

CONCESSION CONTRACT FOR THE PROVISION OF ELECTRIC VEHICLE (EV) CHARGING INFRASTRUCTURE IN CONWY COUNTY BOROUGH BETWEEN

(1) CONWY COUNTY BOROUGH COUNCIL of Council Offices, Coed Pella, Colwyn Bay, LL29 0GG ("the Authority")

AND

(2) [CHARGE POINT OPERATOR NAME] ("the Concessionaire")

THIS CONCESSION CONTRACT is made on the _____ day of _____ **2025**

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1. DEFINITIONS AND INTERPRETATION

- 1.1 In this Contract, unless the context otherwise requires, capitalised terms shall have the meanings set out in **Schedule 20** (Definitions).
- 1.2 In this Contract, unless the context otherwise requires: (a) the singular includes the plural and vice versa; (b) reference to a gender includes the other gender and the neuter; (c) references to Clauses and Schedules are to the Clauses and Schedules of this Contract; (d) references to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument; (e) headings are included for ease of reference only and shall not affect the interpretation or construction of this Contract.

2. COMMENCEMENT AND DURATION

- 2.1 This Contract shall commence on the Commencement Date.

- 2.2 Unless terminated earlier in accordance with the provisions of this Contract, this Contract shall continue for a period of ten (10) years from the Commencement Date ("Initial Term").
- 2.3 The Authority may, at its sole discretion, extend the Initial Term for a further period of up to three (3) years ("Extension Period") by giving written notice to the Concessionaire not less than six (6) months prior to the expiry of the Initial Term.
- 2.4 In the event that the Authority exercises its option to extend the Contract under paragraphs 2.3, the Contract shall be extended on the same terms and conditions as are set out in this Contract.

3. CONCESSION GRANT AND SCOPE

- 3.1 The Authority hereby grants to the Concessionaire, subject to the terms of this Contract, an exclusive right to design, install, operate and maintain Electric Vehicle Charging Points (EVCPs) on the Authority's assets at the sites identified in the jointly developed delivery plan and at such other sites as may be agreed between the Parties.
- 3.2 The Concessionaire acknowledges and agrees that all below ground infrastructure (beyond those owned by the District Network Operator (DNO) as detailed in **Schedule 3**) shall remain in the ownership of the Authority.
- 3.3 The Concessionaire shall retain ownership of all above-ground charging assets throughout the Contract Period.
- 3.4 During the Contract Period, the Concessionaire shall be entitled to charge and receive payment from users of the EVCPs, subject to the revenue sharing arrangements set out in Clause 12.

4. CONCESSIONAIRE'S OBLIGATIONS

- 4.1 Please see **Section 3** of the Tender Specification and **Schedules 1, 2 and 14** for further information.

5. AUTHORITY'S OBLIGATIONS

- 5.1 Please see **Section 3** of the Tender Specification for further information.

6. TRANSFER OF EXISTING CHARGE POINTS

- 6.1 Please see **Section 3 and 6** of the **Tender Specification** and **Schedule 2** for further information.

7. IMPLEMENTATION PLAN AND DELIVERY

- 7.1 Please see **Section 6 and 9** of the **Tender Specification** and **Schedule 4 and 6** for further information.

8. CONSTRUCTION DESIGN AND MANAGEMENT

- 8.1 Please see **Section 8, 9 and 10** of the **Tender Specification** and **Schedule 4 and 5** for further information.

9. SITE LEASES AND PROPERTY MATTERS

- 9.1 Please see **Section 17, 18 and 20** of the **Tender Specification** and **Schedule 13 and 18** for further information.

10. CONSTRUCTION AND INSTALLATION

- 10.1 Please see **Section 7, 17 and 20** of the **Tender Specification** and **Schedule 11, 12 and 14** for further information.

