

## **NFNPA - Invitation to Quote**

**05/04/2023**

### **Introduction**

The New Forest National Park Authority, on behalf of the Forest Farming Group, is seeking a consultant and/or individual to work with the group members to make sure the New Forest is well positioned to access funding from the new Environmental Land Management Schemes.

### **Background**

The New Forest hosts an extraordinary diverse range of species that are rare, uncommon, and declining elsewhere in the UK and Western Europe. The Hampshire Biodiversity Action Plan has identified 50 notable species meriting special regard, with 41 of these found in the New Forest. The area is well placed to sequester increased levels of carbon and it also boasts exceptional water quality, which requires protection.

The various public and non-public bodies that share the management of this unique landscape have a very good track record of collaborative working. This is illustrated by the Verderers' of the New Forest' HLS board, the New Forest National Park Partnership Plan, and the work of the Forest Farming Group to date.

### **About the Forest Farming Group (FFG)**

The group has its origins in the decision of the UK to leave the European Union and consequently the Common Agricultural Policy. The CAP has been the mechanism for providing financial support to New Forest farmers and land managers through the Single Payment Scheme, Basic Payment Scheme and environmental stewardship schemes; Countryside Stewardship and Higher Level Stewardship.

The primary focus of the group has been to work together to promote the need for a bespoke land management scheme for the New Forest which will continue to deliver and maintain vital environmental services for the benefit of the public. The FFG has identified a range of public goods provided by the New Forest including the grazing of legally depastured animals and published the report 'Understanding the New Forest's Natural Capital' in 2018 which gives an evidence base and proposes a structure to help create a replacement for the current system that will be specially suited to the New Forest area.

The FFG has made representations to government ministers and officials and responded to consultations on the future of farming and the Environmental Land Management (ELM) Policy Discussion Document.

The successful supplier will report directly to the FFG and will provide regular written updates as well as attending the FFG meetings

## **The Brief**

We are looking for a supplier to manage the work necessary to be able to enter a New Forest Higher Tier Countryside Stewardship in place of the existing HLS and to progress this CS application with a key focus on the following activities:

1. Work with the FFG and Natural England to write a detailed specification for a PA2 feasibility study and co-ordinate obtaining three written quotations for preparing the study.
2. Scoping the requirements of entering into a Landscape Recovery Scheme and what further work the FFG may need to undertake to achieve this
3. Explore the possibility of expanding the existing HLS scheme area to include other landowners within and around the Forest.
4. Further research to establish the eligibility of the New Forest Inclosures.

## **Outputs / deliverables**

In the first two months May - June:

- A detailed specification for a PA2 Feasibility study
- Securing quotations for the preparation of the study

Further outputs to be agreed from June 2023 (or on notification of the success or failure of the application for the PA2 submission).

## **The contract**

The contract is for a six month period but includes a break clause to review the contract at the end of 3 months (or the notification of the success or failure of the initial application whichever is sooner). Further work is anticipated.

We are seeking a supplier with :

- an understanding of the Countryside Stewardship Higher Tier scheme
- an understanding of emerging Agriculture policy, ELMs including Landscape Recovery
- an understanding of the New Forest National Park, roles and responsibilities of Forestry England, National Park Authority and Verderers of the New Forest
- an understanding of commoners of the New Forest and commoning systems
- an understanding of the key issues and challenges within in the New Forest
- ability to identify risks and opportunities
- strong communication and engagement skills

**Bids will be assessed using a price (30%), quality (70%) matrix.**

Prospective suppliers should:

- Provide no more than four sides of A4 explaining their suitability, experience, and approach to the brief.
- Provide CVs for relevant staff.
- Include their proposed number of hours/days to achieve this work and the hourly/daily rate applicable.
- Be prepared, if successful, to evidence Professional Indemnity Insurance of at least £50,000.

**Key Timelines – to be confirmed / subject to change**

| Stage   | Date             |
|---|------------------|
|   |                  |
| Forest Farming Group meeting                              | 25 May 2023      |
| Submission of PA 2 application                            | June 2023        |
| Forest Farming Group meeting                              | 20 July 2023     |
| Development of Higher Tier application (subject to above) | June – Sept 2023 |
|   |                  |

A copy of our Standard Letter and Conditions of Contract for Services can be found at the end of this document.

