

COMPILATION OF PPP TERMS AND CONDITIONS OF CONTRACT

PUBLIC SECTOR VERSION

CLAUSE 28: LAND

DBFOM CONTRACT

CONCESSION CONTRACT

DBOM CONTRACT

INTRODUCTION

This clause of the Core Contract deals comprehensively with the conditions under which access to land is given to the PPP Co. Although the PPP Co obtains the site for this project, much of the drafting will also work when the Authority obtains the site – the PPP Co will still be required to bear much of the risk in relation to the land.

The Core Contract distinguishes between the 'Site', which is precisely defined in a schedule, and 'Off-Site Areas' which are other areas on which works will be carried out. It is not clear what this is intended to apply to in the Accommodation contract; in the NRA Model Contract it refers to land where accommodation works are to be done, and other roads to be tied into the project road. Likewise 'Other Works' are works other than the construction of, in this case, the conference centre.

Where access to land is provided by the State Authority to the PPP Co. this must be achieved using a licence arrangement.

Note: The use of a lease agreement may reduce the ownership rights of the State Authority to that asset at some point in the future.

SOPC3 GUIDANCE

SOPC3 provides the following comments in relation to land:

31. LAND AND OTHER PROPERTY INTERESTS

31.1 INTRODUCTION

31.1.1 *In the majority of PFI deals, the Authority will transfer to the Contractor, or the Contractor will procure for itself land, property or equipment as part of the Contract. During the life of the Project the Contractor manages the operation and maintenance of the relevant assets.*

31.1.2 *In the context of asset transfer by the Authority to the Contractor, consideration should be given to the nature of the interest that the Contractor should have in the asset during the life of the Project and, in the context of procurement of assets for the purpose of delivering the Project, consideration should be given to whether or not the Authority would be best placed to manage such procurement.*

31.1.3 *The Authority must (where transferring land to the Contractor at financial close) ensure that it conducts*

due diligence over its property rights early in the procurement process to ensure that the Project will not be jeopardised during the procurement due to a late discovery of a problem relating to the nature of the Authority's interest in the property.

31.2 LAND/PROPERTY TRANSFER

31.2.1 *As part of the Authority's feasibility study for a proposed Project, and prior to preparation of the Authority's Outline Business Case, the Authority should consider:*

- *the extent to which it will be required to transfer assets to the Contractor (so as to allow the Contractor to carry out and perform the Service);*
- *its ability to transfer such assets to the Contractor¹; and*
- *the extent to which the Authority requires control over, and/or access to the assets during the life of the Project.*

31.2.2 *If the Project will involve both the Authority and the Contractor accessing and using the asset – for example, school teachers or hospital clinicians accessing a building managed and maintained by the Contractor – then the Authority should seek advice from its legal advisers as to the best way of ensuring that the Authority's rights of use are maintained following transfer of the asset.*

31.2.3 *The Authority may already own the freehold to the land and property. In this case, it can transfer an interest in the land and property (freehold or long leasehold/headlease) to the Contractor, whilst at the same time securing for itself a sub-lease or licence, which allows it to access and use the land and property for the term of the Contract (but see Section 31.5 [of the SoPC3 Guidance]).*

31.2.4 *If the Authority only has a leasehold interest in the land and property it is likely that the consent of the freeholder will be required before the Authority can grant any interest in the land and property to the Contractor. Typically, a sub-lease is granted in favour of the Contractor (with the consent of the freeholder), and a further sub-lease or license is granted back to the Authority by the Contractor to enable the Authority to gain access to and use the land and property.*

31.3 LAND/PROPERTY PURCHASE

31.3.1 *In some Projects it may be necessary for a new site to be secured for the purposes of the Project. Historically, where there has not been a requirement for the Project to be operated from a certain site, Authorities have required bidders to price the cost of the land acquisition into bids with a view to making the acquisition after selection of preferred bidder. However, such an approach should not be taken on Projects where the location of the site is critical to the success of the Project for the following reasons:*

