

## **A Practical Approach in Clarifying Legal Drafting: Delphi and Case Study in Malaysia**

### ***Abstract***

**Purpose:** Legal drafting is one of the root causes for interpretation error and misunderstanding in construction contracts. Moreover, most construction personnel have little or no legal training. Therefore, this paper aims to determine the feasible use and practicality of Plain English in clarify legal drafting in Malaysian construction contracts.

**Design/methodology/approach:** Two research approaches were adopted, Delphi research and case study. The Delphi method was to elicit local experts' knowledge and consensus view on the given example of restructured contract provisions. Second, an actual case study was conducted to substantiate the research findings by critically reviewing the latest and revised standard form of contract for Plain English usage.

**Findings:** The Delphi research shows that all the restructured contract provisions were agreed to by local experts; whereas the case study reveals that significant changes and the acceptance of Plain English in most of the contract provisions.

**Originality/value:** The research renders insightful references in clarifying legal drafting in construction contracts based on the empirical analysis from the Malaysian scenario. It also contributes into the resolution of differences and conflicts caused by the understanding and interpretation problems.

**Keywords:** Plain English, language-structure, legal drafting, Delphi, construction contracts, contract form, Malaysia

### **Introduction**

Contracting parties often use a standard form of contract to regulate their legal relationship and to set up administrative procedures for a project. According to recent studies, certain

features have been incorporated in administrating the construction contract; these include the early warning approach (Meng 2014), pain-gain sharing arrangements (Chang 2014), relationship agreements (Doloi 2013), database systems (Chong and Phuah, 2013), e-dispute resolution (Chong et al. 2013), and so forth. However, when the contracting parties fail to interpret and understand the meaning of the contract provisions, this will create a disastrous impact on the project. The problems of interpretation and misunderstanding can be traced to the inclusion of complex language-structure (Broome and Hayes 1997; Styllis 2005; Love et al. 2011) and legalese or technical legal terms/jargon (Cutts 2004; Candlin et al. 2002) in the construction contracts, which results in disagreements in terms of the individual parties' rights and obligations. Previous studies discussed on the issues in relation to interpretation and their impact on the construction contracts (Martin 1993; Thomas et al. 1994; Shumway et al. 2004; Chong and Rosli 2010; Rameezdeen and Rodrigo 2013). In addition, some studies also described the use of language and related characteristics in general legal documents (Henkin 1988; Hill 2001; Feinman 2003; Cutts 2004).

Particularly, Chong and Rosli (2010) conducted a questionnaire survey, which had identified the language-structure problems and the need for Plain English in the public contract form (PWD 203A) in Malaysia. However, the research focused on an obsolete contract form that was revised in year 1983. Furthermore, the findings require further investigation for the actual use of Plain English into the contract provisions while maintaining their original meanings and legal intends. This is also to bridge the research gap as the previous studies hardly applied and examined Plain English systematic ally into a construction contract.

Therefore, this paper aims to determine the feasible use and practicality of Plain English in clarify legal drafting in Malaysian construction contracts. Two research methods were

adopted, namely, Delphi method and case study. The Delphi method was adopted to elicit the local experts' consensus view on the restructured contract provisions in Pertubuhan Akitek Malaysia (PAM) Contract 2006 (PAM 2006) contract form. This contract form was selected instead of PWD 203A in the previous study due to the need for a familiar and popular contract form in comparing between the original legal drafting and the restructured contract provisions. Subsequently, the case study was to substantiate the outcomes of Delphi research and explore whether Plain English has been applied into an actual contract form. A potential and different contract form was selected as to have a wider perspective and coverage of the Malaysian construction contracts. Hence, the most recent published and newly revised contract form was selected as the case study, namely, Institution of Engineers Malaysia (IEM) Conditions of Contracts for Civil Engineering Works 2011 (IEM.CE 2011).

