

# The Works Agreement

## Works Agreement – Short Form of Contract

This Agreement for the implementation of

is effective from     /     /

and is made between:

1. CONCERN WORLDWIDE, which is a non-governmental organisation, a company limited by guarantee registered in Ireland (company number 39647) and a charity registered in Ireland (charity number 20009090; CHY5745), with its registered address at 52–55 Lower Camden Street, Dublin 2, Ireland as represented by its branch office

with registration number

and whose registered office is at

(‘Concern’); and

- 2.

which is registered in

with registration number

and whose registered office is ,

(hereinafter referred to as the ‘Contractor’); together the **“Parties”**, and **“Party”** will be interpreted accordingly.

## Contract Particulars

The Contractor shall perform in relation to the Site, all works and services specified under the terms and conditions of this Agreement (the **“Works”**).

**“Applicable Law”** means the relevant laws of the country in which the Site is based.

**“Authorised Senior Representative”** means a senior member of each Party representing that Party’s wishes and with the authority to negotiate and discuss any dispute in good faith with the intention of such dispute being settled, such person to be identified by each Party on the execution of the Agreement.

**“Day”** means a calendar day.

**“Default Notice”** means a notice which may be issued by Concern to the Contractor if the Contractor abandons or fails to complete the Works;

**“Donor”** means the entity which has made funds available to Concern to implement the Works.

**“Force Majeure Event”** means any event beyond the reasonable control of either Party including, without limitation, strikes, lock-outs, labour disputes, acts of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, plant or machinery, fire, flood or storm, pandemic, or any other exceptional circumstances that Concern deems in its discretion would make the implementation of the Works excessively difficult or dangerous and such event, circumstances or cause could not have been reasonably anticipated or avoided, and/or any event defined as a Force Majeure Event in the Agreement between Concern and the Donor.

**“Site”** means the land at

**“Commencement Date”** means        /        /

**“Completion Date”** means the date by which the Contractor has completed the Works, which shall be        /        /

OR        Days from the Commencement Date

(subject to any amendments to the Completion Date under [clause 5.3](#) of this Agreement).

**“Defects Liability Period”** means the period of        , immediately following the Completion Date. This should ideally fall within the lifespan of the project Grant / Funding. If the Defects Liability Period expires after the project Grant / Funding, then agreement to be reached with Donor prior to tendering of the works.

**“Retention”** means an amount of        which will be deducted from each payment within the Instalment Plan and paid to the Contractor at the end of the Defects Liability Period in accordance with Clauses 6 and 7. The duration and percentage of retention to be held shall be agreed with the Concern Finance office in advance of tendering.

**“Price”** means

payable in        to be split into instalments as per the following  
**Instalment Plan (i.e. the payment plan):**

**“Instalment Date”** means each date upon which an Instalment (i.e. payment) is due.

**“Certificate of Practical Completion”** means the notice given by Concern to the Contractor once the Works are complete and available for handover to Concern.

**“Certificate of Final Completion”** means the notice given by Concern once the Defects Liability Period has completed and all defects have been rectified.

# Terms and Conditions

## 1. Contractor's Obligations

- 1.1** The Contractor shall complete the Works as set out in Annexes 1-4 (collectively known as the "Design") in accordance with the terms of this Agreement and the documents forming the Agreement between the Parties which are as follows:

- 1.1.1** Scope of Works (See [Annex 1](#))
- 1.1.2** Technical Specification (See [Annex 2](#))
- 1.1.3** Drawings (See [Annex 3](#))
- 1.1.4** Bill of Quantities (with pricing) (See [Annex 4](#))
- 1.1.5** the Workplan/Programme (See [Annex 5](#))
- 1.1.6** Concern's Policies: Safeguarding Policies [Programme Participant Protection, Child Safeguarding and Anti Trafficking in Persons policies], Anti Fraud Policy and Whistleblowing Policy (See [Annex 6](#)) .
- 1.1.7** Any other documents forming part of the proposal from the Contractor (See [Annex 7](#)).