11. OPERATION AND MAINTENANCE

- 11.1 Please see **Section 4 and 18** of the **Tender Specification** and **Schedule 9, 14, 15 and 16** for further information

12. CHARGING PROVISIONS AND PAYMENT

- 12.1 The Concessionaire shall be entitled to set charging rates for users of the EVCPs, subject to: (a) providing transparent pricing information to users; (b) ensuring contactless payment options are available for units >8kW; (c) applying the agreed preferential rate for Authority fleet vehicles.
- 12.2 The Authority shall be entitled to receive a percentage of gross revenue from all EVCPs.
- 12.3 The Concessionaire shall provide monthly revenue reports and make payments to the Authority within 30 days of the end of each month, as detailed in **Schedule 8**.

13. REVENUE SHARING ARRANGEMENTS

- 13.1 The Concessionaire shall pay to the Authority a percentage of the gross revenue generated from the EVCPs installed under this Contract.
- 13.2 For the purpose of this Clause, "gross revenue" means all income received by the Concessionaire from users of the EVCPs before any deductions.
- 13.3 The Concessionaire shall maintain accurate records of all revenue generated and shall make such records available to the Authority for inspection upon reasonable notice.
- 13.4 Revenue sharing payments shall be made monthly in arrears, accompanied by a detailed breakdown of revenue by site and charger.

14. MONITORING AND REPORTING

- 14.1 Please see **Section 11** of the **Tender Specification** and **Schedule 6, 7 and 9**.

15. SERVICE LEVELS AND PERFORMANCE

15.1 Please see **Section 13** and **14** of the **Tender Specification** and **Schedule 9**.

16. GRANT FUNDING

- 16.1 The Authority shall use reasonable endeavours to secure grant funding for below-ground infrastructure costs.
- 16.2 The Concessionaire shall provide all necessary information and assistance to support the Authority's grant applications.
- 16.3 If grant funding is secured, the Authority shall notify the Concessionaire and the Parties shall agree on the allocation and use of such funding.
- 16.4 The Concessionaire shall comply with all conditions attached to any grant funding secured by the Authority.

17. VARIATION PROCEDURE

- 17.1 Either Party may propose variations to this Contract.
- 17.2 No variation shall be effective unless it has been agreed in writing and signed by authorized representatives of both Parties.
- 17.3 The Concessionaire shall not unreasonably withhold or delay its agreement to any variation proposed by the Authority.
- 17.4 Any work undertaken by the Concessionaire which has not been authorised in advance by a Variation, and which has not been otherwise agreed in accordance with the provisions of this section 17, shall be undertaken entirely at the expense and liability of the Concessionaire.

18. HEALTH, SAFETY, ENVIRONMENTAL AND QUALITY

- 18.1 Please see **Section 8, 10** and **12** of the Tender Specification.

19. STAFFING AND KEY PERSONNEL

- 19.1 The Concessionaire shall provide sufficient staff with appropriate skills, qualifications, and experience to perform its obligations under this Contract.
- 19.2 The Concessionaire shall not remove or replace any Key Personnel without the prior written consent of the Authority, such consent not to be unreasonably withheld or delayed.
- 19.3 If any Key Personnel leave the Concessionaire's employment, the Concessionaire shall promptly appoint a suitable replacement with equivalent skills and experience.

20. SUBCONTRACTING AND SUPPLY CHAIN

- 20.1 The Concessionaire shall not subcontract any of its obligations under this Contract without the prior written consent of the Authority, such consent not to be unreasonably withheld or delayed, as detailed in **Schedule 17**.

- 20.2 The Concessionaire shall remain responsible for the acts and omissions of its subcontractors as if they were its own.
- 20.3 The Concessionaire shall ensure that all subcontractors comply with the relevant provisions of this Contract.
- 20.4 The Authority may require the Concessionaire to terminate any subcontract if the subcontractor commits a serious breach of any applicable law or regulation.

