Practice Note for Contract Users of the August 2017 Editions of:

- the “Yellow form” where Quantities form part of the contract,
- the “Blue form” where Quantities do not form part of the contract.

The August 2017 Editions of the Yellow and Blue forms incorporate edits to the RIAI 2012 Editions of these two forms in the manner explained in this Practice Note. (c) RIAI
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3. August 2017 Edits: 1, 2, 3, (4 VAT - postponed), 5, 6, (7 Retention Conditional Guarantee "Bond" - postponed, a text is available on request as a looseleaf insert).

Appendix: Form of record of Actual Date of Possession (or Part Possession), C35(b).

1. INTRODUCTION

The purpose of this Practice Note is to:-

- explain the 2017 Edits to the 2012 Yellow and Blue forms of construction contracts which now form the 2017 Editions of the Yellow and Blue forms.
- Advise on good practices in relation to aspects of contract administration and contract management arising.

The RIAI Construction Contract forms and related documents are available at; The RIAI Bookshop, 8 Merrion Square, Dublin 2, D02Y E68, and can be ordered by email from bking@riai.ie, payable by credit/debit card for postal delivery.

This Practice Note (PN) should be read with a copy of the 2017 Edition of the Yellow or Blue form to hand.

The Edits (amendments) were numbered 1 to 7. Introduction of Edit 4 has been postponed until the next print run. The 2017 Editions update the 2012 Editions of these two forms incorporating the remaining six edits:

- **Edit 1** - The Identity of the Parties.
- **Edit 2** - Definition of the “Works” (to respond to legislative changes in the Building Control regulatory environment, including the Code of Practice for Inspecting and Certifying of Buildings and Works published by the Department of Housing, Planning, Community and Local Government).
- **Edit 3** - Avoiding and Resolving Disputes.
- **Edit 4** - VAT. Postponed the text is drafted for further liaison with industry colleagues, employees, advisors and relevant regulatory authorities.
- **Edit 6** - Gender Neutral Wording.
- **Edit 7** - Updated Text for Retention Bond, postponed.
This urgent updating of these forms of Construction Contract by the RIAI Contracts Drafting Group (CDG) is in the context of current advanced work on a complete overhaul and modernisation of these two forms and related documents. In advancing this work, the CDG is committed to formal and informal liaison with stakeholders;:- Clients as Employers, Clients’ legal advisers, the Construction Industry Federation, colleague design team professionals, insurance and sureties professionals, RIAI colleagues, and relevant regulatory authorities.

The edits in the 2017 Editions have been kept as simple as possible. They are based on collective experience and on changes in law and practice since the publication of the 2012 editions, with the benefit of liaison to date.

The RIAI Conciliation Guidelines & Procedures 2016 (CGP) document was published in September 2016: a further review is planned for September 2017, partly in the light of the Mediation Bill 2017. Conciliation is a hybrid form of mediation which that Bill, when enacted, will regulate. At the date of this print run, the Bill has completed the Report Stage in both Houses of the Oireachtas but, because of a Seanad Amendment in late July 2017, the Bill will return to the Dáil in Sept/Oct 2017 before the President can sign it into law.

The CGP document is available free of charge in the RIAI Bookshop and will be on the RIAI website. This is a time of rapid development in mediation practice, training and experience.

The CGP document is referred to in the Yellow and Blue forms and in other contracts published by the RIAI. The document can be used under agreements published by other bodies; public and private, if parties agree to do so. For example, it has been used successfully in resolving disputes in GCCC Public Works Contracts and in other disputes relating to Conditions of Engagement of Consultants.

2. EXPLANATION OF THE EDITS

There are five edits which amend the earlier 2012 Editions of these two forms so that they now form the 2017 Editions:

**Edit 1. The identity of the parties.**

The purpose of this edit is to assist those who are preparing the forms for completion by the parties to identify the parties sufficiently clearly for the avoidance of doubt. In particular, the updated form requires, for a company registered at the Companies Registration Office (CRO), or the registered equivalent if registered in another jurisdiction, that the company number and CRO registered address be inserted.
Edit 2. Definitions on page 5; Adds a definition of “The Works”.