The documents forming the Agreement are to be taken as mutually explanatory. If an ambiguity, discrepancy or inconsistency is identified between the documents, the Contractor should inform Concern within three (3) Days and Concern shall issue any necessary instructions to the Contractor in writing.

- 1.2** The Contractor shall:

- 1.2.1** carry out the Works with all the reasonable attention to be expected of a competent and qualified contractor experienced in performing similar services and works of a similar nature and complexity to the Works, and adhering to standards of construction acceptable in the construction sector;
- 1.2.2** provide all supervision, labour, materials, plant and equipment which may be required for the Works. All materials and plant on Site will be deemed to be the property of Concern;
- 1.2.3** perform the Works regularly and diligently in a good and workmanlike manner using good quality materials (which shall be fit for their intended purpose) in accordance with the Design in order to achieve completion of the Works by the Completion Date;
- 1.2.4** agree a quality management system with Concern, ensure that tests and inspections are undertaken as per this system, and rectify aspects that do not meet the quality and specifications agreed within this system and the overall Design.

- 1.3** The Contractor shall be taken to have inspected and examined the Design and the Site and its surroundings prior to the date of this Agreement and to have obtained for itself all necessary information about all risks and circumstances of the Design and the Site which may influence or affect the Works. The Contractor shall therefore not be entitled to any extension of time of the Completion Date or to any additional payment in the event of a delay to the project or any additional expense arising due exclusively to either the accuracy of the Design or the conditions of the Site.
- 1.4** The Contractor shall (in performing the Works) comply with all relevant legislation and other legal requirements under the Applicable Law which shall include responsibility for applying for and obtaining all necessary permits, consents or licenses required to commence and perform the Works on the Site, and the permits, consents or licenses which are required in order to achieve completion of the Works in accordance with Applicable Laws. The cost of doing so shall form part of the Price.
- 1.5** The Contractor shall be responsible for any loss or damage to the Site or any neighbouring property occurring prior to the receipt of the Certificate of Final Completion if caused or contributed to by the acts or omissions of the Contractor (or anyone for whom the Contractor is responsible) and the Contractor shall comply with any instructions of Concern to restore, replace or repair any such loss or damage at their own cost.
- 1.6** If required, the Contractor and any approved subcontractors shall grant Concern and any third parties, including donors, who require it, reasonable access to its records and premises (including the Site) in order to monitor compliance with the terms of this Agreement.
- 1.7** The Contractor must adhere to the following principles as part of the Contract:
- 1.7.1** International Labour Organisation (ILO) labour conventions, particularly international labour standards, social protection and work opportunities for all.
  - 1.7.2** Employment must be freely chosen.
  - 1.7.3** The rights of staff to freedom of association and to collective bargaining are respected.
  - 1.7.4** Working conditions are safe and hygienic.
  - 1.7.5** No exploitation of children is tolerated.
  - 1.7.6** Wages paid are adequate to cover the cost of a reasonable living.
  - 1.7.7** Working hours are not excessive.
  - 1.7.8** No discrimination is practiced.
  - 1.7.9** Regular employment is provided.
  - 1.7.10** No harsh or inhumane treatment of staff is tolerated.
  - 1.7.11** Local labour laws are complied with.
  - 1.7.12** Social rights are respected.
  - 1.7.13** Compliance with all statutory and other legal requirements relating to environmental impacts of their business, which includes areas such as waste management, packaging and paper, conservation, energy use and sustainability.

## 2. Concern's Obligations

- 2.1** If reasonably requested by the Contractor, Concern shall assist the Contractor in applying for permits, licences and approvals where required for carrying out the Works. All costs for this shall be the responsibility of the Contractor unless otherwise stated.
- 2.2** Concern shall provide the Site and right of access to the Site from the Commencement Date. The Contractor's right of access to the Site shall not be exclusive and the Contractor agrees that Concern, and third parties, including donors who require access, may, at any time from the date of this Agreement, enter the Site in order to inspect and view the state and progress of the Works and/or to undertake quality testing.
- 2.3** Concern and the Contractor shall also meet on a weekly basis at the Site in order to review progress of the Works and the Contractor's performance generally.

