



**GENERAL TERMS AND CONDITIONS OF  
CONTRACT  
FOR THE SUPPLY OF SERVICES**

**SEPTEMBER 2011**

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# SCHEDULE 1

## DEFINITIONS

1.1 In these Conditions the following words and expressions will have the following meanings:-

**"The Authority"** means Conwy County Borough Council of Council Offices, Bodlondeb, Conwy LL32 8DU

**"Commencement Date"** means the date which is stipulated in the Invitation to Tender or such other date as is specified in writing by the Authority as the date of commencement of the provision of the Services by the Contractor

**"Conditions"** shall mean the General Terms and Conditions of Contract set out in this document

**"Confidential Information"** shall mean all information obtained by the Contractor from the Authority relating to and connected with the Contract and the Services including but not limited to the Contract itself and the provisions of the Contract

**The "Contract"** shall mean the agreement concluded between the Authority and the Contractor for the supply of the Services comprising:-

- The Contract Document
- the Invitation to Tender (incorporating the Specification)
- the Conditions

**The "Contract Document"** shall mean the document or deed entered into between the Authority and the Contractor for the provision of the Services

**"The Contractor"** means the person or persons, firm or company whose tender or other offer has been accepted by the Authority to supply the Services and includes the Contractor's personal representatives successors permitted assigns or agents

**"The Contract Period"** shall mean the Term stipulated in the Contract and (if subject to any extension) then as provided for in Schedule 6 of these Conditions.

**"Default Notice"** shall mean a notice served by the Authority on the Contractor under the provisions of 5.3 of these Conditions

**The "Expiry Date"** shall mean the date upon which the Contract comes to an end whether by termination expiry or otherwise

**"Invitation to Tender"** shall mean the tender or other documents prepared by the Authority for the provision of the Services and in response to which the Contractor submitted the Tender

**"Key Personnel"** shall mean any person named in the Tender as key personnel or any personnel who the Authority notifies the Contractor is to be regarded as key personnel during the course of the Services

**"Performance Deduction"** shall mean an amount (currently determined as £250) and representing the cost incurred by the Authority in dealing with and/or correcting any default by the Contractor and shall be subject to review on the Review Date as set out in Schedule 11 of the Conditions

**"Performance Standard"** shall mean the Authority's performance standards defined in the Invitation to Tender or Specification

**"Premises"** shall mean any land or building where the Services are to be performed as specified in the Tender

**"Price"** shall mean the price or rate for the Services given by the Contractor in the Tender

**"Review Date"** shall have the meaning set out in the Invitation to Tender

**the "Services"** means the work to be done and the other obligations of the Contractor as specified in the Contract and all data, reports, drawings, specifications, designs, inventions, plans, programs and other material produced or acquired in the course of the performance of the Contract

**"Safety Legislation"** means the Health and Safety at Work etc Act 1974 and the Consumer Protection Act 1987 and all other legislation and guidance from time to time in force (including subordinate legislation and European Community legislation to the effect that it has direct effect in a Member State) imposing legal requirements with respect to health and safety at work and/or the safety of any goods handling or storage or the transportation or disposal of any goods used or transported or disposed of in the performance of the Contract, and also the health and safety of any users of the Services provided under the Contract

**"Specification"** shall mean the Specification prepared by or on behalf of the Authority and which forms part of the Authority's Invitation to Tender

**"Standard of Work"** shall mean the standard defined in the Invitation to Tender

**The "Tender"** means the Contractor's formal proposal submitted to the Authority in response to the Invitation to Tender or a Contractors quotation of price

**"The Term"** shall mean the period for which the Contract is awarded to the Contractor from and including the Commencement Date and shall include any extension granted under Schedule 4 of this document

**The "Termination Notice"** shall mean a notice served by the Authority on the Contractor under Schedule 22 of the Conditions

**"TUPE"** means the Transfer of Undertakings (Protection of Employment) Regulations 2006

**"Variation"** shall mean any changes to the Services (whether by way of the removal of Services, the addition of new Services, or increasing or decreasing the Services or locations where the Services are to be provided) which the Authority requires for any reason whatsoever.

**"Working Days"** shall mean Monday to Friday (excluding statutory holidays).

- 1.2 Words importing the singular also include the plural and vice versa where the context requires and words importing the masculine gender shall likewise include the feminine and neutral gender
- 1.3 The headings in these Conditions shall not be deemed to be part thereof or be taken into consideration in the interpretation or construction of these Conditions
- 1.4 All references contained in these Conditions to Schedules are references to Schedules numbered in these Conditions and not to those in any other document forming part of the Contract.
- 1.5 A reference to any statute enactment order or other similar instrument shall be construed as a reference to the statute enactment order regulation or instrument as amended by any subsequent statute enactment order regulation or instrument or as contained in any subsequent re-enactment thereof.

## **SCHEDULE 2**

### **GENERAL PROVISIONS**

- 2.1 The Conditions shall (subject to 2.4 below) apply to all contracts for the supply of Services to the Authority from the Contractor to the exclusion of all other terms and conditions including any terms and conditions which the Contractor may purport to apply under any sales offer or similar document or in correspondence.
- 2.2 Provision of the Services shall be deemed conclusive evidence of the Contractor's acceptance of the Conditions.
- 2.3 Any variations of the Conditions shall not take effect unless evidenced in writing
- 2.4.. In the event of any conflict or inconsistency between any of the various documents forming the Contract the following order of precedence shall apply:-
- The Contract Document
  - the Invitation to Tender (incorporating the Specification)
  - the Conditions
- 2.5 Time shall be of the essence of the Contract as regards any time, date or period mentioned in the Tender or subsequently substituted as a time, date or period by agreement between the parties
- 2.6.. Nothing in these conditions shall restrain or be held to prevent the Authority from purchasing similar Services from any other person if the Authority shall think fit to do so and the Authority reserve to itself the right of ordering any Services otherwise than from the Contractor
- 2.7.. Whenever and so far as one or more conditions of the Contract are held to be void and unenforceable then the remainder of the conditions of Contract shall continue in full force and effect and govern the parties relationship as if the void and unenforceable condition(s) had not formed any part of the Contract
- 2.8.. The Contractor shall when called upon in writing enter into and execute a Contract agreement prepared by the Authority in the form as prescribed by the Authority and until the execution of a formal agreement, the Tender together with the Authority's written acceptance will form a binding agreement between the Authority and the Contractor.
- 2.9.. Failure by the Authority at any time throughout the duration of the Contract to enforce the provisions of the Contract or to require performance by the other party of any of the Contracts provisions shall not be construed as a waiver of any such provision and shall not affect the validity of the Contract or any part of it or the right of the Authority to enforce any of the Contract provisions in the future
- 2.10.. Any notice or other communication given under the Contract shall be in writing and given either by hand, first class recorded delivery post or facsimile transmission.
- 2.11.. Notice given by hand shall be effective immediately, notice given by recorded postal delivery shall be effective two working days after the date of posting and notice by facsimile transmission shall be effective the working day after receipt by the notifying party of a transmission slip showing that the transmission has succeeded
- 2.12.. The rights and obligations of the parties to the Contract shall take effect on the Commencement Date and shall continue until the Expiry Date unless it is otherwise terminated earlier in accordance with the provisions of these Conditions or otherwise
- 2.13.. The terms and conditions contained in the Contract shall be construed in accordance with and be governed by the laws of England and Wales as applied in Wales.