Regarding the research contribution into the international context, the findings would render practical insights into the need for clarity in the construction contracts for other countries based on the empirical analysis from the Malaysian scenario. The results would also contribute in addressing the increased complexity in construction projects, where a clear message in construction contracts could help all stakeholders to maintain a good working relationship (Yung and Rafferty, 2015). As a result, this is able to avoid any escalations of differences and conflicts by having correct interpretations from the related contract provisions that are clarified and easily understandable.

### **The need for Clarifying Legal Language Drafting**

Frade (2007) describes legal English as “the frequent use of formal words; the deliberate use of words and expressions with flexible meanings; attempts at extreme precision; and wordy, unclear, and complex syntactic constructions.” The use of legal English is very common in

construction contracts. As a result, certain parties may take advantage of the fact that there are uncertainties in the contract. For example, in *Amalgamated Building Contractors Ltd v. Waltham Holy Cross UDC* (1952) 2 All ER 452, Denning LJ described the RIBA contract form at that time as a “legislative code”, which gave rise to interpretation problems because courts were generally precluded from considering the intentions of the contract drafters. The complicated and obscure provisions were considered to be the primary source of problems in the contract form.

On the other hand, contract clarity is an undisputable necessity in Malaysia and also other commonwealth countries. The importance of a clear expression is vital for any contractual agreements in the construction industry. Many reasons contribute on this need. First, English is the second language of most Malaysians, whose first language is most often Malay, Chinese or Tamil. Using Plain English would provide a better understanding of a subject (Currie and Chiramanee 2010), such as, applying a simplified language-structure. Moreover, styles of writing that include the use of passive voice, repetition, overly long sentences (i.e. more than 50 words), incorrect or excessive use of ‘shall’, and the inclusion of many cross-references often presents a barrier to achieving clarity in construction contracts (Styllis 2005; Chong and Rosli 2010). Moreover, most contracts contain legalese, which the use of technical language in legal documents would interfere with the proper interpretation (Feinman 2003). On occasion, serious errors may go uncorrected because the interpretation of a contract clause is based on something that was not actually written or meant in the contract (Thomas et al. 1994). Subsequently, this would cause the contracting parties to fail to comprehend the genuine contractual rights and obligations in the contract. Table 1 provides a summary of the language-structure problems as identified in the Malaysian public standard form of contract (Chong and Rosli 2010). Consequently, the summary was used to identify

the language-structure problems in the subsequent restructuring of the contract provisions in this research.

On the contrary, an antidote against the legalese has been proposed in the linguistic study, namely, Plain English. It refers as English that is being simple and clear (Eunson 1996). Plain English is not a new approach; but it is very practical for construction contracts as most construction practitioners do not have a legally trained background. Written legal texts tend to put anyone without professional legal training at a disadvantage (Davis and Love 1996). Therefore, Plain English would be a useful means in dealing with the language-structure problems. For example, a pencil could be explained as “a communication utensil used to relay a thought from one individual to another.” However, in another approach of expression, the pencil could simply be described as “a writing instrument.” This is merely one example of how the complex language can be made clearer (Corren 2000). In Malaysia, Plain English was also recommended for construction contracts based on the outcome of interviews with the local experts in the previous study, where an encouraging response was received on the “simple and plain language contract” that used in the New Engineering Contract (NEC) (Melissa 2006).

However, Plain English must be defined clearly in order to be the effective means in contract drafting. Candlin et al. (2002) have proposed several techniques and guidelines for this purpose, such as using strong verbs instead of weaker nouns (e.g. by substituting “please explain” for “please provide an explanation”), active voices, short sentences, familiar words, and positive styles. Apart from these guidelines, Cutts (2004) has suggested the use of vertical lists to break up sections of complicated texts, and inserting appropriate punctuation into long sentences, and shortening sentences to an average of 15-20 words also facilitate the

ease of reading). Moreover, some guidelines are also proposed, particularly for improving the clarity of construction contracts (Styllis 2005), such as:

- Avoid too many cross references between clauses.
- Use everyday words and grammar and only include legal terms when necessary.
- Use verbs instead of noun phrases
- Use language of obligation correctly (for instance, in the case of “shall”, use it only to express a party’s obligation.)