This edit is drafted to provide contractual recognition to three trends affecting design and construction in the built environment:

1 Increasing technological sophistication in the design, production and delivery of construction projects

With the continuing and welcome advances in more sophisticated technologies, the process of design and specification by designers increasingly involves the selection of proprietary systems and products where the system design is not by the Employer’s design team. The increasing practice of writing performance specifications for certain specialist elements and components is consistent with increasing use of design, fabrication and installation by specialists to meet parts of the Works requirements.

2 Training in safe use and maintenance information

There is an increasing requirement for the delivery of categories of training in use of Employer’s nominated persons by the Contractor. The category of person or persons to be trained should be more particularly set out in the specifications. The training of such nominated persons should be completed at, or prior to, Practical Completion. It is recognised that repeat training is not usually included in specifications and it is thus deemed not to be included for in the contract sum unless repeat training is expressly provided for in, or under, the contract specification. This issue needs careful consideration in each case. The contract specification should set out the handover documentation required from the Contractor at the time of Practical Completion - including in the Safety File, the Operation & Maintenance documents, and any Asset Information Model (where BIM if being used) as part of the Works.

3 Increasing regulatory control requirements

This edit gives specific recognition to the Building Control Acts 1990 – 2007, the Building Regulations and the Building Control Regulations as they stand at the designated date in the contract. The majority of projects undertaken using the RIAI contract forms are regulated by part or all of this legislation.

This Practice Note is not intended to provide a comprehensive explanation of the provisions of Building Control legislation. There is a wide range of information available on the website of the Department of Housing, Planning, Community and Local Government; link at the time of writing: www.housing.gov.ie/housing/building-standards/building-standards

There is a range of explanatory documents and publications available from the RIAI, other professional and industry bodies.
At the date of this Practice Note, the Code of Practice for Inspecting and Certifying Buildings and Works by the DHPCLG (September 2016) is applicable. One of the areas that the Code of Practice does not properly deal with is that of Design and Build - not just to deal with design and build in main contracting, but also to deal with design and build in specialist sub-contracting.

4 Code of Practice for Inspecting and Certifying Buildings and Works 2016 by the DHPCLG

The 2016 Code of Practice states at 1.1

“Status and Purpose of Code “(1) This Code of Practice is published by the Minister with reference to Article 20G of the Building Control Regulations...“

It goes on to state that Building Control Regulations for the purposes of the code; “...means the Building Control Regulations 1997 to 2016 and any amendments thereto;“

At the time of writing, the relevant regulations are:

- Building Regulations(Part B Amendment) 2017 (S.I. 57 of 2017)
- Building Regulations(TGD Part L Amendment) 2017 (S.I. 4 of 2017)
- Building Control (Amendment) Regulations 2015 (S.I. No. 365 of 2015)*
- Building Control (Amendment) Regulations 2015 (S.I. 243 of 2015)
- Building Control (Amendment) Regulations 2014 (S.I. No 105 of 2014)
- Building Control (Amendment) Regulations 2014 (S.I. No 9 of 2014)
- Building Control (Amendment) Regulations 2009 (S.I. No 351 of 2009)
- Building Control (Amendment) Regulations 2004 (S.I. No 85 of 2004)
- Building Control (Amendment) Regulations 2000 (S.I. No 10 of 2000)
- Building Control Regulations,1997 (S.I. No 496 of 1997)

*Amendment to permit “Opt -out“ from the requirements of S.I. 9 of 2014 for new single dwellings on a single unit development and for a domestic extension greater than 40 square metres; such that there is no requirement for an Assigned Certifier or submission of Certificate of Compliance on Completion.

Please note that the legal obligations to comply with Building Regulations remain.

The 2016 Code of Practice provides a definition of Building Regulations for the purposes of the Code;

“Building Regulations means the Building Regulations 1997 to 2017 and any amendments thereto;...”

link at time of writing.