- *deliverability of the Project should be demonstrated at the time the Outline Business Case is prepared by the Authority. This may be best achieved if the Authority secures the site prior to, or at the time of the Outline Business Case being prepared;*
- *requiring bidders to commit to pricing of land acquisition prior to making the acquisition is unlikely to offer best value for money to the Authority, as bidders are likely to include a contingency in their bid to allow for difficult negotiations with the owner of the site or future variability in the purchase price. Furthermore, delay in contract award may arise if the owner of the site realises that the preferred bidder has priced its bid on the assumption that the Project will be delivered on that site, therefore giving the owner a strong negotiating position against the preferred bidder; and*
- *the result of competition could effectively be determined, not by the best value for money bid, but by the best property deal available.*

¹ *The nature of the Authority's interest in the relevant asset will dictate the extent to which, and manner in which the Authority can transfer the benefit of the relevant asset to the Contractor. Legal due diligence over the Authority's interest in the asset will highlight any restrictive covenants, conditions of transfer and /or claims over the relevant asset.*

- 31.3.2** *Where location of the site is not critical to the success of the Project, bidders should be encouraged to offer innovative solutions in respect of land acquisition.*
- 31.3.3** *Where land and property owned by the Authority becomes surplus as a result of the Project and this is signalled by the Authority and forms part of the competition, the Authority must ensure that it receives open market value² from the Contractor. When surplus land and property features as an integral part of a bid, it can be difficult for the Authority to reach clear judgements about open market value. However, this does not relieve an Authority from its obligation to demonstrate that it has achieved open market value. Where the Authority cannot satisfy itself that open market value has been achieved it should consider seeking bids that remove the financial benefit of the surplus land and property.*
- 31.3.4** *The Authority needs to take care that the inter-relationship between the realisation of proceeds from the sale of surplus land and property and the facilities from which services will be delivered during the term of the Contract supports the overall objectives of the Project and also does not prejudice the Authority's position should an event of early termination arise.*

Comment: The treatment of land is an area where Irish and UK practice differ. In Ireland, the PPP Co is generally not given an interest in land used for the project. (In this use distinguish projects in which the Authority provides land to the PPP Co for development, as part of the consideration for the project).

CORE CONTRACT DRAFTING

28. LAND

28.1 Access for PPP Co

Subject to the provisions of Clauses 28.2 (Duration), 28.3 (Limitations), and 31 (Protestors and Trespassers), the Authority shall make available to the PPP Co for the purposes of the Project for the periods referred to in Clause 28.2 (Duration) non-exclusive possession of the Site and such access to and from the Site (as licensee) as shall be required from time to time by the PPP Co for the purpose of carrying out its obligations under this Agreement in relation to the Project and the Senior Credit Providers, in each case subject to:

- (a) any rights of public passage or access existing over any part of the Site from time to time;
- (b) the right of the Authority and/or the Authority's Representative to have access for the purpose of monitoring, inspecting and/or testing the Works, the Operations, the Additional Works or the Renewal Works to be carried out or being carried out by the PPP Co and/or for inspection of the Site or for any other purpose related to the carrying out of the Project or the performance by the PPP Co of its obligations pursuant to this Agreement including, without limitation, the rights of access referred to in Clause 10.8 (Access);
- (c) the right of any Relevant Authority (or any Relevant Authority's Representative) under any Law or Legal Requirement or pursuant to any Requirements of Relevant Authorities to have access to the Site including, without limitation, the rights of access referred to in Clause 10.8 (Access);
- (d) the right of Relevant Persons pursuant to any of the Requirements of Relevant Persons;
- (e) the right of access of the Archaeologist referred to in Clause 32.1(b) (Archaeological Design and Archaeological Works);
- (f) the terms and conditions of any Land Rights relating to the Site or otherwise affecting the

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As defined in Government Accounting, Chapter 32.

Project that are in existence or in the contemplation of both the PPP Co and the Authority on the Effective Date;

Comment: In the NRA Model Contract, this is qualified as follows '(other than those Land Rights which are being acquired pursuant to the Scheme Orders subject to paragraph [●] of Annex [●] to Part [●] of Schedule [●] (Construction Requirements)' [see *provision below*]. This is an appropriate qualification when the Authority acquires the land, and title due diligence is not feasible.

