



infrastructure

operations

bun-troggalys ~ obbraghyn



Isle of Man
Government

Reiltys Ellan Vannin

Standard Conditions of Contract
for the
Provision of Services

Department of Infrastructure

Version 7 Revised January 2014

Condition	Description
1	Definitions and Interpretation
2	Formation
3	Contractor's Obligation
4	Price and Payment
5	Variations
6	Intellectual Property
7	Confidentiality
8	Progress Completion and Testing
9	Warranty and Cancellation
10	Remedial Action and Refunds
11	Access to Site and Regulations
12	Site Conditions
13	Contractor's Personnel
14	Contractor's Equipment and Facilities
15	Inspection and Testing
16	Liability
17	Insurance
18	Termination
19	Assignment and sub-Contracting
20	Force Majeure
21	Notices
22	Dispute Resolution
23	Third Party Rights
24	Law
25	General

1. DEFINITIONS AND INTERPRETATION

In these Conditions:

1.1 The following expressions will have the following meanings:

Background Intellectual Property -	Any and all intellectual property rights, other than in the Project Intellectual Property, which are necessary for the exploitation of the Project Results or the Project Intellectual Property and which the Contractor owns or has rights to use prior to the commencement of the provision of the Services.
Business Day -	Any day other than a Saturday, Sunday or a public or bank holiday in England, Wales or the Isle of Man.
Completion Date -	Subject to Condition 8.1, the date or dates on or by which the Services are required to be completed as specified in the Purchase Order or as otherwise agreed in writing by the Parties.
Conditions -	The standard terms and conditions of purchase set out in this document together with and subject to any special terms that amend and/or extend these conditions which are specified in or expressed to be attached to the Purchase Order.
Construction Act -	The Construction Contracts Act 2004.
Contract -	The contract between the Parties for the provision of the Services which shall comprise the Purchase Order (together with all documents (if any) expressly attached to or referred to in the Purchase Order), the Specification and these Conditions but excluding (unless expressly attached to or referred to in the Purchase Order) all documents (if any) issued by or on behalf of the Contractor including, without limitation, any acknowledgement of order or terms and conditions of the Contractor. In the event of any conflict between the documents comprised in the Contract, such conflict shall be resolved by reference to the documents in the following descending order of priority: <ol style="list-style-type: none">a. The Purchase Order.b. The Specification.c. These Conditions.
Contractor -	The person, firm or Department to whom the Purchasing Section issues the Purchase Order including, where applicable, its legal or personal representatives, successors in title and permitted assigns.

Contractor's Equipment -	The plant, equipment, vehicles, temporary buildings, materials, tools, stores, machinery, apparatus and other articles of any kind brought onto the Site by or on behalf of the Contractor for use in the provision of, but not forming part of, the Services.
Department -	The Department ordering the Services which is named in the Purchase Order and from which the Purchase Order is issued this being the Department of Infrastructure's, Operations Division (a department of the Isle of Man Government).
Force Majeure -	Fire, flood, explosion, acts of God, war or national emergency, but excluding any such events insofar as they arise from or are attributable to the wilful act, omission or negligence of the Party relying on the event of Force Majeure or to the failure on the part of the Party relying on the event of Force Majeure to take reasonable precautions to prevent such event of Force Majeure or its impact.
Parties -	The Department and the Contractor and "Party" means either the Department or the Contractor (as appropriate).
Price -	The price for the Services either for which the basis of calculation has been agreed by the Parties and is set out in the Purchase Order or otherwise as is specified in the Purchase Order.
Project Intellectual Property -	Any and all intellectual property rights which, at any time after the commencement of the provision of the Services, subsist in the Project Results (whether in their entirety or in particular features or combinations of them).
Project Results -	The information, data, designs, documents know-how, materials or products arising out of, and other tangible or intangible results of, any work undertaken by or on behalf of the Contractor in connection with the provision of the Services by the Contractor.
Purchase Order -	An order for Services issued by the Purchasing Section to the Contractor, either in printed or electronic format, including any variation to such Purchase Order under Condition 5 as provided in Condition 5.1.
Purchasing Section -	The Department's Purchasing Section presently based at Ellerslie Depot, Crosby, Isle of Man, IM4 2HA.
Regulations -	The rules, regulations, requirements and conditions in relation to the Site notified to the Contractor by the Department from time to time including, without limitation, those notified under Condition 11.1.2 and those (if any) that are set out in the Specification.
Safe Systems of	That suite of the Department's documents which provides operational

Work -	safety guidelines (a copy of which shall be made available to the Contractor on request).
Services -	The services required to be provided by the Contractor for the Department as specified in the Purchase Order and/or the Specification or as otherwise agreed in writing by the Parties, including any variations to such services pursuant to Condition 5.
Site -	The place or places at which the Services are required to be provided as detailed in the Purchase Order and/or the Specification or as otherwise agreed in writing by the Parties.
Specification -	The specification of the Services expressly attached to or referred to in the Purchase Order (together with all documents, if any, expressly attached to or referred to in the Specification) or otherwise agreed in writing by the Parties.
Supervising Officer -	The person from time to time appointed by the Department and notified to the Contractor to act as the Department's representative for the purpose of the Contract.

1.2 Words denoting the singular shall include the plural and vice-versa, words denoting any gender shall include all genders and words denoting individuals shall include corporate or unincorporated bodies and vice-versa, except where the context makes it clear that this is not the case.

1.3 References to any enactment, order, regulation or instrument shall be construed as a reference to the enactment, order, regulation or instrument as amended, modified, extended or re-enacted by any subsequent enactment, order, regulation or instrument.

