

COMPILATION OF PPP TERMS AND CONDITIONS OF CONTRACT

PUBLIC SECTOR VERSION

CLAUSE 41: PAYMENTS

DBFOM CONTRACT

CONCESSION CONTRACT

DBFM CONTRACT

DBF CONTRACT

OMF CONTRACT

INTRODUCTION

These provisions set out the details regarding the method of payment under the contract, such as the date for payments and their currency.

Note: Although this contract and the direct agreement with the lead arranger of debt is governed by the Laws of Ireland, the State Authority should consult with the NDFA / NTMA as to whether it is necessary (to protect the interests of the State Authority and for value for money reasons) for debt syndication agreements between the lead arranger and the other syndicated debt providers also to be governed by the Laws of Ireland.

Note: the State Authority may become a party to such an agreement if it decides to pre-pay the debt.

Additional Permitted Borrowings – these are additional amounts borrowed under the Senior Credit Providers Agreements above the level contemplated at financial close. Distinction should be made between additional borrowing to meet the changing needs of the client and additional permitted borrowing undertaken where the project failure by the Special Purpose Company (SPC) or the banks (when they exercise their step in rights) is imminent. In the case of the latter, the additional permitted borrowings should not be included in the definition of senior debt in determining compensation on termination for operator default. Adopting this approach gives the Senior Credit Providers the incentive to step-in to rescue the project instead of simply adding additional finance and then, if unsuccessful, relying on a termination payment to repay all their original debt and the additional permitted borrowings. This style of borrowing may also be referred to as rescue refinancing.

CORE CONTRACT DRAFTING

41. PAYMENTS

41.1 Due Date for Payments

- (a) Without prejudice to Clause 34.3 (Disputed Amounts), the Authority shall pay to the PPP Co the amount of a payment request issued by the PPP Co pursuant to Clause 40.1(c) (Monthly Report and Payment Request) not later than the [●] day after the Authority has received the items referred to in Clause 40.1 (Monthly Report and Payment Requests), at which time such amount shall be regarded as being due and payable.
- (b) Should the original due date for any payment pursuant to this Agreement not be a Working Day, then the due date shall be the Working Day next following the original due date.

41.2 Payments

- (a) All payments under this Agreement shall be made in Euro for value on the due date to the bank account of the recipient notified to the payer from time to time, quoting the payment request or refund request number against which payment is made provided that all bank accounts held by or in the name of or for the benefit of the PPP Co shall be maintained in the State at all times during the Contract Period, unless otherwise Approved by the Authority.
- (b) All payments by the parties under this Agreement shall be made free and clear of any counterclaim or any condition or deduction whatsoever unless expressly provided otherwise in this Agreement and shall be made in accordance with, and subject to, Clause 42 (Set-Off).

41.3 Disputed Amounts

- (a) Either party shall have the right to dispute, in good faith, any amount specified in a payment request or debit note referred to in this Agreement. The party disputing any such amount shall pay such amount of the payment request or debit note in question as is not in dispute and shall be entitled to withhold the balance pending resolution of the Dispute.
- (b) The parties shall use all reasonable endeavours to resolve the Dispute in question within [●] ([●]) days of the Dispute arising. If they fail so to resolve it, either party may refer the matter to the Disputes Resolution Procedure.
- (c) Following resolution of the Dispute, any amount agreed or adjudged to be due shall promptly on demand be paid, together with interest thereon at a rate per annum equal to the Interest Rate plus [●]% ([●] percent) per annum from the day after the date on which payment was due to (and including) the date of payment.

41.4 Late Payments

If any undisputed payment due under this Agreement remains unpaid after its due date, such payment shall bear interest at a rate per annum equal to the Default Interest Rate from the day after the date on which the payment was due to (and including) the date of payment. The right of either party to receive interest in respect of the late payment of any sum due shall be without prejudice to such other rights as that party may have under this Agreement.

41.5 Satisfaction of Obligation

If the calculation of any amounts payable by the Authority under this Agreement would (otherwise than for this Clause 41.5) require the Authority to pay an amount to more than one person or more than once within the same provision or under more than one provision

of this Agreement, in respect of the same costs, expense, liability or obligation, the Authority's obligations in respect thereof shall be discharged if and to the extent that payment of such amount is paid once only.

41.6 Examination of Records

Without prejudice to Clause 24.2 (Audit), the Authority shall have the right, at reasonable hours, upon giving the PPP Co reasonable notice and at its own expense, to examine the books and records of the PPP Co relating to this Agreement to the extent necessary to verify the accuracy of any accounting statement, charge, computation or Claim made pursuant to any of the provisions of this Agreement, provided that:

- (a) such books and records need not (unless the same contain information relating to a bona fide Dispute) be preserved longer than the period specified in respect of such books or records in Part 2 of [Clause 24 – Schedule] (Reports and Records) or (if no such period is so specified) a period of [•] ([•]) years after the end of the Contract Year to which such books or records refer;
- (b) if any such examination reveals any inaccuracy in any payment request theretofore made, the necessary adjustments in such payment request and payment shall be made within [•] ([•]) Working Days after the date that such inaccuracy is established by agreement or adjudication;
- (c) such right to examine must be exercised within the period specified for retention of such books or records in Part 2 of [Clause 24 – Schedule] (Reports and Records) or (if no such period is so specified) a period of [•] ([•]) years after the end of the Contract Year to which the books or records being examined refer; and
- (d) PPP Co shall not be required to provide access to those documents which are subject to legal professional privilege and have been created solely for the purposes of processing any Dispute pursuant to the Dispute Resolution Procedure.

CROSS REFERENCES

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

- Clause 39 (Calculation of Payments)
- Clause 48 (Insurance)
- Clause 53 (Effect of Termination)

There are no references to this clause in the Risk Matrix.