## **SCHEDULE 3**

### **SERVICES TO BE PERFORMED**

- 3.1 The Contractor shall provide the Services to the Authority during the Contract Period in accordance with the Contract.
- 3.2.. In providing the Services, the Contractor shall comply with and take into account all applicable laws, enactments, orders, regulations and other similar instruments, the requirements of any Court with relevant jurisdiction and any local, national or super-national agency, inspectorate, minister, ministry, official or public or statutory person of the government of the United Kingdom or of the European Union.
- 3.3.. In carrying out the Services the Contractor shall be acting as Principal and not as the Agent of the Authority. Accordingly the Contractor shall not (and shall procure that its employees or agents do not):-
  - 3.3.1 say or do anything that might lead any other person to believe that the Contractor is acting as the agent of the Authority
  - 3.3.2 place any orders with third parties or otherwise incur any liabilities to third parties in the name of the Authority without the prior written consent of the Authority
- 3.4 Nothing in the Contract shall impose any liability on the Authority in respect of any debts or other obligations incurred by the Contractor to any third party but this shall not be taken to exclude or limit any liability of the Authority to the Contractor that may arise by virtue of either a breach of the Contract or by negligence on the part of the Authority or the Authority's employees or agents.
- 3.5 The Contractor shall provide all the plant, materials and equipment necessary for the provision of the Services.
- 3.6 All equipment shall be at the risk of the Contractor and the Authority shall have no liability for any loss of or damage to any equipment unless the Contractor is able to demonstrate that such loss or damage was caused or contributed to by negligence or default of the Authority
- 3.7 The Authority may at its option purchase any item of equipment from the Contractor at any time, if the Authority considers that the item is likely to be required in the provision of the Services following the expiry or termination of the Contract. The purchase price to be paid by the Authority shall be the fair and market value.

## **SCHEDULE 4**

### **STANDARD OF WORK**

- 4.1 To the extent that the standard of work has not been set out in the Specification the Contractor shall perform the Services:-
  - 4.1.1 with reasonable care and diligence
  - 4.1.2 in accordance with industry best practice and using the best available techniques and standards
  - 4.1.3 using staff who have appropriate skills qualifications and experience
  - 4.1.4 using the appropriate number of staff and
  - 4.1.5 to the reasonable satisfaction of the Authority
- 4.2 The introduction of new methods or systems which impinge on the provision of the Services shall be subject to prior approval in writing by the Authority, such approval not to be unreasonably withheld or delayed
- 4.3 The signing by the Authority (or his representative) of time sheets or similar documents shall not be construed as implying the Contractor's compliance with the Contract
- 4.4 The Contractor shall ensure that the provision of the Services comply in all respects with the Standard of Work
- 4.5. The Standard of Work will be measured against the Performance Standard
- 4.6.. Failure to meet the Standard of Work or the Performance Standard will result in a Default notice being served in accordance with Schedule 5 of the Conditions.
- 4.7. In the event of the Invitation to Tender containing any performance targets these may be altered by mutual consent between the Authority and the Contractor. The Contractor will be required to present a written request to the Authority, detailing the efforts applied to meet the performance, and requesting a specific alteration.

## **SCHEDULE 5**

### **DEFAULT IN PERFORMANCE**

- 5.1 The Authority may from time to time undertake random or programmed inspections of all aspects of the Services (including within any Premises where the Contract or any part of it is being performed) and will record the results of such inspections.
- 5.2 The Authority shall record all complaints, enquiries and oversights notified to the Authority by telephone, visits, or other means and may investigate each case where in the Authority's absolute opinion the Contractor may have failed to perform the Services adequately, completely or at all in accordance with the Contract or to comply with any instruction from the Authority or where the Contractor has otherwise breached the Contract
- 5.3 If the Authority is satisfied that in any particular instance the Contractor has failed to deliver the Services to an acceptable standard, or has failed to perform the Services in accordance with the timetable or where the Contractor is in breach of any other provisions of the Contract (other than as a result of default or negligence on the part of the Authority) then the Authority may serve a Default Notice on the Contractor
- 5.4 The Contractor who shall at its own expense ensure compliance and/or remedy any breach referred to in the Default Notice within such reasonable time as may be specified by the Authority in the notice
- 5.5 The Authority may at any time demand that the Contractor suspend the provision of the Services or any part of them. If the Authority exercises this right or if the Contractor is delayed in proceeding with the provision of the Services by the Authority (otherwise than as a consequence of a breach of the Contract or a breach of duty or fault or negligence on the part of the Contractor) then the Authority shall be responsible for any reasonable losses incurred by the Contractor as a result of such suspension or delay. Subject to the Contractor taking reasonable steps to mitigate its loss the Contractor shall be able to recover from the Authority under this Condition only for those losses which :-
- 5.5.1 were reasonably foreseeable by the Authority as arising as a direct result of the suspension or delay; and
- 5.5.2 relate to the cost of any commitments entered into by the Contractor which cannot be met as a result of the suspension or delay and in respect of which the Contractor cannot obtain a refund (where the Contractor has already paid in relation to the commitment) or is obliged to pay (where the Contractor has not already paid in relation to the commitment)
- 5.6 The provisions of Condition 5.5 shall not apply where the reason for the suspension of the Services arises from circumstances beyond the control of the Authority
- 5.7 Without prejudice to any other rights and remedies the Authority may have pursuant to the Contract, the Contractor shall reimburse the Authority for all reasonable costs incurred by the Authority which have arisen as a direct consequence of the Contractor's default or delay in the performance of the Contract which the Contractor had failed to remedy after being given reasonable notice by the Authority.
- 5.9 For the purposes of this Contract all complaints received by the Authority shall be deemed to be bona fide and may attract Default Notices dependant on the results of any investigation completed by the Authority.

- 5.10 The Authority shall not be liable for any claims from the Contractor for costs incurred as a result of abortive or false reports.
- 5.11 Without prejudice to the above or to any other right or remedy available to the Authority, in the event that the Authority issues a Default Notice he may also deduct the Performance Deduction from the next payment due to the Contractor
- 5.12 In the event that the Contractor receives a total number of four or more Default Notices in any period of 18 consecutive months, the Contractor shall be deemed to have committed a fundamental breach of its obligations which is incapable of remedy for the purposes of Schedule 22 of these Conditions and the Authority shall (without prejudice to any other right or remedy available to it) be entitled to terminate all or any part of the Contract. The Authority's right to terminate all or any part of the Contract under Schedule 22 shall be exercised (if at all) within a maximum period of 6 months of the date of the last Default Notice. The Notice of Termination will give the Contractor a date of termination of the Services or part of the Services in the future which will not be less than 3 months from the date of the Termination Notice

## **SCHEDULE 6**

### **VARIATION OF THE SERVICES**

- 6.1 The Authority reserves the right to demand a Variation on giving reasonable written notice to the Contractor
- 6.2 In the event of a Variation the Price may also be varied. Such Variation in the Price shall be calculated by the Authority and agreed with the Contractor and shall be such amount as properly and fairly reflects the nature and extent of the Variation in all the circumstances. Failing agreement the matter shall be determined by negotiation or mediation in accordance with the provisions of Schedule 23.
- 6.3 The Contractor shall provide such information as may be reasonably required to enable such variation in the Price to be calculated.