## 3. Variations

- 3.1** Concern shall be entitled to instruct variations to the Works and all such instructions shall be given in writing by Concern's Authorised Senior Representative.
- 3.2** Variations requiring a change to the Price are to be valued as follows:
  - 3.2.1** at an agreed lump sum price; or
  - 3.2.2** by using applicable rates included in the Agreement; or
  - 3.2.3** where there are no applicable rates in the Agreement, at new rates agreed between the Parties or as Concern considers appropriate.

## 4. Health and Safety

- 4.1** In carrying out the Works, the Contractor shall comply (and shall ensure anyone who the Contractor is responsible for complies) with all laws, regulations and industry best practice concerning matters of health and safety within, under or pursuant to the Applicable Laws, and any additional standards specified by Concern.
- 4.2** The Contractor shall be liable for any losses, damages, expenses, liabilities, claims, cost for proceedings resulting from any personal injury to or death of any person arising out of its performance of this Agreement.

## 5. Commencement and Completion

- 5.1** This Agreement shall be effective from the date on page 1 of this Agreement and unless otherwise terminated, shall expire once Concern has issued the Certificate of Final Completion to the Contractor which is subject to all defects being made good to the satisfaction of Concern in accordance with Clause 6.
- 5.2** The Contractor will commence the Works on the Commencement Date and shall complete the Works on or before the Completion Date (subject to Clause 5.3).

- 5.3** Concern may make any reasonable adjustments to the Completion Date in an approved amendment to the Agreement. The Contractor shall be entitled to an extension of time of the Completion Date, if it is Concern's own actions, or a Force Majeure Event, which prevents the Contractor from completing the Works by the Completion Date.
- 5.4** When the Contractor considers that the Works are complete, the Contractor shall notify Concern in writing. Concern shall inspect the works within fourteen (14) Days of receipt of notification from the Contractor and if it considers that they are ready for handover, it shall issue a Certificate of Practical Completion to the Contractor stating the date on which the handover has occurred. The Contractor shall then clear the Site.
- 5.5** If the Contractor fails to complete the Works on or before the Completion Date, the Contractor shall be liable to pay a penalty for each Day the Contractor fails to complete the works, to the value of 0.1% per Day of the Agreement price up to a maximum ceiling of 10% of the Price.
- 5.6** Where the Contractor abandons or fails to complete the Works then Concern shall be entitled to issue a Default Notice to the Contractor and Concern shall pay the Contractor for the Works completed up to the date of the Default Notice and which have not yet been paid for, less (i) any additional costs incurred by Concern in engaging a third party replacement contractor to complete the Works and (ii) the amount of any loss or damage incurred by Concern as a result of the Contractor's breach of contract and (iii) any penalty which falls due to be paid in accordance with Clause 5.5.

## 6. Defects

- 6.1** Concern will notify the Contractor of any defects which appear during the Defects Liability Period and which are due to failure of the Contractor to comply with its obligations under this Agreement. Such defects shall be specified by Concern in a schedule of defects. Unless Concern instructs otherwise, upon receipt of such schedule, the Contractor shall within fourteen (14) Days commence diligently with the making good of any defects and other faults contained in the schedule.
- 6.2** Where Concern notifies the Contractor that any defect, shrinkage or other fault:
- 6.2.1** is affecting the use or occupation of the completed Works; or
  - 6.2.2** gives rise to a health and safety risk; or
  - 6.2.3** is causing damage; or
  - 6.2.4** is likely to do so if not rectified without delay;
- the Contractor shall ensure that the required works of making good are commenced within twenty four (24) hours of being requested to do so.
- 6.3** If the Contractor fails to remedy the defects to the required standard within the timeframe agreed in writing by Concern, Concern shall be entitled to instruct a third party contractor to perform the work in substitution for the Contractor. The Contractor shall be liable for the costs of the third party substitute contractor and Concern may recover such amounts as a debt due and payable or as a deduction from any other monies due to the Contractor under the Agreement.

- 6.4** The making good of defects shall be at the Contractor's cost (and at no cost to Concern). Concern will issue the Certificate of Final Completion to the Contractor on the later of the expiry of the Defects Liability Period or the making good by the Contractor of any defects to Concern's reasonable satisfaction within a timeframe agreed in writing by Concern.

