

## **General Conditions for Services**

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## 1. DEFINITIONS AND INTERPRETATION

In these Conditions, unless the context requires otherwise, the following words and phrases shall have the following meanings:-

- (a) "the Contract" means the present entire document including these terms and Conditions and other schedules;
- (b) "the Commencement Date" means the date specified in the contract on which the Contractor is to commence the performance of the Services;
- (c) "the Contractor" means the person appointed by the OSPAR Commission for the performance of the Services;
- (d) "the Contract Price" means the price payable to the Contractor by the OSPAR Commission under the Contract for the full and proper performance by the Contractor of his part of the Contract as determined under the provisions of the Contract;
- (e) "the Designated Persons" means any staff nominated by the Contractor for the performance of the Services and approved by the OSPAR Commission;
- (f) "OSPAR Commission Property" means anything issued or otherwise furnished in connection with the Contract by or on behalf of the OSPAR Commission or its representatives;
- (g) "month" means calendar month;
- (h) "the Liaison Officer" in the Contract means the official(s) of the OSPAR Commission, or other person employed in that capacity, appointed by the OSPAR Commission to act on his behalf for the purpose of managing the Contract;
- (i) "the Premises" means the premises occupied by the OSPAR Commission Secretariat;
- (j) "the Project Management Schedule" means any programme or timetable agreed by the parties to the Contract which regulates or specifies the period or periods for the performance of the Services or any part of them, together with any activities ancillary to the performance of the Services or the preparation and submission of reports;
- (k) "the Services" include the services to be performed by and the other obligations of the Contractor as specified in the Contract and all data, reports, drawings, specifications, designs, inventions, plans, programs or other material produced or acquired in the course of the production or performance of the Services;
- (l) Unless the context requires otherwise, words importing the singular shall include the plural and vice versa, and the masculine shall include the feminine;
- (m) 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);
- (n) "Intellectual Property Rights" means all rights whether registered or unregistered in patents, utility models, designs, trademarks or service marks (and in each case applications therefor), trade names, licences, Copyright, and

confidential information or know-how and all rights affording equivalent or similar protection in any part of the world.

## **2. SCOPE OF THE CONTRACT**

The Contractor shall:

- (1) perform the Services with all reasonable skill, care and diligence and in accordance with the terms and Conditions of the Contract and the Project Management Schedule;
- (2) ensure that the Services are carried out under proper management and supervision by the Designated Persons, or by suitable qualified and competent members of the Contractor's staff.

## **3. COMMENCEMENT AND COMPLETION OF THE CONTRACT**

The Contractor shall:

- (1) commence the performance of the Services on the Commencement Date;
- (2) whenever applicable, deliver all interim and draft reports and the final report either in accordance with the Project Management Schedule, or on or before such reasonable date or dates as the Liaison Officer(s) shall specify.

## **4. PERFORMANCE**

- (1) The Services shall be provided in accordance with the Contract. During the course of the Contract the OSPAR Commission or the Liaison Officer(s) shall have the power to inspect and examine any of the work being performed as part of the Services on the OSPAR Commission premises at any reasonable time; where any such work is being performed on any other premises, the Liaison Officer(s) or the OSPAR Commission shall on giving

reasonable notice to the Contractor be entitled to inspect and examine such work. The Contractor shall give all such facilities as the OSPAR Commission or the Liaison Officer(s) may reasonably require for such inspection and examination.

- (2) If the performance of the whole or any part of the Services is suspended by the OSPAR Commission or the Liaison Officer (otherwise than in consequence of some neglect or default on the part of the Contractor) or if the Contractor is delayed in proceeding with the Services by the OSPAR Commission or the Liaison Officer, beyond the terms specified in the Project Management Schedule, the OSPAR Commission shall be responsible for any reasonable loss incurred by the Contractor as a result of such suspension or delay.

## **5. MEETINGS AND PROGRESS REPORTS**

- (1) The Contractor shall attend all programmed meetings arranged between him and the Liaison Officer(s) for the discussion of matters connected with the performance of the Services.
- (2) Without prejudice to the submission of such formal progress reports as may be required under the Contract, the Contractor shall render such reports as to the progress of the Services at such time or times, and in such form, as the Liaison Officer(s) may reasonably require.
- (3) The submission and acceptance of these reports shall not prejudice the rights of the OSPAR Commission under any other Condition of the Contract.