There is a range of explanatory documents and publications by professional and industry bodies, including the RIAI. The 2016 Code of Practice states at 3.3
“Builder’s Role...The Builder (company or sole trader) should:…………..

(c) ensure a competent person is assigned to oversee the Construction works;

(d) co-operate with the design team, the Assigned Certifier and other certifiers;

(e) ensure that the workmanship complies with the requirements of the Building Regulations;

(f) ensure that materials which they select and for which they are responsible comply with the requirements of the Building Regulations;

(g) sign the Certificate of Compliance (completion);

(h) provide to the Assigned Certifier, such documents for which they are responsible, as may assist the Assigned Certifier to collate particulars for the purposes of handover and certification, and/or for further submissions to the Building Control Authority;

(i) ensure the coordination and provision of all test certificates and confirmations to the satisfaction of the Assigned Certifier or other designated inspectors or certifiers providing Ancillary Certificates;

(j) and maintain records."

These developments have implications for the allocation of contractual and other responsibilities and duties between the Employer and Contractor and the Contractor’s teams of specialists and suppliers, quality control & quality assurance, certification, etc..

Developing and upholding good practices and norms is important for effective liaison at various levels - not least with the users of the forms of contract. The RIAI encourage continued improvement in scope of works and specification writing and future CPD developments. The RIAI also hopes that matching Definitions will be inserted into the nominated and domestic forms of Contract used in respect of the RIAI forms published by the CIF.

**Edit 3. Condition 38 Avoiding and Resolving Disputes**

The wording of the condition has been simplified to reflect a number of developments.

- **Avoiding and Resolving Disputes:** The use of these words represents an expression of support for the ideas relating to dispute avoidance practices. This expression reflects growing recognition internationally among parties to contracts - whether by commercial people or otherwise, and among their professional advisers - of the importance of endeavouring to resolve differences / disputes through negotiation. People cannot be legally forced to negotiate - and agreements to agree are not
enforceable. The objective here is to support the culture of negotiation by parties to contracts and their teams so as to limit the (avoidable) escalation of differences or disputes and to promote early resolution.

• **Conciliation:** It is recommended that readers of this Practice Note should also read the RIAI Guidelines & Procedures 2016 (CGP) document. Where parties are unable to resolve some, or all, of their differences or disputes through negotiation, they can agree to avail of Conciliation. The CGP document explains how this flexible consensual process can serve the parties. The primary emphasis is on Mediation, in which the parties are assisted by a neutral third party to help them to negotiate a resolution. The CGP explains that if negotiation does not succeed in resolving all differences or disputes, then parties should consider availing of the opportunity to ask the Conciliator to prepare a Recommendation, instead of allowing the dispute to escalate to Adjudication, Arbitration or Court action. Where neither party rejects such a Conciliator’s Recommendation, the clause contains the operational provisions which means that the Recommendation becomes a binding settlement agreement.

• **Adjudication:** Adjudication is provided for under Section 6 of the Construction Contracts Act 2013 (CCA) for construction contracts entered into after the 25th July 2016. The CCA provides at Subsection 2(5) “This Act applies to a construction contract whether or not - … (b) the parties to the construction contract purport to limit or exclude its application.” We do not see it as necessary to elaborate Condition 38 at this time as the CCA provides for adjudication as a statutory scheme.

• **Arbitration:** The language of sub clause 38(b) has been simplified to reflect best practice in Arbitration under the Arbitration Act 2010 and the lessons from recent case law and experience in this area.

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**Edit 4. Contract Sum - VAT.**

This amendment has been postponed and will be considered further for the next iteration of these forms.

**Edit 5. To address the Construction Contracts Act 2013.**

The purpose of Edit 5 is to ensure consistency with the Construction Contracts Act 2013 (CCA) which affects relevant contracts (which will include most contracts where RIAI forms are used) made after the 25th July 2016.