## **7. Payment**

- 7.1** Subject to the provisions of this Clause 7, Concern shall pay the Contractor the Price as per the Instalment Plan for full completion of the Works as per the Design.
- 7.2** Concern shall be entitled to withhold the percentage amount for Retention as stated in the Instalment Plan from the payments made to the Contractor. Subject to any rights Concern might have to call on all or part of the Retention in accordance with the Agreement, the Contractor shall be entitled to the Retention upon issue of the Certificate of Final Completion.
- 7.3** The process for payments shall be as follows:
- 7.3.1** Once a Contractor considers that the deliverables for a payment under the Instalment Plan have been met it shall give written notice to Concern together with an invoice for the amount it considers it is entitled.
- 7.3.2** Within fourteen (14) Days of receipt of that written notice, Concern shall inspect the works relevant to that deliverable and notify the Contractor in writing that
- i. the deliverables have been met, in which case Concern will simultaneously notify the Contractor of the amount it fairly determines is due to the Contractor together with the reasons for any deduction; or
  - ii. the deliverables have not been met, in which case Concern will notify the Contractor what needs to be done to complete the deliverables.
- 7.3.3** Payment of the amount due will be made within fourteen (14) Days of Concern confirming to the Contractor that the deliverables have been met and /or upon issue to the Contractor of the Certificates of Practical Completion and Final Completion as appropriate.
- 7.4** The Contractor shall be entitled to bring a claim for additional payment in the case of:
- 7.4.1** That a Force Majeure Event subject to compliance with the obligations contained in Clause 8 and agreeing any additional costs with Concern in advance or where that is not possible, notifying Concern as soon as they arise.
- 7.4.2** Any variation undertaken pursuant to an instruction of Concern subject to [Clause 3](#).

- 7.5** In the event of termination of this Agreement due to Concern default or following termination by Concern (but not due to Contractor default), the Contractor shall be entitled to payment for the value of the Works executed up to the date of the termination and which have not yet been paid for, together with payment of any other sums as Concern reasonably considers fit. In no event shall the Contractor be entitled to any loss of profits by reason of the termination of this Agreement.
- 7.6** All amounts stated to be paid to the Contractor in relation to the Works are inclusive of any applicable sales and other taxes. The Contractor shall meet the cost of all taxes payable in relation to the Works. If Concern is required to withhold or deduct any amount on account of tax from a payment due to the Contractor, Concern will not be required to gross up that payment.

## **8. Force Majeure**

- 8.1** If either Party is prevented from or delayed in performing any of its obligations under this Agreement by a Force Majeure Event then:
- 8.1.1** that Party's obligations under this Agreement shall be suspended for so long as the Force Majeure Event continues and to the extent that Party is so prevented or delayed, provided that within three (3) Days after the commencement of the Force Majeure Event, that Party shall notify the other Party in writing of the date of commencement of the Force Majeure Event and the effect of the Force Majeure Event on its ability to perform its obligations under this Agreement;
  - 8.1.2** that Party shall use all reasonable endeavours to mitigate the effects of the Force Majeure Event upon the performance of its obligations under this Agreement; and
  - 8.1.3** that Party shall with three (3) Days notify the other party in writing if the Force Majeure Event ceases and shall immediately resume performance of its obligations under this Agreement.
- 8.2** If either Party fails to comply with the obligations referred to in clause 8.1, it shall forfeit its rights under clause 8.1.

## **9. Liability and Insurance**

- 9.1** The Contractor shall fully indemnify and hold harmless Concern from any claims, losses, damages, expenses, costs or proceedings incurred as a result of or in connection with the actions of the Contractor or any person for whom the Contractor is responsible under or in relation to the Works except to the extent that the same arise by reason of any breach, failure, negligence or other default of Concern or any person for whom Concern is responsible.
- 9.2** The Contractor will purchase and maintain for the duration of this Agreement any insurance that is required for the Works as required by Applicable Laws and by Concern, unless otherwise agreed. Certificates of such insurance shall be made available to Concern upon request.



