

**SECTION C2 CONDITIONS FOR SERVICES**  
**TERMS AND CONDITIONS**

# CONDITIONS OF CONTRACT FOR SERVICES

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## S1. Definitions

In this Agreement the following words shall have the following meanings unless the context requires otherwise:

**Assigned Employees** has the meaning set out in clause S8.1

**Authority Assets** means any tools, equipment, plant and material belonging to the Authority which are made available to the Supplier including, but not limited to, those items set out in the section headed Authority Assets in Section A.1 (Particulars) of this Agreement;

**Deliverables** means anything specified in this Agreement to be delivered by the Supplier to the Authority under this Agreement including reports, manuals and other documentation and outputs;

**Direct Losses** means all damages, losses, indebtedness, claims, actions, cash, expenses (including the cost of legal or professional services, legal costs being an agent/client, client paying basis), proceedings, demands and charges whether arising under statute, contract or at common law but to avoid doubt, excluding Indirect Losses;

**Directive** means the EC Acquired Rights Directive 2001/23/EC as amended;

**Employee Liability Information** means the information which a transferor is obliged to notify to a transferee pursuant to Regulation 11(1) of TUPE regarding any person employed by him who is assigned to the organised grouping of resources or employees which is the subject of a Relevant Transfer and also such employees as fall within Regulation 11(4) of TUPE;

**Future Service Provider** means any service provider to the Authority who shall provide any service equivalent to any part of the Services immediately after expiry or earlier termination of this Agreement;

**Indirect Losses** means loss of profits, loss of use, loss of production, loss of business, loss of business opportunity, or any claim for consequential loss or for indirect loss of any nature;

**Key Personnel** means any of the Supplier's Personnel named in this Agreement as key personnel in Section A.1 (Particulars) of this Agreement or any of the Supplier's Personnel who the Authority notifies to the Supplier in writing are to be regarded as key personnel;

**Legislation** means as defined in Section C.1 (General Conditions) of this Agreement;

**Particulars** means as defined in Section C.1 (General Conditions) of this Agreement;

**Price** means as defined in Section C.1 (General Conditions) of this Agreement;

**Premises** means the location(s) where the Services are to be performed as specified in this Agreement;

**Relevant Employees** means the employees who are or may be the subject of a Relevant Transfer;

**Relevant Transfer** means a relevant transfer for the purposes of TUPE;

**Relevant Workforce Information** means the Employee Liability Information and together with other information reasonably requested by the Authority to enable an effective tendering process and transfer of the Services to the Future Service Provider;

**Retendering Information** has the meaning set out in clause S8.1.1;

**Return Date** has the meaning set out in clause S8.5;

**Returning Employees** has the meaning set out in clause S8.5;

**Services** means as defined in Section C.1 (General Conditions) of this Agreement;

**Specification** means as defined in Section C.1 (General Conditions) of this Agreement;

**Subcontractor** means as defined in Section C.1 (General Conditions) of this Agreement;

**Supplier's Personnel** means as defined in Section C.1 (General Conditions) of this Agreement;

**TUPE** means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (246/2006) and or any other regulations enacted for the purpose of implementing the EC Acquired Rights Directive 2001/23/EC, as amended, Directive into English law.

## **S2. The Services**

S2.1 The Supplier shall from the Commencement Date and for the duration of the Contract Period provide the Services to the Authority as set out in the Particulars and in accordance with this Agreement.