## **SCHEDULE 7**

### **PERSONNEL ISSUES**

#### **STAFF EMPLOYED ON THE SERVICES**

- 7.1 The Contractor shall at all times during the Contract Period assign to the Services sufficient suitably qualified, competent, careful, honest, experienced, instructed and supervised staff, which the Contractor warrants to the Authority have appropriate skill and expertise for the proper performance of the Services and its supervision, and the Contractor warrants that they shall perform the Services with all due skill care and diligence to ensure that the Services are provided at all times and in all respects to the Performance Standard save as herein provided.

In particular, the Contractor agrees and warrants:

- 7.1.1 that where any staffing or skill levels have been agreed as part of the Tender or are required by the Environmental Protection Act 1990, or any other relevant Order, Statute Regulation or Directive then those levels shall be maintained;
- 7.1.2 that where any Key Personnel have been agreed to be provided as part of the Tender, those Key Personnel shall be assigned to work on the Contract (except where such Key Personnel are no longer employed by the Contractor or any relevant sub-contractor);
- 7.1.3 that it shall replace promptly any staff who are assigned to this Contract and who cease to be in its employment or under its control for whatever reason and that such replacements shall have the equivalent skill levels required and shall in every way be suitable for the performance of the Services.
- 7.2 If, in the opinion of the Authority, the Contractor or any relevant sub-contractor is not employing sufficient staff or staff with the appropriate ability and status adequately to supervise the Contract, then the Contractor shall engage such additional supervisory staff as the Authority shall reasonably deem to be necessary, and the cost shall be borne by the Contractor or relevant sub-contractor (as appropriate).
- 7.3 The Contractor shall provide the Authority with the name, address, e-mail address, facsimile and telephone number (including mobile, if any) of all Key Personnel or other specialist staff who are employed in a senior capacity by the Contractor or any relevant sub-contractor on the Contract
- 7.4 The Contractor shall nominate a person to be responsible for health and safety matters as required by the Safety Legislation. The identity of such person shall be provided to the Authority. The Contractor shall ensure that its staff take all such precautions as are necessary to protect the health and safety of themselves and the public and shall ensure that its staff and those of any relevant sub-contractor are properly trained and instructed with regard to fire risks and fire precautions.
- 7.5 The Contractor shall ensure that all staff involved in the performance and carrying out of the Services shall carry out their duties in a civil and courteous manner and that they refrain from behaviour likely to cause offence to any other person
- 7.6 The Authority reserves the right to require the Contractor, by notice in writing, to remove from the provision of the Services any staff member whom the Authority reasonably believes to be unacceptable due to incompetence, negligence, dishonesty or for any other appropriate reason

- 7.7 The Contractor shall not employ any person below the age of 16 (sixteen) years or any other such minimum age stipulated in any regulation, statute, code of practice, EU directive and any amendment thereof affecting the work, in the performance and carrying out of the Services.
- 7.8 The Contractor shall not permit any unpaid staff such as students, persons on government training schemes or work experience attachments to be involved in carrying out of the Services except with the specific prior written approval of the Authority.
- 7.9 Save as expressly provided in the Contract conditions, the Contractor shall be entirely responsible for the employment and conditions of service of the Contractor's staff and shall procure that any sub-contractor of the Contractor is likewise responsible for its staff and the Contractor shall fully indemnify the Authority for any costs, expenses and any additional liabilities resulting from or connected with any claim made by any staff of the Contractor against the Authority which arises from or is connected with any act or default on the part of the Contractor or any breach of its contractual or statutory obligations to such staff.
- 7.10 The Contractor shall not (except by prior written permission of the Authority) employ in the provision of the Services any former employee of the Authority who was dismissed from that employment for any reason and shall use its reasonable endeavours to secure that all staff are in possession of appropriate entry clearance if they originate from countries outside the European Economic Area
- 7.11.. The Contractor shall maintain and implement systematic programmes of training for all staff engaged in the performance of the Services. The details of such programmes shall be made available to the Authority on request
- 7.12.. The Contractor will keep proper books and time sheets in relation to the wages paid to his staff and engaged in the Contract and such documents will, if required by the Authority, be produced for inspection by the Authority
- 7.13.. The Contractor shall in respect of all persons employed by him (whether in execution of the Contract or otherwise) in every place occupied or used by him for the execution of the Contract comply with the following conditions:
- 7.13.1 Pay rates of wages and observe hours and conditions of labour not less favourable than those established for the trade or industry in the district where the work is carried out, by machinery of negotiation or arbitration to which the parties are organisation of employers and trade unions representative respectively of substantial proportions of the employers and workers engaged in the trade or industry in the district;
- 7.13.2 In the absence of the rates of wages hours or conditions of labour so established pay rates and observe hours and conditions of labour which are not less favourable than the general level of wages hours and conditions observed by other employers whose general circumstances in the trade or industry in which the Contractor is engaged are similar
- 7.14 recognise the right of his employees to be members of such trade union as they may choose
- 7.15 The Contractor shall:
- 7.15.1 demonstrate effective implementation of its policies in relation to recruitment practices including evidence of open recruitment methods
- 7.15.2 regularly review the full range of equality policies and procedures and take specific action to make any necessary changes;
- 7.15.3 not unlawfully discriminate within the meaning and scope of the anti-discrimination legislation for the time being in force in relation to the provision of the Services or otherwise and shall take all reasonable steps to ensure that all its employees agents and sub-contractors employed in the provision of the Services do not unlawfully discriminate

## **TUPE**

- 7.16.. The Contractor hereby acknowledges and undertakes to the Authority that with effect from the Commencement Date, the contracts of employment of any relevant employees shall be transferred from the current contractor to the Contractor or any relevant sub-contractor in accordance with the provisions of TUPE to the intent and effect that each of the relevant employees shall be treated as if he had at all times been employed by the Contractor or any relevant sub-contractor upon the same terms and conditions as those which applied to his employment by the current contractor immediately prior to the Commencement Date.
- 7.17.. In the event that the contracts of employment of any relevant employees do not transfer from the current contractor to the Contractor or any relevant sub-contractor in accordance with the provisions of TUPE, the Contractor shall procure that any relevant sub-contractor shall offer to employ the relevant employees with effect from the Commencement Date on the same terms and conditions on which they were employed by the current contractor immediately before that date.