21. INTELLECTUAL PROPERTY RIGHTS

- 21.1 Any designs, drawings, specifications, data or information ("Material") supplied by the Authority to the Concessionaire, or specifically produced by the Concessionaire for the Authority, in connection with the Contract, together with the copyright, design rights or any other intellectual property rights in the Material, 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.
- 21.2 The Concessionaire 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 Concessionaire 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 Contract.
- 21.3 All Material supplied by the Authority in connection with the Contract is confidential, and its use must be strictly confined to the Concessionaire's own works for the purposes of the Contract. All such Material and all copies thereof must be returned to the Authority on completion of the Contract.
- 21.4 The Concessionaire 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 Services provided infringes the patent, registered design, trade mark, copyright or other intellectual property rights of any other person.
- 21.5 The Authority agrees not (during the Contract Period) to alter modify or vary a design supplied by the Concessionaire to the Authority for the purpose of the Services which is considered by the Concessionaire 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 Concessionaire's prior written consent, such consent not to be unreasonably withheld or delayed.

22. DATA PROTECTION

- 22.1 The Concessionaire shall comply with its obligations under the Data Protection Legislation insofar as performance of this Contract gives rise to obligations under the aforementioned legislation.

- 22.2 The Concessionaire shall ensure that it does nothing knowingly or negligently which places the Authority in breach of the Authority's obligations under the Data Protection Legislation.

23. WELSH LANGUAGE REQUIREMENTS

- 23.1 The Concessionaire shall comply with the Welsh Language (Wales) Measure 2011 and any standards specified by the Welsh Ministers under that Measure.
- 23.2 The Concessionaire shall ensure that all customer-facing elements, including but not limited to: (a) the operating system; (b) all written information for end users; (c) customer support services; (d) signage and instructions on EVCPs are provided equally in Welsh and English.
- 23.3 The Concessionaire shall provide bilingual customer support through its call centre and online services.

24. MARKETING AND PUBLICITY

- 24.1 The Concessionaire shall not without the written consent of the Authority: (a) publish any article, advertisement or photographs in connection with the Contract; or (b) give any information concerning the Contract for publication in the press or on radio, television or screen, or elsewhere.
- 24.2 The Concessionaire shall work with the Authority to develop a communications and marketing strategy to maximize recognition and awareness of the EVCP network.

25. CONFIDENTIALITY

- 25.1 Subject to paragraph 25.2 the Concessionaire agrees not to disclose any Confidential Information to any third party without the prior written consent of the Authority and vice versa. To the extent that it is necessary for the Concessionaire to disclose Confidential Information to its staff, agents and sub-contractors, the Concessionaire shall ensure that such staff, agents and sub-contractors are subject to the same obligations as the Concessionaire in respect of all Confidential Information
- 25.2 Paragraph 25.1 shall not apply to:
- 25.2.1 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;
- 25.2.2 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;
- 25.2.3 any disclosure of information which is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party;
- 25.2.4 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

- 25.2.5 any disclosure of information by the Authority to any other department, office or agency of the government;
- 25.2.6 any disclosure for the purpose of:
- (a) the examination and certification of the Authority's accounts; or
 - (b) 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.
- 25.3 Where disclosure is permitted under Condition 25.2 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.
- 25.4 The Concessionaire 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.
- 25.5 The Concessionaire shall ensure that no unauthorised person gains access to any Confidential Information or any data obtained in the performance of the Contract
- 25.6 The Concessionaire shall 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 shall keep a record of such breaches.
- 25.7 The Concessionaire 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.
- 25.8 The obligations contained in this Condition shall continue to apply after the expiry or termination of the Contract.

26. FREEDOM OF INFORMATION

- 26.1 The Concessionaire acknowledges that the Authority is subject to the Freedom of Information Act 2000 (FOIA) and the Environmental Information Regulations 2004 (EIR) and shall assist and cooperate with the Authority, at the Concessionaire's expense, to enable the Authority to comply with these information disclosure requirements.
- 26.2 In this paragraph -
- "Information"** has the meaning ascribed to it in section 84 of the FOIA; and
 - "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.
- 26.3 The Concessionaire shall (and shall procure that its subcontractors shall) -
- 26.3.1 transfer any Request for Information to the Authority as soon as reasonably practicable after receipt and in any event within two (2) Working Days;