S2.2 The Supplier warrants that it shall:

S2.2.1 meet any performance dates for the Services specified in the Particulars, this Agreement or as notified to the Supplier by the Authority;

S2.2.2 co-operate with the Authority in all matters relating to the Services, and comply with all instructions of the Authority;

S2.2.3 perform the Services with all the due skill, care and diligence to be expected of a competent supplier experienced in providing services of a similar kind, scope and complexity as the Services;

S2.2.4 appropriately select and use Supplier's Personnel who are suitably skilled, trained, experienced, and security cleared (as required) to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with this Agreement;

S2.2.5 adequately supervise and manage the Supplier's Personnel properly to ensure that Supplier's obligations fulfilled in accordance with this Agreement;

S2.2.6 ensure that if any of the Supplier's Personnel are not British citizens, the Supplier shall ensure that the Supplier's Personnel has the necessary Home Office permission to work and shall ensure compliance with the Immigration, Asylum and Nationality Act 2006 and any other Legislation relevant to the legality of employing any person who is not a British national;

S2.2.7 ensure that the Services conform with all descriptions and specifications set out in any Specification, and that the Deliverables shall be fit for any purpose expressly or impliedly made known to the Supplier by the Authority;

- S2.2.8 provide all equipment, tools and vehicles and use the best quality goods, materials, standards and techniques, and ensure that the Deliverables, and all goods and materials supplied and used in the Services or transferred to the Authority, will be free from defects in workmanship, installation and design;
  - S2.2.9 obtain and at all times maintain all necessary licences and consents, and comply with all applicable Legislation;
  - S2.2.10 observe all health and safety rules and regulations and any other security requirements that apply at any of the Authority's premises; and
  - S2.2.11 hold all Authority Materials in safe custody at its own risk, maintain the Authority Materials in good condition until returned to the Authority, and not dispose or use the Authority Materials other than in accordance with the Authority's written instructions or authorisation. All Authority Materials are the exclusive property of the Authority.
- S2.3 The Authority's rights under this Agreement are in addition to the statutory terms implied in favour of the Authority (so far as not inconsistent with any express terms of this Agreement) including those terms implied under the Supply of Goods and/or Services Act 1982.

### **S3. Supplier's Personnel**

- S3.1 If and when requested by the Authority, the Supplier shall provide the Authority with a list of the names of all the Supplier's Personnel who may at any time be concerned with the provision of the Services or any part of it, specifying in each case the capacities in which they are so concerned and giving such other particulars and evidence of identity, qualifications, experience and other supporting evidence as the Authority may reasonably require.
- S3.2 Where the Authority reasonably requires by notice to the Supplier that any of the Supplier's Personnel is not to become involved in or is to be removed from involvement in the Services, the Supplier shall immediately comply with such request. The Supplier shall replace any such person with someone with equivalent experience, qualifications, training and security clearance. The Authority reserves the right to reject any of the Supplier's Personnel without giving any reason or explanation.
- S3.3 The Authority also reserves the right to remove the right of contract participation from any of the Supplier's Personnel at any time during the lifetime of the Agreement, without giving any reason or explanation. The Authority shall not in any circumstances be liable to any such person or member of staff or the Supplier in relation to any such removal and the Supplier shall fully and promptly indemnify the Authority in respect of any claims brought by any such person or member of staff arising from it.
- S3.4 The Supplier's Personnel shall:
  - S3.4.1 take instructions and all directions and, where appropriate, receive the Authority's decisions only through the Authority's Contract Manager;
  - S3.4.2 act in accordance with all reasonable instructions and directions from the Authority's Contract Manager in carrying out the Services;
  - S3.4.3 keep the Authority's Contract Manager advised on all matters materially related to its performance of the Services according to reporting formats specified by the Authority;
  - S3.4.4 answer all reasonable enquiries received from the Authority's Contract Manager; and
  - S3.4.5 attend or be represented at regular meetings as requested by the Authority from time to time.
- S3.5 The Supplier shall employ sufficient staff to ensure that the Services are provided under this Agreement, including during periods of absence of its staff due to sickness, maternity leave, holidays, training or otherwise.