## **6. CHANGES IN SCHEDULE AND INSTRUCTIONS**

- (1) Changes to the Project Management Schedule will be mutually agreed by the Contractor and the Liaison Officer(s), insofar as possible. The Contractor shall comply with such changes and the associated directions and instructions given under this paragraph.
- (2) The Contractor shall be entitled to a reasonable extension of time for the completion of the Services where compliance with any direction or instruction necessarily delays the completion of the Services.
- (3) The Contract Price shall be increased or decreased by the value reasonably attributable to any direction etc. given under paragraph (1) above. The value of any such direction shall be an amount agreed between the parties or in default of agreement, determined by the OSPAR Commission.

#### **7. OBLIGATIONS OF THE OSPAR COMMISSION**

- (1) The OSPAR Commission shall make available free of charge such information in its possession as the Contractor may reasonably require for the proper performance of the Services.
- (2) The Contractor shall not be responsible for any delay in the performance of the Services which results from any failure or delay by the OSPAR Commission to supply information in compliance with paragraph (1) of this Condition.

#### **8. PAYMENT AND INVOICES**

- (1) The OSPAR Commission shall pay the Contractor in respect of the complete and satisfactory performance of the Services in accordance with the tendered fees specified in the Contract.
- (2) For the avoidance of doubt, except where otherwise provided in the Contract, the amount payable to the Contractor for the performance of the Services shall be inclusive of all costs of staff and materials and all other expenses whatsoever incurred by the Contractor in discharging his obligations under the Contract.
- (3) The Contractor shall submit an invoice to the OSPAR Commission within 28 days of the completion of the Services or as otherwise specified in the Contract.
- (4) The Contractor shall submit with the invoices, details of the time of the persons occupied in the supply of the Services.
- (5) The Contractor shall also provide together with the first invoice, the names and address of his/her bank, the account name and number and the bank sort code.
- (6) The OSPAR Commission shall use its best endeavours to pay the Contractor within 30 days of the receipt of a satisfactory invoice, provided that the OSPAR Commission is satisfied that the Services for which the invoice relates have been performed fully in accordance with the Contract.

## **9. SUB-CONTRACTORS AND SUPPLIERS**

- (1) Subject to Conditions 11 and 12 of the Contract, if the parties to the Contract agree to use a sub-contractor(s), the Contractor must ensure that all the terms and Conditions of the Contract, so far as they are applicable to and capable of performance by sub-contractor(s), are applied to the authorised sub-contractor. Any approval to enter into a sub-contract agreement shall not relieve the Contractor of any obligations or duty under the Contract.
- (2) Where the Contractor enters into a contract with a supplier or sub-contractor for the purpose of performing the Contract or any part of it, he shall cause a term to be included in such contract which requires payment to be made to the supplier or sub-contractor within a specified period not exceeding 30 days from receipt of a valid invoice as defined by the Contract requirements.

## **10. RECOVERY OF SUMS DUE FROM THE CONTRACTOR**

Wherever under the Contract any sum of money is recoverable from, or payable by, the Contractor, that sum may be deducted from any sum then due, or which at any later time may become due, to the Contractor under the Contract or under any other contract with the OSPAR Commission.

## **11. VARIATION OF THE CONTRACT**

The Contract may only be varied by the written agreement of the parties.

## **12. ASSIGNMENT**

The Contractor shall only sub-contract the performance of the whole or any part of the Services or transfer, assign or charge the Contract or any part of it with the prior written consent of the OSPAR Commission.

## **13. VALUE ADDED TAX**

For a contractor in the UK, the OSPAR Commission shall pay to the Contractor the amount of any VAT chargeable in respect of the performance of the Services and the expenses for which the Contractor is entitled to be reimbursed.