1.4 Headings are for reference purposes only and shall not be used to construe or interpret the meaning of the Conditions to which they relate.

2. FORMATION

2.1 The Parties agree that the Contract contains all of the terms in relation to the subject matter of the Contract and supersedes any previous agreements or understandings between them in relation to the subject matter of the Contract.

2.2 Neither Party has relied upon any oral or written representations made to it by the other Party or that Party's employees, agents or sub-contractors, prior to the formation of the Contract pursuant to Condition 2.4, which are not set out in the Contract.

2.3 Nothing in Conditions 2.1 or 2.2 will exclude any liability which one Party would otherwise have in respect of any statement it has made fraudulently to the other Party.

2.4 Subject to Condition 2.5, the Contract shall be formed when the Purchase Order is issued to the Contractor.

2.5 Where the Purchase Order is issued by means of electronic communication, the Contractor shall within five (5) Business Days of the date of issue of the Purchase Order, using the same or a similar means of electronic communication, either acknowledge receipt to the Department in a form which accepts the Purchase Order unconditionally and does not impose any terms and conditions of the Contractor or notify the Department that it does not accept the Purchase Order. If however the Contractor acknowledges receipt to the Department in a form which either does not accept the Purchase Order unconditionally or which imposes or seeks to impose the terms and conditions of the Contractor then the Contractor will be deemed to have rejected the Purchase Order. If the Contractor does not acknowledge receipt and fails to notify the Department that it does not accept the Purchase Order within five (5) Business Days of the date of issue of the Purchase Order, the Contractor will be deemed to have accepted the Purchase Order unconditionally.

2.6 The Department will not be responsible nor be obliged to accept or to pay for any Services provided by the Contractor otherwise than in response to and in accordance with the relevant Contract.

2.7 The commencement of the provision of the Services by the Contractor will be deemed conclusive evidence of the Contractor's acceptance of these Conditions.

2.8 These Conditions may only be varied or amended by agreement in writing of the Parties.

2.9 Unless otherwise agreed in writing by the Department, all enquiries and correspondence of the Contractor connected with the Contract (other than regarding payment which should be sent to the payments section of the Department) should be sent to the person from time to time appointed as Supervising Officer.

2.10 The Contractor shall ensure that the number(s) and date of the Purchase Order is quoted on all documents and correspondence connected with the Purchase Order.

3. CONTRACTOR'S OBLIGATIONS

3.1 The Contractor shall diligently provide the Services on or before the Completion Date strictly in accordance with the Contract and with all applicable statutory and EU regulations and requirements so as to meet such standard and quality as specified in the Contract or, if not so specified, so as to reasonably satisfy the Department and, in performing its obligations under this Condition 3.1, the Contractor shall amongst other matters:

3.1.1 Devote such personnel and procure that they devote such of their time, attention and abilities to the Services as may be necessary for the proper performance of the Contractor's obligations under the Contract.

3.1.2 Do all things necessary to provide the Services, including the provision of the Contractor's Equipment.

3.1.3 Provide the Services with the high degree of professional skill, sound practices and good judgement normally exercised by recognised professional firms or

by highly skilled and experienced contractors providing services of a similar nature to the Services.

3.2 The Contractor shall:

3.2.1 Comply with the reasonable directions of the Department. For the avoidance of doubt, only those directions given by the Department (including but not limited to directions given by the Supervising Officer) to the Contractor shall be valid and binding for the purposes of the Contract.

3.2.2 Act diligently and in good faith in all its dealings with the Department and use its best endeavours to promote the interests of the Department and maintain the Department's goodwill.

3.2.3 Obtain and maintain at its own expense all licences, permissions, permits, powers and consents (other than those specified in the Contract to be the responsibility of the Department) necessary to perform its obligations under the Contract.

3.2.4 Insert appropriate conditions which conform to the Contract in any agreements with sub-contractors.

3.2.5 Maintain and make available for inspection by the Department at the Contractor's sole expense such records, including, without limitation, daily time sheets, as the Department may reasonably require for the purposes of supporting the calculation of the Price and shall grant the Department such access to the Contractor's premises as the Department may reasonably require for the purposes of inspection of such records.

3.2.6 When reasonably requested by the Department, provide to the Department at any time:

3.2.6.1 The names of each employee of the Contractor and/or its sub-contractors engaged in providing the Services.

3.2.6.2 The job title and job description of each employee named under Condition 3.2.6.1.

3.2.6.3 The period of time during which each employee named under Condition 3.2.6.1 has been employed by means of a permanent contract of employment by the Contractor and/or its sub-contractors.

3.3 Subject to the nature of the Services, the Contractor, or any individual that it may appoint to provide the Services, may be required to undertake the role of Principal Contractor, Planning Supervisor and/or Designer under and as those terms are defined in the Construction (Design and Management) Regulations 1994, with the extent of the Contractor's role being clarified in or by the Specification. Where one of these roles is to be undertaken, the Contractor must fully comply with all relevant legislation.

4. PRICE AND PAYMENT

4.1 The Price shall:

4.1.1 Remain fixed for the duration of the Contract and may only be varied in writing by agreement of the Parties.

4.1.2 Be exclusive of VAT (and the Contractor shall show the same separately on its invoices).

4.1.3 Be inclusive of all costs and expenses of whatsoever nature incurred by the Contractor in relation to the completion of the Services including, without limitation, in respect of materials, labour and the Contractor's Equipment.

4.2 The Contractor shall be entitled to issue invoices for the provision of the Services as soon as the Services have been accepted in accordance with Condition 8.5. All invoices must be VAT invoices and must be submitted to the payments section of the Department quoting the Purchase Order number.

