**EMPLOYERS ADDITIONAL CONDITIONS**

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| **Z1:Identified and defined terms** | | |
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| Z1.1 | Add the following new defined terms | | | |
|  | (1) Documents are information of any nature produced or provided in the course of Providing the Service. | | | |
|  | (2) EIR is the Environmental Information Regulations 2004. | | | |
|  | (3) FOIA is the Freedom of Information Act 2000 and any subordinate legislation (as defined in Section 84 of the Freedom of Information Act 2000) made under the Freedom of Information Act 2000 from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or the Lord Chancellor’s Department or other relevant Government department in relation to this act.  (4) FOIA Exemption shall mean any applicable exemption to the Freedom of Information Act 2000 including, but not limited to, confidentiality (section 41 FOIA), trade secrets (section 43 FOIA) and prejudice to commercial interests (section 43 FOIA)  (5) EIR Exception shall mean any applicable exception to the Environmental Information Regulations 2004  (6) Redacted Agreement shall mean the final and completed Agreement in a portable document format (pdf) which the Employer shall redact to remove any information which may constitute FOIA Exemption and/or EIR Exception  (7) Website shall mean webpages owned and/or hosted by the Employer connected to and made available on the world wide web and viewable by anyone connected to the internet who has a web browser | | | |
| **Z2: The Contracts (Rights of Third Parties) Act 1999** | | | | |
|  | No one other than a party to this agreement, their successors and permitted assignees, shall have any right to enforce any of its terms. | | | |
| **Z3: Intellectual Property** | | | | |
| **Property** Z3.1  Z3.2 | | | Intellectual Property Rights are all patents, trademarks, service marks, copyright, moral rights, rights in design, rights in databases, know-how and all or any other intellectual or industrial property rights whether or not registered or capable of registration in the United Kingdom or any other part of the world, together with all or any related good will.  All Intellectual Property Rights in any existing Information and Communication Technology (ICT) or other systems operated by the *Employer* and Documents prepared by the *Employer* remain vested in the *Employer* and the *Contractor* provides all reasonable assistance to the *Employer* in the protection of the vesting of such Intellectual Property Rights in the *Employer*. | |
| Z3.3 | | | In relation to any ICT or other systems used and/or developed by the *Contractor* for the purposes of this contract, all Intellectual Property Rights in such systems that are developed during theservice period for the benefit of the *Employer* vest in the *Employer* save to the extent referred to in clauses Z3.5 and Z3.6. | |
| Z3.4 | | | In relation to any Documents prepared by or on behalf of the *Contractor* for the purposes of Providing the Service or in connection with this contract, the *Contractor* grants or procures for the benefit of the *Employer* an irrevocable royalty free licence to use and reproduce the Documents for the same or similar purposes to those originally intended, whether during or after the *service period*. The licence includes the right, at no charge to the *Employer,* to grant sub-licences and is transferable to third parties. | |
| Z3.5 | | | To the extent that any of the Documents referred to in clause Z3.4 is generated by, or maintained on, a computer or other equipment or otherwise in any machine readable format, the *Contractor* procures for the benefit of the *Employer*, the grant of a licence or sub-licence for, and supply of, any relevant software or database to enable the *Employer* or any person authorised by it to access and otherwise use such data for the same or similar purposes to those originally intended, whether during or after the *service period*. | |
| Z3.6 | | | To the extent that any ICT or other systems used by the *Contractor* for the purposes of this contract were developed by the *Contractor* before entering into this contract, the Intellectual Property Rights in such ICT or other systems remain vested in the *Contractor* provided that the *Contractor* procures for the *Employer* the grant of the rights referred to in clause Z3.5 if and to the extent that the relevant ICT or other systems are necessary to the successful continued operation of the *service* provided, or previously provided, under this contract. | |
| **Z4: Confidentiality** | | | | |
| Z4.1 | Confidential Information is information, the disclosure or use of which would constitute an actionable breach of confidence, which has either been notified as confidential by either Party in writing or that ought reasonably to be considered as confidential, including *commercially sensitive information* which relates to the business affairs, trade secrets, intellectual property rights or know-how of either Party and/or personal data and sensitive personal data within the meaning of the Data Protection Act 1998. | | | |
| Z4.2 | The Parties do not disclose or use Confidential Information except; | | | |
|  | * as required and necessary in connection with the *service*, | | | |
|  | * where already in the public domain or in the possession of the other Party, other than as a result of a Party breaching this contract, | | | |