**All submissions can be emailed to [tender@newforestnpa.gov.uk](mailto:tender@newforestnpa.gov.uk) and must be submitted by 12noon on 24 April 2023.**

Any queries must be made via the same email.

**Draft Standard Letter of Contract (consultancy):**



**Private and Confidential**

xx xxxxxxxx 20xx

Dear xxxxxxx

**CONTRACT FOR SERVICE – Enter work/project title**

Thank you for agreeing to work on a consultancy basis for the Authority. This letter and the attachment set out the conditions of the contract for your temporary appointment and the status of your relationship, which is as an independent, individual contractor providing services to the Authority.

The framework of this contract for service will remain in place from xx xxxxxxxx 20xx until xx xxxxxxxxxxxx 20xx. The total value of the contract is £xx,xxx.

I attach a copy of the Standard Conditions of Contract that will apply throughout the period of work you undertake as an independent contractor with the Authority (Annex A). Please note that these Standard Conditions apply to you as the basis of an individual, personal contract. As such, it relates solely to you as an individual and the services to be provided by you. It therefore precludes you from the employment of any third party for the provision of these services.

Please sign and return the attached duplicate of this letter as confirmation of your acceptance of this contract.

Yours sincerely,

**Insert your name**  
**Insert your job title**

Encs: Standard Conditions of Contract

I have received and accept the terms set out in this letter and the Standard Conditions of Contract.

Signed..... **Insert name** ..... Date.....

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**Draft Standard Conditions of Contract for Services:**

**New Forest National Park Authority**

**STANDARD CONDITIONS OF CONTRACT FOR SERVICES**

**Name of Supplier**

**Start & End dates of Contract**

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The conditions may only be varied with the written agreement of the Authority. No terms or conditions put forward at any time by the Contractor shall form any part of the contract.

## **1. DEFINITIONS AND INTERPRETATION**

1.1 In this Contract, unless the context requires otherwise, the following words and phrases shall have the following meanings:-

“Authority” means the New Forest National Park Authority.

“Authority’s Premises” means land or buildings occupied, owned or leased by the Authority or any place where the Services are to be performed.

“Authority’s Property” means anything issued or otherwise provided in connection with the Contract by or on behalf of the Authority or any person authorised to act on its behalf;

“Commencement Date” means the date specified in the Contract for the commencement of the Services;

“Condition” means a condition within the Contract;

“Contract” means the matters listed in the Authority’s Contract Letter, including these Conditions, and all other documents listed in that letter.

“Contractor” means the person appointed by the Authority for the performance of the Services (including any individuals or successors);

“Due Payment Date” means the date for payment for the Services, which, in respect of any invoice, is 30 days after the Authority has verified the invoice.

“Equipment” means all equipment, materials, consumables and plant other than the Authority’s Property to be used by the Contractor in the provision of the Services;

“Intellectual Property Right(s)” means patents, registered designs, registered trade marks or service marks and applications for any of the above, design rights, copyrights, database rights for the purposes of the Copyright and Rights in Databases Regulations 1997, unregistered trade marks or service marks, Know-How, trade names, technical information, domain names and any other similar rights in any jurisdiction for inventions or discoveries;

“Know-How” means all information not in the public domain held in any form (including without limitation that comprised in or derived from drawings, data formulae, patterns, specifications, notes, samples, chemical compounds, biological materials, computer software, component lists, instructions, manuals, brochures, catalogues and process descriptions and scientific approaches and methods).

“Month” means calendar month unless otherwise defined;

Any reference to a “person” shall as the context may require, be construed as a reference to any individual, firm, company, corporation, government department, agency or any association or partnership (whether or not having a separate legal personality);

“Premises” means any land or buildings where the Services are to be performed;

“Service(s)” means all Services which the Contractor is required to carry out under the Contract as defined in the Authority’s Contract Letter.

- 1.2 Unless the context requires otherwise, the singular shall include the plural and vice versa, and the masculine shall include the feminine and vice versa;
- 1.3 The headings are inserted for convenience only and shall not affect the interpretation of the Contract.
- 1.4 Reference to any legislative and statutory requirement or similar instrument shall be deemed to include reference to any subsequent amendment to them.
- 1.5 In case of discrepancy between these Conditions and other documents forming part of the Contract, these Conditions shall prevail unless otherwise agreed in writing.