4.3 Payment shall be made to the Contractor within thirty (30) days of receipt of the Contractor's original valid invoice by the Department at its nominated address for invoices.

4.4 Subject to Condition 4.6, the Department may from time to time and at no additional cost to itself withhold or off-set sums due to the Contractor against sums due from the Contractor to the Department where it has reasonable grounds for so doing and, for the avoidance of doubt, any non-payment arising from any such withholding or off-set shall not be regarded as a breach by the Department of the Contract. However, unless otherwise agreed in writing by the Department, the Contractor shall not be entitled to make any withholding or off-set against the Department unless the Contractor is required by law to make such withholding or off-set or such withholding or off-set is admitted or agreed in writing by the Department or awarded by any Court or in any arbitration.

4.5 If the Construction Act applies to the Contract:

4.5.1 The due date for payment of each invoice will be twenty (20) Business Days after the date of receipt by the Department of such invoice and the final date for payment will be the last day of the month after the month of receipt by the Department of such invoice.

4.5.2 The Department shall give written notice to the Contractor at least two (2) Business Days before the final date for payment of the amount(s) to be withheld or off-set pursuant to Condition 4.5 and the ground(s) therefore (and, if more than one ground, the amount attributable to each ground).

4.7 If the Department fails to pay any sum properly due to the Contractor on the due date for payment, then the Contractor may charge interest on such sum from the due date for payment until the date of payment in full, both before and after any judgment, at 3% per annum above the base rate from time to time of the Isle of Man Bank plc.

4.8 Notwithstanding the terms of this Condition 4, the Department shall not be penalised in any respect for a delay by the Department in fulfilling a payment obligation under a Contract where the Department has reasonable grounds for disputing the accuracy or validity of any charges set out in that invoice.

5. VARIATIONS

5.1 The Department may at any time, before or during provision of the Services, by notice to the Contractor (and such notice may, for the purposes of this Condition 5, include the re-issue of the Purchase Order or the issue of a further supplemental order for Services) direct the Contractor to vary the Services (or any part of them) and, provided that such variations are, in the opinion of the Department, reasonably practicable, the Contractor shall carry out such variations in accordance with these Conditions. For the avoidance of doubt, any re-issue of the Purchase Order (in an amended form) or the issue of a further, supplementary Purchase Order shall only have binding effect when the Contractor is required to carry out the proposed variation contained therein.

5.2 If such variations result in an increase in the cost of performance of the Contract, the Supervising Officer will determine, after consultation with the Contractor, an equitable adjustment to the Price and will notify the Contractor accordingly.

5.3 The Contractor shall promptly notify the Supervising Officer if it is required to make any changes to the Services for the purposes of complying with its obligation to provide the Services strictly in accordance with all applicable statutory regulations and requirements but, save as provided in this Condition 5 and as may be reasonably necessary to comply with such obligation, the Contractor shall not vary the Services unless so directed in writing by the Department.

6. INTELLECTUAL PROPERTY

6.1 The Contractor shall promptly disclose to the Department full details of all Project Intellectual Property created by or on behalf of the Contractor, including but not limited to drawings and models (if any), which shall be treated by the Contractor as confidential to the Department.

6.2 On its creation all Project Intellectual Property and Project Results shall belong to and vest in the Department.

6.3 The Contractor assigns to the Department (including, to the extent necessary, by way of present assignment of future copyright and design right) all future copyright and design right, and all copyright and design rights and all other intellectual property rights free from any lien, charge or encumbrance for their full terms throughout the world, which have been or will be comprised within the Project Results together with the right to sue for damages or other remedies as a result of any infringement of such rights.

6.4 At the request of, and at the reasonable expense of the Department, the Contractor shall and shall procure that its personnel shall:

6.4.1 Execute all such documents and do all things necessary or desirable to enable the Department to ensure the vesting in the Department or the Department's nominee of the Project Intellectual Property and to secure patent, registration of design or other appropriate forms of protection for it throughout the world.

6.4.2 Provide to the Department all such assistance as the Department may require in relation to the resolution of any questions concerning the Project Intellectual Property provided that decisions as to the procuring of a patent or other appropriate protection and exploitation of the Project Intellectual Property shall be in the sole discretion of the Department.

6.5 As soon as the Contractor becomes aware of any infringement of the Project Intellectual Property it shall promptly notify the Department and provide all details within its knowledge. The Contractor shall also provide the Department with all assistance requested by the Department for the purposes of any infringement action or action for misuse the Department may bring.

6.6 The Department shall retain ownership of all intellectual property rights in any of its materials which it provides to the Contractor for use in the provision of the Services and the Contractor shall retain ownership of all Background Intellectual Property.

6.7 The Contractor grants to the Department a non-exclusive, royalty-free, perpetual, world-wide, assignable, irrevocable licence (with the right to sub-license) to use the Background Intellectual Property for the purposes of the Department using the Project Results and the Project Intellectual Property.

6.8 In providing the Services in accordance with the Contract, the Contractor shall not, without the Department's prior written consent, use any third party's intellectual property rights and, where the Department consents to such use:

6.8.1 The Contractor shall ensure that it has obtained all necessary third party consents and that all necessary licences or assignments of the third party intellectual property rights are in place to enable the Contractor and the Department to freely use such third party intellectual property rights as necessary in order to provide and use the results of the Services.

6.8.2 Such consent shall not relieve the Contractor of any obligation under the Contract or prejudice any of the Department's rights, powers or remedies.

6.9 The Contractor shall not disclose any confidential information within the Project Results to any third party and, for the avoidance of doubt, on its creation the Project Results and Project Intellectual Property shall become the confidential information of the Department and subject to the provisions of Condition 7 but, for the avoidance of doubt, the Department shall be free to use such information.