In addition, the use of illustrative examples could be adopted to improve clarity and ameliorate the problem of legalese; for example, breaking down a complicated procedure into the proper sequence of processes using a flowchart (Frade 2007). In sum, Plain English should be examined further in this research. Table 2 shows a summary of Plain English usage and guidelines as identified in the previous research (Chong and Rosli 2010). Consequently, the guidelines were adopted to restructure the contract provisions in the subsequent research process.

## **Methodology**

The research adopted deductive reasoning approach was adopted to test the hypothesis that developed based on the research aim, namely “*Plain English is feasible and practical in clarifying legal drafting in the Malaysian construction contracts*”. The hypothesis was mainly confirmed by the Delphi research; while the case study was to support and reaffirm the hypothesis. The Delphi method was selected due to the complexity of the research subject in clarifying the contract provisions while maintaining the original meanings and legal intends. Hence, the local experts who involved in drafting standard forms of contracts were required and selected in the research. The Delphi method would accommodate the above

needs, and elicit the experts' knowledge and consensus view on the given example of restructured contract clauses in PAM 2006. Subsequently, the case study method was conducted to substantiate the Delphi's findings by exploring whether Plain English was applied on the most recent published and newly revised IEM.CE 2011 contract form. The methods were conducted separately to have a comprehensive view and analysis on the use and practicality of Plain English in the Malaysian construction industry.

### ***Delphi method***

Four key features require in the Delphi method, namely, (a) assessment by a panel of experts, (b) anonymity of the individual responses, (c) opportunity for feedback, and (d) revision of views (Linstone and Turoff 1975). Two rounds of the interviews were designed. The first round sought agreement scores concerning the restructured contract provisions, while the second round confirmed or revised the first round's results by the experts. Both rounds were conducted using the questionnaires with direct interviews as certain clarifications were necessary to explain the complexity of the research subject.

The variations clauses within Clause 11.0 of PAM 2006 were selected as the example for the restructured contract provisions. The clauses are very familiar to the local experts as the variations are one of the most problematic issues in the construction industry. The experts were asked for their degree of agreement based on an 11-point Likert scale as to accommodate the complex and sophisticated knowledge required on the restructured contract provisions. The score and definition for the agreements were modified from previous models (Liang et al. 2006; Hsu et al. 2010), i.e., 1 = absolutely disagree, 2 = strongly disagree, 3 = highly disagree, 4 = quite disagree, 5 = slightly disagree, 6 = neutral, 7 = slightly agree, 8 = quite agree, 9 = highly agree, 10 = strongly agree, and 11 = absolutely agree. Subsequently,

the score was analyzed using geometric mean ( $M_A$ ) and standard deviation (SD). The threshold value has been used to carry out the defuzzification and normalization procedures (Kuo and Chen 2008). As a result, the classification of the three categories for the 11-point Likert scale is as follows:

- ‘Disagree’ =  $1 \leq M_A < 4.75$
- ‘Undecided/Neutral’ =  $4.75 \leq M_A < 7.25$
- ‘Agree’ =  $7.25 \leq M_A \leq 11.00$

The threshold value is set at the score of 7.25 and above.

### *Case study*

The Institution of Engineers Malaysia (IEM) has published three standard forms in Malaysia, namely, IEM.CE 2011, IEM Standard Conditions of Subcontract for use in conjunction with the IEM Conditions of Contract for Civil Engineering Works 1994, and IEM Conditions of Contract for Mechanical and Electrical Works 1994. The contract forms focus on civil engineering, mechanical and electrical works, which all fall under the traditional procurement system. Additionally, IEM.CE 2011 was selected as the case study because it has been revised recently from its previous version in 1989 and many new and improved drafting approaches have been applied to IEM.CE 2011 to facilitate better understanding and interpretation. As such, the contract form is a particularly appropriate as to serve a recent example for critical review to substantiate the outcomes from the Delphi research. The critical review was classified into four stages and designed to:

- a) review and understand the language-structure used in the contract
- b) analyse the language-structure with the intended meanings
- c) compare the language-structure with identified attributes for contract drafting
- d) provide a critical evaluation of the language-structure with the selected attributes

## **Results and discussion**

### ***Delphi research***

The local experts with various backgrounds were interviewed and classified into four groups, namely, legal professionals, architects, engineers, and quantity surveyors. Three persons out of each group were selected based on their contribution, expertise and reputation in the construction industry. All of the twelve experts were had more than 20 years of working experience in contract administration for both contractors and employers. They held a significant role or position in the local professional bodies. The experts were required to examine the restructured contract provisions with respect to the original meanings and legal intends, and were asked to rate their degree of agreement.

However, some of the contract provisions within Clause 11.0 are straightforward and do not necessarily require language restructuring, such as:

- Clause 11.1 (a): *the addition, omission or substitution of any work*
- Clause 11.1 (b): *the alteration of the kind or standard of any materials and goods to be used in the Works*
- Clause 11.1 (d): *any changes to the provisions in the Contract with regards to:*
  - *any limitation of working hours*
  - *working space*
  - *access to or utilisation of any specific part of the Site; and*
  - *the execution and completion of the work in specific order*
- Clause 11.3: *The Architect may issue instructions in writing requiring a Variation at any time before the issuance of the Certificate of Practical Completion. Thereafter, any*

*AI requiring a Variation must be necessitated by obligations or compliance with the requirement of any Appropriate Authority and Service Provider.*

In particular, Clause 11.3 is a new provision in this revised contract form. It employs active voice instead of passive voice to explain the Architect's instruction (AI), as well as the proper use of 'must' instead of the language of obligation 'shall', for a variation. Moreover, the Appropriate Authority and Service Provider are listed as different organisations, as opposed to the use of repetitive words that were described as an impediment to the clarity (Table 1). Hence, these sub-clauses are exempted from the language restructuring. Subsequently, the guidelines of Plain English (Table 2) were adopted to restructure the remaining contract provisions.

Consequently, the scores of  $M_A$  and SD were applied to analyze the consensus value for the restructured contract provisions. All of the sub-clauses within Clause 11.0 were above the threshold value of  $M_A$  (7.25). Table 3 shows the language-structure problems in the original drafting and the guidelines of Plain English in the restructured contract provisions for the selected examples within Clause 11.0.

The first example was originally drafted in the passive voice and contained 33 words in a sentence. The certain guidelines of Plain English were employed the active voice and verbs. The sentence also had been shortened. This variable was agreed by the experts with the score of 9.71, which was within the range of 'agree' category ( $7.25 \leq M_A \leq 11.00$ ).

Next, Clause 11.1 (c) was a typical example of legal English drafting with an unnecessarily long sentence (38 words), which included double negative phrases, passive voice, repetitive words (i.e. works, materials and goods), and noun phrases. After its revision, the sentence had

been shortened to 17 words by deleting the redundant words. It also used the active voice and positive style of language. As a result, the sub-clause was agreed to by the experts with respect to their contents and intended meanings.

The third example showed the typical passive voice, noun phrase, and misuse of 'shall' in a long sentence. The clause had been shortened by simplifying the sentence. The active voice and verbs were used. In addition, the word 'shall' was replaced by 'must' because 'shall' was only adopted to express a party's obligation, if necessary.

The fourth example demonstrated the everyday words and grammar (plain and simple language) that were used in place of the repetition of words and complicated language-structure found in the original legal drafting. The restructured provision had been shortened from 21 words to 11 words. This variable received the highest agreement score as rated by the experts, namely, 10.43.

The last example showed another successful change from the original legal English drafting with complicated language-structure, cross-reference clauses, passive voice, misuse of 'shall', legal jargon (*best endeavour*), and repetitive words. The clause was significantly clarified and the number of words was reduced from 128 to 49 by using everyday words and grammar, the active voice, direct reference, the proper use of 'shall' and by eliminating repetitive words. In this case, however, certain legal terms (*possession, custody or control of*) need to remain in the language-structure because of their legal intents. It was agreed by the experts with a high agreement score of 9.34.