## **2. BASIS OF THE CONTRACT**

### **2.1 Remuneration and hours:**

The Authority anticipates that during this contract you will work a maximum of approximately **xx** days and that your work pattern will be agreed with **xxx**. Overtime premium rates are not payable. On that basis, your remuneration will be **£xxx** per day. No payments will be due for absences from work or where hours have not been worked for whatever reason.

### **2.2 Changes to period of contract:**

Either party can terminate this contract early giving 2 weeks written notice of the termination.

### **2.3 Location:**

The base for your work is **at xxx**.



#### 2.4 Expenses:

You will be reimbursed for travel costs incurred by you in carrying out your duties under this contract. The current rate that you may claim is 45 pence per mile. The Authority may determine and set subsistence allowances for these costs in the future.

#### 2.5 National Insurance and Personal Indemnity:

The Authority, the HMRC and the Department for Work and Pensions will regard you as being self-employed. Accordingly, this will indemnify the Authority against any tax, National Insurance contributions or similar payments for which the Authority may otherwise be liable in respect of you by reason of this contract.

#### 2.6 Abatement of pension:

If you are in receipt of a pension, it is your responsibility to confirm whether or not your employment incurs a liability for abatement of your pension, and to ensure that you have complied with the requirements of the scheme and its administration in this respect.

### 3. SERVICES

- 3.1 The Contractor shall perform the Services in accordance with the provisions of the Contract and until the Services are completed to the satisfaction of the Authority.

### 4. VARIATION OF THE SERVICES

- 4.1 The Authority reserves the right by notice to the Contractor to vary the Services.

#### ***Provision of the Services***

### 5. CONDITIONS AFFECTING PROVISION OF SERVICES

- 5.1 The Contractor is deemed to have understood the nature and extent of the Services to be carried out and satisfied himself in relation to all matters connected with the Services including the conditions affecting the provision of the Services, the suitability of the Authority's Premises or any other Premises where the Services are to be performed, and any Equipment

necessary for the performance of the Services, subject to all such matters being discoverable by the Contractor.

- 5.2 The Authority shall, at the request of the Contractor, grant such access to the Authority's Premises as may be reasonable for this purpose.

## **6. CONTRACTOR'S STATUS**

- 6.1 In carrying out the Services the Contractor shall be acting as principal and not as the agent or employee of the Authority.
- 6.2 Nothing in the Contract shall impose any liability on the Authority in respect of any liability incurred by the Contractor to any other person 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 this Contract or any negligence on the part of the Authority, its staff or agents.

## **7. AUTHORITY'S PROPERTY**

- 7.1 The Authority's Property shall remain the property of the Authority and shall be used in the performance of the Contract and for no other purpose without prior approval of the Authority.
- 7.2 The Contractor shall ensure that the title in the Authority's Property is brought to the attention of any third party dealing with the Authority's Property.
- 7.3 On receipt of the Authority's Property, the Contractor shall subject it to a visual inspection and such additional inspection and testing as may be necessary to check that it is not defective. If the Contractor discovers any defect, he shall notify the relevant person responsible in the Authority within 14 days of receipt of the Property, or such other period as may be agreed with the Authority. The Authority shall, within 14 days of receiving such notification, inform the Contractor of the action to be taken.
- 7.4 The Authority shall be responsible for the repair or replacement of the Authority's Property unless the need for repair or replacement is caused by the Contractor's failure to comply with Condition 7.3, or by the negligence or default of the Contractor.
- 7.5 The Contractor shall maintain all items of the Authority's Property in good and serviceable condition (fair wear and tear excepted), and in accordance with the manufacturer's recommendations.
- 7.6 The Contractor shall be liable for any loss of or damage to any Authority's Property unless the Contractor is able to demonstrate that such loss or

damage was caused or contributed to by the negligence or default of the Authority.