|  | * for the purpose of dispute resolution in connection with this contract; or | | | |
|  | * in accordance with the *law of the contract* | | | |
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| **Obligations**  Z4.3 | **preserved**  If disclosure or use of Confidential Information is permitted, the disclosing Party places the receiver under the same obligation of confidentiality required by this contract. | | | |
| **Z5: Insurance**  Z5.1 | The following shall be added as the fifth insurance in the Insurance Table set out in Clause 82:   |  |  | | --- | --- | | **Insurance Against** | **Minimum amount of cover or minimum limit of indemnity** | | Liability for breach of contract or liability in tort in relation to the Contractor’s professional obligations under this contract (professional indemnity insurance) | £5,000,000 for each and every claim maintained for the period of 12 years following the end of the Service Period | | | | |
| **Z6: Freedom of Information & Transparency** | | | | |
| Z6.1 | The Parties acknowledge that the FOIA and EIR may apply to this contract. The Parties undertake to facilitate compliance with the information disclosure requirements pursuant to the FOIA and EIR in the manner provided for in clauses Z6.2 and Z6.3 to the extent that such requirements relate to information held by a Party on behalf of the other Party in connection with this contract. | | | |
| Z6.2 | Request for Information has the meaning set out in section 8 of the FOIA. | | | |
| Z6.3 | Before responding to a Request for Information, the *Employer* will consider in its absolute discretion | | | |
|  | * the availability of exemptions under the FOIA, the EIR or any other applicable legislation and | | | |
|  | * where an exemption being considered requires it, whether or not the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing information relating to this contract. | | | |
| Z6.4 | Before   * responding to a Request for Information (which, where the FOIA or EIR provides, includes confirming or denying that the information is held by the *Employer* or on the *Employer’s* behalf) or * disclosing information about, or relating to, this contract   the *Employer* notifies the *Contractor* of the Request for Information and stipulates the time period (not exceeding one week from the date of the Request for Information) within which the *Contractor* must make representations to the *Employer* concerning whether an exemption applies (including, where necessary, why the public interest in maintaining the exemption is not outweighed by the public interest in disclosure). | | | |
| Z6.5 | In determining whether an exemption applies or whether to confirm or deny or to disclose any information, the *Employer* takes into account any reasonable representations made by the *Contractor*. | | | |
| Z6.6 | The *Contractor* acknowledges that, acting in accordance with the Secretary of State for Constitutional Affairs’ Code of Practice on the Discharge of Public Authorities’ Functions under Part 1 of the FOIA, the *Employer* may be obliged, or in its discretion decide, under the FOIA or EIR to disclose information concerning this contract | | | |
|  | * without consulting with the *Contractor* or | | | |
|  | * following consultation with the *Contractor* and having taken its views into account. | | | |
| Z6.7 | A disclosure made in accordance with the FOIA or EIR is not in breach of any confidentiality agreements between the Parties.    By entering into this Agreement, the Contractor agrees and gives consent to the following principles and obligations:  (a) It is the policy of the Employer to demonstrate transparency in its public life and activity. This includes publication of contracts entered into by the Employer onto the Website. To assist the Employer to demonstrate such transparency, the Contractor shall provide such support as may be reasonably required by the Employer to achieve the publication of the Contract onto the Website. For purposes of this Clause Z6, the "Agreement" shall include the full agreement or any part thereof including but not limited to any schedule, annexure, plan, drawing and/or deed of variation.  (b) Within one week of the date of the agreement, the Contractor shall use all proper and reasonable care to prepare and forward an electronic version of the Redacted Agreement to the following e-mail address: [foi@rbwm.gov.uk](mailto:foi@rbwm.gov.uk) .  (c) The Contractor shall use all proper and reasonable care in the preparation of the Redacted Agreement and use its best endeavours to ensure that all information contained in the Redacted Agreement is accurate, complete and up to date. In preparing the Redacted Agreement, it is the Contractor’s obligation to consider and take into account all relevant legislations, regulations, case laws and guidance; including but not limited to the following:-  1. In the case of any intellectual property the Contractor shall ensure that such contents or materials are non-infringing. 2. In the case of any commercial information the Contractor shall ensure that no commercial confidence is breached by publication. 3. In the case of personal information within the meaning of the Data Protection Act 1998 the Contractor shall secure (and produce the relevant written evidence to the Council) the explicit consent of the individual who may be affected by publication of the Redacted Contract. | | | |
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| **Z7: Data Protection** | | | | | |