6.10 The Contractor shall indemnify the Department and be responsible for the payment of any costs, claims, proceedings, expenses or demands arising from any infringement of third party intellectual property rights.

7. CONFIDENTIALITY

7.1 Except with the prior written consent of the other Party, and save as set out in Condition 7.2, neither Party shall at any time use, make use of or divulge or allow to be used, made use of or divulged to any person, any confidential or secret information of the other Party including, without limitation, the documents comprising the Contract or other information concerning the business or affairs of the other Party or that other Party's clients or customers.

7.2 The provisions of Condition 7.1 shall not apply to confidential or secret information to the extent that:

7.2.1 It is or becomes publicly available through no act or omission of either Party (or its employees, agents or sub-contractors).

7.2.2 It is necessarily disclosed pursuant to a statutory or regulatory obligation but only to the extent of that obligation.

7.2.3 It is reasonably and necessarily disclosed by the Department in the ordinary course of its business.

7.3 The Contractor shall not at any time publish or permit to be published either alone or in conjunction with any other person any information, article, photograph, illustration or any other material of whatever kind, relating to the Contract or the Department's business generally, without the prior written consent of the Department. Such consent shall only apply to each specific request for consent.

8. PROGRESS, COMPLETION AND REJECTION

8.1 If it becomes apparent that the Services (or any part of them) will not be completed by the Completion Date as a result of:

8.1.1 Any variation ordered pursuant to Condition 5;

8.1.2 Any reasonable directions of the Department under Condition 3.2.1;

8.1.3 Any circumstances (other than Force Majeure) which are outside the reasonable control of the Contractor or its sub-contractors or any other person for whom the Contractor is responsible and which could not have been reasonably contemplated by an experienced contractor;

8.1.4 Any breach of the Contract by the Department or its employees, agents or sub-contractors (other than the Contractor) or any person for whom it is responsible including, without limitation, the Supervising Officer;

then the Contractor shall promptly notify the Supervising Officer of full particulars of the circumstances. The Supervising Officer shall, promptly on receipt of full particulars from the Contractor, award the Contractor such extension of time (if any) for completion of the

Services or the relevant part of them (as the case may be) as the Supervising Officer in his sole discretion determines to be reasonable.

8.2 When the Contractor considers that the whole of the Services (or any part of them which has its own Completion Date) has been completed, it shall give notice to that effect to the Supervising Officer.

8.3 The Department shall have the right for a period of ten (10) Business Days from the date of receipt of the Contractor's notice under Condition 8.2 to inspect and (if appropriate) check the Services which are the subject of such notice as provided in Condition 15. Following such inspection and/or checking, if the relevant Services are found not to conform to the Contract, the Department shall give notice to the Contractor specifying the action required to be taken (which may include re-performance of the Services) so that such Services conform to the Contract.

8.4 If the Department gives notice to the Contractor under Condition 8.3, the provisions of Conditions 8.2 and 8.3 shall apply to any action taken by the Contractor pursuant to such notice.

8.5 The Department will have the right to reject any Services at any time prior to acceptance of such Services in accordance with this Condition 8.5. The Services which are the subject of the Contractor's notice under Condition 8.2 shall be deemed to have been accepted by the Department upon either:

8.5.1 The date of the Department's inspection and/or checking (or of the final inspection and/or checking if more than one) of such Services provided that such inspection and/or checking found such Services to conform to the Contract.

8.5.2 The date on which the period for inspection and/or checking under Condition 8.3 expires if the Department does not exercise the right of inspection and/or checking or further inspection and/or checking (as the case may be) pursuant to Condition 8.3.

The Department will also have the right to reject any Services (as though they had not been accepted) within ten (10) Business Days after any latent defect in such Services has become apparent.

8.6 The making of a payment by or on behalf of the Department to the Contractor shall not prejudice the Department's right of rejection under Condition 8.5 or 15.1.

8.7 The provisions of Conditions 8.2 to 8.6 inclusive shall apply to all Services, including those which are re-performed or subject to remedial action under Condition 10.

9. WARRANTY AND CANCELLATION

9.1 The Contractor warrants, represents and undertakes to the Department that:

9.1.1 It will provide the Services:

9.1.1.1 With the high degree of professional skill, sound practices and good judgement normally exercised by recognised professional firms or by highly skilled and experienced contractors providing services of a similar nature to the Services.

9.1.1.2 In accordance with all applicable statutory and EU regulations and requirements.

9.1.2 The Services when completed will conform in all respects with the Specification and will be suitable for the purpose indicated by or to be reasonably inferred from the Specification.

9.1.3 The Contractor's Equipment complies and will at all material times comply with all applicable statutory and EU regulations and requirements.

9.1.4 The Contractor has informed and satisfied itself fully as to the nature and extent of the Services including but not limited to the physical condition of and around the Site so far as is reasonably practicable and therefore has provided, unless otherwise expressly specified in the Contract, for all reasonably foreseeable eventualities in the Price.

9.2 Without prejudice to any of the Department's other rights, powers or remedies (whether expressed or implied), if the Contractor breaches any provision of the Contract (including, without limitation, a failure to provide or delay in providing the Services on or before the Completion Date), or if the Department terminates the Contract in accordance with Condition 18.1 or 18.2, then the Department may (but will not be so obliged), whether or not the Services (or any part of them) have been accepted by the Department, by notice to the Contractor:

9.2.1 Cancel the whole or any part of the Purchase Order that remains to be fulfilled.

9.2.2 Recover from the Contractor all additional cost, loss and expense reasonably incurred by the Department which is properly attributable to the Contractor's breach of the Contract or arises from termination of the Contract including, without limitation, all additional costs incurred by the Department in procuring the Services (or any part of them) from an alternative contractor.