Edit 5 is drafted to respect the CCA and its stated purposes. The amendments to the 2012 texts of the Yellow and Blue forms have been kept to the necessary minimum, pending further work in the transition to the next Editions of the RIAI forms of construction contract. That transition will also take account of
initial experiences in the practical operation of the CCA and further experience on the operation of BC(A)R.

This Practice Note is not intended to provide a comprehensive explanation of the provisions of the CCA. There is a wide range of scholarship, explanatory documents and publications emerging on the subject of the CCA by industry bodies, professional bodies including the RIAI and others.

Readers are referred to the Construction Contracts Adjudication Service website;  

There is an Information booklet at:  

The CCA text can be found at link:  

The Code of Practice governing the conduct of adjudications under section 6 can be found at link  

Section 2(5) CCA includes a provision that … “This Act applies to a construction contract whether or not .. the parties to the construction contract purport to limit or exclude its application.”

Accordingly, it is essential for the text in the Yellow and Blue forms of contract not to be inconsistent with the requirements of the CCA. Section 3 CCA sets out mandatory requirements in relation to payments under construction contracts. The RIAI have carried out an assessment on the consistency with the CCA of the 2016 Editions (i.e.: of the existing 2012 Editions as amended by these five edits) with the CCA, this assessment is summarised as follows.

The requirements of the CCA

Payments under construction contracts.

3 (1) A construction contract shall provide for
   (a) the amount of each interim payment to be made under the construction contract, and
   (b) the amount of the final payment to be made under the construction contract, or
      for an adequate mechanism for determining those amounts.
(2) A construction contract shall provide for—

(a) the payment claim date, or an adequate mechanism for determining the payment claim date, for each amount due under the construction contract, and

(b) the period between the payment claim date for each such amount and the date on which the amount is so due.

The RIAI 2017 Editions provide as follows.

Articles 1 and 2 of the Agreement and the Conditions (principally Condition 35) provide for the amount of each interim payment, the amount of the final payment and an adequate mechanism for determining these amounts.

Condition 35 coupled with the entries in the Appendix provide for payment claim dates, and for the period between the payment claim date for each such amount and the date on which the amount is so due.

Section 4 CCA sets out the provisions in respect of payment claim notices as follows - see especially subsection (5) which is in emphasis at the end of this extract.

Payment claim notices.

4 (1) This section applies where, not later than 5 days after the payment claim date, an executing party to a construction contract delivers a payment claim notice relating to a payment claim to the other party or another person specified under the construction contract.

(2) A payment claim notice is a notice specifying—

(a) the amount claimed (even if the amount is zero),

(b) the period, stage of work or activity to which the payment claim relates,

(c) the subject matter of the payment claim, and

(d) the basis of the calculation of the amount claimed.

(3) If the other party or specified person referred to in subsection (1) contests that the amount is due and payable, then the other party or specified person—

(a) shall deliver a response to the payment claim notice to the executing party, not later than 21 days after the payment claim date, specifying—

(i) the amount proposed to be paid,

(ii) the reason or reasons for the difference between the amount in the payment claim notice and the amount referred to in subparagraph (i), and

(iii) the basis on which the amount referred to in subparagraph (i) is calculated,

and
To address this culture change, Edit 5 includes a change to the last sentence in Condition 35(b) which, in the 2012 Edition reads;

\[\text{If the amount certified differs from the progress statement submitted by the Contractor the Architect, on request, shall give the Contractor an explanation of the difference.}\]

(Emphasis added).

The change is the omission of the words on request. The change is that the Contractor is now automatically entitled under the contract to an explanation from the Architect where a different payment being certified differs from the amount sought. In turn, this highlights the obligations on design team colleagues making recommendations to the named Architect with regard to payments to give the Architect the explanations required under the CCA. This applies to: quantum recommendations by consultant Quantity Surveyors; to consulting design team colleagues opinions on quality and on compliance with specifications and drawings (e.g.: civil & structural elements, mechanical & electrical elements, etc.) and quantum recommendations by consulting design team colleagues (e.g.; on specialist subcontracts).