## **14. ISSUES OF OSPAR COMMISSION PROPERTY**

- (1) All OSPAR Commission property issued in connection with the Contract shall remain the property of the OSPAR Commission and shall be used in the execution of the Contract and for no other purpose whatsoever without the prior approval in writing of the OSPAR Commission.
- (2) All such property shall be deemed to be in good condition when received by or on behalf of the Contractor unless he shall notify the OSPAR Commission to the contrary within fourteen days or such other time as is specified in the Contract.
- (3) The Contractor undertakes the due return of all such property so issued and will be responsible for all loss thereof or damages thereto from whatever cause happening to the full amount of such loss or damage.
- (4) For the purpose of paragraph (3) of this Condition, deterioration in such property resulting from its normal and proper use in the execution of the Contract shall not be deemed to be loss or damage (except as so far as the

deterioration is contributed to by any want of maintenance and repair as required by the Contract).

- (5) Neither the Contractor, nor any sub-contractor, nor any other person shall have a lien on any such property so issued for any sum due to the Contractor, sub-contractor or other person, and the Contractor shall take all such steps as may be reasonably necessary to ensure that the title of the OSPAR Commission, and the exclusion of any such lien, are brought to the notice of any sub-contractor and other person dealing with any such property.

#### **15. INSOLVENCY OF THE CONTRACTOR**

- (1) The Contractor shall inform the OSPAR Commission:
- (a) if being an individual (or where the Contractor is a firm any partner of that firm) he shall at any time become bankrupt, or shall have a receiving order or administration order made against him or shall make any composition or arrangement with or for the benefit of his creditors, or shall make any conveyance or assignment for the benefit of his creditors, or shall purport to do so, or where any applications shall be made under the Insolvency Act 1986 for sequestration of his estate, or a trust deed granted by him on behalf of his creditors; or
- (b) if being a company, passes a resolution, or the court makes an order, that the company be wound up otherwise than for the purpose of reconstruction or amalgamation, or if a receiver or manager on behalf of a creditor shall be appointed, or if circumstances shall arise which entitle the court otherwise than for

the purposes of amalgamation or reconstruction to make a winding-up order.

- (2) If any of the events in the above paragraphs (1)(a) or (1)(b) occur, the OSPAR Commission may at any time by notice in writing summarily terminate the Contract without compensation to the Contractor.
- (3) Provided always that such termination shall not prejudice or affect any right of action or remedy which shall have accrued before that date or shall accrue thereafter to the OSPAR Commission.

#### **16. UNSATISFACTORY PERFORMANCE AND TERMINATION OF THE CONTRACT**

- (1) Where the Contractor has persistently failed to perform the whole or any part of the Services with the standard of skill, care and diligence which a competent and suitably qualified person performing the same services could reasonably be expected to exercise, or in accordance with these terms and Conditions or in accordance with the Project Management Schedule, but the circumstances have not given rise to a material breach of the Contract, the OSPAR Commission may give the Contractor a notice specifying the way in which his performance falls short of the expected standard, or is otherwise unsatisfactory.
- (2) Where the Contractor has been notified of a failure in accordance with paragraph (1) of this Condition, the OSPAR Commission may:-
- (a) request from the Contractor that, at his own expense he re-schedules and performs the Services correctly within such period as may be reasonably specified by the OSPAR Commission in the notice,

including where necessary, the correction or re-execution of any Services already carried out; or

- (b) withhold payments to the Contractor, as deemed appropriate in each particular case.
- (3) Without prejudice to any other power of termination, the OSPAR Commission may terminate the Contract by giving the Contractor 7 days written notice, for any of the following reasons:
  - (a) the breach by the Contractor of any of Conditions 19, 20, 21 or 23 of the Contract or some other material breach of the Contract;
  - (b) the failure by the Contractor to comply with a notice given under paragraph (2) of this Condition;
  - (c) the Contractor ceases or threatens to cease to carry on his business;
  - (d) there is a change of control of the type referred to in Condition 15 herein, unless the OSPAR Commission has agreed in advance in writing to the particular change of control and the change of control takes place as proposed, save that in this event the OSPAR Commission must give one month's notice in writing to the Contractor.
- (4) The OSPAR Commission may, terminate the Contract at any time by giving the Contractor summary written notice where the Contractor has been guilty of any act which may reasonably be regarded by the OSPAR Commission as an act of gross misconduct or negligence or which may bring the OSPAR Commission or the Contractor into disrepute or if the Contractor has conducted himself (including by his agents or employees) in any manner which has or is likely to

impair the Contractor's ability to provide any of the Services to The OSPAR Commission or to do so in any manner or at any time which the OSPAR Commission shall reasonably have required of him.