## **8. FREE-ISSUE MATERIALS**

- 8.1 Where the Authority for the purpose of the Contract issues materials free of charge to the Contractor such materials shall be and remain the property of the Authority.
- 8.2 The Contractor shall maintain all such materials in good order and condition and shall use them in an economical manner and solely in connection with the Contract.
- 8.3 The Contractor shall notify the Authority of any surplus materials remaining after completion of the Services and shall dispose of them as the Authority may direct.
- 8.4 Any waste of materials arising from bad workmanship or negligence of the Contractor shall be made good at the Contractor's expense. Without prejudice to any other rights of the Authority, the Contractor shall deliver up such materials whether processed or not to the Authority on demand.

## **9. EQUIPMENT**

- 9.1 The Contractor shall maintain all items of Equipment in good and serviceable condition.
- 9.2 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 except to the extent that the Contractor is able to demonstrate that such loss or damage was caused or contributed to by the negligence or default of the Authority.

## **10. INDEMNITY OF AUTHORITY AND INSURANCE**

- 10.1 The Service Provider shall be liable for and shall indemnify the Authority against any expense, liability, loss, claim or proceedings whatsoever arising under any statute or at common law in respect of personal injury to or death of any person whomsoever arising out of or in the course of or caused by the performance of the Contract. Further, the Service Provider shall be liable for and shall indemnify the Authority against any expense, liability, loss, claim or proceedings in respect of any injury or damage whatsoever to any property real or personal in so far as such injury or damage arises out of or in the course of or by reason of the performance of the Contract.

- 10.2 Without prejudice to his liability to indemnify the Authority the Service Provider shall take out and maintain and shall cause any Sub-Contractor to take out and maintain such insurances as are necessary to cover the liability of the Service Provider or, as the case may be, of such Sub-Contractor in respect of personal injury or death arising out of or in the course of or caused by the performance of the Contract by the Service Provider and in respect of injury or damage to property, real or personal, arising out of or in the course of or by reason of the performance of the Contract by the Service Provider.
- 10.3 The Contract is for the provision of professional Services and the Service Provider shall indemnify the Authority against injury, loss or damage arising from the Service Providers professional negligence or that of his employees or sub-Contractor. The Service Provider shall take out and maintain a professional indemnity insurance policy for a period of 6 years (or such other period as may be agreed).
- 10.4 The minimum insurance liability limits shall be for not less than £100,000 for Public Liability or such other sum as may be agreed by the Authority for Professional Indemnity, for any one occurrence or series of occurrences arising out of the same event.
- 10.5 As and when he is reasonably required so to do by the Authority, the Service Provider shall produce and shall cause any Sub-Contractor to produce for inspection by the Authority documentary evidence that the insurances required herein are properly maintained but on any occasion the Authority may (but not unreasonably or vexatiously) require to have produced for its inspection the Policy or Policies and premium receipts in question.
- 10.6 Should the Service Provider or any Sub-Contractor make default in insuring or in continuing or in causing to insure as provided herein the Authority may itself insure against any risk with respect to which the default shall have occurred and may deduct a sum or sums equivalent to the amount paid or payable in respect of premiums from any money due or to become due to the Service Provider or such amount shall be recoverable from the Service Provider by the Authority as a debt.
- 10.7 The Service Provider shall immediately notify the Authority and the Service Provider's Insurers of any happening or event which may give rise to a claim, demand, proceeding, damage, cost or charge whatsoever arising out of the particular Contract and the Service Provider shall indemnify the Authority against any loss whatsoever which may be occasioned to the Authority by the Service Provider's failure to give such notification.
- 10.8 The Policies of Insurance effected by the Service Provider in accordance with the terms of the Contract shall also include an Indemnity to Principals clause or contain an endorsement in the following terms:

- 10.9 “It is hereby declared and agreed that New Forest National Park Authority is interested in the insurance effected by this Policy as Principal in respect of a Contract made between the said Authority as Employer and the said Insured Service Provider as Service Provider relating to the Contract for the supply of consultancy work from the date of this Contract.”

## **11. MANNER OF PROVIDING THE SERVICES**

- 11.1 The Contractor shall perform the Services with all reasonable skill, care, diligence, following best professional or industry practice and in accordance with any legislative requirements.
- 11.2 The Services shall only be performed on Premises agreed in advance with the Authority.
- 11.3 The signing by the Authority of time sheets or other documents shall not be construed as implying the Contractor’s compliance with the Contract.