10. REMEDIAL ACTION AND REFUNDS

10.1 Notwithstanding the Department's rights under the Limitation Act 1984 and without prejudice to any of the Department's other rights, powers or remedies, if the Department either rejects any Services in accordance with Condition 8.5 or notifies the Contractor of a breach of warranty under Condition 9 in respect of any Services, then the Contractor shall, at its own cost and as soon as reasonably practicable, but in any event within twenty (20) Business Days of the Department's notice, at the Department's option either:

10.1.1 Provide all necessary and appropriate remedial action; or

10.1.2 Re-perform; or

10.1.3 Pay to or credit the Department with a refund of the price paid in respect of the Services that are the subject of such a notice from the Department; or

10.1.4 Provide a combination of the remedies set out in Conditions 10.1.1 to 10.1.3 in respect of the Services that are the subject of such a notice from the Department.

10.2 Any Services that have been subject to remedial action and/or have been re-performed in whole or in part by the Contractor shall themselves be subject to the provisions of Condition 10.1.

10.3 The Department may (but shall not be obliged to) give the Contractor a reasonable opportunity to re-perform any Services or take remedial action pursuant to Condition 10.1. However, if, after notice from the Department requiring re-performance or remedial action, the Contractor is unable or unwilling or fails to re-perform or carry out remedial action to the Services within such period as the Department shall reasonably determine is necessary, nothing shall prevent the Department from procuring the provision of Services or remedial action from an alternative contractor.

10.4 Where the Department procures the provision of Services or remedial action from an alternative contractor, the Department shall be entitled to recover from the Contractor all additional cost, loss and expense reasonably incurred by the Department which is properly attributable to the Department procuring the provision of Services or remedial action from such alternative contractor.

11. ACCESS TO THE SITE AND REGULATIONS

11.1 The Department shall:

11.1.1 Grant or procure to be granted to the Contractor (including its employees, agents and sub-contractors) all such rights (if any) in relation to the Site (or any part of it) which the Department determines are reasonably necessary for the purposes of providing the Services, provided that, for the avoidance of doubt, nothing shall require the Department to grant or procure to be granted any right which is exclusive to the Contractor or which restricts or may restrict the rights of the Department or any third party.

11.1.2 Notify the Contractor, before the commencement of the provision of the Services, of all of the rights granted under Condition 11.1.1 and the terms and conditions (if any) upon which such rights have been granted.

11.2 The Contractor shall:

11.2.1 If required by the Department, upon arriving at the Site, and before commencing the provision of the Services, report to the Supervising Officer or his nominated representative.

11.2.2 Not exercise or purport to exercise any rights in respect of the Site (or any part of it) in excess of those which have been granted under Condition 11.1.

11.2.3 At its own expense, comply with and procure that its employees, agents and sub-contractors comply with all applicable legislative provisions, bye-laws, guidance, codes of practice, all of the Regulations (if any), particularly (but without limitation) those relating to health and safety, and the Safe Systems of Work or such part or parts of the Safe Systems of Work as the Department may reasonably determine are applicable. Before providing any Services at the Site, the Contractor may be required to sign a certificate, provided by the Department, certifying that the Contractor has been made aware of the Regulations and that the Contractor will comply with them and that the Contractor will ensure that its employees, agents and sub-contractors (if any) will comply with them.

12. SITE CONDITIONS

The Contractor shall notify the Department as soon as reasonably practicable if any delay in the provision of the Services is likely to arise due to any restrictions imposed by the operation of the business of the Department at the Site.

13. CONTRACTOR'S PERSONNEL

13.1 The Department shall be entitled, if it so requires, to have suitable certificates of competence from the Contractor for any person employed in connection with the Services.

13.2 Without prejudice to any of its other rights, powers or remedies, the Department shall have the right to object to and request the removal of any representative or person, engaged or employed by the Contractor or its sub-contractors in the provision of the Services, who shall, in the opinion of the Department, misconduct himself or be incompetent or negligent or otherwise breach the provisions of the Contract. The Contractor shall remove that person from the Services and he shall not be employed or engaged again by the Contractor in connection with the Services without the written permission of the Department. Any removal of labour under this Condition 13.2 shall not constitute a valid reason for the Contractor's failure to complete the Services in accordance with the Contract. The Contractor shall replace any such removed personnel with suitably qualified, skilled and competent personnel.

14. THE CONTRACTOR'S EQUIPMENT AND FACILITIES

14.1 Except as otherwise agreed in writing by the Department:

14.1.1 The Contractor shall, subject to Condition 14.2, at its own risk and expense provide everything necessary for the provision of the Services, including the provision of the Contractor's Equipment.

14.1.2 All Contractor's Equipment shall remain the responsibility and at the risk of the Contractor who shall be liable for its delivery, unloading, loading, maintenance, care, safety and storage and removal.

14.1.3 The Contractor shall remove all Contractor's Equipment from the Site at the end of each of its visits (and immediately upon termination of the Contract) and leave the Site in an undamaged, clean, tidy and safe condition.

14.2 The Contractor may, with the prior written consent of the Department, use such supplies of electricity, water, gas and any other facilities as are reasonably required and available for the provision of the Services. If so permitted, the Contractor shall use these facilities at its own risk and the Department reserves the right to charge for such facilities at reasonable rates.

14.3 The Department will not be liable for loss or damage caused by variations in pressure or quality or by the interruption, withdrawal or failure of any facilities provided under Condition 14.2. The Contractor shall, at its own expense, provide any apparatus necessary for using such facilities and shall be responsible for any loss or damage to persons or property caused by its use of them.