**Notices under the CCA**

The CCA makes provisions for a number of notices, e.g;

- Payment claim notice - Section 4(2).
- Notices of suspension of work - Section 5(2) and Section 7(2) (different circumstances can give rise to two similar notices).
• Notice of intention to refer the payment dispute for adjudication – Section 6(2).
Section 10 CCA sets out the provisions in relation to the delivery of such notices. Again, as it is an important provision of the CCA, we set out the text in full:

**Delivery of notices, etc.**

10 (1) The parties to a construction contract may agree on the manner by which notices under this Act shall be delivered.

(2) If or to the extent that there is no such agreement, a notice may be delivered by post or by any other effective means.

(3) Where under this Act a notice is required to be delivered not later than a specified number of days after a particular date and the last of those days is a day which is a Saturday or Sunday or a public holiday (within the meaning of the Organisation of Working Time Act 1997), the notice shall be taken to be validly delivered if delivered on the next day which is not such a day.

Edit 5 makes provision for agreement on the manner by which notices under the CCA shall be delivered in the form of an additional Article of Agreement which reads:

5. As allowed under s.10 of the Construction Contracts Act 2013 (CCA) all notices in this contract arising under the CCA shall be delivered by registered post, notwithstanding which, a payment claim notice under s4 of the CCA may alternatively be delivered by the Contractor to the Architect by post or by any other means, including by means of email to the email address stated in the Appendix (Note: The Architect may notify the Contractor of a change of email address after this agreement is made), and effectiveness of delivery is at risk of the sender. S4 of the CCA provides for a person referred to as “another person specified under the construction contract.”; the Architect is the person referred to as another person under this construction contract."

Note 1: Section 4(1) CCA provides

“This section applies where, not later than 5 days after the payment claim date, an executing party to a construction contract delivers a payment claim notice relating to a payment claim to the other party or another person specified under the construction contract. (Emphasis added).

**Note:**

*It is important to appreciate that the delivery of interim progress statements, claims, final account claims, documents and notices under the contract etc., continue as normal under the provisions of contract – whether by email, post or hand delivery or registered post as appropriate and as the parties and the design team usually do.*
This edit does not alter the parties rights and obligations under the contract - or under the CCA.

This edit does not interfere with the right of either party to this construction contract to refer for adjudication in accordance with Section 6(1) CCA any dispute relating to payment arising under the construction contract referred to in the CCA as a “payment dispute”.

To summarise, the purposes of this edit are:

1. To recognise the special significance to the issue of a notice under the CCA - so to distinguish such CCA notices from other written communications and notices in the ordinary conduct of business under this construction contract.

2. To specify the identity of the person referred to as “other person” to whom payment claim notices under Section 4(1)/4(2) CCA may be delivered. This is particularly important in view of the potential consequence provided for in Section 4(3)(b) for an Employer arising from a failure to deliver a response to the payment claim notice to the executing party (the Contractor) not later than 21 days after the payment claim date.

3. “Note: Architects administering contracts, Employers and Contractors are advised to arrange for the exchange of a record of the actual date of possession of the site (or the actual date of possession of part of the site if provided for).

   A practical way to do this is to have the appended form titled “Record of the actual date of possession of the site” completed on behalf of the Employer and the Contractor - and to promptly circulate copies to the relevant project team members - and keep a copy on the project file.

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Edit 6: Gender neutral edits:

These edits have removed him / he / his, etc.

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Edit 7: Retention “bond” text:

This text is omitted from the forms - and is available as a longleaf from the RIAI bookshop. The Text of the Retention Bond has been updated. The RIAI acknowledges the CIF for raising the need to do this owing to changes in the types of “bond” available from Sureties.

Essentially, the 2012 text was for an “on demand” type of Bond. The new text is for a “Conditional Guarantee” bond. Regarding ‘bonds’, the CDG is currently working on the text for the Advance Payment Bond and the RIAI will liaise on this also with a view to its introduction under the RIAI forms.
3. THE EDITS

Edit 1: Signing / sealing on page 4

New replacement text has been added after the words .. and year first above written. … to the end of page. The footnote is deleted.