| Z7.1 | | (1)Data Protection Act means the Data Protection Act 1998 and any subordinate legislation made under this act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.  (2) “Data Controller”, “Data Processor”, “Data Subject”, “Personal Data”, “Process” and “Processing” have the meanings prescribed under the Data ProtectionAct. | | | |
| Z7.2 | | The *Contractor* complies (and ensures that all his employees comply) with any notification requirements under the Data Protection Act and both Parties observe their obligations under the Data Protection Act which arise in connection with this contract. | | | |
| Z7.3 | | Notwithstanding the general obligation in clause Z7.2, where the *Contractor* is processing Personal Data as a Data Processor for the *Employer*, the *Contractor;* | | | |
|  | | * processes the Personal Data only in accordance with instructions from the *Employer* (which may be specific instructions or instructions of a general nature), | | | |
|  | | * complies with all applicable statutory provisions, | | | |
|  | | * processes the Personal Data only to the extent, and in such manner as is, necessary for the provision of the *Contractor’s* obligations under this contract or as required by any statutory provision or any regulatory body, | | | |
|  | | * implements appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful Processing and against accidental loss, destruction, damage, alteration or disclosure. These measures must be appropriate to the harm which may result from any unauthorised or unlawful Processing, accidental loss, destruction or damage to the Personal Data, having regard to the nature of the Personal Data which is to be protected, | | | |
|  | | * takes reasonable steps to ensure the reliability of its employees and agents who may have access to the Personal Data, | | | |
|  | | * obtains prior written consent from a strategic director or head of service of the *Employer* in order to transfer the Personal Data to any Subcontractor in connection with Providing the Service, | | | |
|  | | * does not cause or permit the Personal Data to be transferred outside of the European Economic Area (unless transferred under a “safe harbour” scheme) without the prior consent of the *Employer*, | | | |
|  | | * ensures that all employees and agents required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with their obligations, | | | |
|  | | * ensures that none of the employees and agents publish, disclose or divulge any of the Personal Data to any third parties unless directed in writing to do so by the *Employer*, | | | |
|  | | * does not disclose Personal Data to Others in any circumstances other than with the written consent of the *Employer* or in compliance with a legal obligation imposed on the *Employer*, | | | |
|  | | * notifies the *Employer* (within one week) if it receives:   + a request from a Data Subject to have access to that person’s Personal Data or   + a complaint or request relating to the *Employer’s* obligations under the Data Protection Act and | | | |
|  | | * notifies the *Employer* of any breach or potential breach of the Data Protection Act, including the loss of personal information relating to this contract. | | | |
| Z7.4 | | This clause applies both during and after the *service period*. | | | |
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| **Z8: Local Government Ombudsman** | | | | |
| Z8.1 | Where any investigation by a Local Government Ombudsman or Information Commissioner takes place, the *Contractor* | | | |
|  | * attends meetings as required by the Ombudsman or Information Commissioner and permits its people to attend if required, | | | |
|  | * promptly allows access to and investigation of any documents deemed by the Ombudsman or Information Commissioner to be relevant, | | | |
|  | * allows any of its people to be interviewed by the Ombudsman or Information Commissioner, | | | |
|  | * allows any of its people to appear as a witness in any proceedings and | | | |
|  | * co-operates as required by the Ombudsman or Information Commissioner during the course of any investigation. | | | |
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| **Z9: Assignment** | | | | |
| Z9.1 | The *Contractor* does not assign, novate or otherwise dispose of this contract or any part thereof without the prior consent in writing of the *Employer*. | | | |
| Z10: Corrupt Gifts | | | | |
| Z10.1 | If   * the *Contractor* has offered or given, or agreed to give, to any person any gifts or consideration of any kind as an inducement or reward for doing (or forbearing to do) or having done (or forborne to do) any action in relation to the entry into this contract with the *Employer* or for showing or forbearing to show favour or disfavour to any other person in relation to this contract or * similar acts have been done by any person in relation to this contract or by any person employed by the *Contractor* or acting on behalf of the *Contractor* (whether with, or without, the knowledge of the *Contractor*) or * the *Contractor* or any person employed by the *Contractor* has committed any offence under the Bribery Act 2010 or has given any fee or reward, the receipt of which is an offence under sub-section 2 of section 117 of the Local Government Act 1972,   the *Employer* may terminate the *Contractor’s* obligation to Provide the Service. | | | |
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