## **12. CONFLICT OF INTEREST**

- 12.1 The Contractor shall ensure that there is no conflict of interest as to be likely to prejudice his independence and objectivity in performing the Services and undertakes that upon becoming aware of any such conflict of interest during the performance of the Services (whether the conflict existed before the award of the Contract or arises during the performance of the Services) he shall immediately notify the Authority in writing of the same, giving particulars of its nature and the circumstances in which it exists or arises and shall furnish such further information as the Authority may reasonably require.
- 12.2 Where the Authority is of the opinion that the conflict of interest notified to it under Condition 11.1 is capable of being avoided or removed, the Authority may require the Contractor to take such steps as are necessary to avoid or remove the conflict.
- 12.3 If the Contractor fails to avoid or remove the conflict the Authority may terminate the Contract and recover from the Contractor the amount of any loss resulting from such termination.
- 12.4 Where the Authority is of the opinion that the conflict of interest which existed at the time of the award of the Contract could have been discovered with the application by the Contractor of due diligence and ought to have been disclosed as required, the Authority may terminate the contract immediately for breach of a fundamental condition and, without prejudice to any other rights, recover from the Contractor the amount of any loss resulting from such termination.

### **13. CONTRACTOR'S PERFORMANCE**

- 13.1 The Contractor shall properly manage and monitor the Services to be provided and shall immediately inform the Authority if any aspect is not being or is unable to be performed.
- 13.2 The Contractor shall comply with any rules, regulations and any safety and security instructions from the Authority, including completion of any additional clearance procedures required by the Authority, and return of any passes as required.
- 13.3 The Contractor shall not be prevented from working reasonable additional hours. The Contractor may claim for additional hours working but only if prior approval or agreement for this has been obtained. Claims for any additional hours working above those set out in this contract may not be met if this condition is not fulfilled.

### **14. USE OF AUTHORITY'S PREMISES**

- 14.1 The Contractor shall not use the Authority's Premises for any purpose or activity other than the provision of the Services unless given prior approval by the Authority.
- 14.2 The Contractor shall carry out any business or trading activity within the confines of the Authority's Premises and no advertisement, sign or notice of any description shall be exhibited without prior approval, in writing, from the Authority.
- 14.3 Where the Contractor has use of the Authority's Premises for the purpose of performing the Services, the Contractor has such use as licensee only and shall vacate the Authority's Premises on completion of the Services or determination of the Contract.

### **15. MEETINGS AND REPORTS**

- 15.1 The Contractor shall attend all meetings arranged by the Authority for the discussion of matters concerned with the performance of the Services.
- 15.2 Without prejudice to the submission of any reports specified under the Contract, the Contractor shall render any additional reports as to the progress of the Services at such time or times, and in such form as the Authority may reasonably require.

## ***Payment***

### **16. INVOICES AND PAYMENT**

- 16.1 In consideration of the satisfactory provision of the Services by the Contractor, the Authority shall pay the sums as specified in Condition 2 of this Contract up to a total of £xx,000 (which constitutes the total value of the contract).
- 16.2 The Contractor shall submit invoices to the Authority, at regular intervals in arrears.
- 16.3 The Contractor shall submit with the invoice, all such records and information as the Authority may reasonably require including, but not limited to time sheets, expenses incurred, invoices paid or any other documents to enable the Authority to verify the information and the amounts referred to in that invoice.
- 16.4 Unless otherwise stated in the Contract, payment will be made on or before the Due Payment Date. All valid undisputed invoices will be paid by the Authority within 30 days; the contractor must do likewise with any invoices they pay, to any parties, in relation to this contract. Payment is generally made by BACS and therefore these details should be given on the invoice.
- 16.5 The Authority will use all reasonable endeavours to ensure that invoices are verified promptly.

### **17. RECOVERY OF SUMS DUE**

- 17.1 Whenever, any sum of money is recoverable from the Contractor or otherwise payable by the Contractor to the Authority, the Authority may unilaterally deduct that sum from any sum then due, or which at any later time becomes due to the Contractor under this Contract, or any other contract with the Authority.
- 17.2 The Authority shall give at least 21 days' notice to the Contractor of its intention to make a deduction under Condition 16.1 above.
- 17.3 Any overpayment by the Authority to the Contractor, shall be a sum of money recoverable by the Authority from the Contractor.