- (g) the right of any Interested Parties to have access to the Site;
- (h) any lawful restriction imposed by any Relevant Authority in discharging its statutory duties;
- (i) the right of the Authority and its nominees to conduct and/or attend at a ceremony, on a date selected by the Authority after consulting with the PPP Co, to mark the occasion of the opening of the [Project Facility] for use by the Users;
- (j) any other right of access of the Authority;
- (k) any other right of access of other person arising under this Agreement or pursuant to Law or Legal Requirement;
- (l) the right of any contractor or consultant of the Authority carrying out works on the Site [and/or Off-Site Areas] including without limitation, rights relating to the finishing of such works and relating to the repair, amendment, reconstruction, rectification and making good of any Defects, imperfections, shrinkages or other faults;
- (m) the obligation of the PPP Co to use only the designated routes to the Site as set out in Schedule [●] (Construction Requirements) during the Design and Construct Period; and
- (n) the terms of the [Title Documents] or the Environmental Impact Statement,

in each case without prejudice to the provisions of the documents listed in Part [●] of Schedule [●] (Required Documents) and Schedule [●] (Title Documents).

Comment:

The following additional limitations are included in the NRA Model Contract:

- *the right of any relevant Road Authority to have access for the execution on or near the Site or the Off-Site Areas of any work in fulfilling any function of such Road Authority under any Law or Legal Requirement;*

This is specific to road (and perhaps rail) projects.

- *any restriction under the Scheme Orders;*

This is appropriate when statutory procedures under which the project has been authorised (and land acquired) may limit the project, and in particular the use of the land.

- *the rights of the DoEHLG and any artist and/or third party appointed in connection with the 'Per Cent for Art' scheme;*
- *[any right of access of CIE/Iarnrod Eireann including any rights it may have to erect tracks and or operate trains underneath or above the Project Road].*

This is relevant when there is a railway interface. Other potential utility interfaces are provided for in 28.1(c).

28.2 Duration

Subject to Clause 28.3 (Limitations), Clause 9.4 (Services Commencement Certificate) and Clause 11.6 (Step-In Rights), the date on which duration of the rights of access and possession given under Clause 28.1 (Access for PPP Co) shall commence, shall be from the date on which access is required in respect of the relevant part of the Off-Site Areas under the Programme (as amended and supplemented from time to time in accordance with Clause 6.3 (Variations to Programme)) and shall continue in respect of the [Project Facility], until the end of the Contract Period, [and in respect of the Other Works, until the date on which the Outstanding Items are completed in accordance with Clause 9.4 of this Agreement], provided, however, that if the Programme at Commencement Date does not clearly specify the dates on which access will be required to the Site, then, in relation to the Site, the date of access shall be deemed to be the Effective Date.

28.3 Limitations

- (a) The rights of access and possession given under Clause 28.1 shall be by way of licence only and shall subsist for the purposes of carrying out the Project and for no other purpose. This Agreement is not intended to grant (either directly or indirectly) and shall not grant or be deemed to grant any legal estate or other interest in land and, for the avoidance of doubt, the PPP Co by the execution of this Agreement declares and acknowledges that it shall have no freehold, leasehold or tenancy interest or tenancy rights in the Site from the Effective Date.
- (b) Without prejudice to the generality of Clause 28.3(a), where land or Land Rights forming part of the Site [or Off-Site Areas] have been acquired subject to any restriction relating to the use of such land for any specified purpose, such land shall not be used by the PPP Co otherwise than for activities which are necessary for the achievement of such specified purpose, and the right of access granted by the Authority in respect of such land shall be limited accordingly.
- (c) PPP Co warrants and undertakes to the Authority that it has satisfied itself that the carrying out of Works and the provision of the Services at the [Project Facility] by or on behalf of PPP Co (whether before, during or after the completion of the Works) in accordance with the terms of this Agreement will not breach any provisions of the Title Documents and there shall be no action or omission, which shall give rise to a right for any person to obtain a proprietary interest in or title to the [Project Facility] or any part of it (save in accordance with the terms of this Agreement).
- (d) PPP Co warrants and undertakes that it shall procure that any licensee of the Site other than PPP Co and other than those persons referred to in Clauses 28.1(b), 28.1(i), 28.1(k) and 28.1(l), shall at all times comply with the reasonable instructions and requirements of PPP Co, PPP Co's Representative, the Authority and the Authority's Representative, which are necessary in order to enable PPP Co and/or the Authority to fully comply with their duties and obligations under this Agreement and under any Project Document.
- (e) PPP Co warrants and undertakes that it shall use all reasonable endeavours to procure that any licensee, other than the Authority, referred to in Clauses 28.1(b), 28.1(i), 28.1(k) and 28.1(l), shall at all times comply with the reasonable instructions and requirements of PPP Co, PPP Co's Representative, the Authority and the Authority's Representative, which are necessary in order to enable PPP Co and/or the Authority to fully comply with their duties and obligations under this Agreement and under any Project Document.