14.4 The Contractor shall, in providing the Services, ensure that there is no avoidable interference at the Site with the operations of the Department (or of any other Department, Statutory Board or other body forming part of the Isle of Man Government) or of other contractors or with the use and enjoyment of any public rights or of any property (whether or not such property is owned by the Department) and shall use its best endeavours to minimise the nature and duration of any unavoidable interference.

14.5 All minerals, materials, metals, objects and other things found or discovered on the Site by the Contractor shall (insofar as they may lawfully be so) be the property of the Parties shall not move or procure to be moved any such items otherwise than may be strictly necessary and lawful for the provision of the Services.

15. INSPECTION AND CHECKING

15.1 The Department shall have the right to inspect and check the Services (or any part of them including work-in-progress) to ascertain conformance of the Services with the Contract. Such inspection and/or checking may take place at all reasonable times wherever such Services have been or are being provided and the Contractor shall procure that access is given to the Department to all such premises for that purpose. The Department may at any time at the point of inspection and/or checking reject Services which, in the reasonable opinion of the Department, do not conform with the Contract.

15.2 Any inspection, checking, rejection or approval made, carried out or given by or on behalf of the Department shall not relieve the Contractor from any obligation under the Contract or prejudice any of the Department's rights, powers or remedies.

15.3 If, as a result of such inspection and/or checking under Condition 15.1, the Department is not satisfied that the Services will conform in all respects with the Contract and the Department so informs the Contractor within ten (10) Business Days of inspection and/or checking, the Contractor will take all necessary steps to ensure conformance. Without prejudice to any of the Department's other rights, powers or remedies, any failure of this obligation by the Contractor will be deemed a material breach which is not capable of remedy entitling the Department to terminate the Contract under Condition 18.2.

16. LIABILITY

16.1 Subject to Conditions 16.2 and 16.3, the Contractor shall indemnify, keep indemnified and hold harmless the Department from and against all costs (including but not limited to the cost of enforcement and legal and other professional fees and expenses on a full indemnity basis), expenses, liabilities, injuries, direct, indirect or consequential loss (all 3 of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and like loss), damages, claims, demands, proceedings, awards, orders or judgments which the Department incurs or suffers as a consequence of:

16.1.1 Any infringement of any intellectual property right arising out of the provision or use by the Department of the Project Intellectual Property or the Background Intellectual Property or the Project Results.

16.1.2 Any direct or indirect breach or negligent performance by the Contractor or its employees, agents or sub-contractors or any failure or delay in performance by the Contractor or its employees, agents or sub-contractors of any of the provisions of the Contract.

16.1.3 Any claim by all or any of the employees of the Contractor and/or the sub-contractors of the Contractor or any representatives of such employee, whether before or after the expiry or termination of the Contract, including, but not limited to, a claim for unfair dismissal, breach of contract, sex or race discrimination, equal pay, redundancy payments, protective awards, awards pursuant to any claim under the Minimum Wage Act 2001 and/or the Employment Act 2006.

16.2 The liability of the Contractor to the Department under or in connection with the Contract howsoever arising shall be limited in aggregate to and shall in no circumstances exceed:

16.2.1 £2,000,000 (two million pounds) for any single claim.

16.2.2 £2,000,000 (two million pounds) for claims in aggregate over the life of the Contract (whether such claims arise during the Contract or after the Contract has expired or otherwise terminated).

16.3 The Contractor shall not be liable for any loss, damage, liability, cost, and claim or expense to the extent that the same is wholly attributable to:

16.3.1 Any error, fault or defect in any data or information provided or procured to be provided by the Department to the Contractor under and for the purposes of the Contract.

16.3.2 Any breach or negligent performance of any of its obligations under the Contract by the Department or its employees, agents or sub-contractors (other than the Contractor) or any delay by the Department or its employees, agents or sub-contractors (other than the Contractor) in performing (or procuring to be performed) any of its obligations under the Contract unless such breach, negligent performance

or delay is in respect of an obligation which has been suspended under Condition 20 and occurs during the period of such suspension.

16.4 The Department shall not be liable to the Contractor for any loss of profits, direct, indirect or consequential or any other indirect or consequential loss (both of which terms include, without limitation, pure economic loss, loss of business, depletion of goodwill and like loss) howsoever arising out of or in connection with the Contract.

16.5 Nothing in the Contract excludes or limits the liability of a Party for death or personal injury caused by its own negligence, for fraudulent misrepresentation by it, for fraud or for any matter for which it would be illegal for that Party to exclude or to attempt to exclude its liability.

16.6 The Parties acknowledge that the above provisions of this Condition 16 are reasonable and are reflected in the Price.

17. INSURANCE

17.1 Unless the Department otherwise agrees in writing, the Contractor shall effect and maintain at its own cost the insurances specified in Conditions 17.1.1 and 17.1.2 with a limit of indemnity of not less than and an excess of not more than those referred to in Conditions 17.1.1 and 17.1.2 and such other insurances as are from time to time required by law (the "Insurances"):

<u>Cover</u>	<u>Maximum Excess</u>	<u>Limit of Indemnity</u>
17.1.1 Public Liability	£100,000	£2,000,000 for any one claim or series of claims arising from any one occurrence and unlimited in the aggregate
17.1.2 Professional Indemnity	None specified	£2,000,000 for any one claim or series of claims arising from any one occurrence

17.2 The Contractor shall effect and maintain the Insurances for such period as is necessary to ensure that insurance is provided for all of the Contractor's liabilities arising under or in connection with the Contract irrespective of when any claim in relation to any such liability is made.