- (5) The agreement will terminate automatically if the reason is the Contractor's death, disability, dismissal, insolvency or any reason that is incompatible with this Agreement remaining in force.

## **17. CONSEQUENCES OF TERMINATION**

- (1) Where the Contract is terminated under paragraphs 3(d) or (4) of Condition 16, the Contractor may claim from the OSPAR Commission reimbursement of all reasonable costs necessarily and properly incurred by him in relation to the orderly cessation of the Services.
- (2) Where the Contract is terminated under paragraphs (3)(a), (3)(b) or (3)(c) of Condition 16, or the provisions of Condition 15 the following provisions shall apply:-
  - (a) any sum due or accruing due from the OSPAR Commission to the Contractor may be withheld or reduced by such amount as the OSPAR Commission in either case considers reasonable and appropriate in the circumstances;
  - (b) the OSPAR Commission may make all arrangements which are in his view necessary to procure the orderly completion of the Services including the letting of another contract or contracts;
  - (c) where the total costs reasonably and properly incurred by the OSPAR Commission by reason of such arrangements exceed the amount that would have been payable to the Contractor for the

completion of the Services, the excess shall be recoverable from the Contractor by set-off against any amount withheld by the OSPAR Commission under paragraph 2(b) or otherwise.

## **18. LOSS OR DAMAGE**

- (1) This Condition applies to any loss or damage which arises out of or is in any way connected with the performance of the Contract.
- (2) The Contractor shall without delay and at his own cost reinstate, replace or make good to the satisfaction of the OSPAR Commission, or if the OSPAR Commission agrees, compensate the OSPAR Commission for any loss or damage.
- (3) Where a claim is made, or proceedings are brought against the OSPAR Commission in respect of any loss or damage, the Contractor shall reimburse the OSPAR Commission any costs or expenses which the OSPAR Commission may reasonably incur in dealing with, or in settling, that claim or those proceedings.
- (4) The OSPAR Commission shall notify the Contractor as soon as possible of any claim made, or proceedings brought, against the OSPAR Commission in respect of any loss or damage.
- (5) The OSPAR Commission shall reimburse the Contractor for any costs or expenses which the Contractor incurs in accordance with paragraphs (2) and (3) to the extent that the loss or damage is caused by:-
  - (a) the neglect or default of the OSPAR Commission or of any contractor or agent of the OSPAR Commission;
  - (b) any other circumstances which are outside the control of the Contractor or of any of his sub-contractors or suppliers and which could not have been reasonably contemplated under the Contract, provided that this paragraph shall not apply where the loss or damage



is a loss or damage falling within 6(c) below.

- (6) In this Condition loss or damage includes:
- (a) loss or damage to property;
  - (b) personal injury to or the sickness or death of any person;
  - (c) loss of profits or loss of use suffered because of any loss or damage.

#### **19. DUTY OF CONFIDENCE**

The Contractor shall:

- (1) treat as confidential all information which may be derived from or obtained in the course of the Contract or which may come into the possession of the Contractor or any employee, servant or agent of the Contractor as a result of or in connection with the Contract;
- (2) take all necessary precautions to ensure that all such information is treated as confidential by the Contractor, the Contractor's employees, servants or agents and the OSPAR Commission shall treat in confidence any information given by the Contractor under this Condition;
- (3) not make whether directly or by his employees, servants or agents any communication to the press or any journalist or broadcaster about the Contract without the previous written consent of the OSPAR Commission;
- (4) exercise due care and propriety when dealing with third parties in connection with the Contract and to ensure that no commitments are entered into without the OSPAR Commission's written consent.

#### **20. OFFICIAL SECRETS**

The Contractor shall take all reasonable steps to ensure that all persons employed by him or by any sub-contractor in connection with the Contract are aware of the Official Secrets Acts 1911 to 1989, and shall inform them that these Acts apply to them during and after performance of any work under or in connection with the Contract.