Eventually, all of the results above were reviewed again by the experts in the second part of the Delphi with the option of revising their scores. However, there was no change of view or altered score by the experts. This indicates that all the variables (restructured contract provisions) were agreed by the experts according to the pre-determined threshold value. The high agreement scores were not surprised because the original sub-clauses had poor clarity and contained problems related to legalese that was caused by legal English drafting. It should be noted that the scope of this paper merely focuses on the revisable contract provisions and some existing contract provisions have been excluded in this research.

### ***IEM Conditions of Contracts for Civil Engineering Works 2011***

IEM.CE. 2011 is the latest contract form in Malaysia. It is an updated version of the standard form of contract for civil engineering works. According to the critical review and an informal discussion with the drafting committee, seven drafting guidelines were adopted in producing the contract form, including: (a) balanced allocation of contractual risks; (b) simple, practical and straightforward contract provisions; (c) language used must be simple and clear; enhanced role of engineers; (d) price certainty; (e) incorporation of project management techniques; and (f) high degree of certainty for interpretation. Most of the guidelines were focused on the perspective of the language-structure in improving the contract clarity. This is another reason in selecting IEM.CE. 2011 instead of the revised PWD 203A contract form as the case study.

Subsequently, the scope of the case study would explore the usage of Plain English in the language-structure. First, the overall layout and format of the contract were examined. The revised contract form made extensive use of vertical lists to break up complex sections of text. IEM.CE. 2011 has adopted a four-tier numbering system, for example, Clause 14, Clause

14.1, Clause 14.1(1) and Clause 14.1(1)(a). The next obvious change in language use was a total elimination of 'shall' in the contract. The 'shall' had been replaced by the more appropriate choice 'must'. This is a bold approach in the contract drafting. The contract form also properly describes the meanings of 'will' and 'may', as opposed to some contract provisions in other local contract forms that merely apply 'shall' to most circumstances, which this will create confusions about the legal obligations for the involved parties.

Besides, the shortened sentences as demonstrated in the Delphi research are one of the most important criteria for contract clarity. The case study reveals that most of the revised contract's provisions have been limited to 15-20 words. For example, Clause 3.1 (1) *All instructions issued by the Engineer must be in writing*; Clause 15.4(4)(a) *"night" means the time from 8.00p.m. to 8.00a.m.*; Clause 55.4(2) *The method of Measurement forms part of the Bills of Quantities, etc.*

However, there are still some contract provisions that are more than 20 words due to the need for explaining the complex situations. Nonetheless, punctuations (notably commas) and conjunctions have been placed at appropriate points in the text for the sake of greater clarity. For example, Clause 10.4(1) *Before the Employer can make a claim under performance security, the Engineer must have already issued the Certificate of Default*; Clause 32.1(1) *The Contractor must accord all reasonable opportunities to other contractors or the Employer's workmen who carry out works on the Site which do not form part of the Works, etc.* The punctuation and conjunctions serve to connect and clarify two or more messages within the long sentence.

Furthermore, the contract employs active voice, positive style and verb phrases in most of its

provisions, even though some provisions still adopt a negative style and passive voice that are more appropriate for certain situations. According to the critical review, approximately 80%, or eight out of ten sentences include at least two of the above-mentioned guidelines of Plain English in the contract provisions. This is indeed a significant change compared to other standard forms of contracts in Malaysia.

Finally, most of the common legal jargons have been replaced by simple and clear terminologies or phrases. For example, “*if*” has been adopted instead of the common legal jargon, such as “*provided always that*” or “*provided further that*”. The use of “*practical completion*” has been changed to “*completion*” with a further explanation as in Clause 47.3(1)(a). These two common examples of legal jargon still apply in other contract forms in Malaysia. Moreover, the repetition of same meaning of words has been eliminated, and everyday words and grammars have been used as much as possible in the revised contract form. Nevertheless, certain legal terms have been remained in the contract form, as they have been judicially interpreted and carried legal implications, for example, the phrases “*act of prevention of breach of contract*”, “*regularly and diligently*”, etc.