- 26.3.2 provide the Authority with a copy of all Information in its possession or power in the form which the Authority requires within five (5) Working Days (or such other period as the Authority may reasonably specify) of the Authority requesting that Information;
- 26.3.3 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.
- 26.4 The Authority shall be responsible for determining, at its absolute discretion, whether any Information:-
- 26.4.1 is exempt from disclosure in accordance with the provisions of the FOIA or the EIR; or
- 26.4.2 is to be disclosed in response to a Request for Information.
- 26.5 In no event shall the Concessionaire respond directly to a Request for Information unless expressly authorised to do so in writing by the Authority.
- 26.6 The Concessionaire 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 Concessionaire with regard to whether the FOIA applies to the Information and whether an exemption applies
- 26.7 The Concessionaire 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.
- 26.8 The Concessionaire 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 Concessionaire considers confidential.

27. FORCE MAJEURE

- 27.1 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, epidemic or pandemic, 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 shall 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.
- 27.2 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.

- 27.3 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.
- 27.4 It is expressly agreed that any failure by the Concessionaire to perform or any delay by the Concessionaire 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 Concessionaire 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.

28. SUSPENSION

- 28.1 **Authority Rights to Suspend:** The Authority may at its sole discretion, and for any reason, suspend the Contractor's performance of all or any of the Services at any time by giving reasonable written notice to the Contractor specifying the Services to be suspended and the effective date of suspension.
- 28.2 **Effect of Suspension:** During any period of suspension pursuant to this Clause 27:
- The Contractor shall comply promptly with any reasonable instructions from the Authority in relation to the suspension, including instructions to secure and protect any material, documentation, or equipment specifically related to the suspended Services;
 - The Contractor shall not be entitled to payment of Charges in respect of the suspended Services for the period during which those Services are suspended;
 - The Contractor shall continue to perform any Services that have not been suspended;
 - The Contractor shall use all reasonable endeavours to minimise the costs of complying with its obligations under paragraph (a) of this Clause 27.2.
- 28.3 **Resumption of Suspended Services:** The Authority may, at any time following the suspension of any Services, give the Contractor reasonable written notice specifying the date on which the suspended Services shall be resumed. From the date specified in such notice, the Contractor shall resume performance of the previously suspended Services in accordance with the terms of this Contract.
- 28.4 **Impact on Contract Period:** Where the Authority suspends any Services under this Clause 27, the Expiry Date shall be extended by a period equal to the duration of the suspension unless otherwise agreed by the Parties in writing.
- 28.5 **Long-term Suspension:** If the Authority suspends any Services for a continuous period of more than six (6) months, the Contractor may terminate this Contract immediately by written notice to the Authority.
- 28.6 **Costs of Suspension:** Subject to Clause 27.7, the Authority shall reimburse the Contractor for its reasonable and demonstrable costs directly incurred as a result of complying with Clause 27.2(a), provided such costs could not reasonably have been avoided or mitigated by the Contractor.
- 28.7 **Suspensions Due to Contractor Default:** If a suspension under this Clause 27 arises from or is related to the Contractor's material breach of this Contract, the Contractor shall bear its own

costs of such suspension and shall not be entitled to any extension of time or additional payments.

29. DEFAULT AND EARLY TERMINATION

- 29.1 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 shall record the results of such inspections.
- 29.2 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 Concessionaire 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 Concessionaire has otherwise breached the Contract.
- 29.3 If the Authority is satisfied that in any particular instance the Concessionaire 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 Concessionaire 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 Concessionaire.
- 29.4 The Concessionaire 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.
- 29.5 The Authority may at any time demand that the Concessionaire suspend the provision of the Services or any part of them. If the Authority exercises this right or if the Concessionaire 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 Concessionaire) then the Authority shall be responsible for any reasonable losses incurred by the Concessionaire as a result of such suspension or delay. Subject to the Concessionaire taking reasonable steps to mitigate its loss the Concessionaire shall be able to recover from the Authority under this Condition only for those losses which:-
- 29.5.1 were reasonably foreseeable by the Authority as arising as a direct result of the suspension or delay; and
- 29.5.2 relate to the cost of any commitments entered into by the Concessionaire which cannot be met as a result of the suspension or delay and in respect of which the Concessionaire cannot obtain a refund (where the Concessionaire has already paid in relation to the commitment) or is obliged to pay (where the Concessionaire has not already paid in relation to the commitment).
- 29.6 The provisions of paragraph 29.5 shall not apply where the reason for the suspension of the Services arises from circumstances beyond the control of the Authority.
- 29.7 Without prejudice to any other rights and remedies the Authority may have pursuant to the Contract, the Concessionaire shall reimburse the Authority for all reasonable costs incurred by the Authority which have arisen as a direct consequence of the Concessionaire's default or delay in the performance of the Contract which the Concessionaire had failed to remedy after being given reasonable notice by the Authority.

