 | | |
| 3 | | |
| 4 | | |
| 5 | | |
| | Remainder of the <i>works</i> | |

~~If Option X6 is used (but not if Option X5 is also used)~~

~~• The bonus for the whole of the *works* is
.....per day~~

~~If Option X7 is used (but not if Option X5 is also used)~~

~~• Delay damages for the whole of the *works* are **To be advised during Phase 1**..... per day~~

~~If Option X12 is used~~

~~• The Client is
Name
.....~~

~~• Address
.....~~

~~• The Client's objective is
.....
.....
.....~~

~~• The Partnering Information is in
.....
.....
.....~~

If Option X13 is used

• 


~~If Option X14 is used~~

~~• The amount of the advanced payment
is.....~~

~~• The *Contractor* repays the instalments in assessments
starting not less than weeks after the
Contract Date.~~

~~• The instalments are
..... (either an
amount or a percentage of the payment otherwise due)~~

- ~~• An advanced payment bond is/is not required.~~

If Option X16 is used

- ~~• [REDACTED]
[REDACTED]~~

If Option X17 is used

- ~~• The amount for the low performance damages are
Amount Performance level
..... for
..... for
..... for
..... for~~

If Option X18 is used

- ~~• The Contractor's liability to the Employer for indirect or consequential loss is limited to
.....~~
- ~~• For any one event, the Contractor's liability to the Employer for loss of or damage to the Employer's property is limited to
.....~~
- ~~• The Contractor's liability for Defects due to his design which are not listed on the Defects Certificate is limited to
.....~~
- ~~• The end of liability date is years after the Completion of the whole of the works.~~

If Option X20 is used (but not if Option X12 is also used)

- ~~• The incentive schedule for Key Performance Indicators is in
.....~~
- ~~• A report of performance against each Key Performance Indicator is provided at intervals of months.~~

If Option Y(UK)3 is used

- ~~• term Person or organisation
.....
.....
.....~~

If Option Z is used

- The *additional conditions* of contract are included in **Volume 1** of this document.

Part two – Data provided by the Contractor

Completion of the data in full, according to the Option chosen, is essential to create a complete contract.

Statements given in all contracts

- The Contractor is

Name
Address.....
.....

- The fee percentage is%

- The working areas are the Site and.....

- The key people are

(1) Name

.....
Job
Responsibilities

Qualifications.....
Experience

(2) Name

Job
Responsibilities

Qualifications
.....
Experience

- The following matters will be included in the Risk Register

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

Optional Statements

If the Contractor is to provide Works Information for his design

- The Works Information for the Contractor's design is in

If a programme is to be identified in the Contract Data

- The programme identified in the Contract Data is **To be agreed in Phase 1**

If the Contractor is to decide the completion date for the whole of the works

- [REDACTED]
- The activity schedule is **To be established in Phase 1**
- The tendered total of the Prices is **To be established in Phase 1**

Data for Schedule of Cost Components

- **The listed items of equipment purchased for work on this contract, with an on cost charge, are**

| Equipment | Time-related charge | Per time period |
|-----------|---------------------|-----------------|
| | | per..... |
| | | per..... |
| | | per..... |
| | | per..... |

- ~~The rates for special Equipment are~~

| Equipment | Size or Capacity | % |
|-----------|------------------|-------|
| | | |
| | | |
| | | |
| | | |

- The percentage for manufacture and fabrication overheads is%


**Data for both
schedules of cost
components**

**The hourly rates for Defined Cost for design outside the Working
Areas are**

| Category of employee | Hourly rate |
|----------------------|-------------|
| | |
| | |
| | |
| | |

- The percentage for design overheads is
.....%
- The categories of design employees whose travelling
expenses to and from the Working Areas are included
as a cost design of the works and Equipment done
outside of the Working Areas are
.....
.....
.....
.....

**Data for the Shorter
Schedule of Cost
Components**

- The percentage for people overheads is.....%
- 
- The percentage for adjustment for Equipment in the
published list is.....% (state plus or
minus).

• The rates of other Equipment are

| Equipment | Size or Capacity | % |
|-----------|------------------|-------|
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |

Schedule of Amendments / Additions to the NEC3 Engineering and Construction Contract, Option C Target contract with activity schedule

Conditions of Contract

The Conditions of Contract are The NEC3 Engineering and Construction Contract Option C (Target contract) incorporating the amendments dated June 2006 and Secondary Options W2, X2, X4, X5, X7, X13, X15, Y(UK)2, Y(UK)3 and Z.

The following amendments are incorporated into the Contract.