## ***Protection Of Information***

### **18. INTELLECTUAL PROPERTY AND RETENTION OF INFORMATION**

- 18.1 Subject to any prior rights and to the rights of third parties, the Contractor hereby assigns copyright and all other Intellectual Property Rights to the Authority, in all reports, documents and things produced under the Contract.
- 18.2 Without prejudice to the generality of the foregoing, any Intellectual Property Rights in or over any Know-How or other thing, or in and over anything so made or derived from, which may be supplied to the Contractor by the Authority, in relation to the Contract, shall not be construed as granting any licence or assignment of such Intellectual Property Rights to the Contractor.
- 18.3 The information collected pursuant to the Contract (excluding any information which in the reasonable opinion of the Authority is confidential to the Contractor or which has been communicated to the Contractor under a condition that it shall be confidential to the Contractor) shall be the property of the Authority and all original documents in whatever form which contain that information, including any computer tape or disk, any voice recording and any special computer programme written to give access to the information, shall on request be deposited with the Authority.

### **19. FREEDOM OF INFORMATION**

- 19.1 The Contractor recognises that the Authority is subject to legal duties which may require the release of information under the FOIA or any other applicable legislation governing access to information, and that the Authority may be under an obligation to provide information on request. Such information may include matters relating to, arising out of or under this contract in any way.
- 19.2 The Contractor will assist the Authority to enable it to comply with its obligations. In particular, it acknowledges that the Authority is entitled to any and all information relating to the performance of this Contract or arising in the course of performing this Contract. In the event that the Authority receives a request for information under the FOIA or any other applicable legislation governing access to information, and requests the Contractor's assistance in obtaining the information that is the subject of such request or otherwise, the Contractor will respond to any such request for assistance at its own cost and promptly, and in any event within seven days of receipt of the Authority's request.



- 19.3 The Authority shall not be liable for any loss, damage, cost, harm or other detriment however caused arising from the disclosure of information relating to this Contract further to its duties under the FOIA or other applicable legislation governing access to information.

## **20. DATA PROTECTION**

- 20.1 The Contractor shall take such appropriate technical and organisational measures as are necessary to comply with the seventh data protection principle as provided by Part 1 of the Data Protection Act 1998 to protect against unauthorised or unlawful processing of personal data (as defined in section 1(1) of the Data Protection Act 1998) and against accidental loss or destruction of, or damage to, personal data.

## **21. ACCESS TO DOCUMENTS**

- 21.1 For a period of not less than three years after the completion of the Services or, where relevant, the termination of this Contract, the Contractor shall maintain in its possession all records and documents relating to the Services.
- 21.2 The Contractor shall permit duly authorised agents of the Authority and/or the National Audit Office or other Auditors to examine the Contractor's records and documents relating to the Services and to provide such oral and/or written explanations as may reasonably be required.
- 21.3 This Condition does not constitute a requirement or agreement for the examination, certification or inspection of the accounts of the Contractor under section 6(3) and 6(5) of the National Audit Act 1983.

### ***Compliance with legal obligations***

## **22. CORRUPT GIFTS AND PRACTICES (INCLUDING PAYMENTS OF COMMISSION)**

- 22.1 The attention of the Contractor is drawn to the criminal offences created by the Prevention of Corruption Acts 1889 to 1916. The Contractor shall not (and warrants that in entering the contract he has not done) any of the following;
- 22.2 Solicit, receive or agree to receive from any person, or offer or agree to give any person, or procure for any person any gift or consideration of any kind as an inducement, advantage or reward for doing or not doing anything, or

for showing favour or disfavour to any person in relation to the Contract or any other contract with the Authority

- 22.3 Enter into this or any other contract with the Authority in connection with which commission has been paid or has been agreed to be paid by him or on his behalf, unless before the Contract is made particulars of any such commission and the terms and conditions of any such agreement for the payment of it, have been disclosed in writing to the Authority.