- S3.6 The decision of the Authority as to whether any person is not to become involved in or is to be removed from involvement in the Services, as to the designation or approval of Key Personnel and as to whether the Supplier has furnished the information or taken the steps required by this clause S3 shall be final and conclusive.
- S3.7 The Supplier shall make the Key Personnel available for the purposes of the Services and shall not make any changes in the Key Personnel without the prior written approval of the Authority, such approval not to be unreasonably withheld. Whenever, for any reason, the Key Personnel are unavailable for the performance of the Services, the Supplier shall as soon as reasonably practicable substitute suitably qualified replacements acceptable to the Authority.
- S3.8 The Supplier shall ensure that leave is taken by the Key Personnel on dates which do not interfere with the proper delivery of the Services.
- S3.9 The Supplier shall not vary the Prices at any time during the term of this Agreement including any extension due to the promotion of any of the Supplier's Personnel.
- S3.10 The Supplier shall bear the cost of any notice, instruction or decision of the Authority under this clause S3.

#### **S4. Equipment, Plant and Materials**

- S4.1 The Supplier shall provide all equipment, plant and materials necessary for the provision of the Services except where otherwise provided for under this Agreement.
- S4.2 Where the Authority in accordance with this Agreement issues Authority Assets free of charge to the Supplier such Authority Assets shall be and remain the property of the Authority. The Supplier shall not in any circumstances have a lien on the Authority Assets and shall take all steps necessary to ensure that the title of the Authority and the exclusion of any lien are brought to the attention of any third party dealing with the Authority Assets.
- S4.3 The Supplier shall maintain all Authority Assets provided by the Authority in good order and condition and shall use such equipment, plant and materials solely in connection with this Agreement. The Supplier shall notify the Authority of any surplus materials remaining after completion of the Services and shall dispose of them as the Authority may direct. Waste of such materials arising from bad workmanship or negligence of the Supplier or the Supplier's Personnel shall be made good at the Supplier's expense. Without prejudice to any other of the rights of the Authority, the Supplier shall deliver up such equipment, plant or materials whether processed or not to the Authority on demand.
- S4.4 Where the Supplier utilises part of or an element of the Price for the purchase of equipment, plant or materials for the purposes of delivering the Services, the Supplier shall maintain a list of such equipment, plant and/or materials and provide a copy of such list upon demand to the Authority. No later than one month prior to expiry or upon notification of termination of this Agreement the Supplier shall provide a copy of such list to Authority and invite the Authority to select those items of equipment, plant or materials that the Authority would like passed to it at the expiry or earlier termination of this Agreement. The Supplier shall comply with the Authority's instruction in this respect.
- S4.5 Under International Financial Reporting ("IFRS"), the Authority is required to ensure that contracts that secure the use of specific assets solely for the Authority are treated as assets within its accounts, e.g. the hiring or leasing of equipment over more than one year or the outsourcing of a service that may include the use of assets. In accordance with this requirement, the Supplier shall identify such assets and their value prior to contract commencement. The asset information will be maintained during the life of the contract to reflect acquisition and disposal of assets.

#### **S5. Monitoring and Inspection**

- S5.1 The Authority reserves the right to monitor the Supplier's performance of its obligations under this Agreement by any means it considers appropriate at its absolute discretion, including by unannounced inspections.

- S5.2 The Supplier shall assist the Authority as necessary and undertake as requested any monitoring of the Services or of the users or recipients of the Services as the Authority shall require in order for the Authority to fulfil any of its statutory obligations, including, without limitation, to meet its obligations under the Equality Act 2010.
- S5.3 Throughout the Contract Period, the Parties shall work together to ensure that this Agreement and the Supplier's performance of the Services represent value for money and continuous improvement for the benefit of the Authority.
- S5.4 At any time during the Contract Period, the Authority shall be entitled to carry out, either itself or by engaging a suitably qualified third party, a thorough review of the operation of this Agreement and the provision of the Services, including, their value for money. The Supplier shall offer all reasonable assistance, at its own cost, to the Authority and any independent third party in the carrying out of any such review and shall attend meetings and provide documents as may be reasonably requested for this purpose.
- S5.5 The Supplier shall, upon request, provide management information based on this Agreement's activity and demand to the Authority's Contract Manager, the format and timescales for which shall be agreed between the Supplier and the Authority's Contract Manager where such a request is made.