- 29.8 For the purposes of this Contract all complaints received by the Authority shall be deemed to be bona fide and may attract Default Notices dependent on the results of any investigation completed by the Authority.
- 29.9 The Authority shall not be liable for any claims from the Concessionaire for costs incurred as a result of abortive or false reports.
- 29.10 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 it may also deduct the Performance Deduction from the next payment due to the Concessionaire
- 29.11 In the event that the Concessionaire receives a total number of two (2) or more Default Notices in any period of six (6) consecutive months, the Concessionaire shall be deemed to have committed a fundamental breach of its obligations which is incapable of remedy for the purposes of this section 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 this section shall be exercised (if at all) within a maximum period of six (6) months of the date of the last Default Notice. The Notice of Termination shall give the Concessionaire a date of termination of the Services or part of the Services in the future which shall not be less than three (3) months from the date of the Termination Notice.

30. CONSEQUENCES OF TERMINATION

- 30.1 Please see **Section 20** of the **Tender Specification** for more information.
- 30.2 Upon termination or expiry of this Contract, the Concessionaire shall: (a) continue to provide the Services until the effective date of termination; (b) cooperate with the Authority to ensure an orderly transition; (c) implement the approved Exit Plan; (d) unless otherwise agreed, decommission all EVCPs and reinstate the sites in accordance with **Schedule 16**.
- 30.3 Termination or expiry of this Contract shall not affect any rights, remedies, obligations or liabilities of the Parties that have accrued up to the date of termination or expiry.

31. DISPUTE RESOLUTION

- 31.1 If a dispute arises out of or in connection with this Contract or the performance, validity or enforceability of it ("**Dispute**") then except as expressly provided in this Contract, the Parties shall follow the procedure set out in this clause:
- 31.1.1 either Party shall give to the other written notice of the Dispute, setting out its nature and full particulars ("**Dispute Notice**"), together with relevant supporting documents. On service of the Dispute Notice, the Authorising Officer of the Council and General Manager of the Concessionaire shall attempt in good faith to resolve the Dispute;
- 31.1.2 if the Authorising Officer of the Authority and General Manager of the Concessionaire are for any reason unable to resolve the Dispute within twenty (20) Working Days of service of the Dispute Notice, the Dispute shall be referred to the [TBC] for the Authority and the [TBC] of the Concessionaire who shall attempt in good faith to resolve it; and

- 31.1.3 if the [TBC] for the Authority and the [TBC] of the Concessionaire are for any reason unable to resolve the Dispute within twenty (20) Working Days of it being referred to them, the Parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the Parties the mediator shall be nominated by CEDR within forty-five (45) Working Days of service of the Dispute Notice. To initiate the mediation, a Party must serve notice in writing ("**ADR notice**") on the other Party to the Dispute, requesting a mediation. A copy of the ADR notice should be sent to CEDR. Unless otherwise agreed between the parties, a mediator will be appointed and the mediation process will start not later than ten (10) Working Days after the date of the ADR notice. A date for the mediation and other procedural steps will be set in accordance with the CEDR Model Mediation Procedure.
- 31.2 The commencement of mediation shall not prevent the Parties commencing or continuing court proceedings in relation to the Dispute.
- 31.3 If the Dispute is not resolved within sixty (60) Working Days after service of the ADR notice, or if either Party fails to participate or ceases to participate in the mediation, or the mediation terminates without reaching a resolution of the Dispute, the Dispute shall be finally resolved by the courts of England and Wales sitting at Cardiff.