## **OFFERS OF EMPLOYMENT**

- 7.18.. For the duration of the Contract and for a period of six (6) months after its termination the Contractor undertakes not to make offers of employment to or engage any employee or agent of the Authority connected with the Contract without the prior written consent of the Authority

## **SCHEDULE 8**

### **PRICE**

- 8.1 The price or rate for the supply of the Services by the Contractor shall be the price stipulated in the Tender and unless otherwise so stated shall be:
- 8.1.1. Exclusive of any applicable VAT (which shall be payable by the Authority subject to receipt of a valid VAT invoice); and
- 8.1.2 Where appropriate the Price shall include the cost of instruction of the Authority's personnel in the use of the Service such instructions shall be in accordance with the requirement of the Contract.
- 8.2 The sum or sums payable to the Contractor by the Authority under this Contract shall constitute the only remuneration in connection with the Service and neither the Contractor nor its employees shall accept any commission discount allowance or indirect payment or other consideration in connection with the discharge of the Contractor's obligations hereunder.
- 8.3 No increase in the Price may be made (whether on account of increase material labour or transport costs fluctuations in rates of exchange or otherwise) without the prior written consent of the Authority.
- 8.4.. Proposals for the revision of prices must be submitted in writing to the Authority at least 30 days prior to the effective date of the Variation. The Contractor must furnish such evidence as may be reasonably required to satisfy the Authority that the amount of any increase in cost is justified and / or any decrease in cost is adequate.
- 8.5.. The revised Price will only be paid after the Contractor has received written confirmation of the new price from the Authority
- 8.6.. In no circumstances will the Authority consider themselves under an obligation to pay any increased prices of which they have not received the requisite notice and which they have not agreed in writing to accept
- 8.7.. In the event of failure to reach agreement on the revision of prices then the provisions of Schedule 23 shall apply
- 8.8.. The Contractor shall be deemed to have satisfied himself before submitting the Tender as to the accuracy and sufficiency of the rates and prices stated by the Contractor in the Tender

## **SCHEDULE 9**

### **PAYMENT**

- 9.1 All invoices submitted to the Authority shall be in the same form and contain the same information as if the same were a tax invoice for the purposes of Regulations made under the Value Added Tax Act 1994
- 9.2 The Contractor shall prepare and submit to the Authority a statement ("The Monthly Statement") within 5 (five) working days of the end of the monthly period for the amount that is claimed to be due to the Contractor for that month and shall comprise of:
- 9.2.1 The value of the work completed forming part of the Services which has been completed by the Contractor to the Standard of Work, since (i) in the case of the first monthly statement the Commencement Date and, thereafter (ii) in the monthly period just ended
- 9.2.2 the estimated additions which the Contractor considers should be made to the value of the work in accordance with any Variation orders issued of these Contract Conditions and
- 9.2.3 any Performance Deductions
- 9.3 If the Authority accepts the Monthly Statement, the Authority shall pay the amount of the monthly statement within 30 (thirty) calendar days of the end of the monthly period
- 9.4 If the Authority notifies the Contractor that it has an objection to any item on the Monthly Statement, the Contractor shall take proper account of such objection and shall as soon as reasonably practicable and in any event within 5 (five) working days of receipt of the Authority's objection, notify the Authority of the Contractor's agreement with the disputed amount or not as the case may be.
- 9.5 If the Contractor agrees with the Authority's objection then the Authority shall pay the undisputed amount.
- 9.6 If the Contractor disagrees with the Authority's objection the Contractor then the matter shall be dealt with under Schedule 23 of the Conditions
- 9.7 The Authority will authorise that part of the monthly statement which has been agreed by the parties, and the Authority will pay that part of the disputed monthly statement
- 9.8 The Authority shall not be responsible for the payment of any charges for the supply of services provided in excess of those contained in the Tender unless authorised in writing
- 9.9 Whenever under the Contract any sum of money shall be recoverable from or payable by the Contractor, such sum may be deducted from any amount then due or which at any time hereafter may become due, to the Contractor under this Contract or any other agreement contract or arrangement with the Authority
- 9.10 Any overpayment by the Authority to the Contractor whether in respect of the cost of provision of the Services or VAT shall be a sum of money recoverable from the Contractor pursuant to condition 9.9 above or otherwise
- 9.11 If the Contractor uses a sub-contractor for the purpose of performing the Services or any part of it then the Contractor shall include in the relevant contract a provision which requires the Contractor to pay for those goods or service within 30 days of the Contractor receiving a correct invoice from the sub-contractor

## **SCHEDULE 10**

### **AUTHORITY'S PROPERTY AND PREMISES**

**(To apply only if the Authority is supplying any plant, premises or equipment for the performance of the Services)**

- 10.1 Any property belonging to the Authority at the start of the Contract shall remain the property of the Authority and shall be used in the execution of the Contract and for no other purpose whatsoever except with the prior agreement in writing of the Authority
- 10.2 All Authority property shall be deemed to be in good condition on the Commencement Date unless the Contractor notifies the Authority to the contrary within 14 days of the Commencement Date or such other times as is specified in the Contract
- 10.3 The Contractor shall, except as otherwise provided for in the Contract, repair or replace or, at the option of the Authority, pay compensation for all loss destruction or damage occurring to any Authority property caused by the Contractor or by its agents or sub-contractors whether or not arising from the performance of the Contract (unless caused by the negligence or default of the Authority)
- 10.4. As soon as reasonably practicable following completion of the Contract the Contractor shall remove the equipment and unused materials and shall clear away from the Authority's premises all rubbish arising out of the Services, making good any damage caused to the Authority's premises by the removal of the equipment and leave the Authority's premises in a neat and tidy condition
- 10.5.. Any access to the Authority's premises shall not be exclusive to the Contractor but only such as shall enable the performance of the Contract concurrently with the execution of work by others. The Contractor shall co-operate with such others as the Authority may reasonably require.
- 10.6.. The Contractor shall make no deliveries of materials plant or other things nor commence any work on the Authority's premises without obtaining the Authority's prior consent.
- 10.7.. The Contractor shall provide for the haulage or carriage thereof to the premises and the removal of equipment when no longer required at its sole cost. The Contractor shall ensure that the Authority's Premises are appropriate to contain and operate the equipment.
- 10.8. The Authority shall have the power at any time during the Contract Term to order in writing:
  - 10.8.1 The removal from the Authority's premises of any equipment which in the opinion of the Authority is either hazardous, noxious or not in accordance with the Contract; and / or
  - 10.8.2 The substitution of property and suitable materials, plant, equipment; and / or

## **SCHEDULE 11**

### **ASSIGNMENT AND SUB-CONTRACTING**

- 11.1 The Contractor shall not assign, delegate, sub-contract, mortgage, charge or otherwise transfer any or all of its rights and obligations under the Contract or any part thereof or any benefit in or under the Contract without the written consent of the Authority, such consent not to be unreasonably withheld or delayed
- 11.2 The Authority shall be entitled to assign the benefit of the Contract or any part thereof and shall give written notice of any assignment to the Contractor.
- 11.3 Where the Authority has consented to the placing of sub-contracts, copies of each sub-contract shall be sent by the Contractor to the Authority within five (5) working days of issue.
- 11.4 If with the Authority's consent the Contractor sub-contracts the provision of any element of the Services, every act or omission of the sub-contractor shall for the purposes of the Contract deemed to be the act or omission of the Contractor and the Contractor shall be liable to the Authority thereafter as if such act or omission had been committed or omitted by the Contractor itself.
- 11.5 The Contractor acknowledges and agrees that by way of illustration only and without restricting or fettering the Authority's right to withhold its consent on reasonable grounds it shall be reasonable for the Authority to withhold its consent where the sub-contracting of any element of the provision of the Services would be contrary to law or contrary to public or government policy or contrary to public morality and decency or which it is not in the national interest.