## **S6. The Authority Premises**

- S6.1 This clause S6 shall only apply where the Premises are provided by or on behalf of the Authority or where access to the Premises is required by the Supplier in order to perform the Services.
- S6.2 Access to the Premises shall be made available to the Supplier free of charge and shall be used solely for the purposes of performing this Agreement. The Supplier shall have use of the Premises as licensee.
- S6.3 Access to the Premises shall not be exclusive to the Supplier but shall be such as to enable the Supplier to carry out the Services concurrently with the execution of work by others. The Supplier shall co-operate with such others as the Authority may reasonably require.
- S6.4 Where any of the Supplier's Personnel is replaced in accordance with S3 the Supplier shall ensure that such Supplier's Personnel are prevented being admitted to the Premises and take any steps reasonably required by the Authority to prevent such admittance.
- S6.5 The Supplier shall make no delivery of its equipment, plant or materials nor commence the Services on the Premises without the Authority's Contract Manager's prior approval.
- S6.6 The Supplier shall maintain its items of equipment, plant and materials within the Premises in a safe, serviceable and clean condition.
- S6.7 All equipment, plant and materials brought onto the Premises by the Supplier shall be at the Supplier's own risk and the Authority shall have no liability for any loss of or damage to the same unless the Supplier can demonstrate that such loss or damage was caused by the wilful act of the Authority.
- S6.8 The Supplier shall provide for the haulage or carriage of its equipment, plant or materials to the Premises and the removal therefrom when no longer required at the Supplier's sole cost.
- S6.9 The Authority shall have the power at any time during this Agreement to order in writing that the Supplier:
- S6.9.1 remove from the Premises any of its equipment, plant or materials which in the opinion of the Authority is either hazardous, noxious or not in accordance with this Agreement; and,
  - S6.9.2 substitute proper and suitable equipment, plant and materials.

- S6.10 On completion of the Services the Supplier shall remove its equipment, plant and unused materials and shall clear away from the Premises all rubbish arising out the Services and leave the Premises in a neat and tidy condition.
- S6.11 The Supplier shall pay the costs of making good any damage to the Premises (and any fixtures and fittings of the Premises) caused by the Supplier's Personnel other than fair wear and tear.
- S6.12 Continuity of electricity, heating, telephone, water supplies, stationery and sewerage ("Supplies") at the Premises is not guaranteed and no liability will be accepted by the Authority for shutdown or restrictions due to any cause whatsoever.
- S6.13 The Supplier's Personnel shall ensure that the Premises are used with due regard for the need for the efficient use and conservation of Supplies and the Authority shall not bear the costs of any use of such Supplies by the Supplier's Personnel which do not conform to the requirements of this clause S6.13.

## **S7. Health and Safety, and Security**

- S7.1 The Supplier shall notify the Authority if any of the Services are or become hazardous to health, safety or the operation of the Authority's services and of the precautions that should be taken in respect thereto.
- S7.2 The Authority shall notify the Supplier of any special health and safety hazards which the Authority becomes aware of in relation to the Premises, where the Premises are provided by or on behalf of the Authority, which may affect the Supplier's performance of the Services. If the Authority notifies the Supplier of any special health and safety hazards the Supplier shall draw any such hazards to the attention of the Supplier's Personnel.
- S7.3 The Supplier shall be responsible for the observance by itself and the Supplier's Personnel of all such rules, site regulations, policies, procedures, requirements (including those relating to security arrangements) and safety precautions necessary for the protection of itself and the Supplier's Personnel and any other persons including all precautions required to be taken by or under all applicable laws, enactments, orders, regulations, other similar instruments and codes of practice. The Supplier and the Supplier's Personnel shall co-operate fully with the Authority to ensure the proper discharge of these duties.
- S7.4 Where the Premises are provided by or on behalf of the Supplier, the Authority shall be entitled to inspect the Premises to ensure they are appropriate for the provision of the Services.
- S7.5 Accidents to the Supplier's Personnel at the Premises which ordinarily are required to be reported in accordance with the Health and Safety at Work etc. Act 1974 shall be reported immediately to the Authority's Contract Manager.
- S7.6 The Authority may undertake security and/or identity checks on any of the Supplier's Personnel requiring unescorted access to the Authority's premises or IT network. The Supplier and the Supplier's Personnel must comply with the Authority's arrangements for undertaking security and identity checks.