#### **21. CORRUPTION**

- (1) The Contractor shall not receive or agree to receive from any person, or offer or agree to give to any person, or procure for any person any gift or consideration of any kind as an inducement or reward for doing or not doing anything, or for showing favour or disfavour to any person in relation to the Contract or to any other contract to which the OSPAR Commission is party.
- (2) The Contractor shall not conspire with any person to do any of the acts mentioned in paragraph (1) of this Condition.
- (3) The OSPAR Commission shall be entitled to recover from the Contractor the amount or value of any gift or consideration received or paid or procured by them or on their behalf, if the Contractor shall be in breach of this Condition, or if any person employed by them or acting on their behalf (with or without their knowledge) shall commit any offence under the Prevention of Corruption Acts 1889 to 1916 in relation to the Contract or to any other contract to which the OSPAR Commission is a party.

## **22. DISCRIMINATION**

- (1) The Contractor shall not unlawfully discriminate within the meaning and scope of the provisions of the Race Relations Act 1976, the Sex Discrimination Act 1975 and 1986, the Disability Discrimination Act 1995, Employment Equality (Religion or Belief) Regulations 2003, the Employment Equality (Sexual Orientation) Regulations 2003 and the Employment Equality (Age) Regulations 2006 or any statutory modifications or re-enactments of them.
- (2) The Contractor shall take all reasonable steps to ensure that his employees, agents and sub-contractors do not unlawfully discriminate within the meaning and scope of the above-mentioned enactments.

## **23. VESTING OF MATERIAL, COPYRIGHT AND PUBLICATION OF RESULTS**

The Contractor hereby waives all moral rights (in relation to copyright) in relation to the work, with the exclusion of specially commissioned artwork (drawings) and photography for which separate provisions will be made.

## **24. SERVICE OF NOTICES**

Any notice required to be given or served under the Contract shall be in writing and shall be served by:

- (a) delivery to the Liaison Officer or as the case may be Designated Person; or
- (b) by sending it by ordinary pre-paid post to the Contractor's ordinary place of business or registered office or the OSPAR Commission's principal office, when it shall be deemed to be served on the day when, in the

ordinary course of the post it would have been delivered.

## **25. PERSONS DESIGNATED TO PERFORM THE SERVICES**

- (1) The Services shall be performed by personnel in the employment of the Contractor.
  - (2) The Contractor shall give the OSPAR Commission, if so requested, details of all persons who are or may be at any time employed upon the Contract and shall complete any additional clearance procedures required.
  - (3) Any employee of the Contractor must, whilst on the Premises, carry appropriate identification from the Contractor and such building passes for access to the Premises as the OSPAR Commission may require, and must return all passes to the OSPAR Commission on completion or termination of the Services, or at any time at the OSPAR Commission's request.
  - (4) The decision of the OSPAR Commission as to whether any person is reasonably suitable to perform for the Services and/or to be admitted to the Premises, shall be final and conclusive.
  - (5) The Contractor's staff must comply with any safety and security advice and instructions issued by the OSPAR Commission or its representative whilst on the Premises.
  - (6) The Contractor shall bear the cost of any notice, instruction or decision of the OSPAR Commission under this Condition.
- ## **26. INSURANCE**
- (1) The Contractor shall maintain a policy of insurance sufficient for the purposes of the Contract.

- (2) The Contractor shall, if required by the OSPAR Commission, produce a copy of the relevant insurance policy to the OSPAR Commission.
- (3) For the avoidance of doubt it is agreed that nothing in this Condition shall relieve the Contractor from any of his obligations and liabilities under the Contract.

## **27. ACCOUNTS, DOCUMENTS, ETC**

The Contractor shall retain and produce, at the premises nominated by the OSPAR Commission and if so required by the OSPAR Commission, such accounts, documents (including working documents), records or explanations as the OSPAR Commission, or the Liaison Officer, may request, in connection to the Contract, during the Contract and for a period of two years from the date of expiry or termination.

## **28. DATA PROTECTION**

- (1) The Contractor shall indemnify the OSPAR Commission against all claims and proceedings, and all costs and expenses incurred in connection therewith, made or brought against the OSPAR Commission by any person in respect of loss, damage or distress caused to that person by the disclosure, loss or destruction by the Contractor, the Contractor's servants or agents, of any personal data.
- (2) In this Condition "personal data" has the same meaning as in section 1(3) of the English Data Protection Act 1984.

## **29. APPLICABLE LAW**

The Contract is subject to the law of England and Wales.