<table>
<thead>
<tr>
<th>The Contractor:</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>(If a person or partnership)</td>
<td></td>
</tr>
<tr>
<td>Name (Print)</td>
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<tr>
<td>Signature:</td>
<td></td>
</tr>
<tr>
<td>(Authorised Partner if a Partnership)</td>
<td></td>
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<tr>
<td>(Names of Partners if a Partnership)</td>
<td></td>
</tr>
<tr>
<td>Date of signing</td>
<td>Day</td>
</tr>
</tbody>
</table>

| Witness to Signature |  |
| Address |  |

| (If a Company) |  |
| Name as registered with CRO |  |
| Company Reg. No. |  |
| CRO Registered Address |  |

| Company Seal |  |
| (If contract is being executed under seal) |  |

| Director of Company |  |
| Name (Print) |  |
| Signature |  |

| Director of Company |  |
| Name (Print) |  |
| Signature |  |

| Date of Signing | Day | Month | Year 20 |

<table>
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<th>The Employer</th>
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<tbody>
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<td>(If a person or partnership)</td>
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<tr>
<td>Name (Print)</td>
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<tr>
<td>Signature:</td>
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<tr>
<td>(Authorised Partner if a Partnership)</td>
<td></td>
</tr>
<tr>
<td>(Names of Partners if a Partnership)</td>
<td></td>
</tr>
<tr>
<td>Date of signing</td>
<td>Day</td>
</tr>
</tbody>
</table>

| Witness to Signature |  |
| Address |  |

| (If a Company) |  |
| Name as registered with CRO |  |
| Company Reg. No. |  |
| CRO Registered Address |  |

| Company Seal |  |
| (If contract is being executed under seal) |  |

| Director of Company |  |
| Name (Print) |  |
| Signature |  |

| Director of Company |  |
| Name (Print) |  |
| Signature |  |

| Date of signing | Day | Month | Year 20 |
Edit 2. Definitions on page 5 Add definition of “The Works”.

New definition 1(d) added.

References in this Agreement to execution and completion of the Works by the Contractor shall be deemed to include compliance by the Builder (the Contractor) with the requirements of the Building Regulations (where applicable) and the Building Control Regulations (where applicable) under the Building Control Acts 1990 – 2007; and with the provisions of in the Code of Practice for Inspecting and Certifying Buildings and Works 2016 (CoP) published by the Department of Housing, Planning, Community and Local Government (or a successor) which is current at the Designated Date stated in the Appendix to this contract. Where applicable, such references to the requirements of the Builder under the above Acts, Regulations and CoP are deemed to be references to the obligations of the Contractor in this construction contract.

New definition 1(e) added.

Where under this contract a notice is required to be delivered not later than a specified number of days after a particular date and the last of those days is a day which is a Saturday or Sunday or a public holiday (within the meaning of the Organisation of Working Time Act 1997), the notice shall be taken to be validly delivered if delivered on the next day which is not such a day.

Edit 3. Condition 38 on page 37

Titled “Avoiding and Resolving Disputes.” The condition now reads;

38(a) Conciliation;

(i) Should any dispute arise in relation to this contract – and it is not resolved by negotiation - the parties should enter into Conciliation to resolve such dispute before recourse to statutory Adjudication or Arbitration.

(ii) Either party may commence Conciliation by sending a written Request for Conciliation to the other party, setting out a brief outline of that party’s issues and concerns and an indication of the reliefs and/or remedies sought. The provisions in the RIAI Conciliation Guidelines and Procedures document current at the designated date shall apply.
(iii) If the parties are not able to agree on the appointment of a Conciliator, then either party may apply
in writing to the RIAI requesting the nomination of a Conciliator by the President of the RIAI (or a
Vice-President if the President is not available).

(b) Arbitration:
(i) Should any dispute arise in relation to this contract, either party may refer such dispute to Arbitration
and the place of such Arbitration shall be Ireland.

