

## **E CONTROL OF THE CONTRACT**

### **E1 Transfer, Sub-Contracting and Novation**

- E1.1 Except where Clause E1.4 and E1.5 applies the Contractor shall not assign, sub-contract or in any other way dispose of the Contract or any part of it without prior Approval. Sub-contracting any part of the Contract shall not relieve the Contractor of any of its obligations or duties under the Contract including, but not limited to, any security requirements specific to this Contract.
- E1.2 The Contractor shall be responsible for the acts and omissions of its sub-contractors as though they are its own.
- E1.3 Where the Client has consented to the placing of sub-contracts, copies of each sub-contract shall, at the request of the Client, be sent by the Contractor to the Client as soon as reasonably practicable.
- E1.4 Notwithstanding Clause E1.1, the Contractor may assign to a third Party (the "Assignee") the right to receive payment of the Contract Price or any part thereof due to the Contractor under the Contract. Any assignment under this Clause E1.4 shall be subject to:
- (a) deduction of any sums in respect of which the Client exercises its right of recovery under Clause B3 (Recovery of Sums Due); and
  - (b) all related rights of the Client under the Contract in relation to the recovery of sums due but unpaid;
- E1.5 In the event that the Contractor assigns the right to receive the Contract Price under Clause E1.4, the Contractor shall notify the Client if future payments are to be made directly to the Assignee and shall provide the Client with the relevant Information. The provisions of Clause B2 (Payment Terms and VAT) shall continue to apply in all other respects after the assignment and shall not be amended without the Approval of the Client.
- E1.6 Subject to Clause E1.8, the Client may assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof to:
- (a) any Contracting Authority; or
  - (b) any other body established by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Client; or
  - (c) any private sector body which substantially performs the functions of the Client,
- provided that any such assignment, novation or other disposal shall not increase the burden of the Contractor's obligations under the Contract.
- E1.7 Any change in the legal status of the Client such that it ceases to be a Contracting Authority shall not, subject to Clause E1.8, affect the validity of the Contract. In such circumstances, the Contract shall bind and inure to the benefit of any successor body to the Client.

- E1.8 If the rights and obligations under the Contract are assigned, novated or otherwise disposed of pursuant to Clause E1.6 to a body which is not a Contracting Authority or if there is a change in the legal status of the Client such that it ceases to be a Contracting Authority (in the remainder of this Clause both such bodies being referred to as the "Transferee"):
- (a) the rights of termination of the Client in Clauses G1 (Termination on insolvency and change of control) and G2 (Termination on Default) shall be available to the Contractor in the event of, respectively, the bankruptcy or insolvency, or Default of the Transferee;
  - (b) the Transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof with the previous consent in writing of the Contractor.
- E1.9 The Client may disclose to any Transferee any Confidential Information of the Contractor which relates to the performance of the Contractor's obligations under the Contract. In such circumstances the Client shall authorise the Transferee to use such Confidential Information only for purposes relating to the performance of the Contractor's obligations under the Contract and for no other purpose and shall take all reasonable steps to ensure that the Transferee gives a confidentiality undertaking in relation to such Confidential Information.
- E1.10 Each Party shall at its own cost and expense carry out, or use all reasonable endeavours to ensure the carrying out of, whatever further actions (including the execution of further documents) the other Party reasonably requires from time to time for the purpose of giving that other Party the full benefit of the provisions of the Contract.

## **E2 Waiver**

- E2.1 The failure of either Party to insist upon strict performance of any provision of the Contract, or the failure of either Party to exercise, or any delay in exercising, any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by the Contract.
- E2.2 No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with Clause A5 (Notices).
- E2.3 A waiver of any right or remedy arising from a breach of the Contract shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of the Contract.

## **E3 Variation**

- E3.1 Subject to the provisions of this Clause E3.1, the Client may request a Variation of the Specification provided that such Variation does not amount to a material change to the Specification. Such a change is hereinafter called a "Variation".
- E3.2 The Client may request a Variation by notifying the Contractor in writing giving the Contractor sufficient Information to assess the extent of the Variation and any additional cost that may be incurred by the Contractor. The Client shall specify a time limit within which the Contractor shall respond to the request for a Variation. Such time limits shall be reasonable having regard to the nature of the Variation. If the Contractor accepts the Variation it shall confirm the same in writing.

E3.3 In the event that the Contractor is unable to provide the Variation to the Specification or where the Parties are unable to agree a change to the Contract Price, the Client may;

- (a) allow the Contractor to fulfil its obligations under the Contract without the Variation to the Specification;
- (b) terminate the Contract with immediate effect, except where the Contractor has already delivered all or part of the Services or where the Contractor can show evidence of substantial work being carried out to fulfil the requirements of the Specification; and in such case the Parties shall attempt to agree upon a resolution to the matter. Where a resolution cannot be reached, the matter shall be dealt with under the Dispute Resolution procedure detailed at Clause H2.

#### **E4 Severability**

E4.1 If any provision of the Contract is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions of the Contract shall continue in full force and effect as if the Contract had been executed with the invalid, illegal or unenforceable provision eliminated.

#### **E5 Remedies Cumulative**

E5.1 Except as otherwise expressly provided by the Contract, all remedies available to either Party for breach of the Contract are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

#### **E6 Extension of Initial Contract Period**

E6.1 Subject to Clause B6. (Price adjustment on extension of the Initial Contract Period), the Client may, by giving written notice to the Contractor not less than [ ] Month(s) prior to the last day of the Initial Contract Period, extend the Contract for a further period of up to [ ] Month(s). The provisions of the Contract will apply (subject to any Variation or adjustment to the Contract Price pursuant to Clause B6 (Price adjustment on extension of the Initial Contract Period)) throughout any such extended period.

#### **E7 Entire Agreement**

E7.1 The Contract constitutes the entire agreement between the Parties in respect of the matters dealt with therein. The Contract supersedes all prior negotiations between the Parties and all representations and undertakings made by one Party to the other, whether written or oral, except that this Clause shall not exclude liability in respect of any Fraud or Fraudulent misrepresentation.

E7.2 In the event of, and only to the extent of, any conflict between the Clauses of the Contract, any document referred to in those Clauses and the Schedules, the conflict shall be resolved in accordance with the following order of precedence:

- (a) the Clauses of the Contract;
- (b) the Schedules; and
- (c) any other document referred to in the Clauses of the Contract.