Apart from that, there are some restrictions with respect to the usage of Plain English in restructuring the contract provisions. For example, the passive voice and negative style seem to be necessary in explaining certain contractual situations. Likewise, everyday words and grammars cannot replace many legal terms, and many cross-references between clauses remain necessary. Nonetheless, most of the guidelines of Plain English have been adopted part and parcel in the contract form, with the exception of using the illustrative examples in explaining processes or procedures. Overall, it is evident that the use of Plain English has been demonstrated in the case study and the examples of clarified and clear language-structure can be easily observed throughout the contract form.

## **Conclusions**

Plain English is one of the measures in clarifying construction contracts from the perspective of the language-structure. The Delphi research and case study have confirmed the feasible use and practicality of Plain English in clarify legal drafting in the Malaysian construction contracts, namely, PAM 2016 and IEM.CE 2011. In Clause 11.0 of PAM 2006, most of the contract provisions contain problems of language-structure in terms of poor clarity and the use of legalese. The problems of language-structure include passive voice, negative styles of language, the misuse of 'shall', repetitive words and procedures, and long sentences. The affected sub-clauses were restructured using Plain English and agreed by the local experts based on the analysed geometric mean. Besides, the case study on IEM.CE 2011 has supported the findings on Clause 11.0 in the Delphi research. The newly published contract form reveals that a significant change in contract drafting. Most of the guidelines of Plain English have been applied in the contract provisions.

Certain limitations need to be addressed when assessing and using Plain English in contract drafting as various legal issues need to be taken into consideration. These include inevitable legal intents and contractual obligations in construction contracts as highlighted in the local case study. On the other hand, these areas will be more complicated in the international context as to the continuous development of common law and different civil jurisprudence in other countries. Plain English should not be treated as the sole solution that able to satisfy all circumstances, but it should be recommended and used in clarifying the complicated language-structure, especially for the contract documents in the construction industry. In conclusion, the research renders new insights into the practical use of Plain English for clarifying legal drafting from the Malaysian scenario. This concrete example also contributes

into resolving differences and conflicts caused by the understanding and interpretation problems in the construction contracts.

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**Table 1** Identified clarity problems in regard to language structure (Chong and Rosli 2010)

<b>Attributes</b>	<b>Problems of Clarity</b>
LONG	Sentence is too long, example
PASSIVE	Too many passive voices
REPEAT	Repetition of words
CROSS	Too many cross references between clauses
NOUN	Complexity of noun phrases
SHALL	Too many “shall”
NEGATIVE	Negative style of language
PROCEDURE	Poor explanation on procedure or process
CONTROVERSIAL	Controversial as legal terms
AMBIGUOUSNESS	Ambiguous word or sentence caused more than one meaning
GRAMMAR	Poor words formation, e.g. grammar in the contract
TERMS	Too many legal terms or phrases
JARGON	Specialised vocabulary or legal jargon
COMPLEX	Unnecessary length and complexity
OVERLY	Overly complicated, dense, repetitive, and outdated

**Table 2** Identified Plain English usage and guidelines in standard form (Chong and Rosli 2010)

<b>Attributes</b>	<b>Plain English Usage and Guidelines</b>
REDUCE	Reduce the unnecessary words to keep it as short as possible if more than 20 words in a sentence.
PUNCTUATION	Put accurate punctuation in a “long” sentence.
SHORTEN	Shorten the sentence for ease of reading to average 15-20 words.
POSITIVE	Use positive style rather than negative style.
ILLUSTRATIVE	Use illustrative examples or flow chart in treating procedures as processes;
DIRECT	Avoid too many cross references between clauses.
VERBS	Use verbs instead of noun phrases.
ACTIVE	Use the active voice instead of passive voice.
EVERYDAY	Use everyday words and grammar and only include legal terms where it has to.
LIST	Use vertical list to break up complicated text.
NON-REPEAT	Eliminate the repetition or redundancy of words.
OBLIGATION	Use language of obligation correctly: avoid using “shall”, but still using it to express parties’ obligation.