(ii) Either party may commence Arbitration by delivering a written Notice of Arbitration to the
other party. Such notice shall set out a brief outline of the dispute and an indication of the
reliefs and/or remedies sought.

(iii) If the parties are not able to agree on the appointment of an Arbitrator, then either party may
apply in writing to the RIAI requesting the appointment of an Arbitrator by the President of the RIAI
(or a Vice-President if the President is not available).

Note: The RIAI forms of contract are sold in pairs with free copies of this Practice Note and the current
RIAI Conciliation Guidelines & Procedures (CGP) document provided with each pack. The CGP document
will also be on the RIAI website. The operational provisions of the Conciliation Guidelines & Procedures
are printed in the RIAI construction contracts and agreements. In the case of the Yellow and Blue forms of
Construction Contract, these operational provisions are printed on the page following Condition 38.

It is recommended that two copies of the contracts are completed identically - one to be retained by the
Employer and one by the Contractors. When the contracts are executed, the Architect should keep a copy
of the contracts as completed. This could be a photocopy or scanned copy.

The Page after Condition 38 reads:

The parties are referred to the RIAI Conciliation Guidelines & Procedures (CGP) document current at the
Designated Date.

The parties to this contract are deemed to have agreed to the following provisions with regard to such
Conciliator’s Recommendation should the conciliation proceed to the stage that a Recommendation is
delivered to each party:
(A) With the consent of the parties to do so and having; a) advised on an indicative period of time to write the Conciliator’s Recommendation (the Recommendation) and b) had confirmation from each party of the email addresses and postal addresses to which the Recommendation is to be sent, the Conciliator will write the Recommendation and send the Recommendation to the parties; 1) by simultaneous email to the parties’ email addresses provided and 2) by post (recorded postal delivery) simultaneously to the parties’ postal addresses provided within one working day of the date that the email referred to at 1) was sent.

(B) If neither party rejects the Recommendation in writing within 10 working days beginning on the working day after the sending of the Recommendation by post (recorded postal delivery), the Recommendation shall be deemed to be agreed as a legally binding and enforceable settlement agreement between the parties - in full and final settlement of the issues as referred to and determined by the Conciliator in the Recommendation.

(C) If a party decides to reject the Conciliator’s Recommendation, that party may reject the Recommendation by sending a written notice of rejection to the other party within 10 working days beginning on the working day after the Recommendation was sent as provided for at A above. A written notice of rejection is deemed to have been served if it has been sent to the other party; a) by email to the other party’s email address to which the Recommendation was sent and b) by post (recorded postal delivery) to the other party’s address to which the Recommendation was sent - within one working day of the date that the email referred to at a) was sent.

(D) In the case of the sending of a notice of rejection of the Recommendation as provided for at (c) above, the Conciliator’s Recommendation is deemed to be of no legal effect and the parties are not bound by its terms.

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**Edit 4. VAT - Postponed for further consideration for the next iteration**

**Edit 5: To address the CCA.**

The first part of the edit is to add a new Article 5 which serves to provide for agreement on the manner of (effective) delivery of statutory CCA notices as provided for in s10 CCA:

New Article 5 to read:
As allowed under s.10 of the Construction Contracts Act 2013 (CCA) all notices arising under the CCA shall be delivered by registered post. Notwithstanding this, a payment claim notice under s4 of the CCA may be delivered by the Contractor to the Architect by means of email to the email address stated in the Appendix with effectiveness of delivery at the risk of the sender. Note: The Parties further agree that the
Architect may notify the Contractor of a change of email address after this agreement is made. s4 of the CCA provides for “another person specified under the construction contract”; the Architect is the person referred to as “another person” specified under this construction contract.

Add an advisory footnote to the bottom of this page to read:
Note: This note is not part of the Articles. For the avoidance of doubt, and to ensure the effectiveness of a payment claim notice and as a matter of good practice, any notice delivered under the Construction Contracts Act 2013 (CCA) should; a) clearly state the type of notice it is, and b) should clearly state which section(s) of the CCA (or any amendment to the CCA) under which it is being issued.