28.4 Acquisition of Land by the PPP Co

Subject to Clause 28.6(b), the freehold and/or leasehold interest in any additional land and/or any other Land Rights acquired by the PPP Co after the Commencement Date and/or the Effective Date for the purposes of the Project shall, upon request by the Authority, be conveyed to the Authority or to a person nominated by it at the Expiry Date or Termination Date, as the case may be, free of charge and without any Encumbrances which would impede the Authority's use of the [Project Facility].

Comment: This provision is not just for projects in which the PPP Co is responsible for obtaining the site. For example, it is in the NRA Model Contract form – although the public sector obtains the site, the PPP Co may obtain additional land.

28.5 Observance by PPP Co

The PPP Co shall observe and comply with the terms and conditions of any Land Rights relating to the Site [and the Off-Site Areas].

28.6 Boundaries of the Site

- (a) Subject to Clause 28.6 (c), the boundaries of the Site shall be as shown on the Site drawings referred to in Part [●] of Schedule [●] (Land Issues).
- (b) If, as a result of implementing a Variation pursuant to [Clause 34 - Schedule] (Variations) any area of land becomes required for the Project, the Authority may, by notice to the PPP Co, specify that such area of land shall be added to the definition of the Site together with the effective date of such addition, and in such circumstances, the area of land so specified shall be added to the definition of the Site with effect from the effective date of such addition, provided that, where as a consequence of implementing an Authority Change (including an Authority Change in respect of an expansion to the [Project Facility] as contemplated in the User Requirements and the PPP Co Proposals) land is to be added to the definition of the Site, the acquisition cost to be incurred by the PPP Co in respect of such land shall be agreed as part of the Estimate pursuant to [Clause 34 – Schedule] (Variations).
- (c) Where an area of land has been added to the definition of Site pursuant to Clause 28.6(b), the PPP Co shall proceed expeditiously to revise the Site drawings listed in Part [●] of Schedule [●] (Land Issues) necessary to reflect such addition and, if the parties are unable to reach agreement in respect of such revised Site drawings within [●][●] days of the effective date of such addition, then a Dispute shall exist and either party may refer the Dispute for resolution under the Disputes Resolution Procedure.
- (d) PPP Co shall identify for the Authority the boundaries of the Off-Site Areas, as are required to allow construction of the Works, including all temporary accesses.

Comment: Under the NRA model contract, the Contractor can notify the Authority within 90 days of completion if there is any land that was originally included within the definition of “Site” that is not needed for the Project. The Authority may then exclude that area from the definition of Site for the rest of the life of the Project. The relevant wording is as follows:

By not later than 90 (ninety) days after the issue of the Completion Certificate (but not before such issue), the PPP Co shall by notice to the Authority specify any area of land falling within the boundaries of the Site as referred to in Clause [●].7(a) which is not required for the Project Road. To the extent that the PPP Co issues any such notice, the Authority may, at its absolute discretion, agree to the exclusion of the area of land so specified together with the effective date of such exclusion and, in such circumstances, the area of land so specified shall be excluded from the definition of the Site, with effect from the effective date of such exclusion.