## SCHEDULE 12

### INDEMNITY AND INSURANCE

- 12.1 The Contractor shall indemnify the Authority in full in respect of all claims for damage or injury to any person or to any property and against all actions, suits, claims, demands, costs, charges, or expenses awarded against or incurred by the Authority (including the costs of transport, labour, administration and legal expenses on an indemnity basis to the Authority) arising from:
- 12.1.1 breach of any term of the Contract or breach of any warranty given by the Contractor in relation to the Service; or
  - 12.1.2 any act or omission of the Contractor or its employees, agents or sub-contractors in providing the Service.
- 12.2 The Authority shall not in any event be liable to the Contractor for any indirect or consequential loss whatever and however caused.
- 12.3 The Contractor's liability to indemnify the Authority be without prejudice to any other right or remedy of the Authority arising under this Contract.
- 12.4 The Contractor shall throughout the Contract Period maintain such insurances as are necessary to cover any liability arising under the Contract. Such insurance cover shall have an indemnity limit of not less than **five million pounds (£5,000,000)** in respect of any one incident or series of connected events in respect of public liability and a figure of no less than **ten million pounds (£10,000,000)** as regards to employer's liability.
- 12.5 The Contractor shall supply to the Authority upon request a certificate from its insurers or brokers confirming that the Contractor's insurance policies comply with Schedule 12.4 and the Contractor shall supply to the Authority on request copies of all insurance policies, cover notes and premium receipts

## **SCHEDULE 13**

### **SURETIES**

- 13.1 The Contractor shall if required by the Authority give security for the due and faithful performance of the Contract:-
- 13.1.1 By the Contractor executing a bond ('the Performance Bond') in a form to be approved by the Authority in a sum equal to ten per cent of the value or amount of any order placed under the Contract; or
  - 13.1.2 By the Contractor obtaining a guarantee by its holding company or companies (as defined by s.154 of the Companies Act 1985) if the Contractor is a subsidiary company within the meaning of the said Act; or
  - 13.1.3 By a deposit being made with the Authority of a sum equal to ten per cent of the value or amount of any order placed under the Contract

## **SCHEDULE 14**

### **FORCE MAJEURE**

- 14.1 For the purposes of this Agreement the expression "Force Majeure" shall mean any cause affecting the performance by a party of its obligations arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control including (but without limiting the generality thereof) governmental regulations, fire, flood, or any disaster affecting a third party for which a substitute third party is not reasonably available. Any act, event, omission, happening or non-happening will only be considered Force Majeure if it is not attributable to the wilful act, neglect or failure to take reasonable precautions of the affected party, its agents or employees.
- 14.2 Neither party shall in any circumstances be liable to the other for any loss of any kind whatsoever including but not limited to any damages or abatement of charges whether directly or indirectly caused to or incurred by the other party by reason of any failure or delay in the performance of its obligations hereunder which is due to Force Majeure. Notwithstanding the foregoing, each party shall use all reasonable endeavours to continue to perform, or resume performance of, such obligations hereunder for the duration of such Force Majeure event.
- 14.3 If either of the parties shall become aware of circumstances of Force Majeure which give rise to or which are likely to give rise to any such failure or delay on its part it shall forthwith notify the other by the most expeditious method then available and shall inform the other of the period which it is estimated that such failure or delay shall continue.
- 14.4 It is expressly agreed that any failure by the Contractor to perform or any delay by the Contractor in performing its obligations under the Contract which results from any failure or delay in the performance of its obligations by any person, firm or company with which the Contractor shall have entered into any contract, supply arrangement or sub-contract or otherwise shall be regarded as a failure or delay due to Force Majeure only in the event that such person firm or company shall itself be prevented from or delayed in complying with its obligations under such contract, supply arrangement or sub-contract or otherwise as a result of circumstances of Force Majeure.

## **SCHEDULE 15**

### **TRANSFER OF SERVICES**

- 15.1 If requested to do so by the Authority, the Contractor shall provide at no cost to the Authority any and all relevant information relating to the Services reasonably required by the Authority to enable it to prepare the necessary documentation in respect of any subsequent tendering or re-tendering of the Services
- 15.2 For the avoidance of doubt, this obligation shall extend to all workforce information necessary to enable the Authority to comply with its duties under TUPE, if applicable
- 15.3 Where the Authority intends to continue with services equivalent to any or all of the Services after termination or expiry of the Contract, either by performing them itself or by the appointment of a replacement Contractor, the Contractor shall use all reasonable endeavours to ensure that the transition is undertaken with the minimum of disruption to the Authority
- 15.4 The Contractor shall co-operate fully during the transition period and provide full access to all data documents manuals working instructions reports and any information which the Authority considers relevant and whether in electronic or written form

## SCHEDULE 16

### PREVENTION OF FRAUD OR CORRUPTION

#### 16.1 In this Condition:-

**"Bribery Act 2010"** means the Bribery Act 2010 and any subordinate legislation made under this Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning the legislation.

**"Prohibited Act"** means the following which constitute Prohibited Acts:

(a) to directly or indirectly offer, promise or give any person working for or engaged by the Authority a financial or other advantage to:

- (i) induce that person to perform improperly a relevant function or activity; or
- (ii) reward that person for improper performance of a relevant function or activity;

(b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement;

(c) committing any offence:

- (i) under the Bribery Act;
- (ii) under legislation creating offences concerning fraudulent acts;
- (iii) at common law concerning fraudulent acts relating to this Agreement or any other contract with the Authority; or
- (iv) defrauding, attempting to defraud or conspiring to defraud the Authority.

#### 16.2 The Contractor:

16.2.1 shall not, and shall procure that any Contractor or its agents and other contractors including each subcontractor (Contractor Party) and all the Contractor's agents, consultants and other contractors or any sub contractor (Contractor's Personnel) shall not, in connection with this Agreement commit a Prohibited Act;

16.2.2 warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by the Authority, or that an agreement has been reached to that effect, in connection with the execution of this Agreement, excluding any arrangement of which full details have been disclosed in writing to the Authority before execution of this Agreement.

#### 16.3 The Contractor shall:

16.3.1 if requested, provide the Authority with any reasonable assistance, at the Authority's reasonable cost, to enable the Authority to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act;

16.3.2 within 25 Working Days of the Commencement Date, and annually thereafter, certify to the Authority in writing (such certification to be signed by an officer of the Contractor) compliance with this Schedule by the Contractor and all persons associated with it or other persons who are supplying goods or services in connection with this Agreement. The Contractor shall provide such supporting evidence of compliance as the Authority may reasonably request.

- 16.4 The Contractor shall have an anti-bribery policy (which shall be disclosed to the Authority) to prevent any Contractor party or Contractor personnel from committing a Prohibited Act and shall enforce it where appropriate.
- 16.5 If any breach of clause 16.2 is suspected or known, the Contractor must notify the Authority immediately.
- 16.6 If the Contractor notifies the Authority that it suspects or knows that there may be a breach of clause 16.2, the Contractor must respond promptly to the Authority's enquiries, co-operate with any investigation, and allow the Authority to audit books, records and any other relevant documentation.
- 16.7 The Authority may terminate this Agreement by written notice with immediate effect if the Contractor, Contractor party or Contractor personnel (in all cases whether or not acting with the Contractor's knowledge) breaches clause 16.2.
- 16.8 Any notice of termination under clause 16.7 must specify:
- 16.8.1 the nature of the Prohibited Act;
  - 16.8.2 the identity of the party whom the Authority believes has committed the Prohibited Act; and
  - 16.8.3 the date on which this Agreement will terminate.
- 16.9 Despite Schedule 32 (Disputes), any dispute relating to:
- 16.9.1 the interpretation of clause 16.2; or
  - 16.9.2 the amount or value of any gift, consideration or commission,
- shall be determined by the Authority and its decision shall be final and conclusive.
- 16.10 Any termination under clause 16.7 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Authority.