1 General

Identified and defined terms 11

- 11.2 (8) Delete entirely and insert:
- 11.2(8) The Fee is [£ x – insert the lump sum Fee] plus changes to that for compensation events in accordance with clause 63.1
- 11.2 (29) Delete entirely and replace:
- 11.2(29) The Price for Works Done to Date is the total Defined Cost attributable to *works* carried out in accordance with the contract up to the assessment date which
- the *Contractor* has paid at the assessment date or
 - the *Contractor* is committed to pay before the next assessment date (under contracts the *Contractor* has entered into to Provide the Works)
- plus a proportion of the Fee being
- The *fee percentage applied* to the total Defined Cost up to a value that will not exceed the value of the Fee

Early warning 16

- 16.1 Add as new bullet points:
- increase the Price for Work Done to Date
 - require a change to the Accepted Programme.

Prevention 19

- 19 Delete entirely.

2 The Parties' main responsibilities

Providing the Works 20

Add in the following new clause:

- 20.5 The *Contractor* is responsible for obtaining all consents or approvals or agreements from or with Others in order to comply with the Accepted Programme.

The Contractor's design 21

- 21.4 The *Contractor* accepts responsibility for the entire design (which term includes specification) of the *works* including all design incorporated into the Works Information at the time this contract is entered into. Where the *Project Manager* instructs any change to the Works Information any such change shall not modify or limit the *Contractor's* obligations or liability under this contract or responsibility for the whole of the design including in relation to any changes instructed provided that the *Project Manager* shall take account of any reasonable objection to the instruction notified by the *Contractor* on the basis of it adversely affecting design integrity or performance or preventing the *Contractor* from complying with its obligations under the contract.

Subconsulting 24

- 26.2 Delete entirely and insert:

- 26.2 The *Contractor* submits the name of each proposed Subcontractor to the *Project Manager* for acceptance. A reason for not accepting the Subcontractor is that

- his appointment will not allow the *Contractor* to Provide the Works or
- the *Contractor* has agreed to use a different Subcontractor
- the *Employer* is concerned (on reasonable grounds) with the financial standing or expertise or experience or insurance cover of the proposed Subcontractor or
- the *Contractor* has not followed the agreed procurement procedure for the appointment of the Subcontractor.

The *Contractor* does not appoint a proposed Subcontractor until the *Project Manager* has accepted him.”

- 26.3 Delete the following bullet point:

- an NEC contract is proposed or

Add the following bullet points following the last bullet point in Clause 26.3

- they do not represent best value or open market or competitively tendered prices
- they do not incorporate agreed rates
- they are inconsistent with the requirements of this contract
- they may limit or adversely affect rights under any collateral warranty agreements to be provided by the Subcontractor”

Clause 26.4 Delete the following bullet point (including the “and” at the end of the first bullet point):

- the *Project Manager* instructs the *Contractor* to make the submission

Add after the last paragraph:

Additional reasons for not accepting the proposed contract data are that they

- do not represent best value or open market or competitively tendered prices
- do not incorporate agreed rates or fee percentages
- are inconsistent with the requirements of this contract

3 Time

The programme 31

- 31.3 Add as a further bullet point at the end:
- it places more onerous requirements on the *Employer* or *Others*.

5 Payment

The Contractor’s share

53.3 Delete entirely and insert:

53.3 The Project Manager makes a preliminary assessment of the Contractor’s share at any assessment date. If the forecast Price for Work Done to Date is less than the final total of the Prices, this share is included in the amount due following completion of the whole of the works. If the forecast Price for Work Done to Date is more than the forecast total of the Prices, this share is retained from the amount due.

6 Compensation events

Compensation events 60

- 60.1 (12) Delete entirely
- 60.1 (13) Delete entirely
- 60.1 (19) Delete entirely
- 60.2 Delete entirely
- 60.3 Delete entirely

Assessing compensation events 63

Clause 63.1 Add the following sentence after the last bullet point:

The Fee is increased or decreased if the Defined Cost (in relation to work already done or forecast) increases or decreases as a result of a compensation event. The change in the Fee is the amount calculated by applying the *fee percentage* to the increase or decrease in Defined Cost.

8 Risks and insurance

Insurance cover 84

Add in the following new clause:

- 84.3 The *Contractor* shall maintain professional indemnity insurance for the amount stated in the Contract Data for each and every claim, and with exclusions and excesses in line with those normally applicable to contractors undertaking the design of works such as the *works*, for 12 years following Completion of the whole of the *works*, provided that such insurance continues to be available generally to contractors such as the *Contractor* on reasonable commercial rates.

9 Termination

Procedures on termination 92

Add in the following new clause:

- 92.3 Upon termination for whatever reason, the *Contractor* hands over to the *Project Manager* all hard copy and electronic data for the *Contractor's* design (including material prepared by a Subcontractor, the Works Information for the *Contractor's* design and site information) obtained or prepared at

termination. At such termination the *Employer* has the right to use such material for completion of the *works*.