28.7 Excavation and Disposal of Materials

The PPP Co may only dispose of, excavate, extract, exploit or otherwise deal with any materials (including, without limitation, any soil, aggregates, rocks, coal, minerals or other deposits, excavated, arising or produced in connection with the carrying out of the Project on the Site [or the Off-Site Areas] (together “Site Materials”)):

- (a) if and to the extent that the PPP Co has the right to do so by Law or Legal Requirement

pursuant to the terms of any agreement;

- (b) if and to the extent that such disposal, excavation, extraction, exploitation or other dealing with materials does not have an adverse environmental impact;
- (c) if and to the extent that, in the case of excavation or extraction of Site Materials, such excavation or extraction is necessary for the purpose of constructing the Works, any works forming part of the Operations, the Additional Works and/or the Renewal Works pursuant to the User Requirements;
- (d) subject to the rights of any third party, whether being rights in or to the Site Materials, Land Rights or otherwise;
- (e) subject to any limitation, restriction or condition, whether pursuant to any Law, Necessary Consent or otherwise, applying to or affecting the right of the PPP Co to undertake any such disposal, excavation, extraction, exploitation or other dealing; and
- (f) subject to the terms of Clause 32 (Fossils, Antiquities and Burial Grounds).

28.8 Authority Access

Without prejudice to 28.1(b), the PPP Co shall procure that the Authority and any persons nominated by it shall have unrestricted access to the Site [and the Off-Site Areas] subject to compliance with health and safety requirements at all reasonable times from the Commencement Date to [grant of Lease].

NRA MODEL CONTRACT DRAFTING

[●] LAND

[●].1 Access for PPP Co

Subject to the provisions of Clauses [●].2 (Duration), [●].3 (Limitations), and [●] (Protestors and Trespassers), the Authority shall make available to the PPP Co for the purposes of the Project for the periods referred to in Clause [●].2 (Duration) vacant and uninterrupted possession of the Site and such access to and from the Site and the Off-Site Areas as shall be required from time to time by the PPP Co for the Project and the Senior Credit Providers, in each case subject to:

- (a) any rights of public passage or access existing over any part of the Site or the Off-Site Areas from time to time;
- (b) the right of the Authority and/or the Authority's Representative to have access for the purpose of monitoring, inspecting and/or testing the Works, the Operations, the Additional Works or the Renewal Works to be carried out or being carried out by the PPP Co and/or for inspection of the Site or the Off-Site Areas or for any other purpose related to the carrying out of the Project or the performance by the PPP Co of its obligations pursuant to this Agreement including, without limitation, the rights of access referred to in Clause [●] (Access for Authority's Representative) and Clause [●] (Access);
- (c) the right of any Relevant Authority (or any Relevant Authority's Representative) under any Law or Legal Requirement or pursuant to any Requirements of Relevant Authorities to have access to the Site or the Off-Site Areas including, without limitation, the rights of access referred to in Clause [●] (Access);
- (d) the right of Users to use the Project Road and/or any Connecting Road;

- (e) the right of Relevant Persons pursuant to any of the Requirements of Relevant Persons;
- (f) the right of access of the Project Archaeologist referred to in Clause [●] (Archaeological Design and Archaeological Works);
- (g) the right of any relevant Road Authority to have access for the execution on or near the Site or the Off-Site Areas of any work in fulfilling any function of such Road Authority under any Law or Legal Requirement;
- (h) the terms and conditions of any Land Rights relating to the Site or the Off-Site Areas or otherwise affecting the Project (other than those Land Rights which are being acquired pursuant to the Scheme Orders subject to paragraph [●] of Annex [●] to Part [●] of Schedule [●] (Construction Requirements);
- (i) the right of any Interested Parties to have access to the Site or the Off-Site Areas;
- (j) any restriction imposed by any Relevant Authority in discharging its statutory duties;
- (k) any restriction under the Scheme Orders;
- (l) the right of the Authority and its nominees to conduct and/or attend at a ceremony, on a date selected by the Authority after consulting with the PPP Co, to mark the occasion of the opening of the Project Road for use by the Users;
- (m) the rights of the DoEHLG and any artist and/or third party appointed in connection with the 'Per Cent for Art' Scheme;
- (n) other right of access of the Authority or any other person arising under this Agreement or pursuant to Law or Legal Requirement;
- (o) the right of any contractor or consultant of the Authority carrying out works on the Site and/or Off-Site Areas including without limitation, rights relating to the finishing of such works and relating to the repair, amendment, reconstruction, rectification and making good of any defects, imperfections, shrinkages or other faults;
- (p) the obligation of the PPP Co to use only the designated routes to the Site as set out in Schedule [●] (Construction Requirements) during the Design and Construct Period; and
- (q) [any rights of access of CIE/Iarnrod Eirerann including any rights it may have to erect tracks and/or operate trains underneath or above the Project Road].

