

COMPILATION OF PPP TERMS AND CONDITIONS OF CONTRACT

PUBLIC SECTOR VERSION

CLAUSE 32: FOSSILS, ANTIQUITIES AND BURIAL GROUNDS

DBFOM CONTRACT

CONCESSION CONTRACT

DBFM CONTRACT

DBF CONTRACT

DBOM CONTRACT

DBM CONTRACT

INTRODUCTION

All PPP Contracts will set out the risk allocation that will arise in the event that antiquities or archaeological objects are discovered. This drafting requires the PPP Co to carry out any required archaeological works and to bear the risk of its cost and effect on the programme. When the risk is significant, for example because the area is known to be sensitive or has not been (or cannot be) tested, specific provision may be required for the sharing of this risk, particularly in the event of an unknown national monument.

CORE CONTRACT DRAFTING

32. FOSSILS, ANTIQUITIES AND BURIAL GROUNDS

32.1 Archaeological Design and Archaeological Works

- (a) The PPP Co shall comply with the Construction Requirements and the Certification Procedure in respect of archaeology (including, without limitation, the Archaeological Code of Practice).
- (b) The PPP Co shall procure that the Archaeologist has unrestricted access to the Site [and the Off-Site Areas] at all reasonable times and, without limitation to Clause 28.7 (Excavation and Disposal of Materials), the PPP Co shall comply with any instructions and notifications of the Archaeologist and the Authority's Representative in respect of any archaeological surveys or inspections of the Site [or the Off-Site Areas] and/or any Archaeological Design and Archaeological Works (including Further Archaeological Works and Further Archaeological Design).
- (c) The PPP Co shall comply with the Archaeological Requirements and shall carry out the Archaeological Design and the Archaeological Works in accordance with this Agreement.

- (d) At all times when the Archaeologist and/or the Archaeological Licence Holder is or are appointed or is or are required to be appointed in accordance with this Agreement, the PPP Co shall at all times ensure that such Archaeologist and/or Archaeological Licence Holder has expertise in the area of archaeology relevant to any Archaeological Works, Monuments, Antiquities and Archaeological Objects discovered on the Site [or the Off-Site Areas].
- (e) To the extent that there is a conflict between any instruction or notification of the Archaeologist and any instruction or notification of the DoEHLG or the Archaeological Licence Holder, the PPP Co shall immediately notify the Authority's Representative and such conflict shall be determined and resolved promptly by the Authority's Representative, at his absolute discretion.

32.2 Ownership

As between the Authority and the PPP Co, all Monuments, Antiquities and Archaeological Objects shall be the property of the Authority.

32.3 Treatment

The PPP Co shall prevent the removal of, or damage to, any Monuments, Antiquities and Archaeological Objects of which it is aware, or should reasonably have been aware, having regard to its obligations under Clause 32.1. The PPP Co shall immediately inform the Archaeologist, the Authority's Representative and all relevant authorities of the discovery of any Monuments, Antiquities and Archaeological Objects and shall provide the Archaeologist and the Authority's Representative with all information available to it (or all information which should reasonably have been available to it having regard to its obligations pursuant to this Clause 32) and shall carry out any instructions of the Archaeologist and the instructions of the Authority's Representative (provided that the Authority's Representative shall issue such instructions promptly and in any event not later than 10 Working Days of the Archaeologist issuing its instructions) regarding the examination and treatment of same.

32.4 Archaeological Instruction

Unless an Authority Notice of Change is issued, in no circumstances shall any instruction or notification of the Authority, the DoEHLG, the Archaeologist or the Authority's Representative in relation to Monuments, Antiquities and Archaeological Objects constitute an Authority Change or a PPP Co Change.

ACCOMMODATION CONTRACT DRAFTING

Comment: Under the Accommodation Contract Drafting the Operator will bear all of the cost arising from the discovery of antiquities, until that cost reaches a certain limit, after which the Operator and the Minister share the cost arising from the discovery of antiquities, until the cost exceeds the next limit, at which point the Minister will bear all of the costs.

[●].4 All costs reasonably and properly incurred by the Operator as a direct result of the discovery of Fossils and Antiquities or compliance with the instructions from any of the bodies or organisations

referred to in Clause [●].3 (or any successor body or organisation) shall be borne by the Operator or by the Minister in accordance with the table set out below:

Amount of Costs (€)

Liability for Costs

CROSS REFERENCES

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

- Clause 28 (Land)

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

- C6 (Archaeology)