## **23. UNLAWFUL DISCRIMINATION**

- 23.1 The Contractor shall not unlawfully discriminate within the meaning and scope of the provisions of the Race Relations Act 1976, the Sex Discrimination Acts 1975 and 1986 and the Disability Discrimination Act 1995 the Employment Equality (Sexual Orientation) Regulations 2003, the Employment Equality (Religion or Belief) Regulations 2003, the Employment Equality (Age) Regulations 2006 or any statutory modification or re-enactment thereof relating to discrimination in employment. The Contractor shall take all reasonable steps to ensure the observance of these provisions and any other relevant statutory employment protection obligations by all servants, employees or agents of the Contractor and all sub-contractors employed in the execution of the Contract.

## **24. HEALTH AND SAFETY**

- 24.1 In carrying out the Services the Contractor shall comply with best practice and all relevant provisions, whether statutory or otherwise, relating to health and safety at work.

### ***Control of Contract***

## **25. UNSATISFACTORY PERFORMANCE**

- 25.1 Where in the opinion of the Authority the Contractor has failed to perform the whole or any part of the Services, with the due standard of skill, care and diligence or which a competent and suitably qualified person performing the same Services could reasonably be expected to exercise, or in accordance with the Contract or any legislative requirements, the Authority may give the Contractor a notice specifying the way in which his performance falls short of the requirements of the Contract, or is otherwise unsatisfactory.

- 25.2 Where the Contractor has been notified of a failure in accordance with Condition 24.1 the Authority may:

- 25.2.1 direct the Contractor, to remedy the failure at his own expense within such time as may be specified by the Authority; and/or

25.2.2 withhold or reduce payments to the Contractor, in such amount as the Authority reasonably deems appropriate in each particular case.

25.3 If, having been notified of any failure, the Contractor fails to remedy it in accordance with Condition 25.2, the Authority may treat the continuing failure as a material breach of the Contract.

## **26. CHANGE OF CONTROL**

26.1 The Contractor shall forthwith inform the Authority in writing of any proposal or change of control, change of name or status, including, where the Contractor is a company as defined in the Companies Act 1985, any change in "control" as defined in Section 416 of the Income and Corporation Taxes Act 1988.

## **27. SERVICE OF NOTICES AND COMMUNICATIONS**

27.1 Any notice required to be given under, or any communication between the parties with respect to any of the provisions of the Contract shall be in writing and shall be deemed duly given if signed by or on behalf of a duly authorised officer of the party giving the notice.

27.2 Any such notice or other communication shall be deemed to have been given and received by the addressee:-

27.3 At the same time as it is left at the address of or handed to a representative of the party to be served;

27.4 By post on the day (not being a Sunday or public holiday 2 days following the date of posting);

27.5 In the case of a facsimile or email or other type of electronic telecommunication on the day following despatch

27.6 In proving the giving of a notice it shall be sufficient to prove that the notice was left, or that the envelope containing the notice was correctly addressed and was posted, or that the facsimile or e-mail or other form of electronic communication was correctly addressed and was despatched and despatch of the transmission was confirmed and (in the case of a facsimile) confirmed as having been sent to the number above with all pages successfully transmitted.

## **28. SEVERANCE**

- 28.1 If any condition, clause or provision of the Contract which is not of a fundamental nature is held to be invalid, illegal or unenforceable for any reason by any court of competent jurisdiction in any proceedings relating to the Contract, such provision shall be severed and the validity or enforceability of the remainder of the Contract shall not be affected thereby.

## **29. WAIVER**

- 29.1 The failure of the Authority or the Contractor to exercise any right or remedy shall not constitute a waiver of that right or remedy.
- 29.2 No waiver shall be effective unless it is communicated to either the Authority or the Contractor in writing.
- 29.3 A waiver of any right or remedy arising from a breach of contract shall not constitute a waiver of any right or remedy arising from any other breach of the Contract.