[●].2 Duration

Subject to Clause [●] (Limitations), Clause [●] (Issue of Taking-Over Certificate) and Clause [●] (Step-In Rights), the date on which duration of the rights of access and possession given under Clause [●] (Access for PPP Co) shall commence, shall:

- (a) in relation to the Site, be from the later of the Commencement Date and the date on which access is required under the Programme (as amended and supplemented from time to time in accordance with Clause [●] (Variations to Programme)) in respect of the relevant part of the Site; and
- (b) in relation to the Off-Site Areas, be from the date on which access is required in respect of the relevant part of the Off-Site Areas under the Programme (as amended and supplemented from time to time in accordance with Clause [●] (Variations to Programme)),

and shall continue in respect of the Project Road, until the end of the Contract Period, and in respect of the Other Works, until the Completion Date, provided, however, that if the Programme at Commencement Date does not clearly specify the dates on which access will be required to the Site

and/or the Off-Site Areas, then, in relation to the Site, the date of access shall be deemed to be the Commencement Date and, in relation to any Off-Site Area, the PPP Co shall be required to give 30 (thirty) Working Days notice to the Authority's Representative in respect of such access.

[●].3 Limitations

- (a) The rights of access and possession given under Clause [●].1 (Access for PPP Co) shall be by way of licence only and shall subsist for the purposes of carrying out the Project and for no other purpose. This Agreement is not intended to grant (either directly or indirectly) and shall not grant or be deemed to grant any legal estate or other interest in land and, for the avoidance of doubt, the PPP Co by the execution of this Agreement declares and acknowledges that it shall have no freehold, leasehold or tenancy rights in the Site or the Off-Site Areas.
- (b) Without prejudice to the generality of Clause [●].3(a), where land or Land Rights forming part of the Site or Off-Site Areas] have been acquired:
 - (i) by Scheme Orders for landscaping or any other specified purpose; or
 - (ii) subject to any restriction relating to the use of such land for landscaping or any other specified purpose,

such land shall not be used by the PPP Co otherwise than for activities which are necessary for the achievement of such landscaping or such other specified purpose, and the right of access granted by the Authority in respect of such land shall be limited accordingly.

[●].4 Failure to Grant Access

(a) Subject to Clause [●] (Responsibility for Protestors and Trespassers) if a Road Authority (other than the Authority) or Relevant Person (as the case may be) does not give to the PPP Co access to the areas of the Off-Site Areas required to carry out Outstanding Works on the date such access is required under the Programme then:

- (i) subject to Clause [●].4(c), the PPP Co shall not be required to carry out the Outstanding Works relating to the area in respect of which access has not been given;
- (ii) the Outstanding Works referred to at Clause [●].4(a)(i) above will be deemed to have been completed for the purpose of the issue of the Permit to Use Certificate and Completion Certificate; and
- (iii) the Authority shall not be required to make available to the PPP Co access to such area and the PPP Co's obligations in respect of the Outstanding Works which relate to such area shall not apply during the period that access to such area is not made available to the PPP Co.

(b) On the areas of the Off-Site Areas required to carry out the Outstanding Works being made available, the Authority shall promptly notify the PPP Co's Representative.

(c) If the areas of the Off-Site Areas required to carry out the Outstanding Works are made available:

- (i) within 12 (twelve) weeks of the date such access is required in accordance with the Programme, the PPP Co shall proceed expeditiously with the carrying out and completion of the Outstanding Works; or
- (ii) later than 12 (twelve) weeks after the date such access is required in accordance with the Programme, on receipt of an instruction from the Authority's Representative, the PPP Co shall proceed expeditiously with the carrying out and completion of the Outstanding Works.

(d) The PPP Co shall have no Claim against the Authority in respect of the circumstances described in this Clause [●].4, save as expressly provided for in Clause [●] (Delays to Completion and Delay Events).