Payment on termination 92

Clause 93.2 Replace A3 with:

A deduction of any loss or costs incurred by the *Employer* as a result of such termination including the additional cost to the *Employer* of completing the whole of the *works* taking into account as part of such cost any share of savings payable to the *Contractor* or a replacement contractor (and after termination the *Employer* shall not be obliged to make any further payment until the full extent of loss or costs can be fully ascertained and in the event that such loss or cost exceeds the amount otherwise payable to the *Contractor* in accordance with this contract, without prejudice to any other right or remedy of the *Employer*, the *Employer* may recover such excess from the *Contractor* as a debt).

Dispute Resolution

Option W2

W2.4 (1) Delete entirely and insert:

W2.4 (1) Either Party may refer any dispute to the tribunal at any time, whether or not that dispute has or has not been referred to the Adjudicator.

Amendments to the Schedule of Cost Components and Shorter Schedule of Cost Components

Charges 4

- 43 Add the following
- j) catering
 - k) medical facilities and first aid
 - l) recreation
 - m) sanitation
 - n) security
 - o) copying
 - p) telephone, telex, fax, radio and CCTV
 - q) surveying and setting out
 - r) computing
 - s) hand tools not powered by compressed air
- 44 Delete entirely

Option Z Additional Conditions of Contract

| | | |
|--|-------------------|--|
| Prevalence of amended and additional conditions of contract | Z1 Z1.1 | <p>The provisions of</p> <ul style="list-style-type: none">• the Employer’s amendments to the conditions of contract, and• the Z clauses <p>prevail where a conflict or inconsistency arises with the published documents.</p> |
| Intellectual property rights | Z2 Z2.1 | <p>The <i>Contractor</i> assigns to the <i>Employer</i> all present and future intellectual property rights in any materials created by or on behalf of the <i>Contractor</i> in Providing the Works.</p> |
| Equality of opportunity | Z3 Z3.1 | <p>The <i>Contractor</i> complies with all applicable fair employment, equality of treatment and anti-discrimination legislation, including, in particular</p> <ul style="list-style-type: none">• the Employment (Northern Ireland) Order 2002,• the Fair Employment and Treatment (Northern Ireland) Order 1998,• the Sex Discrimination (Northern Ireland) Order 1976 and 1988,• the Employment Equality (Sexual Orientation) Regulations (Northern Ireland) 2003,• the Equal Pay Act (Northern Ireland) 1970,• the Disability Discrimination Act 1995,• the Race Relations (Northern Ireland) Order 1997,• the Employment Relations (Northern Ireland) Order 1999 and• the Employment Rights (Northern Ireland) Order 1996. <p>The <i>Contractor</i> uses his best endeavours to ensure that in his employment policies and practices and in the provision of the Works he has due regard to the need to promote equality of treatment and opportunity between</p> <ul style="list-style-type: none">• persons of different religious beliefs or political opinions,• men and women or married and unmarried persons,• persons with and without dependents (including women who are pregnant or on maternity leave and men on paternity leave),• persons of different racial groups (within the meaning of the Race Relations (Northern Ireland) Order 1997),• persons with or without a disability (within the meaning of the Disability Discrimination Act 1995),• persons of different ages and• persons of differing sexual orientation. |

The *Contractor* takes all reasonable steps to ensure the observance of the provisions of this clause by all servants, agents, employees, consultants and Subcontractors of the *Contractor*.

Corrupt practices Z4

Z4.1

The *Contractor* does not:

- offer or gives to any person in the service of the *Employer* any gift or consideration of any kind as an inducement or reward in relation to the obtaining or execution of this contract or any other contract with the *Employer* or for showing favour or disfavour to any person in relation to this contract or any other contract with the *Employer*, or
- enter into this contract or any other with the *Employer* if, in connection with this contract or any such other contract, commission has been paid or an agreement for the payment of commission has been made by him or on his behalf or to his knowledge.

Confidentiality Z5

Z5.1

The *Contractor*:

- has the right to use the Works Information or any other material relating to the *works* only for the purpose of providing the *works* and may make this right available to Subcontractor's,
- returns the Works Information or any other material relating to the *works* to the *Employer* at the expiry of the *defects date*,
- does not disclose information obtained in connection with the *works* or this contract to any other person without the *Employer's* written consent,
- does not give information concerning the *works* for publication in the press or radio, television, screen or any other media without the written consent of the *Project Manager* and
- does not use the Site for advertising purposes except with the written consent of the *Employer* and subject to such conditions as are prescribed.

Partnering Z6

Z6.1

No partnering agreement which the parties may enter into (with or without other parties) in connection with the *works* is intended to create legally enforceable rights or obligations between the parties or to affect the terms of this contract.

Technical submission Z7

Z7.1

The *technical submission* sets out the *Contractor's* proposals for the management and resourcing of the *works*.

Z7.2

The *Contractor* warrants:

- that the representations contained in the *technical submission* are accurate in every respect and may be fully relied upon by the *Employer* where the standards represented exceed the minimum originally specified by the *Employer and*
- that the *technical submission* does not constitute a qualification to his tender. Insofar as the *technical submission* may conflict or be inconsistent with other contract documents, the Works Information shall always prevail.