## **S8. Transfer of undertakings (Protection of Employment) Regulations 2006 (TUPE) Retendering**

- S8.1 The Supplier shall (and shall procure that any Subcontractor shall) within the period of twelve (12) months immediately preceding the end of the Contract Period, or following the service of a notice to terminate in accordance with the provisions of the Agreement:
- S8.1.1 on receiving a request from the Authority to provide Employee Liability Information in respect of any person engaged or employed by the Supplier or any of its Subcontractor in the provision of the Services ("**Assigned Employees**"), the Relevant Workforce Information and other matters affecting each of those Assigned Employees who it is expected, if they remain in the employment of the Supplier (or of any Subcontractor as the case may be) until immediately before the end of the Contract Period, would be Relevant Employees (**Retendering Information**);

- S8.1.2 provide the Retendering Information promptly and at no cost to the Authority;
  - S8.1.3 notify the Authority forthwith in writing of any material changes to the Retendering Information promptly as and when such changes arise;
  - S8.1.4 be precluded from making any material increase or decrease in the numbers of Assigned Employees;
  - S8.1.5 be precluded from making any increase in the remuneration or other change in the terms and conditions of the Assigned Employees other than in the ordinary course of business, and provided that the Authority's prior written consent is obtained; and
  - S8.1.6 be precluded from transferring any of the Assigned Employees to another part of its business or moving other employees from elsewhere in its or their business who have not previously been employed or engaged in providing the Services to provide the Services, save with the Authority's prior written consent.
- S8.2 Without prejudice to clauses S8.1 and S8.3, the Supplier shall provide (and shall procure that any Subcontractor shall provide) the Employee Liability Information to the transferee under TUPE at such time or times as are required by TUPE, and shall warrant at the time of providing such Employee Liability Information that such information will be updated to take account of any changes to such information as is required by TUPE.
- S8.3 The Supplier shall indemnify and shall keep indemnified in full the Authority and at the Authority's request any Future Service Provider against all Direct Losses arising from any claim by any party as a result of the Supplier or any of its Subcontractors failing to provide or promptly to provide the Authority and/or any Future Service Provider where requested by the Authority's Commercial Representative with any Retendering Information and/or Employee Liability Information, or as a result of any material inaccuracy in or omission from the Retendering Information and/or Employee Liability Information. However this indemnity shall not apply in respect of the Retendering Information to the extent that such information was originally provided to the Supplier by the Authority and was materially inaccurate or incomplete when originally provided.