32. LIABILITY AND INDEMNITIES

- 32.1 The Concessionaire shall indemnify the Authority in full in respect of all claims arising out of or in connection with the death of or injury to any person or damage to any property and against all actions, suits, claims, demands, costs, charges, or expenses brought 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:
- 32.1.1 breach of any term of the Contract or breach of any warranty given by the Concessionaire in relation to the Services; and/or
- 32.1.2 any act or omission of the Concessionaire or its employees, agents or sub-contractors in providing the Service.
- 32.2 The Authority shall not in any event be liable to the Concessionaire for any indirect or consequential loss whatever and however caused.
- 32.3 The Concessionaire's liability to indemnify the Authority shall be without prejudice to any other right or remedy of the Authority arising under this Contract.

33. INSURANCE

- 33.1 The Concessionaire shall throughout the Contract Period and for the period ten (10) years thereafter maintain the following insurances –
- 33.1.1 **Employer's liability insurance** with a minimum level of cover of ten million pounds (£10,000,000) each and every claim and unlimited in any one year;
- 33.1.2 **Public and third party liability insurance** with a minimum level of cover of ten million pounds (£10,000,000) each and every claim and unlimited in any one year; and

33.1.3 **Professional indemnity insurance** with a minimum level of cover of two million pounds (£2,000,000) each and every claim and unlimited in any one year.

33.2 The Concessionaire shall supply to the Authority upon request a certificate from its insurers or brokers confirming that the Concessionaire is maintaining insurance policies in accordance with paragraph 32.1 and the Concessionaire shall supply to the Authority on request copies of all insurance policies, cover notes and premium receipts.

34. NOTICES

34.1 **Form of Notices:** Any notice given under or in connection with this Contract must be in writing and signed by or on behalf of the Party giving it.

34.2 **Method of Service:** Notices must be:

- a. delivered by hand;
- b. sent by pre-paid first-class post, recorded delivery or special delivery;
- c. sent by pre-paid airmail post if being sent to or from a location outside the United Kingdom; or
- d. sent by email to the email address provided by the receiving Party for the purpose of serving notices under this Contract.

34.3 **Address for Service:** Notices must be sent to:

- a. In the case of the Authority: Conwy County Borough Council, PO Box 1, Colwyn Bay, LL29 OGG. Attention: [TBC] Email: [TBC]
- b. In the case of the Contractor: [Insert Contractor's name] [Insert Contractor's address] Attention: [Insert position title] Email: [Insert email address];

or to such other address as either Party may notify to the other in writing from time to time.

34.4 **Deemed Service:** Any notice shall be deemed to have been served:

- a. if delivered by hand, at the time and date of delivery;
- b. if sent by pre-paid first-class post, recorded delivery or special delivery, at 9.00am on the second Business Day after the date of posting;
- c. if sent by pre-paid airmail post, at 9.00am on the fifth Business Day after the date of posting; or
- d. if sent by email, at the time of confirmation of receipt by the recipient's server.

34.5 **Proof of Service:** In proving service of a notice, it shall be sufficient to prove that:

- a. in the case of delivery by hand, the notice was delivered to or left at the correct address for service;
- b. in the case of delivery by post, that the envelope containing the notice was properly addressed, paid for and posted; or
- c. in the case of delivery by email, a delivery receipt or read receipt was obtained, or other evidence exists showing that the email was delivered to the recipient's server.

34.6 **Service Outside Business Hours:** If deemed service under Clause 33.4 would occur outside business hours in the place of receipt, it shall be deemed to have occurred at 9.00am on the next Business Day.

- 34.7 **Notices Requiring Immediate Attention:** Where a notice requires immediate attention, the Party giving the notice shall, in addition to complying with the formal requirements of this Clause 33, use all reasonable endeavours to contact the relevant person by telephone to alert them to the fact that a notice has been sent.