Responsibility for Statutory Bodies Z8
Z8.1

The *Contractor* on behalf of the *Employer*:

- identifies those measures which need to be taken as a consequence of or in order to facilitate the *works* with any *Statutory Body*,
- settles a specification for the measures which need to be taken and determines by whom those measures are to be taken with the *Statutory Body*,
- co-ordinates the taking of those measures and the carrying out of the *works* with the *Statutory Body*

and the *Employer* as the *Contractor's* principal pays the *Statutory Body's* allowable costs in respect of these measures.

Z8.2 The *Contractor*:

- is responsible for ensuring the *Statutory Body's* compliance with any agreement or arrangement entered into under Clause Z8.1 and
- indemnifies and keeps indemnified the *Employer* against:
 - claims, demands, actions and proceedings
 - costs, charges and expenses arising there from
 - loss of or damage to any property
 - increased cost of working or
 - business interruption

which may be brought or made by any *Statutory Body* in connection with such an agreement or arrangement including but not limited to the negligence or default of the *Consultant*.

Z8.3 The *Contractor* allows in his Accepted Programme any notice period required by a *Statutory Body* in relation to any matters and measures under Clause Z8.1.

Special requirements of Statutory and Other Bodies Z9
Z9.1

The *Contractor*:

- complies with all Special Requirements of Statutory and Other Bodies as set out in the Works Information,

- is not excused from the performance of any of his obligations under the contract as a consequence of the requirement to comply with this Clause,
- acknowledges and accepts that the *Employer* does not warrant and has not warranted the accuracy or completeness or any data or information which has been or will be provided to the *Contractor* by the *Employer* or the *Project Manager* relating to the location, size, nature or condition of services, in, on over or under the Site or in the vicinity of the Site and
- further acknowledges and accepts that he neither has nor will have any claim of any kind whatsoever against the *Employer* founded upon the accuracy or completeness of any such data or information.

Named key persons Z10
Z10.1

Acceptance by the *Employer* of key persons stated in the Contract Data does not constitute acceptance that such individuals are suitable for the roles assigned to them or serve to relieve the *Contractor* of his duties or obligations under the contract.

Subcontractors Z11
Z11.1

The *Contractor* is not relieved from any liability or obligation under this contract if:

- the *Employer* objects to or fails to object to a proposed Subcontractor or
- the *Project Manager* issues an instruction to remove a Subcontractor. Reasons for removal of a Subcontractor include:
 - inadequate or poor quality of workmanship,
 - incompetent or negligent performance,
 - uncooperative or disruptive working practices,
 - failure to operate a quality management system.

The *Contractor* then arranges the removal of the Subcontractor and the appointment of a replacement in accordance with this contract. An instruction to remove a Subcontractor is not a compensation event.

Recovery of sums due from Contractor Z12
Z12.1

All or part of any sum or sums of money which become recoverable from or payable by the *Contractor* under this contract may be withheld by the *Employer* from payments due or which become due to be made under this contract or any other contract with the *Employer*. This provision does not prejudice or affect the rights of the *Employer* to recover the sum or sums by any other means.

Z12.2 All or part of any sum or sums of money which become recoverable from or payable by the *Contractor* to the *Employer* or to any other Government Department may be deducted from any payment due to the *Contractor* under this contract.

**The Construction
Contracts (Northern
Ireland) Order 1997**

Z13

Z13.1 Definitions.

(1) The Order is the Construction Contracts (Northern Ireland) Order 1997.

(2) A period of time stated in days is a period calculated in accordance with Section 39 of the Interpretation Act (Northern Ireland) 1954.

Z13.2 Dates for payment.

The date on which a payment becomes due is the date on which a VAT invoice for an amount certified by the *Project Manager* is submitted as directed in the Contract Data.

The final date for payment is seven days after the date on which payment becomes due.

The *Project Manager's* certificate is the notice of payment specifying the amount of the payment made or proposed to be made and stating how the amount was calculated

Z13.3 Notice of intention to withhold payment.

If either Party intends to withhold payment of an amount due under this contract, he notifies the other Party not later than seven days (the prescribed period) before the final date for payment by stating the amount proposed to be withheld and the reason for withholding payment. If there is more than one reason, the amount for each reason is stated.

A Party does not withhold payment of an amount due under this contract unless he has notified his intention to withhold payment as required by this contract.

Z13.4 Suspension of performance.

If the *Contractor* exercises his right under the Order to suspend performance, it is a compensation event.

Retention bond Z14

Z14.1 On issue of the Completion Certificate for the whole of the *works* the *Employer* agrees to release all retained monies if the *Contractor* provides the *Employer* with a retention bond which is:

- provided by a bank or insurer which the *Employer* has accepted,
- in the form required by Contract Data part one and
- for an amount equivalent to the amount of retention then held by the *Employer*.