#### **Transfer at the end of the Contract Period**

- S8.4 The Authority and the Supplier agree that it is their intention that TUPE shall apply at the end of the Contract Period in respect of the provision thereafter of any service equivalent to the Services or part thereof, but the position shall be determined in accordance with TUPE at the date of expiry or termination as the case may be, and this clause is without prejudice to such determination.
- S8.5 For the purposes of this clause S8, "**Returning Employees**" shall mean those employees wholly or mainly engaged in the provision of the Services as the case may be as immediately before the end of the Contract Period whose employment transfers to the Authority or a Future Service Provider pursuant to TUPE. At the end of the Contract Period for whatever reason (such date being termed the "**Return Date**"), the provisions of this clause S8.5 will apply:
- S8.5.1 The Supplier shall or shall procure that all wages, salaries and other benefits of the Returning Employees and other employees or former employees of the Supplier or its Subcontractors (who had been engaged in the provision of the Services) and all PAYE tax deductions, pension contributions and national insurance contributions relating thereto in respect of the employment of the Returning Employees and such other employees or former employees of the Supplier or Subcontractors up to the Return Date are satisfied;
  - S8.5.2 Without prejudice to clause 8.5.1, the Supplier shall:
    - (i) remain (and procure that its Subcontractors shall remain) (as relevant) responsible for all the Supplier's or Subcontractor's employees (other than the Returning Employees) on or after the end of the Contract Period and shall indemnify the Authority and any Future Service Provider against all Direct Losses incurred by the Authority or any Future Service Provider resulting from any claim whatsoever whether arising before on or after the Return Date by or on behalf of any of the Supplier's or Subcontractor's employees who are not Returning Employees;



- (ii) in respect of those employees who are Returning Employees, indemnify the Authority and any Future Service Provider against all Direct Losses incurred by the Authority or any Future Service Provider resulting from any claim whatsoever by or on behalf of any of the Returning Employees in respect of the period on or before the Return Date (whether any such claim, attributable to the period up to and on the Return Date, arises before, on or after the Return Date) including but not limited to any failure by the Supplier or any Subcontractor to comply with its or their obligations under Regulations 13 and 14 of TUPE and any award of compensation under Regulation 15 of TUPE as if such legislation applied, even if it does not in fact apply, save to the extent that any such failure to comply arises as a result of an act or omission of any of the Authority or any Future Service Provider.

S8.5.3 The Authority shall be entitled to assign the benefit of the indemnity in clause S8.5.2(ii) to any Future Service Provider.

### **Sub-Contractors**

S8.6 In the event that the Supplier enters into any subcontract in connection with this Agreement, it shall impose obligations on its Subcontractors in the same terms as those imposed on it pursuant to this clause S8 and shall procure that the Subcontractor complies with such terms. The Supplier shall indemnify and keep the Authority indemnified in full against all Direct Losses, incurred by the Authority or any Future Service Provider as a result of or in connection with any failure on the part of the Supplier to comply with this clause and/or the relevant Subcontractor's failure to comply with such terms.

### **S9. Soliciting for Employment**

S9.1 Each Party to this Agreement undertakes not to attempt to solicit nor procure the service or employment of employees of the other Party or persons engaged under a contract for services with the other Party during the term of this Agreement and within six calendar months after the termination or expiry of this Agreement without the prior written permission of the other Party.

S9.2 Clause S9.1 shall not restrict either Party from appointing any person, whether employee or consultant of the other or not, who has applied in response to an advertisement properly and publicly placed in the normal course of business. In such event, neither Party shall have any obligation or liability to the other by way of introductory or finder's fee.

### **S10. Business Continuity Planning**

S10.1 The Authority may require the Supplier to develop and agree with the Authority a Business Continuity Plan. Where so required the Supplier shall:

S10.1.1 in accordance with good industry practice, maintain detailed and comprehensive contingency plans against events which could affect the ability of the Supplier or its agent or Sub-contractors to perform the Services in accordance with this Agreement, including loss of computer and business systems, loss or failure of equipment, loss of utilities or premises, industrial relations problems, failures in the supply chain, pandemic and loss of Key Personnel; and

S10.1.2 keep the plans under review and make such changes, from time to time, as shall be required in accordance with good industry practice.

S10.2 The Authority shall be entitled to review any business continuity plans developed under this Agreement at any time and, at its sole discretion, make suggested changes or amendments to the plans which the Supplier, acting reasonably shall consider and, after consultation and agreement with the Authority, put in place.

**S11. Exit and Skills Transfer**

The Authority may require the Supplier to develop and agree with the Authority an exit and skills transfer plan describing how the Services shall be handed over and appropriate skills transferred. Any such exit and skills transfer plan will be developed in line with the Authority's requirements and updated through the term of this Agreement.