## 10. Assignment and Sub Contracting

- 10.1** This Agreement shall be binding upon the Parties hereto and their representatives, successors, and permitted assignees.
- 10.2** This Agreement is personal to the Contractor and the Contractor shall not assign, or transfer, or sub contract any of its rights and/or obligations under this Agreement to any third party without the prior written consent of (and upon conditions acceptable to) Concern. Concern may assign or transfer its rights and/or obligations under this Agreement without the consent of the Contractor. Notwithstanding any permitted assignment by the Contractor, the Contractor is and shall remain liable to Concern for any and all elements of the design (if any) and construction of the Works. Where permission is granted to sub- contract, it will be the responsibility of the Contractor to ensure the sub- contractor's compliance with the terms of this Agreement.

## 11. Termination

- 11.1** In the event that Concern is materially in breach of the terms and conditions of this Agreement and such default is not remedied within twenty one (21) Days of written notice of such default being received by Concern, the Contractor shall issue a notice to Concern stating that it intends to terminate the Agreement. If the default is still not remedied within ten (10) Days of the notice of the intention to terminate, the Contractor may, without prejudice to any other right it may have, terminate this Agreement with immediate effect by notice to Concern.
- 11.2** Concern has the absolute right if it decides (in its own discretion) that it does not wish to progress the Works and to suspend or terminate the Agreement at any time and for any reason (including but not limited to a Force Majeure Event, the withdrawal of donor funding, any reasons concerning the security of Concern or any of its employees or agents, or for a breach of any policy in Annex 6 by giving immediate notice to the Contractor in writing.
- 11.3** In addition to Concern's rights under clause 11.2, in the event the Contractor materially fails to perform or comply with the terms and conditions of this Agreement, and such default is not remedied within seven (7) Days of written notice of such default, Concern may, without prejudice to any other right it may have, terminate this Agreement with immediate effect by notice to the Contractor.
- 11.4** In the event of termination of this Agreement:
- 11.4.1** the Contractor shall immediately vacate the Site in an orderly manner leaving behind all material, plant and other items that Concern advises, but the Contractor shall carry out such works as Concern may instruct to secure and protect the Works prior to vacating the Site. Such works will be at the Contractor's cost in the event of termination of this Agreement due to Contractor default, but otherwise at Concern's cost;
- 11.4.2** Concern may pay any sub- contractor directly for any materials, goods or services supplied or works executed for the purposes of this Agreement (whether before or after the date of termination) in so far as the Contractor has not already paid for the same; and

- 11.4.3** the Contractor shall within fourteen (14) Days of receipt of a written instruction from Concern remove from the Site any temporary buildings, plant, tools, equipment, goods and materials belonging to or hired by it.

Notwithstanding the termination provisions of this Agreement, the rights and obligations which, by their terms, are intended to survive this Agreement, shall survive and shall not terminate upon termination of this Agreement.

## 12. Dispute Resolution

- 12.1** On the occurrence of a dispute between the Parties under the Agreement which cannot be solved in the ordinary course of business, the following procedure must be followed:
- 12.1.1** either Party shall call a management meeting on at least five (5) Days written notice;
- 12.1.2** the Authorised Senior Representative from each Party must be present at this management meeting and any follow-up meetings;
- 12.1.3** those attending the meeting shall in good faith and acting reasonably seek to resolve the dispute that has arisen within ten (10) Days of the management meeting;
- 12.1.4** if the Parties fail to resolve the dispute within ten (10) Days of the management meeting, each Party may, by giving written notice to the other, refer the matter to a senior executive of each Party who shall cooperate in good faith to resolve the dispute within ten (10) Days of the dispute being referred to them; and
- 12.1.5** In the event that the people nominated under clause 12.1.4 are unable to resolve the dispute within ten (10) Days of the dispute being referred to them, or either Party fails to procure such person to try and resolve the dispute then either Party shall be entitled to refer the matter for arbitration in accordance with clause.
- 12.2** Any dispute arising out of or in connection with this contract, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration under the United Nations Commission on International Trade Law Arbitration Rules, which Rules are deemed to be incorporated by reference into this clause.