Z14.2 A reason for not accepting the bank or insurer is that its commercial position is not strong enough to carry the bond.

Z14.3 The *Employer* releases the retention bond to the *Contractor* on

the last *defects date*.

Dispute resolution Z15

Z15.1

(1) A dispute arising under or in connection with this contract is referred to and decided by the *Adjudicator*. A Party may refer a dispute to the *Adjudicator* at any time.

(2) In this clause, time periods stated in days exclude Christmas Day, Good Friday and bank holidays.

The Adjudicator Z15.2

(1) The Parties appoint the *Adjudicator* under the NEC Adjudicator's Contract current at the *starting date*.

(2) The *Adjudicator* acts impartially and decides the dispute as an independent adjudicator and not as an arbitrator.

(3) If the *Adjudicator* is not identified in the Contract Data or if the *Adjudicator* resigns or becomes unable to act

- the Parties may choose an adjudicator jointly or
- a Party may ask the *Adjudicator nominating body* to choose an adjudicator.

The *Adjudicator nominating body* chooses an adjudicator within four days of the request. The chosen adjudicator becomes the *Adjudicator*.

(4) A replacement *Adjudicator* has the power to decide a dispute referred to his predecessor but not decided at the time when his predecessor resigned or became unable to act. He deals with an undecided dispute as if it had been referred to him on the date he was appointed.

(5) The *Adjudicator*, his employees and agents are not liable to the Parties for any action or failure to take action in adjudication unless the action or failure to take action was in bad faith.

The adjudication Z15.3

(1) Before a Party refers a dispute to the *Adjudicator*, he gives a notice of adjudication to the other Party with a brief description of the dispute and the decision which he wishes the *Adjudicator* to make. If the *Adjudicator* is named in the Contract Data, the Party sends a copy of the notice of adjudication to the *Adjudicator* when it is issued. Within three days of the receipt of the notice of adjudication, the *Adjudicator* notifies the Parties

- that he is able to decide the dispute in accordance with the contract or
- that he is unable to decide the dispute and has resigned.

If the *Adjudicator* does not so notify within three days of the issue of the notice of adjudication, either Party may act as if he has resigned.

(2) Within seven days of a Party giving a notice of adjudication he

- refers the dispute to the *Adjudicator*,
- provides the *Adjudicator* with the information on which he

- relies, including any supporting documents and
- provides a copy of the information and supporting documents he has provided to the *Adjudicator* to the other Party.

Any further information from a Party to be considered by the *Adjudicator* is provided within fourteen days of the referral. This period may be extended if the *Adjudicator* and the Parties agree.

(3) If a matter disputed by the *Contractor* under or in connection with a subcontract is also a matter disputed under or in connection with this contract, the *Contractor* may, with the consent of the Subcontractor, refer the subcontract dispute to the *Adjudicator* at the same time as the main contract referral. The *Adjudicator* then decides the disputes together and references to the Parties for the purposes of the dispute are interpreted as including the Subcontractor.

(4) The *Adjudicator* may

- review and revise any action or inaction of the *Project Manager* or *Supervisor* related to the dispute and alter a quotation which has been treated as having been accepted,
- take the initiative in ascertaining the facts and the law related to the dispute,
- instruct a Party to provide further information related to the dispute within a stated time and
- instruct a Party to take any other action which he considers necessary to reach his decision and to so within a stated time.

(5) If a Party does not comply with any instruction within the time stated by the *Adjudicator*, the *Adjudicator* may continue the adjudication and make his decision based upon the information and evidence he has received.

(6) A communication between a Party and the *Adjudicator* is communicated to the other Party at the same time.

(7) If the *Adjudicator's* decision includes assessment of additional cost or delay caused to the *Contractor*, he makes his assessment in the same way as a compensation event is assessed.

(8) The *Adjudicator* decides the dispute and notifies the Parties and the *Project Manager* of his decision and his reasons within twenty-eight days of the dispute being referred to him. This period may be extended by up to fourteen days with the consent of the referring Party or by any other period agreed by the Parties.

(9) Unless and until the *Adjudicator* has notified the Parties of his decision, the Parties, the *Project Manager* and the *Supervisor* proceed as if the matter disputed was not disputed.

(10) If the *Adjudicator* does not make his decision and notify it to the Parties within the time provided by this contract, the Parties and the *Adjudicator* may agree to extend the period for making

his decision. If they do not agree to an extension, either Party may act as if the *Adjudicator* has resigned.

(11) The *Adjudicator's* decision is binding on the Parties unless and until revised by the *tribunal* and is enforceable as a matter of contractual obligation between the Parties and not as an arbitral award. The *Adjudicator's* decision is final and binding if neither Party has notified the other within the times required by this contract that he is dissatisfied with a matter decided by the *Adjudicator* and intends to refer the matter to the *tribunal*.

(12) The *Adjudicator* may, within fourteen days of giving his decision to the Parties, correct a clerical mistake or ambiguity.

Review by the *tribunal* Z15.4

(1) A Party does not refer any dispute under or in connection with this contract to the *tribunal* unless it has first been decided by the *Adjudicator* in accordance with this contract.

(2) If, after the *Adjudicator* notifies his decision a Party is dissatisfied, that Party may notify the other Party of the matter which he disputes and state that he intends to refer it to the *tribunal*. The dispute may not be referred to the *tribunal* unless this notification is given within four weeks of the notification of the *Adjudicator's* decision.

(3) The *tribunal* settles the dispute referred to it. The *tribunal* has the powers to reconsider any decision of the *Adjudicator* and to review and revise any action or inaction of the *Project Manager* or the *Supervisor* related to the dispute. A Party is not limited in *tribunal* proceedings to the information or evidence put to the *Adjudicator*.

(4) If the *tribunal* is arbitration, the *arbitration procedure*, the place where the arbitration is to be held and the method of choosing the arbitrator are those stated in the Contact Data.

(5) A Party does not call the *Adjudicator* as a witness in *tribunal* proceedings.

Value engineering Z16

Z16.1

The *Contractor* may submit to the *Project Manager* for acceptance written proposals to change the Works Information which if implemented will in the *Contractor's* opinion:

- enhance the quality or durability of the *works* or
- improve the efficiency of carrying out the *works* or
- reduce the cost to the *Employer* of maintaining the *works*,

Z16.2

The *Contractor* includes with his proposals:

- the value of any savings that will arise
- the effect if any on the Accepted Programme
- proposed changes to the Prices.

| | | |
|---|----------------------------------|---|
| Prompt payment to Subcontractors | Z17 Z17.1 | Where the <i>Contractor</i> enters a sub-contract with a supplier or Subcontractor for the purpose of executing the <i>works</i> he causes a term to be included in such sub-contract which requires payment to be made to the supplier or Subcontractor within a specified period not exceeding 30 days from receipt of a valid invoice as defined by the sub-contract requirements. |
| Security firms | Z18 Z18.1 | If the <i>Contractor</i> proposes to use the services of a security firm he submits the name and address of the firm to and obtains approval in writing from the <i>Employer</i> before appointing the firm. |
| Accident reports | Z19 Z19.1 Z19.2 | <i>The Contractor</i> informs the <i>Project Manger</i> , in writing, on a monthly basis of all accidents, including accidents involving members of the public, which occur when providing the <i>works</i> . Immediate written notification is made to the <i>Project Manager</i> of injuries which result in over 3 day absences, major injuries, fatalities, diseases and dangerous occurrences as listed in the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations (RIDDOR). |
| Key performance indicators | Z20 Z20.1 | The <i>Contractor</i> provides all information requested by the <i>Employer</i> or the <i>Project Manager</i> to facilitate the implementation of key performance indicators throughout the duration of the contract. |
| Works suspension | Z21 Z21.1 | Suspension of performance is a compensation event if the <i>Contractor</i> exercises his right to suspend performance under The Construction Contracts (Northern Ireland) Order 1997. |
| Contract monitoring | Z22 Z22.1 | Appointment of the CCM (1) The <i>Employer</i> may appoint a Construction Contract Monitor (“CCM”) from a list of persons or organisations held by the <i>Employer</i> . The objectives of the appointment of the CCM are: <ul style="list-style-type: none"> • to limit opportunities for criminals, or criminal or paramilitary organisations to target any work being carried out under this contract, • to encourage fair competition and equal opportunities for all, • to promote sustainability through monitoring compliance with appropriate legislation and tax regimes, including those concerning aggregate exploitation, waste disposal and landfill, and • any other objectives set out elsewhere in this contract. (2) The CCM shall act as stated in this contract and in a spirit of mutual trust and cooperation with the <i>Project Manager</i> , the <i>Employer</i> and the <i>Contractor</i> . |

(3) The *Employer* does not appoint as the CCM any person or organisation that provides or has provided within 5 years of the *starting date* any accountancy, audit or legal services to the *Contractor* or to the *Contractor's* ultimate parent company or to a company with the same ultimate parent company as the *Contractor*.

(4) The *Employer* may replace the CCM at any time after he has notified the *Contractor* of the name of the replacement.

(5) For the purposes of this Clause these terms have the following meanings

The *Project Manager* means the *Project Manager*, *Service Manager*, or *Employer's Agent*, as appropriate appointed under this contract.

The *Contractor* means the *Contractor* or the Consultant named in this contract.

A *Supplier* means any person or organisation with a contract with the *Contractor* in relation to any of the *works* or services carried out under this contract, including, but not limited to those

- supplying Plant and Materials,
- supplying or hiring Equipment,
- designing any parts of the *works*,
- carrying out any other professional services,
- supplying labour,
- who are Subcontractors or Subconsultants, or
- supplying any other *works* or services in relation to this contract

Z22.2 Role of the CCM

(1) The CCM monitors and audits the *Contractor's* activities and those of his Suppliers with respect to

- payments to criminal or paramilitary organisations,
- payment of aggregate taxes,
- payment of landfill taxes,
- compliance with waste disposal legislation, and
- employment of labour-only subcontractors.

The CCM advises the *Employer* of his findings with respect to these matters.

(2) As soon as he is appointed the CCM provides the *Contractor* with a schedule of all of the persons he intends to employ in carrying out his duties. The CCM provides the *Contractor* with the CVs of all such persons if requested to by the *Contractor*.

After notification to the *Contractor* the CCM may remove people from, or add people to this schedule.

(3) Within 30 days of his appointment the CCM will examine the existing procedures and systems used by the *Contractor* and present a report to *Employer, Project Manager* and *Contractor*. This report will include recommendations as to any changes the CCM requires to the *Contractor's* procedures in order to meet the objectives of the appointment of the CCM set out in this contract.

(4) The CCM may, without prior notice to or permission from the *Contractor*, conduct reviews and surveillance of the *Contractor* and his employees, officials and Suppliers at any place where they are carrying out work or services in connection with this contract.

(5) The CCM issues a monthly report to the *Employer, the Project Manager* and the *Contractor*, which includes details of

- the areas he has targeted for investigation and any appropriate findings or observations,
- recommendations he has made to the *Contractor*, and the *Contractor's* response or action,
- the number of events and reports submitted to each appropriate authority in accordance with the Notification Table, and

such other information as the CCM considers appropriate to the objectives of his appointment.

(6) The CCM immediately notifies any of the events in the Notification Table to the named appropriate authority. The CCM issues a copy of any notification to the *Contractor*

Notification Table

| <i>Event</i> | <i>Appropriate authority</i> |
|--|--|
| Suspected or actual criminal activity | Police Service of Northern Ireland |
| Suspected or actual unethical or irregular business activity, or breach of this contract by the <i>Contractor</i> , or his Suppliers, or any government employee | The <i>Employer</i> and the <i>Project Manager</i> |
| An ongoing investigation by any law enforcement officer, official of any government agency or other civil authority of the activities of the <i>Contractor</i> , or his Suppliers. | The <i>Employer</i> |

(7) The CCM does not disclose any commercially confidential information except as required by the Notification Table.

(8) If the CCM decides that the *Contractor* has failed to comply with the requirements of this clause he notifies the *Contractor* of

that failure. The CCM sends a copy of his notification to the *Employer* and *Project Manager*. Following such a notification the *Employer* makes no further payments to the *Contractor* under this contract until the CCM notifies the *Employer*, *Project Manager* and *Contractor* that the failure has been corrected.

A notification issued by the CCM's under this subclause is treated as a notice from the *Project Manager* or *Employer*, as appropriate, that the *Contractor* has substantially failed to comply with his obligations under this contract.

Z22.3 Responsibilities of the *Contractor*

(1) The *Contractor* cooperates with the CCM in the carrying out of his duties and complies with any request issued by him. The *Contractor* ensures that all of his employees, officials and Suppliers also cooperate with the CCM and comply with his requests.

(2) The *Contractor* implements such procedures as are recommended or required by the CCM in order to meet the objectives of the appointment of the CCM set out in this contract.

(3) The *Contractor* immediately notifies the CCM if, in connection with the *Contractor's* business

- any of its employees, officials, or Suppliers involved with the contract are
 - interviewed, questioned, or otherwise contacted by any law enforcement officer or official of any government department or civil authority in connection with any criminal, civil, or administrative investigation, or
 - notified that they are the subject of any criminal, civil or administrative investigation, or
- the *Contractor* becomes aware of or suspects any unethical or criminal conduct or other impropriety in connection with this contract.

(4) The *Contractor* allows the CCM to examine all of his records, including those held electronically, that relate directly or indirectly to this contract, and that are in the possession or control of

- the *Contractor*
- any subsidiary of the *Contractor*,
- the *Contractor's* ultimate parent company,
- any company with the same ultimate parent company as the *Contractor*, or
- any other company directly or indirectly controlled by the *Contractor* or its owners or shareholders.

(5) The *Contractor* issues to Others any necessary instructions to enable the CCM to have access to any records that are partly or wholly under the *Contractor's* control but not in the *Contractor's* possession.

(6) The *Contractor* provides any authorisations, permissions

and/or waivers requested by the CCM to obtain records from Others relating to the *Contractor* and this contract that are not maintained by the *Contractor*, including, but not limited to bank records, credit reports and the like.

(7) The *Contractor* provides the CCM with access to and use of an appropriate private and secure workspace, photocopying facilities and communications equipment.

(8) The *Contractor* maintains such records as the CCM shall require relating to its own workforce, and that of its Suppliers.