**Table 3** Examples of the restructured contract provisions within Clause 11.0

<b>Clause No.</b>	<b>Original legal drafting</b>	<b>Plain English drafting</b>	<b>Analyzed Score</b>
11.1	<p><i>But shall exclude any changes intended to rectify any negligence, omission, default and/or breach of contract by the Contractor and such changes shall be executed by the Contractor entirely at his own cost.</i></p> <p>Analysis on language structure problems: PASSIVE; LONG</p>	<p>The Contactor shall execute variation entirely at his own cost if to rectify his negligence, omission, default and/or breach of contract.</p> <p>Analysis on Plain English approach: ACTIVE; VERBS; REDUCE</p>	<p>M<sub>A</sub>: 9.71 (Agreed), SD: 0.85</p>
11.1 (c)	<p><i>the removal from the Site of any work executed or materials and goods brought thereon by the Contractor for the purposes of the Works other than work, materials and goods which are not in accordance with the Contract</i></p> <p>Analysis on language structure problems: OVERLY; NEGATIVE; PASIVE; LONG; REPEAT; NOUN</p>	<p>the removal from site any executed works, materials and goods which are in accordance with the Contract.</p> <p>Analysis on Plain English approach: SHORTEN; POSITIVE; ACTIVE; NON-REPEAT; VERBS</p>	<p>M<sub>A</sub>: 8.70 (Agreed), SD: 0.91</p>
11.2	<p><i>The Architect may issue an AI ordering a Variation or sanctioning any Variation made by the Contractor. No Variation ordered by the Architect or subsequently sanctioned by him shall vitiate the Contract.</i></p> <p>Analysis on language structure problems: PASSIVE; NOUN; SHALL; LONG</p>	<p>The Architect may issue variations or sanctions Contractor's variations provided that the variation will not vitiate the original Contract.</p> <p>Analysis on Plain English approach: SHORTEN; ACTIVE; OBLIGATION; VERBS</p>	<p>M<sub>A</sub>: 8.58 (Agreed), SD: 0.95</p>
11.4	<p><i>The Architect shall issue AI in regard to the expenditure of P.C. Sums and Provisional Sums included in the Contract Bills.</i></p> <p>Analysis on language structure problems: REPEAT; LONG</p>	<p>AI is mandatory for expenditure of P.C. Sums or Provisional Sums.</p> <p>Analysis on Plain English approach: EVERYDAY; NON-REPEAT; SHORTEN</p>	<p>M<sub>A</sub>: 10.43 (Agreed), SD: 1.79</p>
11.8	<p><i>The Contractor shall keep contemporaneous records to substantiate all his claims for the additional expenses under Clause 11.7, and shall submit all particulars to the Architect and Quantity Surveyor. The Architect and Quantity Surveyor shall have access to all books, documents, reports, papers or records in the possession, custody or control of the Contractor that are material to the claim and the Contractor shall provide free of charge a copy each to the Architect and Quantity Surveyor when requested. All such documents shall remain available in accordance with this clause until all claims have been resolved. The Contractor shall use his best endeavour to ensure that all such similar documents in the possession, custody, or control of sub-contractors and/or suppliers that are material to the claim are similarly available.</i></p> <p>Analysis on language structure problems: OVERLY; PASSIVE; CROSS: SHALL; JARGON; REPEAT; LONG</p>	<p>The Architect and QS shall have access all contractor's documents or records in the possession, custody or control and with free of charge each to them if requested until all variation claims resolved. Same for the sub-contractors and/or suppliers' documents in possession, custody or control by the Contractor.</p> <p>Analysis on Plain English approach: EVERYDAY; ACTIVE; DIRECT; OBLIGATION; NON-REPEAT; REDUCE</p>	<p>M<sub>A</sub>: 9.34 (Agreed), SD: 2.08</p>