Add an additional entry in the Appendix below the words “Designated Date” to read:

<table>
<thead>
<tr>
<th>A payment claim notice under s4 of the CCA may be delivered by the Contractor to the Architect by means of email to this email address. (Note: The Architect may notify the Contractor of a change of email address after this agreement is made). See Article 5.</th>
</tr>
</thead>
<tbody>
<tr>
<td>@ ..................................................................................................................</td>
</tr>
</tbody>
</table>

The second part of the edit is to amend C35 to provide:

(1) for an adequate mechanism for determining the first payment claim date and the period between the payment claim date for each such amount due. ( s3 CCA ).

(2) that a C35(b) progress statement may include a s4 CCA payment claim notice at the Contractor’s election.

(3) that if the amount certified differs from the C35(b) progress statement submitted by the Contractor, the Architect shall give the Contractor an explanation specifying the reason or reasons for the difference and the basis on which the amount certified for payment is calculated. (s4((a)(i), (ii) and (iii) CCA).

C35(b) now reads as below:

Within one calendar month of the actual date of possession of the site (or the actual date of possession of part of the site if provided for in this contract) and thereafter at the period of Interim Certificates named in the Appendix, the Contractor shall (subject to Clause 16(c) of these Conditions) on production of a detailed progress statement (which may include a payment claim notice under s4 of the CCA ) be entitled to receive in five working days unless otherwise stated in the Appendix a certificate from the Architect of the amount due to the Contractor from the Employer, which certificate shall include any amounts allowed in respect of sub-contracts and the Architect shall specify and show separately the amount (if any) allowed in respect of each Nominated Sub-Contractor. Each certificate shall be honoured by the Employer within seven working days of presentation of same to the Employer by the Contractor.

If the amount certified differs from the progress statement submitted by the Contractor, the Architect shall
give the Contractor an explanation specifying the reason or reasons for the difference and the basis on which the amount certified for payment is calculated.

Add a footnote to the page on which C35(b) appears - to read:

Note: This note is not part of the Condition. For the avoidance of doubt and to ensure the effectiveness of an s4 CCA payment claim notice included in any progress statement and/or documents, such s4 notice should as a matter of good practice clearly state that it is a payment claim notice issued under Section 4 of the CCA (or any amendment to the CCA).

The third part of the edit is to change the current “Period for Interim Certificates..” default period of “4 weeks” to “one calendar month”. This is to reflect usual practice for the convenience of the parties.

This now reads:

Period of Interim Certificates
(if not stated, one calendar month)  35(b) ...........................................................

The fourth edit is to add a subclause 1(d) at Condition 1 to provide for consistency between delivery of notices under the contract and delivery of notices under the CCA.

Add a sub-clause to Condition 1:

1(d) Where under this contract a notice is required to be delivered not later than a specified number of days after a particular date and the last of those days is a day which is a Saturday or Sunday or a public holiday (within the meaning of the Organisation of Working Time Act 1997), the notice shall be taken to be validly delivered if delivered on the next day which is not such a day.

Edit 6: Gender neutral edits as noted.

Edit 7: Retention Bond

Text available as a loose-leaf at the RIAI bookshop.
APPENDIX

Template form - Users of these contracts are advised to keep a record of the actual date and share by email and/or paper copy.

Record of the actual date of possession of the site
(or the actual date of possession of part of the site if provided for)

<table>
<thead>
<tr>
<th>Works</th>
<th>Site Address</th>
<th>Employer</th>
<th>Contractor</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

The signatories to this document record that the actual date of possession of the site (or the actual date of possession of part of the site if provided for) by the Contractor is:

<table>
<thead>
<tr>
<th>Employer (or authorised agent of the Employer)</th>
<th>Name</th>
<th>Signature</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date Day Month Year</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Contractor (or authorised agent of the Contractor)</th>
<th>Name</th>
<th>Signature</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date Day Month Year</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Note: This document is a record only and is not a contract document.