35. GENERAL PROVISIONS

- 35.1 The Conditions of Contract shall apply to all contracts for the supply of Services to the Authority from the Concessionaire to the exclusion of all other terms and conditions including any terms and conditions which the Concessionaire may purport to apply under any sales offer or similar document or in correspondence.
- 35.2 Subject to the provisions of Clause 17 (Variation Procedure) any Variations of the Conditions shall not take effect unless evidenced in writing (which shall include email) by both parties or their Authorised Representatives.
- 35.3 In the event of any conflict or inconsistency between any of the various documents forming the Contract the following order of precedence shall apply:-
- 35.3.1 the Conditions of Contract;
 - 35.3.2 the Specification;
 - 35.3.3 the Conditions (including all of the Schedules).
- 35.4 Time will not be of the essence save where any date or time period is agreed in the implementation plan (under **Schedule 4**) to be a milestone or key date which must be achieved.
- 35.5 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 reserves to itself the right to order services similar to or the same as the Services other than from the Concessionaire.
- 35.6 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.
- 35.7 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 Concessionaire of any of the Contract 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.
- 35.8 Any notice or other communication given under the Contract shall be in writing and given by hand, first class recorded delivery post or email.
- 35.9 Notice given by hand shall be effective immediately; notice given by recorded postal delivery shall be effective at 9am two (2) Working Days after the date of posting; notice by email transmission shall be effective the Working Day after receipt by the notifying party of a transmission slip showing that the transmission has succeeded, provided that email transmissions shall be followed up with a confirmation by registered post or recorded delivery sent the same day as the email transmission.

Procurement Act 2023 Compliance Clauses

36. IMPLIED TERMS

36.1 Implied Term of Good Faith

36.1.1 The Parties shall act in good faith in relation to this Contract.

36.1.2 For the purposes of clause 36.1.1, acting in "good faith" means:

acting honestly, reasonably, and fairly, with integrity and with a genuine intention to perform contractual obligations; and

complying with: (i) relevant legal and professional standards; and (ii) recognised market practices relevant to the subject matter of this Contract.

36.1.3 Without limiting clause 36.1.1, the Parties shall work collaboratively to achieve the objectives of this Contract.

36.2 Implied Term of Open and Fair Dealing

36.2.1 The Parties shall deal with each other in an open and fair manner.

36.2.2 For the purposes of clause 36.2.1, dealing in an "open and fair manner" means:

- (a) providing such information as is reasonably necessary to enable the other Party to perform its obligations under this Contract;
- (b) not deliberately withholding information that would, if disclosed, materially affect the other Party's decision-making in relation to this Contract; and
- (c) resolving disputes promptly and in a manner that is proportionate to the nature, complexity, and value of the matter in dispute.

36.3 Implied Term of Non-Impairment

36.3.1 Neither Party shall do anything that impairs:

- (a) the ability of the other Party to perform its obligations under this Contract; or
- (b) the benefits that the other Party might reasonably expect to derive from proper performance of this Contract.

36.3.2 For the purposes of clause 1.3.1, "impair" means to hinder, obstruct, prevent, or reduce, whether directly or indirectly.

36.4 Relationship with Express Terms

36.4.1 The implied terms in clauses 36.1, 36.2, and 36.3 shall be read and construed consistently with the express terms of this Contract.

36.4.2 In the event of any inconsistency between an implied term and an express term, the express term shall prevail to the extent of the inconsistency.

36.4.3 Nothing in the implied terms shall impose an obligation on either Party to act in a manner that would breach an express term of this Contract.

37. TRANSPARENCY AND DISCLOSURE

37.1 Transparency Obligations

37.1.1 The Contractor acknowledges that the Authority is subject to the requirements of:

- (a) the Freedom of Information Act 2000;
- (b) the Environmental Information Regulations 2004;
- (c) the Procurement Act 2023; and
- (d) the Authority's own transparency and disclosure policies.