(9) If, and to the extent, required by the CCM, the *Contractor* ensures that his Suppliers provides to the CCM facilities to inspect their records, including those held electronically.

(10) If the *Contractor*, or an employee or official of the *Contractor*, becomes aware of any improper or illegal conduct by any of its employees, officials or Suppliers, he immediately notifies the CCM.

(11) The *Contractor* includes in any contract he has with a Supplier appropriate provisions that

- allow the CCM to have the rights with regards to the Supplier set out in this contract, and
- give the *Contractor* the right to withhold payment to the Supplier if the Supplier
 - fails to cooperate with the CCM, or
 - fails to comply with any action required or requested by the CCM, or
 - fails to supply complete, accurate and truthful information in compliance with a request from the CCM.

(12) The *Contractor* withholds payment to a Supplier who

- fails to cooperate with the CCM, or
- fails to comply with any action required or requested by the CCM, or
- fails to supply complete, accurate and truthful information in compliance with a request from the CCM.

(13) The *Contractor* does not disclose to Others any dealings or communications with, or actions by, the CCM in relation to the CCM's duties or actions under this contract.

Z22.4 Other matters

(1) The following are additional compensation events.

- a) If the *Contractor* is required to pay fees to external accountants, auditors or solicitors in relation to any requests from or requirements of the CCM, but excluding any fees incurred in challenging or disputing a decision of the CCM.
- b) Complying with any specific requirements of the CCM as to

security, to the extent that such requirements are greater than an experienced contractor would have deemed reasonable to have allowed for in his tender taking into account

- his knowledge of the area in which the *works* or services are being carried out,
- any information provided by the *Employer* in this contract,
- any information available from a visual inspection of the area in which the *works* or services are being carried out, and
- any other information which an experienced *Contractor* could reasonably be expected to have or to obtain.

Only the difference between the security required by the CCM and that which it would have been reasonable to have allowed for is taken into account when assessing this compensation event.

(2) With the exception of the compensation events set out in the preceding sub-clause, the *Contractor* is required to include the costs of complying with all the requirements of this clause in the Prices.

(3) Any information provided in accordance with this clause to the *Employer*, *Project Manager* or CCM may be used by any Governmental Department or Agency for statistical or information publications. Where such information is used it will not identify any individuals or organisations, except to the extent set out in the Notification Table.

Project Share Mechanism

Z23

Z23.1

The incentive for exceptional performance on this scheme operates at two levels; at project level and at a strategic level. There are two share mechanisms; one related to performance against the contract target cost (the Section Share) and the other related to performance against a pre-set Project Target Cost (the Project Share).

The purpose of the two level incentivisation is to encourage the A5WTC Contractors on each of the sections to work collaboratively to successfully deliver the entire A5WTC project on time, to the required specification and within the budget set by the *Employer*.

The Project Target Cost is set by the *Employer* once the preferred route alignment has been announced. It will comprise all elements of the scheme budget that the *Employer* considers that the A5WTC Contractors can influence.

During Phase 1 (the Professional Services Contract) the *Contractors* will work with the *Employer's* design team to optimise the specimen design and propose value engineering solutions to achieve the optimum target costs for each section.

During Phase 2 (the design and construct contract) the *Contractors* will continue to drive out waste and minimise costs and must seek the best possible outcome for the A5WTC project in its entirety, not merely their own section.

The share ranges for the Project Share are:



When the *Employer* has taken its share, the remainder is shared equally amongst the A5WTC Contractors regardless of who has undertaken the greater share of the work or which section has delivered the greatest cost saving. This is intended to encourage sharing of best practice and sharing of programme risks. It is based on the premise that each Contractor is in a position to add value to the A5WTC project by working in collaboration.

The A5WTC Contractors and the *Employer* are expected to work together in accordance with the following principles:

- (a) Good faith – to work in a collaborative manner in which the achievement of overall benefits to the A5WTC is the prime consideration.
- (b) Innovation - using innovative methods in the development of the A5WTC so that it meets the *Employer's* requirements at the lowest possible cost without in any way compromising the total commitment of each A5WTC Contractor and the *Employer* to safety and quality.
- (c) Transparency - being entirely transparent in connection with all Defined Costs incurred or to be incurred in relation to the A5WTC.
- (d) Commitment – to an effective interface between each A5WTC Contractor and its Subcontractors, striving to eliminate all sources of duplication and inefficiency in the provision of the works.
- (e) Continuous Improvement – in all aspects of the performance of the services, through the application of effective business management, excellent engineering and integration between the A5WTC Contractors.

A Project delivery Charter is developed jointly between the *Employer* and the A5WTC Contractors.

- Z23.2 The Project Share is paid to the Contractors within 3 months of the latest defects date from Section 1, 2 or 3. Payment is made subject to the following conditions precedent:
- Final accounts for all three Sections have been agreed
 - There are no disputes outstanding on any Section