

## **F LIABILITIES**

### **F1 Liability, Indemnity and Insurance**

F1.1 Neither Party excludes or limits liability to the other Party for:

- (a) death or personal injury caused directly or indirectly by its negligence; or
- (b) Fraud; or
- (c) Fraudulent misrepresentation; or
- (d) any breach of any obligations implied by Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982.

F1.2 Subject to Clauses F1.3 and F1.4, the Contractor shall indemnify the Client and keep the Client indemnified against all claims, proceedings, actions, damages, costs, expenses and any other liabilities which may arise out of or in consequence of the supply, or the late or purported supply, of the Goods or Services, or the performance or non-performance by the Contractor of its obligations under the Contract, or the presence of the Contractor or any Staff on the Premises, including in respect of any death or personal injury, loss of or damage to the Client's Property, financial loss arising from any advice given or omitted to be given by the Contractor, or any other loss which is caused directly or indirectly by any negligent act or omission of the Contractor.

F1.3 The Contractor shall not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is solely caused by the negligence or wilful misconduct of the Client or by breach by the Client of its obligations under the Contract.

F1.4 Subject always to Clause F1.1, the liability of either Party for Defaults shall be subject to the following financial limits:

- (a) the aggregate liability of either Party for all Defaults resulting in direct loss of or damage to the Property of the other under or in connection with the Contract shall in no event exceed ( ) million pounds; and
- (b) the annual aggregate liability under the Contract of either Party for all Defaults (other than a Default governed by Clauses D8.4 (Intellectual Property Rights) or F1.4(a) shall in no event exceed the greater of ( ) or ( %) of the Contract Price paid or payable by the Client to the Contractor in the year in which the liability arises];
- (c) The aggregate liability of the Contractor under Clause D8.4 (Intellectual Property Rights) where applicable shall in no event exceed ( ) million pounds.

F1.5 Subject always to Clause F1.1, in no event shall either Party be liable to the other for any:

- (a) loss of profits, business, revenue or goodwill; and/or
- (b) loss of savings (whether anticipated or otherwise); and/or
- (c) indirect or consequential loss or damage.

- F1.6 The Contractor shall effect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Contractor, arising out of the Contractor's performance of its obligations under the Contract, including in respect of death or personal injury, loss of or damage to Property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Contractor and shall be maintained for the Contract Period
- F1.7 The Contractor shall hold employer's liability insurance to a minimum of £5,000,000 in respect of Staff in accordance with any legal requirement from time to time in force.
- F1.8 The Contractor shall give the Client, on request, copies of all insurance policies referred to in this Clause or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
- F1.9 If, for whatever reason, the Contractor fails to give effect to and maintain the insurances required by the provisions of the Contract the Client may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Contractor.
- F1.10 The provisions of any insurance or the amount of cover shall not relieve the Contractor of any liabilities under the Contract. It shall be the responsibility of the Contractor to determine the amount of insurance cover that will be adequate to enable the Contractor to satisfy any liability referred to in Clause F1.2.
- F1.11 The Contractor shall effect and maintain with a reputable insurance company a fidelity insurance policy or policies to cover the loss, theft or misappropriation of moneys held on behalf of the Client up to the sum of [(words/figures)] whilst in the custody or possession of the Contractor, or its Staff.

## **F2 Warranties and Representations**

- F2.1 The Contractor warrants and represents that:
- (a) it has full capacity and authority and all necessary consents (including where its procedures so require, the consent of its parent company) to enter into and perform its obligations under the Contract and that the Contract is executed by a duly authorised representative of the Contractor;
  - (b) in entering the Contract it has not committed any Fraud;
  - (c) as at the Commencement Date, all Information contained in the Tender remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Client prior to execution of the Contract;
  - (d) no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of the Contractor's knowledge and belief, pending or threatened against it or any of its assets which will or might have a material adverse effect on its ability to perform its obligations under the Contract;

- (e) it is not subject to any Contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under the Contract;
- (f) no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Contractor or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Contractor's assets or revenue;
- (g) it owns, has obtained or is able to obtain, valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under the Contract;
- (h) in the three years prior to the date of the Contract:
  - (i) it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;
  - (ii) it has been in full compliance with all applicable securities and tax Laws and regulations in the jurisdiction in which it is established; and
  - (iii) it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under the Contract.

### **F3 Professional Indemnity**

- F3.1 The Contractor shall effect and maintain appropriate professional indemnity insurance cover during the Contract Period and shall ensure that all agents, professional consultants and sub-contractors involved in the supply of the Services do the same. To comply with its obligations under this Clause and as a minimum, the Contractor shall ensure professional indemnity insurance held by the Contractor and by any agent, sub-contractor or consultant involved in the supply of the Services has a limit of indemnity of not less than [ ] for each individual claim or such higher limit as the Client may reasonably require (and as required by Law) from time to time. Such insurance shall be maintained for the duration of the Contract Period and for a minimum of 12 months thereafter.
- F3.2 Any excess or deductibles under the insurance referred to in Clause F3.1 shall be the sole and exclusive responsibility of the Contractor or the Contractor's agents, professional consultants or sub-contractors, as applicable.
- F3.3 The terms of any insurance or the amount of insurance cover shall not relieve the Contractor of any liabilities arising under the Contract.
- F3.4 The Contractor shall, on request, provide the Client with copies of all insurance policies referred to in Clause F3.1 or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
- F3.5 If, for whatever reason, the Contractor fails to give effect to and maintain the insurances required by this Clause then the Client may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Contractor.