37.1.2 The Contractor shall assist and cooperate with the Authority to enable the Authority to comply with its obligations under the legislation and policies referred to in clause 37.1.1.

37.2 Publication of Contract Information

37.2.1 The Contractor acknowledges that the Authority may publish:

- (a) the provisions of this Contract, subject to the redaction of information that is exempt from disclosure in accordance with the provisions of the Freedom of Information Act 2000;
- (b) the Charges payable under this Contract;
- (c) performance metrics relating to the Contractor's performance of its obligations under this Contract; and
- (d) such other information as the Authority is required to publish under the Procurement Act 2023 or other applicable legislation.

37.2.2 Prior to publishing any information relating to this Contract, the Authority shall consult with the Contractor to enable the Contractor to identify any information that it considers to be exempt from disclosure under the Freedom of Information Act 2000 or other applicable legislation.

37.2.3 The Authority shall take account of any representations made by the Contractor regarding the exemption of information from disclosure, but the final decision as to whether any information is exempt from disclosure shall rest with the Authority.

38. CONTRACT NOTICES

38.1 Publication of Contract Modification Notices

38.1.1 The Parties acknowledge that the Authority may be required to publish a contract modification notice in accordance with the Procurement Act 2023 if this Contract is modified during its term.

38.1.2 The Contractor shall provide the Authority with all information necessary to enable the Authority to publish a contract modification notice if required.

38.1.3 The publication of a contract modification notice shall not affect the validity or enforceability of any modification to this Contract.

39. DISPUTE RESOLUTION

39.1 Procurement Act Requirements

39.1.1 The Parties acknowledge that the dispute resolution provisions in this Contract must comply with the requirements of the Procurement Act 2023, including any applicable regulations or statutory guidance.

39.1.2 The Parties shall ensure that any dispute arising under or in connection with this Contract is resolved in accordance with the dispute resolution procedure set out in Clause 31.

39.1.3 Nothing in this Contract shall prevent either Party from seeking an interim remedy from the courts where such remedy is necessary to protect that Party's position pending the resolution of a dispute under the dispute resolution procedure.

40. CONTRACT TERMINATION

40.1 Termination on Mandatory Grounds

40.1.1 Without prejudice to any other rights or remedies that the Authority may have, the Authority may terminate this Contract with immediate effect by giving written notice to the Contractor if:

- (a) the Contractor or any of its directors, officers, or key personnel is convicted of an offence specified in regulations made under the Procurement Act 2023;
- (b) the Contractor is subject to a relevant exclusion ground under the Procurement Act 2023; or
- (c) the continuation of this Contract would breach the Procurement Act 2023 or any other applicable procurement legislation.

40.1.2 If this Contract is terminated under clause 40.1.1, the Contractor shall:

- (a) compensate the Authority for any losses directly resulting from the termination; and
- (b) not be entitled to claim any compensation or other payment from the Authority in respect of such termination.

41. COMPLIANCE WITH STATUTORY OBLIGATIONS

41.1 General Compliance

41.1.1 The Contractor shall comply with all applicable laws, statutes, regulations, and codes from time to time in force, including but not limited to:

- (a) the Procurement Act 2023;
- (b) the Modern Slavery Act 2015;
- (c) the Equality Act 2010;
- (d) the Data Protection Act 2018 and UK GDPR; and
- (e) all applicable health and safety legislation.

41.1.2 The Contractor shall maintain all licenses, permissions, authorizations, consents, and permits that it needs to carry out its obligations under this Contract.

41.1.3 The Contractor shall notify the Authority immediately upon becoming aware of any breach or potential breach of any applicable law, statute, regulation, or code.

IN WITNESS whereof the Parties have executed this Contract as a deed on the day and year first above written

EXECUTED as a **DEED** by affixing the

COMMON SEAL of **CONWY COUNTY BOROUGH COUNCIL** in the presence of:

Authorized Signatory: _____

EXECUTED as a **DEED**

by [**CHARGE POINT OPERATOR**]) acting by:

Director: _____

Director / Secretary: _____