## **SCHEDULE 17**

### **COMPLIANCE WITH LEGISLATION**

#### **WELSH LANGUAGE**

17.1 The Contractor shall comply with the provisions of the Welsh Language Act 1993 (or as amended from time to time) and all other relevant legislation and statutory requirements.

#### **HEALTH AND SAFETY**

17.8 The Contractor shall at all times comply with the requirements of the Safety Legislation in relation to the Services and of its own staff, the Authority's employees and others who may be affected by its performance of the Services.

17.9 The Contractor's health and safety policy shall be deemed to be part of the Contract.

17.10 The Contractor shall regularly review and update its health and safety policy and provide to the Authority any updates, variations or additions to its health and safety policy as it may make from time to time.

17.12 The Contractor shall maintain a COSHH (control of substances hazardous to health) register if appropriate and shall provide copies to the Authority on request.

17.13 The Contractor shall throughout the Contract Period have full regard for the safety of all persons and shall take all reasonable steps to safeguard and protect all persons from any danger or hazard

17.15 The Contractor shall immediately notify the Authority of any major accident or dangerous occurrence arising out of the performance of the Services.

17.16 If in the opinion of the Authority or a health and safety officer and in their sole discretion the Contractor is at any time not complying with the Safety Legislation so as to put a serious risk to the health or safety of any person then the Authority shall be entitled to do either or both of the following.

17.16.1 to instruct the Contractor to cease to carry out all or a specified part of the Services either immediately or within a specified period or not later than a specified date or time. Such instruction shall contain the requirements that such Services shall not be resumed until the Authority is satisfied that the risk has been removed and has confirmed in writing that the Contractor may do so; and/ or

17.16.2 to instruct the Contractor either orally (confirmed in writing) or in writing:

17.16.2.1 to take specified steps (including training) to secure compliance with the Safety Legislation; or

17.16.2.2. to comply with any advice and/or requirements of the health and safety executive or a health and safety Officer;

Provided always that in any of the above events the provision of the Services shall be continued by the Contractor in a manner agreed by the Authority, so far as possible and to the extent still permissible. Any additional costs incurred in respect of this Schedule shall be borne by the Contractor.

17.17 For the avoidance of doubt it is hereby declared and agreed that the Contractor having undertaken to comply with the Safety Legislation, all instructions given and works undertaken in order to secure compliance with that legislation shall be deemed not to require or involve a Variation under any other provision of the Contract and the Contractor shall not be entitled to any payment either for Services not carried out whilst complying with an instruction or for any additional work or accumulation of tasks or variation of Services arising out of or in connection with any such instruction which is not a qualifying change in law.

- 17.18 The Contractor shall inform the Authority forthwith of any improvement notice, prohibition notice, or notice to prosecute which the Contractor receives in relation to a health and safety matter.
- 17.19 The Contractor shall immediately inform the Authority of any accident which has occurred however minor which has been caused in the provision of the Services by the use of any Premises or as a result of acts or omissions of any Authority employees, or agents.
- 17.20 The Contractor shall maintain an accurate accident/injury recording system. The records shall be made available to the Authority for examination upon request.
- 17.21 Without prejudice to the generality of the obligations in this Schedule, the Contractor shall ensure that the statutory requirements in relation to the following subjects are strictly adhered to throughout the Contract Period: -
- 17.21.1 control of any substances hazardous to health and protection of any person exposed to them;
  - 17.21.2 effective provision use and maintenance of any personal protective equipment necessary to protect staff;
  - 17.21.3 effective assessment of manual handling operations in order to remove or reduce the risk of injury;
  - 17.21.4 safe use of electricity at work;
  - 17.21.5 the availability of a competent person to make arrangements to plan organise control monitor and review all health and safety measures;
  - 17.21.6 the provision of effecting training and information to all workers on all aspects of health and safety at work; and
  - 17.21.7 proper operation of visual display units.

The above list is not exhaustive and any other relevant legislation should be strictly adhered to.

- 17.22 The Contractor shall make suitable and sufficient assessment of:
- 17.22.1 the risk to health and safety of staff to which they are exposed in carrying out the Services;
  - 17.22.2 the risk to health and safety of persons other than the Contractor's staff arising out of or in connection with the conduct by it of its undertaking.
- 17.23 The Contractor shall make such arrangements as are appropriate, having regard to the nature of its activities and the size of its undertaking, for the effective planning, organisation, control, monitoring and review of any preventative and protective measures identified as part of the risk assessment process and shall record those arrangements.

## **HUMAN RIGHTS**

- 17.24 The Contractor shall comply with the provisions of the Human Rights Act 1998 as if it were a public body as defined in the Human Rights Act 1998 as appropriate to the provision of the Service.

## **DATA PROTECTION**

- 17.25 The Contractor shall comply with its obligations under the Data Protection Act 1998 ("the 1998 Act") and the Computer Misuse Act 1990 insofar as performance of this Contract gives rise to obligations under those Acts.
- 17.26 The Contractor shall ensure that it does nothing knowingly or negligently which places the Authority in breach of the Authority's obligations under the 1998 Act.

## **FREEDOM OF INFORMATION AND ENVIRONMENTAL INFORMATION**

17.27 The contractor acknowledges that the Authority is or may be subject to the Freedom of Information Act 2000 (FOIA) and the Environmental Information Regulations S1 2004 No 3391 (EIR) and shall assist and cooperate with the Authority, at the Contractor's expense, to enable the Authority to comply with these information disclosure requirements

17.28 In this Condition:-

"Information" has the meaning ascribed to it in section 84 of the FOIA

"Request for Information" has the meaning ascribed to it in section 8 of the FOIA or any apparent request for information under the FOIA or EIR

17.29 The Contractor shall (and shall procure that its subcontractors shall) :-

17.29.1 transfer any Request for Information to the Authority as soon as practicable after receipt and in any event within two working days

17.29.2 provide the Authority with a copy of all Information in its possession or power in the form which the Authority requires within five working days (or such other period as the Authority may reasonably specify) of the Authority requesting that Information

17.29.3 provide all necessary assistance as reasonably requested by the Authority to enable it to respond to a Request for Information within the time of compliance set out in Section 10 of the FOIA or Regulation 5 of the EIR

17.30 The Authority shall be responsible for determining, at its absolute discretion, whether any Information:-

17.30.1 is exempt from disclosure in accordance with the provisions of the FOIA or the EIR or

17.30.2 is to be disclosed in response to a Request for Information

In no event shall the Contractor respond directly to a Request for Information unless expressly authorised to do so in writing by the Authority

17.31 The Contractor acknowledges that the Authority may be obliged under the FOIA or the EIR to disclose Information unless an exemption applies. The Authority may at its discretion consult the Contractor with regard to whether the FOIA applies to the Information and whether an exemption applies

17.32 The Contractor shall ensure that all Information provided in the course of the Contract or relating to the Contract is retained for disclosure and shall permit the Authority to inspect such records as requested from time to time

17.33 The Contractor acknowledges that any lists or schedules provided to it outlining information it deems confidential or commercially sensitive are of indicative value only and that the Authority may nevertheless be obliged to disclose information which the Contractor considers confidential

## **EQUALITY AND EQUAL OPPORTUNITIES**

17.34 The Contractor shall:

17.34.1 demonstrate effective implementation of its policies in relation to recruitment practices including at least evidence of open recruitment methods such as use of the Job Centre or press advertisements;

17.34.2 regularly review the full range of equality policies and procedures and take specific action to make any necessary changes; and

17.34.3 regularly monitor the ethnic composition of its workforce.