[●].5 Acquisition of Land by the PPP Co

The freehold and/or leasehold interest in any land and/or any Land Rights acquired by the PPP Co which has been acquired in relation to the Project shall, upon request by the Authority, be conveyed to the Authority or to a person nominated by it at the Expiry Date free of charge and without any Encumbrances which would impede the Authority's performance of its statutory functions.

[●].6 Observance by PPP Co

The PPP Co shall observe and comply with the terms and conditions of any Land Rights relating to the Site and the Off-Site Areas.

[●].7 Boundaries of the Site

- (a) Subject to Clause [●].7(e), the boundaries of the Site shall be as shown on the Site drawings referred to in Part [●] of Schedule [●] (Land Issues, Roads and Orders).
- (b) By not later than 90 (ninety) days after the issue of the Completion Certificate (but not before such issue), the PPP Co shall by notice to the Authority specify any area of land falling within the boundaries of the Site as referred to in Clause [●].7(a) which is not required for the Project Road. To the extent that the PPP Co issues any such notice, the Authority may, at its absolute discretion, agree to the exclusion of the area of land so specified together with the effective date of such exclusion and, in such circumstances, the area of land so specified shall be excluded from the definition of the Site, with effect from the effective date of such exclusion.
- (c) If any area of land becomes required for the Project, the Authority may, by notice to the PPP Co, specify that such area of land shall be excluded to the definition of the Site together with the effective date of such exclusion, and in such circumstances, the area of land so specified shall be excluded from to the definition of the Site, with effect from the effective date of such exclusion.
- (d) If, as a result of a Construction Variation or an Operation Variation any area of land:
 - (i) is no longer required for the Project; or
 - (ii) becomes required for the Project,the Authority may, by notice to the PPP Co, specify that such area of land shall be excluded from, or added to, the definition of the Site together with the effective date of such exclusion or addition (as the case may be), and in such circumstances, the area of land so specified shall be excluded from, or added to, the definition of the Site (as the case may be), with effect from the effective date of such exclusion or addition (as the case may be).
- (e) Where an area of land has been excluded from or added to the definition of Site pursuant to Clauses [●].7(b), (c) or (d), the PPP Co shall proceed expeditiously to revise the Site drawings listed in Part [●] of Schedule [●] (Land Issues, Roads and Orders) necessary to reflect such exclusion or addition (as the case may be) and, if the parties are unable to reach agreement in respect of such revised Site drawings within 30 (thirty) days of the effective date of such exclusion or addition (as the case may be), then a Dispute shall exist and either party may refer the Dispute for resolution under the Disputes Resolution Procedure.

[•].8 Excavation and Disposal of Materials

The PPP Co may only dispose of, excavate, extract, exploit or otherwise deal with any materials (including, without limitation, any soil, aggregates, rocks, coal, minerals or other deposits, excavated, arising or produced in connection with the carrying out of the Project on the Site or the Off-Site Areas (together "Site Materials")):

- (a) if and to the extent that the PPP Co has the right to do so by Law or pursuant to the terms of any agreement or Scheme Order;
- (b) if and to the extent that, in the case of excavation or extraction of Site Materials, such excavation or extraction is necessary for the purpose of constructing the Works, any works forming part of the Operations, the Additional Works and/or the Renewal Works pursuant to the Technical Requirements;
- (c) subject to the rights of any third party, whether being rights in or to the Site Materials, Land Rights or otherwise; and
- (d) subject to any limitation, restriction or condition, whether pursuant to any Law or otherwise, applying to or affecting the right of the PPP Co to undertake any such disposal, excavation, extraction, exploitation or other dealing.

CROSS REFERENCES

This clause is referred to in the following clauses of the Compendium:

- Clause 3 (Effectiveness of this Agreement)
- Clause 15 (Warranties)
- Clause 32 (Fossils, Antiquities and Burial Grounds)
- Clause 10 (Standards of Operations and Maintenance)

This clause is relevant to the following entries in the Risk Matrix:

- A7 (Land Purchase)
- A8 (Site Acquisition)
- A9 (Legal Covenants)
- A10 (Consents and Licences)
- C1 (Site Access)
- C3 (Ground Conditions)
- C6 (Archaeology)