17.3 The Insurances shall be affected and maintained with insurance companies with an AM Best claims rating of no less than A.

17.4 The Contractor shall in relation to all of the Insurances provide to the Department on request:

17.4.1 Copies of all insurance policies (including all documents evidencing any amendments, extensions or variations to such Insurances).

17.4.2 Evidence that the premiums payable under all insurance policies have been paid and that the Insurances are in full force and effect.

17.5 If the Contractor is in breach of Condition 17.1 the Department may pay any premiums required to keep any of the Insurances in force or itself procure such Insurances. In either case, the Department may recover such premiums from the Contractor, together with all expenses incurred in procuring such insurance, as a debt.

18. TERMINATION

18.1 The Department may (without prejudice to any other rights, powers or remedies it may have) terminate the Contract immediately by notice to the Contractor if the Contractor:

18.1.1 Being a Company, summons a meeting of its creditors, or makes a proposal for a voluntary arrangement, or becomes subject to any voluntary arrangement, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or has a receiver, manager, administrator or administrative receiver appointed over any of its assets, undertaking or income, or has a petition presented or a resolution passed for its winding-up (save for the purpose of a voluntary reconstruction or amalgamation without insolvency), or is subject to a petition presented to any Court for its administration, or has a provisional liquidator appointed, or has a proposal made for a scheme of arrangement under section 425 of the Companies Act 1985, or is the subject of a notice to strike off the register at Companies House, or is subject to an administration order.

18.1.2 Being an individual, partnership or firm, has entered into any composition or arrangement with its creditors, or has a bankruptcy order made against it, or has been made subject to an application for an interim order under section 253 of the Insolvency Act 1986, or has an interim receiver of its property appointed under section 286 of the Insolvency Act 1986.

18.1.3 Being an individual or a member of a partnership, dies or, by reason of any illness (including mental disorder or infirmity), accident, injury or any other cause whatsoever, becomes unable, for a consecutive period of one (1) month or for an aggregate period of two (2) months in any one (1) consecutive period of twelve (12) months, to comply with its obligations under the Contract.

18.1.4 Has any distraint, execution or other process levied or enforced on any of its property.

18.1.5 Ceases or threatens to cease to carry on a material part of its business, or if anything analogous to any of the events specified in Conditions 18.1.1, 18.1.2, 18.1.4 or 18.1.5 occurs in relation to the Contractor under the laws of any applicable jurisdiction for those purposes.

18.2 Either Party shall have the right to terminate the Contract immediately by notice to the other if the other Party is in material breach of the Contract and:

18.2.1 The other Party fails to remedy such breach within ten (10) Business Days of the date of service of a notice specifying the breach and requiring it to be remedied and referring to the provisions of this Condition 18.2 if it is not so remedied.

18.2.2 Such breach is incapable of remedy, for the purposes of this Condition

(a) A breach shall be considered capable of remedy if the Party in breach can comply with the provision in question in all respects other than as to the time of performance (provided that time of performance is not of the essence).

(b) The expression "material breach" shall mean a breach of any of the provisions of the Contract which is material having regard to all relevant circumstances including, without limitation, the nature of the relationship between the Parties and the need for each Party to maintain the confidence of the other and the nature of the breach (and, in particular but without limitation, whether it was intentional, negligent or otherwise).

18.3 Termination of the Contract shall not prejudice any rights, powers or remedies of either Party which had arisen on or before the date of termination. Upon the termination of the Contract (howsoever it may be terminated including but not limited to expiry):

18.3.1 Each Party shall (if required by the other Party) promptly return to the other all data, materials and other property of the other held by it provided that, if the Department terminates the Contract because the Contractor is in default, the Department shall have the right to retain and use such data, materials and other property of the Contractor until such time as it has found a comparable alternative contractor from whom to procure the Services (or any part of them).

18.3.2 The Contractor shall (if required by the Department) remove all Contractor's Equipment remaining on the Site in accordance with Condition 14.

18.3.3 The Contractor shall cease to exercise the rights granted under Condition 11.1 (if any) and the grant of all such rights shall be revoked.

18.4 For the avoidance of doubt unless otherwise agreed in writing by the Parties:

18.4.1 The Department shall, in the event of termination by the Department under Condition 18.1 or 18.2, be entitled to recover from the Contractor, all additional cost, loss and expense reasonably incurred by the Department in procuring the Services (or any part of them) from an alternative contractor.

18.4.2 The Contractor shall, in the event of termination under Condition 18.1 or 18.2 (if the Department has not already exercised its right of cancellation under Condition 9.2 and the Contractor has not already done so), cease to provide any Services whether or not the Contractor started the provision of such Services prior to the date of such termination.

18.5 The Department shall not be obliged to pay any cancellation charge or other compensation to the Contractor by reason solely of termination of the Contract.

18.6 The Conditions that expressly or by implication have effect after termination including, without limitation, Conditions numbered 1 (Definitions and Interpretation), 2 (Formation), 3.2.5 (The Contractor's Obligations), 4.5 (Price and Payment), 6 (Intellectual Property), 7 (Confidentiality), 9 (Warranty and Cancellation), 10 (Remedial Action and Refunds), 14.1, 14.2, 14.3 and 14.5 (The Contractor's Equipment and Facilities), 16 (Liability), 17 (Insurance), 18.3 to 18.6 inclusive (Termination), 19 (Assignment and Sub-contracting), 21 (Notices), 22 (Dispute Resolution) and 25 (General), will continue to be enforceable notwithstanding termination.

18.7 The Department may terminate the Contract either totally or in part by giving one calendar months notice to the Supplier.