- 17.35 The Contractor shall observe as far as possible the Commission for Racial Equality's Code of Practice in Employment as approved by Parliament in 1983.
- 17.36 The Contractor shall provide such information as the Authority may reasonably request for the purpose of assessing the Contractor's compliance in respect of equalities.
- 17.37 The Contractor shall comply with the requirements of the Equality Act 2010 and any subsequent enactment thereof.

## SCHEDULE 18

### CONFIDENTIALITY

- 18.1 Subject to Condition 18.2 the Contractor agrees not to disclose any Confidential Information to any third party without the prior written consent of the Authority. To the extent that it is necessary for the Contractor to disclose Confidential Information to its staff, agents and sub-contractors, the Contractor shall ensure that such staff, agents and sub-contractors are subject to the same obligations as the Contractor in respect of all Confidential Information
- 18.2 Condition 18.1 shall not apply to:
- 18.2.1 any information which the disclosing party can demonstrate is already generally available and in the public domain otherwise than as a result of a breach of this Schedule;
  - 18.2.2 any disclosure which is required by any law (including any order of a court of competent jurisdiction) or the rules of any stock exchange or governmental or regulatory authority having the force of law;
  - 18.2.3 any disclosure of information which is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party;
  - 18.2.4 any disclosure by the Authority of information relating to the provision of the Services and such other information as may be reasonably required for the purpose of conducting a due diligence exercise to any proposed replacement supplier, its advisers and lenders, should the Authority decide to re-tender the contract; or
  - 18.2.5 any disclosure of information by the Authority to any other department, office or agency of the government;
  - 18.2.6 any disclosure for the purpose of:
    - 18.2.6.1 the examination and certification of the Authority's accounts; or
    - 18.2.6.2 any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources.
- 18.3 Where disclosure is permitted under Condition 18.2 the disclosing party shall ensure that the recipient of the information shall be subject to the same obligation of confidentiality as that contained in this Contract.
- 18.4 The Contractor shall not make use of this Contract or any information issued or provided by or on behalf of the Authority in connection with this Contract otherwise than for the purpose of performing its obligations under this Contract, except with the written consent of the Authority.
- 18.5 The Contractor shall ensure that no unauthorised person gains access to any Confidential Information or any data obtained in the performance of the Contract
- 18.6 The Contractor will immediately notify the Authority of any breach of security in relation to Confidential Information and all data obtained in the performance of the Contract and will keep a record of such breaches.
- 18.7 The Contractor shall not advertise or publicly announce that it is supplying the Services or carrying out work for the Authority without the prior written consent of the Authority, such consent not to be unreasonably withheld or delayed
- 18.8 The obligations contained in this Condition shall continue to apply after the expiry or termination of the Contract

## **SCHEDULE 19**

### **AUDIT AND ACCOUNTS**

- 19.1 The Contractor shall at all reasonable times (including following termination for whatsoever reason of this Contract) afford to the Authority's representative (or its auditor or nominee) access to any records, accounts, information and data in the possession or control of the Contractor which in any way relate to or are or have been used in connection with the provision of the Services including (but without limitation) Authority data and information stored on a computer system operated by the Contractor and to allow the copying or removal of any such material.
- 19.2 The Contractor shall keep full and proper accounts records and vouchers relating to all expenditure relating to the provision of the Services and all payment made by the Authority in respect of the Services and shall ensure that the said accounts records and vouchers are available for a period of six years after termination or expiry of the Contract

## **SCHEDULE 20**

### **INTELLECTUAL PROPERTY**

- 20.1 Any specification supplied by the Authority to the Contractor, or specifically produced by the Contractor for the Authority, in connection with the Contract, together with the copyright, design rights or any other intellectual property rights in the specification / schedule, shall be the exclusive property of the Authority, and the Authority shall be free to effect and be responsible for securing such protection of the design whether by registration in the register of designs or otherwise as it sees fit.
- 20.2 The Contractor shall lend to the Authority all assistance in securing registration of the design in the register of designs if required to do so by the Authority. In addition the Contractor shall if required to do so by the Authority execute any assignment of the copyright in such designs complying with the provisions of the Copyright Designs and Patents Act 1998 (or any subsequent enactment thereof). However the right of the Authority to require such an assignment of copyright shall in no way be construed as indication that the copyright in such designs is not already vested in the Authority in accordance with the terms of this agreement.
- 20.3 All designs, drawing, specifications and information supplied by the Authority in connection with the Contract are confidential, and their use must be strictly confined to the Contractor's own works for the purposes of the Contract. All such designs, drawings, specifications and information and all copies thereof must be returned to the Authority on completion of the Contract.
- 20.4 The Contractor shall indemnify the Authority against all actions, claims and demands, costs charges and expenses awarded against or incurred by the Authority (including legal costs on an indemnity basis) as a result of or in connection with any claim that the Service provided infringes the patent, registered design, trade mark, copyright or other intellectual property rights of any other person except to the extent that the claim arises from compliance with the specification / schedule.
- 20.5 The Authority agrees not to alter modify or vary a design supplied by the contractor to the Authority which is considered by the Contractor to be material to the design or to permit any such design to be altered modified or varied by any other person firm or company without first obtaining the Contractor's prior written consent, such consent not to be unreasonably withheld or delayed.

## **SCHEDULE 21**

### **THIRD PARTY RIGHTS**

The provisions of the Contracts (Rights of Third Parties Act) 1999 shall not apply to this contract and a person who is not a party to the Contract shall have no right under that Act to enforce any term of the Contract.

## SCHEDULE 22

### TERMINATION

- 22.1 The Contractor shall notify the Authority in writing immediately upon the occurrence of any of the following events:
- 22.1.1 (where the Contractor is an individual) if a petition is presented for the Contractor's bankruptcy or a criminal bankruptcy order is made against the Contractor, or the Contractor makes any composition or arrangement with or for the benefit of creditors, or makes any conveyance or assignment for the benefit of creditors, or if an administrator is appointed to manage his affairs
  - 22.1.2 (where the Contractor is a firm; or a number of persons acting together in any capacity) if any event in (a) or (c) of this Condition occurs in respect of any partner in the firm or any of those persons or a petition is presented for the Contractor to be wound up as an unregistered company; or
  - 22.1.3 where the Contractor is a company, if the company passes a resolution for winding-up or the court makes an administration order or a winding-up order, or the company makes a composition or arrangement with its creditors, or an administrative receiver, receiver or manager is appointed by a creditor or by the court, or possession is taken of any of its property under the terms of a floating charge
  - 22.1.4 There is a change of ownership or control as defined by s416 of the Income and Corporation Taxes Act 1988 in the Contractor or its Parent Company which, in the reasonable opinion of the Authority will have a material impact on the supply of the Services or the image of the Authority
- 22.2. The Authority shall be entitled to terminate this Contract (or any part of it) by service of a Termination Notice to the Contractor with immediate effect if:
- 22.2.1..any of the events described in Condition 22.1 occurs;
  - 22.2.2 the Contractor has committed a fundamental breach of the Contract and (if such breach is capable of remedy) has failed to remedy such breach within thirty days of being required by the Authority in writing to do so; or
  - 22.2.3 (where the Contractor is an individual), if he shall die or be adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Health Act 1983.
- 22.3 The Authority may without prejudice to any other accrued rights and remedies under the Contract forthwith terminate the Contract in the event of the Contractor or any provider of a performance bond: -
- 22.3.1 having been discovered to have made a material misrepresentation during the tendering process; or
  - 22.3.2 having summoned a meeting of its creditors, suffers a proposal for a voluntary arrangement, becomes subject to any voluntary arrangement, is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, has a petition for bankruptcy presented has a receiver, manager, administrator or administrative receiver appointed over its assets, undertaking or income, has passed a resolution for its winding-up (save for the purpose of a voluntary reconstruction or amalgamation) has a petition presented to any Court for its winding-up (save for the purpose of a voluntary reconstruction or amalgamation), has a provisional liquidator appointed, has a proposal made for a scheme of arrangement under section 245 of the Companies Act 1985 or is the subject of a notice to strike off or dissolve the company from the register at Companies House or for an administration order; or