## **30. TERMINATION OF THE CONTRACT**

- 30.1 The Contractor shall notify the Authority in writing immediately upon the occurrence of any of the following events;
- being an individual:-
    - is the subject of a bankruptcy order; or
    - has made a composition or arrangement with his creditors;
  - as an individual but registered as a company :-
    - goes into compulsory winding up; or
    - passes a resolution for voluntary winding up; or
    - suffers an administrator, administrative receiver or receiver and manager to be appointed or to take possession over the whole or any part of its assets; or
    - has entered into a voluntary arrangement with its creditors under Part I of the Insolvency Act 1986, or has proposed or entered into any scheme of arrangement or composition with its creditors under section 425 of the Companies Act 1985 ; or

- has been dissolved;
  - as an individual but being in a partnership or in an unregistered company :-
- goes into compulsory winding up; or
- is dissolved; or (in the case of a partnership only)
- suffers an administrator or receiver and manager to be appointed over the whole or any part of its assets ; or
- has entered into a composition or voluntary arrangement with its creditors; or
- any individual member of the partnership falls within any Condition above;
  - or is in any case affected by any similar occurrence to any of the above in any jurisdiction.

On the occurrence of any of the events described in Condition 30.1 or, if the Contractor shall have committed any of the following :-

- material breach of the Contract and (if such breach is capable of remedy) shall have failed to remedy such breach within thirty days of being required by the Authority in writing to do so;
- 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,

the Authority shall be entitled to terminate this Contract by notice to the Contractor with immediate effect and without compensation to the Contractor.

The right to terminate on the occurrence of an event under Condition 30.1 may only be exercised within a period of six months from receipt of a notice under this condition or earlier discovery by the Authority.

### **31. TERMINATION ON NOTICE**

- 31.1 In addition to its rights of termination under Condition 31 the Authority shall be entitled to terminate this Contract by giving to the Contractor not less than the notice stated in Condition 2.2.

## **32. DISPUTE RESOLUTION**

- 32.1 The parties shall in good faith attempt to negotiate a settlement to any dispute between them arising out of or in connection with the Contract.
- 32.2 If any such dispute cannot be resolved the relevant parties, shall consider referring the matter to mediation.
- 32.3 The procedure for mediation shall be as follows:
- 32.3.1 A neutral person ("the Mediator") shall be chosen by agreement between the relevant parties, alternatively, any party may within 14 days from the date of the proposal to appoint a mediator, or within 14 days of notice to any party that the chosen mediator is unable or unwilling to act, apply to the Centre for Dispute Resolution ("CEDR") to appoint a mediator.
- 32.3.2 The relevant parties shall within 14 days of the appointment of the Mediator meet with him or her to agree a timetable for the exchange of all relevant and necessary information and the procedure to be adopted for the mediation. If appropriate, the relevant parties may at any stage seek from CEDR guidance on a suitable procedure.
- 32.3.3 Unless otherwise agreed, all negotiations and proceedings in the mediation connected with the dispute shall be conducted in strict confidence and shall be without prejudice to the rights of the relevant parties in any future proceedings.
- 32.3.4 If the relevant parties reach agreement on the resolution of the dispute, that agreement shall be put in writing and shall be binding upon the relevant parties.
- 32.3.5 Failing agreement, any relevant party may invite the Mediator to provide a non-binding but informative opinion in writing. Such opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the dispute without the prior written consent of the relevant parties.
- 32.3.6 For a period of sixty days from the date of the appointment of the Mediator, or such other period as the relevant parties may agree, none of the parties to the dispute may commence any proceedings in relation to the matters referred to the Mediator.

**33. ADDITIONAL CONDITIONS**

33.1 Depending on the nature of the Contract entered into by the Authority and the Contractor, the Authority may require additional conditions to apply to the Contract. If such additional conditions are to apply to the Contract, they will be referred to in the Contract Letter and attached as an Annex to these Conditions.

**34. RIGHTS OF THIRD PARTIES**

34.1 For the purposes of the Contracts (Rights of Third Parties) Act 1999, this Contract is not intended to, and does not, give any person who is not a party to it any right to enforce any of its provisions.

**35. GOVERNING LAW**

35.1 The Contract shall be governed by and interpreted in accordance with English Law and shall be subject to the jurisdiction of the Courts of England and Wales. The submission to such jurisdiction shall not (and shall not be construed so as to) limit the right of the Authority to take proceedings against the Contractor in any other court of competent jurisdiction, nor shall the taking of proceedings in any other court of competent jurisdiction preclude the taking of proceedings in any other jurisdiction whether concurrently or not.

**36. COPY OF BID**

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