The number of arbitrators shall be one.

The seat, or legal place, of arbitration shall be Dublin, Ireland [Consult Legal Adviser for confirmation. The country where the works are taking place or selection of another place may be more appropriate.]

The language to be used in the arbitral proceedings shall be English.

The decision of the arbitrator shall be final and binding upon all Parties.

### 13. Incident Reporting

**13.1** The Contractor must report to Concern as follows:

- 13.1.1** within five Days of becoming aware of any breach or suspected breach of the relevant safeguarding policies specified in Annex 6 shall report such breach or suspected breach to Concern Worldwide's Safeguarding Unit via e-mail at *safeguarding@concern.net*; and
- 13.1.2** within five Days of becoming aware of any breach or suspected breach of the anti-fraud policy specified in Annex 6, shall report such breach or suspected breach to Concern Worldwide's Internal Auditor via email at *fraudmailbox@concern.net*.

### 14. Confidentiality

**14.1** The Contractor shall treat the contents of this Agreement, all related documents and information received in connection with the Agreement as private and confidential and will not, except as necessary to execute the Agreement or as required by Law, publish or disclose any particulars of the Agreement without the prior written consent of Concern. If any disagreement arises concerning disclosure of any details about this Agreement, Concern's decision shall be final.

### 15. General Provisions

- 15.1** No failure or delay by either Party in exercising any of its rights under this Agreement shall be deemed a waiver of that right, and no waiver by either Party of any breach of this Agreement by the other shall be considered as a waiver of any subsequent breach.
- 15.2** If any provision of this Agreement is held by any competent authority to be invalid or unenforceable in whole or in part, the validity of the other provisions and the remainder of the provision in question shall not be affected.
- 15.3** No variation to this Agreement shall be valid unless it is in writing and signed by the Senior Authorised Representative of both Parties.
- 15.4** Nothing in this Agreement is intended to or shall operate to create a partnership or joint venture of any kind between the parties and neither party shall have authority to act in the name of or on behalf of or otherwise to bind any other party in any way, except as otherwise provided in this Agreement.
- 15.5** Any notices shall be in writing and shall be delivered personally or sent by courier to the address provided in this Agreement (or to such other address as may be supplied by the Parties), or emailed and shall be deemed duly served and delivered as follows:
  - 15.5.1** in the case of a notice delivered personally, at the time of delivery;
  - 15.5.2** in the case of a notice sent by courier, on the fifth calendar Day after the date of dispatch;
  - 15.5.3** in the case of an email:
    - if sent between the working hours in the country of the Works. at the time of transmission; and
    - if sent outside the period specified above on the next Day thereafter on which the recipient is open for business.

Any notice given by the Parties to this Agreement shall be sufficient only if in writing and delivered to the following respective representatives of each party listed below:

**CONCERN**

*[insert name of Contractor]*

*[insert address]*

*[insert address]*

Name:

Name:

Position:

Position:

Phone:

Phone:

Email:

Email:

**15.6** Annexes 1–6 form part of this Agreement.

**15.7** This Agreement constitutes the entire agreement between the Parties, and supersedes any previous agreement or understanding in relation to its subject matter.

**15.8** This Agreement is made pursuant to and shall be governed by and construed in accordance with the Applicable Law and the courts of the country of the Sites shall have jurisdiction to determine any dispute arising under this Agreement in the event that the clause 12 dispute resolution procedure has not led to the dispute being resolved.

**15.9** This Agreement is in English and may have been translated. In the event of any dispute over meaning or contradiction between the versions the English language version will be given priority.

**15.10** This Agreement may be executed by any form of e-signature; the e-signature shall be considered as an original signature for all purposes and the e-signature shall have the same force and effect as an original signature.

The Parties agree to be bound by this Agreement, which comprises the contract particulars and the terms and conditions, together with the Annexes.

Signed for and on behalf of **Concern**

Name:

Position:

Phone:

Email:

Stamp:

Signed for and on behalf of **the Contractor**

Name:

Position:

Phone:

Email:

Stamp: