

TABLE 1 – SELECT PWC NOTICE PROVISIONS

| Ref. | Contract clause | Paper References | Commentary based on the paper |
|--------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 9.3.1 | <p>If the Contractor becomes aware that work under the Contract is being or is likely to be delayed for any reason, <u>it shall as soon as practicable notify the Employer’s Representative of the delay</u> and its cause. ... But if the Contractor has given notice and details of the delay under sub-clause 10.3.1 it does not have to give notice or details again under this sub-clause 9.3.1 for the same delay.</p> | 2.22, 2.29 - 2.32 | <p>This Notice Provision only relates to the Contractor notifying the ER of a delay, it does not relate to the Contractor obtaining rights, it does however affect the entitlement of the Employer to recover Liquidated damages.</p> <p>There is no corresponding Time-Bar and so this Notice Provision does not constitute a Condition Precedent.</p> <p>If the clause were a Condition Precedent, the use of the phrase as soon as practicable would need to be viewed in the light of the other contract provisions, perhaps the time limits prescribed in section 10.3.1.</p> |
| 10.1.1 | <p>Subject to and in accordance with this sub-clause 10.1, if a Compensation Event occurs the Contract Sum shall be adjusted [upward or downward] by the amount provided in sub-clause 10.6. However, <u>if the adjustment is an increase</u> it shall only take effect to the extent that all of the following apply to the Compensation Event:</p> <p>...</p> <p>(3) <u>The Contractor has complied with this clause 10 in full [including giving notices and details within the time required].</u></p> | 2.23 | <p>The second sentence here is akin to an “Observance of Terms” clause under an insurance contract, such that compliance with all the terms of the contract is precedent to the insurers liability; however, in addition to this clause, there is a specific Time-Bar in a subsequent clauses (10.3.3), so it is not necessary to consider this matter in any great depth.</p> |
| 10.3.1 | <p>If <u>the Contractor</u> considers that under the Contract there should be an extension of time or an adjustment to the Contract Sum, or that it has any other entitlement under or in connection with the Contract, the Contractor shall, as soon as</p> | 2.34 - 2.55 | <p>This is the primary Notice Provision that gives rise to an entitlement for additional monies under the PWC and therefore it is the one that gives rise to most examination.</p> |

| | | | |
|--------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| | further 20 working days after giving the notice, the Contractor shall give the Employer's Representative details... | | words "after it became aware, or should have become aware" has given rise to significant disputes over its application. |
| 10.3.2 | If the Contractor does not give notice and details in accordance with and within the time provided in this sub-clause 10.3, except where the Contractor has been required to and has given a proposal complying in full with sub-clause 10.4 [notwithstanding anything else in the Contract] the Contractor shall not be entitled to an increase to the Contract Sum or extension of time or use of the programme contingency referred to in sub-clause 9.4 [and the Employer shall be released from all liability to the Contractor in connection with the matter]. | 2.34 - 2.55 | This is the accompanying Time-Bar that converts the Notice Provisions in sub-clause 10.3 into a Conditions Precedent. This clause has been examined in detail in the accompanying paper in section 2; under the Public Works section, please refer to this section of the paper. The only ambiguity here being whether or not this applies to sub-clause 10.3.3 as well as 10.3.1; it is suggested that this is clearly the case given the clear wording of the clause, notwithstanding its positioning ahead of clause 10.3.3; this is supported by the provisions of clause 10.1.1. |
| 10.3.3 | If the cause of the claim has a continuing effect, the Contractor shall update the information at monthly intervals... | 2.34 - 2.55 | See the comments on 10.3.2 and 10.1.1. |
| 10.9 | If the Employer or the Employer's Representative considers that, under the Contract, there should be a reduction of the Contract Sum, or that any amount is due to the Employer from the Contractor under the Contract, the Employer or the Employer's Representative shall, as soon as practicable, give notice and particulars of the event or circumstances to the other, and to the Contractor. | None specifically | This is a Notice Provision with respect to the Employer; however, as to whether or not it is subject to the Time-Bar as stated in clause 10.3.2, it is suggested that this is not the case as 10.3.2 refers to a Time-Bar with respect only to the <u>Contractor's</u> obligations to issue notice. There is no accompanying Time-Bar so applying the tests outlined in the paper it is not a Condition Precedent. |

TABLE 2 – SELECT RIAI NOTICE PROVISIONS

| Ref. | Contract Clause | Paper References | Commentary based on the paper |
|-------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 2 | If compliance with an Architect’s Instruction will involve the Contractor in loss or expense beyond that provided for in or reasonably contemplated by this Contract the Contractor <u>shall so inform the Architect...</u> | None specifically | This is a very vague Notice Provision with no time limits or corresponding Time-Bar; applying the tests outlined in the paper it is not a Condition Precedent. |
| 13 | Any oral instructions, directions or explanations given by the Architect upon the Works to the Contractor or his Foreman shall, if involving a variation, be <u>confirmed in writing by the Contractor to the Architect within five working days...</u> | 2.57 - 2.65 | This is a Notice Provision with time limits; however, again there is no Time-Bar and so applying the tests outlined in the paper it is not a Condition Precedent. |
| | And if his <u>dissent</u> therefrom is not communicated by the Architect to the Contractor <u>in writing within a further five working days</u> shall be deemed to be authorised in writing. | None specifically | While this is not exactly a Condition Precedent, it is worth noting as it constitutes a requirement of a response within a time limit and specifies a result should the Architect fail to issue that response. Failure by the Architect to comply with the time limits results in a deemed acceptance that could result in a loss to their Employer. |
| 29(a) | Provision that Architect to certify in writing that the works ought to be completed, thereafter “Liquidated and Ascertained Damages” may be deducted by the Employer from any money due or to become due to the Contractor. | 2.66 - 2.68 | This is a Notice Provision placing an onus on the Architect to issue notice. It has been long accepted that compliance with this Notice Provision is a Condition Precedent to the Employer’s rights thereunder; however, an issue arises as to retrospective certification as raised in the paper. |
| 29(b) | If any act of default of the Employer delays the progress of the Works then the Contractor shall <u>within five working days of the act or default give notice</u> in writing to the Architect... | 2.56 - 2.65 | This is a Notice Provision with time limits; however, again there is no Time-Bar and so applying the tests outlined in the paper it is not a Condition Precedent. |
| 30 | Upon the happening of any of the events outlined in (a) to (j) of the condition causing delay, the Contractor <u>shall immediately give notice</u> thereof in writing to the Architect... | 2.57 - 2.65 | This is a Notice Provision with a time limit of sorts; however, again there is no Time-Bar and so applying the tests outlined in the paper it is not a Condition Precedent. |
| 33(a) | If the Contractor shall make default in any of the defined matters, then, if such default shall continue for <u>ten working days after notice</u> given the Employer may within a further ten working days determine the Contractor’s employment. | None specifically | The entitlement of the Employer to terminate the Contractor’s employment is dependent upon notice being given in accordance with this clause; therefore, the Notice Provision is a precedent condition to the gaining of this right. |

| | | | |
|-------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| | | | |
| 34(a) | If the Employer fails to pay on foot of a certificate the Contractor after <u>five working days notice</u> to the Employer may suspend the Works... | None specifically | The entitlement of the Contractor to suspend the works is dependent upon notice being given in accordance with this clause; therefore, the Notice Provision is a precedent condition to the gaining of this right. |
| 35(i) | Architect shall <u>issue notice of intention to issue Final Account before the expiration of ten working days</u> from the expiration of the Defects Liability Period... | None specifically | This needs to be read in conjunction with the following provision. |
| | Unless the Architect receives <u>notice of arbitration within ten working days</u> ... from the Employer or the Contractor he shall issue the Final Certificate. 35(j) The said Final Certificate shall be conclusive in any proceedings... | None specifically | There is a Notice Provision here and a built in bar (The said Certificate shall be conclusive in any proceedings...); therefore while this is not a Condition Precedent in the strict sense of this paper, it is worth being aware of it, as it carries with it the loss of significant rights, arguably, the loss of all rights. |
| 38(a) | Under the Conciliation Procedures if neither party <u>rejects</u> the Conciliator's recommendation <u>within ten working days</u> it shall become final and binding. | None specifically | The comments above are equally relevant here. Failure to reject the recommendation results in the loss of all alternative remedies. |