- 22.3.3 having passed a resolution for its voluntary winding-up; or
- 22.3.4 having possession taken, by or on behalf of the holders of any debenture secured by a floating charge, or any property comprised in, or subject to, the floating charge; or
- 22.3.5 having ceased to carry on a substantial part of its business or disposes of a substantial part of its assets which in the opinion of the Authority would adversely and materially affect the delivery of the Services or (as the case may be) the value of the Performance Bond relating to the Contract; or
- 22.3.6 has a director of it or a partner in it convicted of dishonesty (whether or not suspended) which has an effect upon the operation of the Services or the relationship between the Authority and the Contractor; or
- 22.3.7 failing to provide any Performance Bond when required within the period specified in the Contract or the failure of the Contractor to ensure that the Performance Bond remain in force for the whole of the Contract Period; or
- 22.3.8 being a consortium or partnership including any company or companies and: -
- 22.3.9 any member of the consortium or any partner leaves the consortium or partnership for any reason unless the other members of the consortium or partnership irrevocably undertake in writing to the Authority to be responsible for and assume all the liabilities, accrued or otherwise, of such a member; or
- 22.3.10 the consortium or partnership terminates for any reason;

22.4 Upon such termination:-

- 22.4.1 the Contractor shall forthwith cease to perform any or any specified part of the Services;
- 22.4.2 the Contractor shall be liable forthwith to compensate the Authority for any loss or damage it has sustained in consequence of any antecedent breaches of contract by the Contractor;
- 22.4.3 the Contractor shall fully and promptly indemnify and compensate the Authority in respect of all loss and damage suffered by the Authority by reason of such termination and without prejudice to the generality of this Schedule shall fully and promptly indemnify the Authority in respect of the cost and expenses of causing to be performed such Services as would have been performed by the Contractor during the remainder of the Contract Period to the extent that such cost and expenses exceeds such sums as would have been lawfully payable to the Contractor for performing such Services (such costs to include all costs and expenses of and in connection with closing the Contract and re-tendering and entering into a new Contract with a replacement Contractor). The Authority shall be at liberty to have such Services performed by any persons (whether or not employees of the Authority) as the Authority shall in its sole and entire discretion think fit (acting reasonably) and to use all such Contractor's materials, clothing and equipment, vehicles or other goods and shall be under no obligation to employ the least expensive method of having such Services performed;

- 22.4.4 the Authority shall be under no obligation to make further payments to the Contractor and shall (in all cases) be entitled to retain any payment which may have fallen due to the Contractor before determination until the Contractor has paid in full to the Authority all sums due under or arising from this Contract (and/or any other Contract with the Authority) or to deduct there from any sum due from the Contractor to the Authority under the Contract (and/or any other Contract with the Authority). Such loss or damage shall include the reasonable cost to the Authority of the time spent by its officers in terminating the Contract and in making alternative arrangements for the provision of the Services or any part thereof;
- 22.4.5 The Contractor shall forthwith cease to occupy and use any of the Authority's Premises and shall return any equipment or plant belonging to the Authority
- 22.5 All costs to be paid to the Authority under this Schedule shall be conclusively determined by the Authority acting reasonably having regard to any reasonable representations on the matter made by the Contractor.
- 22.6 In the event of the Authority having the right to terminate under this Schedule, the Authority may, at its sole discretion, give the receiver, liquidator or other person (as appropriate) the option of carrying out the Contract subject to a guarantee acceptable to the Authority being provided for the due and faithful performance of the Contract.
- 22.7 The Authority shall be entitled to cancel the Contract in respect of all or part only of the Service by giving notice to the Contractor at any time prior to delivery or performance, in which event the Authority's sole liability shall be to pay the Contractor for the Price of the Service in respect of which the Authority has exercised its right of cancellation, less the Contractor's net saving of cost arising from the cancellation.
- 22.8 In the event of and upon any termination or expiry of this Contract the Contractor and the Authority shall each carry out their respective responsibilities in accordance with the Contract until termination
- 22.9 The termination of this Contract shall not prejudice or affect any claim, right, action or remedy that shall have accrued or shall thereafter accrue to either party.
- 22.10 Once the Contract has been terminated, the Authority will have the power to enter into a new contract with any other person or persons firm or company for the provision of the Services.

## **SCHEDULE 23**

### **DISPUTES AND MEDIATION**

- 23.1 The parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract
- 23.2 If the parties cannot resolve the dispute pursuant to Condition 23.1 above then the dispute may, by agreement between the parties, be referred to mediation
- 23.3 The performance of the Service shall not cease or be delayed by the reference of a dispute to mediation
- 23.4 If the parties agree to refer the dispute to mediation:
- 23.4.1 in order to determine the person who shall mediate the dispute ("the Mediator") the parties shall by agreement choose a neutral advisor or mediator from one of the dispute resolution providers listed by the Office of Government Commerce on its website or in its printed guidance on dispute resolution within 30 days after agreeing to refer the dispute to mediation
  - 23.4.2 the parties shall within 14 days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held
  - 23.4.3 unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the parties in any future proceedings
  - 23.4.4 If the parties reach agreement on the resolution of the dispute within 60 days of the Mediator being appointed, or such longer period as may be agreed between the parties, the agreement shall be reduced to writing and shall be binding on the parties once it is signed by both the Contractor and the Authority
  - 23.4.5 failing agreement within 60 days of the Mediator being appointed, or such longer period as may be agreed between the parties, either of the parties may invite the Mediator to provide a non-binding but informative opinion in writing. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Contract without the prior written consent of both parties
- 23.5 If the parties do not agree to refer the dispute to mediation or if the parties fail to reach agreement as to who shall mediate the dispute pursuant to condition 23.4.1 or if they fail to reach agreement in the structured negotiations within 60 days of the Mediator being appointed or such longer period as may be agreed by the parties then any dispute or difference between them may be referred to the courts

## **SCHEDULE 24**

### **GOVERNING LAW & JURISDICTION**

- 24.1 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of England and Wales as applied in Wales.
- 24.2 The parties irrevocably agree that the courts of England and Wales shall have jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).