19. ASSIGNMENT AND SUB-CONTRACTING

19.1 The Contract is personal to the Contractor and shall not be assigned, novated or otherwise transferred by the Contractor or sub-contracted as a whole without the prior written consent of the Department. The Contractor shall not sub-contract any part of the Contract without the Department's prior written consent, such consent not to be unreasonably withheld or delayed.

19.2 Notwithstanding any sub-contracting pursuant to Condition 19.1, the Contractor shall be and remain responsible for all of its duties and obligations under the Contract whether performed by itself or by its sub-contractors.

20. FORCE MAJEURE

20.1 Neither Party shall be deemed to be in breach of the Contract, or otherwise liable to the other Party in any manner whatsoever, for any failure or delay in performing its obligations under the Contract due to Force Majeure.

20.2 If a Party's performance of its obligations under the Contract is affected by Force Majeure, then:

20.2.1 It shall give written notice to the other Party, specifying the nature and extent of the Force Majeure, as soon as reasonably practicable after becoming aware of the Force Majeure and will at all times use all reasonable endeavours to mitigate the severity of the Force Majeure.

20.2.2 Subject to the provisions of Condition 20.2.4, the date for performance of such obligation shall be deemed suspended but only for a period equal to the delay caused by such event.

20.2.3 Except as otherwise provided in the Contract, it shall not be entitled to payment from the other Party in respect of extra costs and expenses incurred by virtue of the Force Majeure.

20.2.4 If the Force Majeure in question prevails for a continuous period in excess of three (3) months after the date on which the Force Majeure begins, the other Party is then entitled to give notice to the Party whose performance is affected by Force Majeure to terminate the Contract. This notice to terminate must specify the termination date, which must not be less than ten (10) Business Days after the date on which the notice to terminate is given. Once a notice to terminate has been validly given, the Contract will terminate on the termination date set out in the notice.

21. NOTICES

21.1 Subject to the provisions of Condition 21.2, any notice to be served on a Party by the other Party shall be in writing sent to the address or facsimile (fax) number of the Department or the Contractor (as the case may be) set out in the Purchase Order or to such other addresses or fax numbers of either Party as may be notified from time to time by one Party to the other in accordance with this Condition 21.

21.2 Each such notice under the Contract shall be sent by hand or by prepaid recorded delivery or registered post or fax (provided that where notice is sent by fax it shall only be valid if a hard copy is sent the same day by prepaid recorded delivery or registered post by way of confirmation) and shall be deemed to have been received by the addressee at the time of delivery by hand or within three (3) Business Days of posting or on the next Business Day if sent by fax to the correct fax number of the addressee. The Contractor shall, unless otherwise notified by the Department, mark all of its notices to the Department for the attention of the person from time to time appointed as Supervising Officer.

22. DISPUTE RESOLUTION

22.1 Where Part II of the Construction Act applies, either Party may at any time refer any dispute in connection with or arising under the Contract to adjudication. Where Part II of the Construction Act does not apply, any dispute in connection with or arising under the Contract may with the agreement in writing of both Parties be referred by either Party to adjudication. The adjudication procedures and the agreement for the appointment of any adjudicator will be as set out in the Institution of Civil Engineers' Adjudication Procedure current at the date of reference. The nominating body will be the Institution of Civil Engineers or its successor body.

22.2 Without prejudice to Condition 22.1, any dispute which may arise between the Parties in connection with or arising out of the Contract may, with the agreement in writing of both the Parties, be resolved by arbitration in which event such dispute shall be referred to a single arbitrator to be agreed by the Parties or, failing such agreement within ten (10) Business Days of the agreement to refer to arbitration, to be nominated by the President of the Isle of Man Law Society in accordance with the Arbitration Act 1976. The decision of the arbitrator shall be final and binding and the cost of the arbitration shall be borne equally by the Parties or as the arbitrator in his sole discretion otherwise directs.

22.3 Nothing in this Condition 22 will restrict either Party's freedom to commence legal proceedings of any nature where no agreement has been reached to resolve a dispute by arbitration.

23. THIRD PARTY RIGHTS

Except as otherwise provided in the Contract, this Contract is intended to be solely for the benefit of the Contractor and the Department and no third party shall acquire any benefit, claim or rights under this Contract.

24. LAW

The Contract shall be governed by and construed in accordance with the laws of the Isle of Man, the courts of the Isle of Man will have exclusive jurisdiction to settle any disputes which may arise out of or in connection with the Contract. The Parties irrevocably submit to that jurisdiction.

25. GENERAL

25.1 The failure or delay by either Party to exercise any right, remedy or power shall not in any circumstances impair such right, remedy or power nor operate as a waiver of it.

25.2 The Contract shall constitute neither an agency nor a partnership between the Parties. In carrying out their respective duties neither Party shall say or do anything that might lead any third party to believe that either Party (as the case may be) is acting as agent or partner to the other Party.

25.3 If any provision of the Contract is declared by a judicial or other competent authority to be wholly or partly void, voidable, illegal or otherwise unenforceable it will be severed from the Contract and will not affect any other provisions of the Contract which will remain in full force and effect. The Parties will in good faith endeavour to agree to amend the Contract to reflect as nearly as possible the spirit and intention behind that void, voidable, illegal or otherwise unenforceable provision but so that the amended provision complies with English law.

25.4 All rights, powers and remedies granted to either of the parties shall be cumulative and no single or partial exercise by either of the parties of any right, power or remedy shall restrict or prejudice any other or further exercise of it or the exercise of any other right, power or remedy available to it.



infrastructure

operations

bun-troggalys / obbraghyn