

## **Appendix D**

### **Implementation of an Alternative Delivery Model (ADM) for various leisure related activities/functions**

#### **Heads of Terms**

**1. BACKGROUND**

The Contractor is willing and able to provide the Services in accordance with the terms and conditions of this Contract.

**2. INTERPRETATION**

The interpretation and construction of the Contract shall be subject to the following provisions:

**3. OFFICIAL NOTICES**

Except as otherwise expressly provided within the Contract, no notice or other communication from one Party to the other shall have any validity under the Contract unless made in writing by or on behalf of the Party sending the communication.

**4. ENTIRE AGREEMENT AND CONFLICT**

This Contract constitutes the entire agreement between the Parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to the Contract.

**5. CONTRACT PERIOD**

Notwithstanding the date of this Contract, the Contract Period will commence on the Commencement Date and, unless terminated earlier in accordance with any provisions within the Contract, it shall remain in force until the Expiry Date or any date agreed between the Parties as an extension beyond the Expiry Date.

**6. PERFORMANCE**

The Contractor shall supply the Services in accordance with the Specification and the Tender in consideration for the Contract Price.

**7. QUALITY STANDARDS**

At all times comply with the Quality Standards, and, where applicable, shall maintain accreditation with the relevant Quality Standards authorisation body;

8. The Contractor shall ensure that all Staff supplying the Services shall do so with all due skill, care and diligence and shall possess such qualifications, skills and experience as are necessary for the proper supply of the Services in accordance with Good Industry Practice.

9. **CONTRACT MANAGER, KEY PERSONNEL AND STAFF**

The Contractor shall appoint the Contract Manager. The Contract Manager shall be competent in the subject matter of this Contract and, with the exception of a Dispute, shall be able to make decisions under the Contract without the need for the matter to be escalated within the Contractor's business. This will not limit in any way any other of the Contractor's rights or obligations.

10. **LEASE TO OCCUPY AND SECURITY OF THE PREMISES**

Land or Premises made available from time to time to the Contractor by the Council in connection with the Contract shall be made available to the Contractor on a Leasehold basis and shall be used by the Contractor solely for the purpose of performing its obligations under the Contract. The Council may require the Contractor to enter into a licence agreement for the use of the Premises and may require the Contractor to pay to the Council a licence fee.

11. **EQUIPMENT**

Except as otherwise specified in the Specification, the Contractor shall provide the Equipment to perform the Services at its own cost. Such Equipment shall be fit for purpose, well maintained (in accordance with the manufacturer's servicing and maintenance requirements), insured and, where necessary, fulfilling any Quality Standards and/or the requirements contained in the Specification.

12. **ENVIRONMENTAL REQUIREMENTS AND SOCIAL VALUES**

The Contractor shall be required to deliver any agreed social value elements in accordance with the Well-being of Future Generations (Wales) Act 2015 and the Specification.

The Contractor shall where relevant to the Specification co-operate with the Council in relation to the economic, social and environmental well-being of the Council's area and shall accordingly notify the Council of any best practice ideas which may improve the same.

13. **HEALTH AND SAFETY AT PREMISES**

While on the Premises, the Contractor shall comply with any health and safety measures implemented by the Council in respect of the Staff and any other persons working there.

**14. PROVISION OF MANAGEMENT INFORMATION AND MEETINGS**

The Contractor shall, unless otherwise agreed by the Parties, submit Management Information to the Council throughout the Contract Period as required in the Contract Particulars and in Schedule 4 of the Contract and in the Specification.

**15. MONITORING OF CONTRACT PERFORMANCE**

The Contractor shall comply with the requirements for the monitoring of the performance of the Services as required in the Contract Particulars including, but not limited to, providing the Management Information, performance of the Key Performance Indicators and such data and information as the Contractor may be required to produce under the Contract.

**16. COUNCIL'S OBLIGATIONS**

Except as otherwise expressly provided, the obligations of the Council under the Contract are obligations of the Council in its capacity as a contracting counterparty and nothing in the Contract shall operate as an obligation on, or in any other way fetter or constrain the Council in any other capacity, nor shall the exercise by the Council of its duties and powers in any other capacity lead to any liability under the Contract (howsoever arising) on the part of the Council to the Contractor.

**17. CONTRACT PRICE**

The Contract Price for the Services shall be the full and exclusive remuneration due to the Contractor in respect of the provision of the Services. Unless otherwise agreed in writing by the Council, the Contract Price shall include every cost and expense of the Contractor directly or indirectly incurred in connection with the performance of the Services.

**18. VAT**

The Contractor shall, where it is VAT registered, be entitled to charge the Council VAT in relation to the Services provided to the Council.

**19. INVOICING**

Unless otherwise specified in the Specification or the Contract Particulars, the Contractor shall invoice the Council for payment of the Contract Price in accordance with Schedule 3 no later than seven (7) days after the end of each Month (or such other frequency as agreed between the Parties in writing).

**20. TAXATION, NATIONAL INSURANCE AND EMPLOYMENT LIABILITIES**

The Parties acknowledge and agree that the Contract constitutes a contract for the provision of services and not a contract of employment. The Contractor shall at all times indemnify the Council and keep the Council indemnified in full from and against all claims, proceedings, actions, damages, costs, expenses, liabilities and demands whatsoever and howsoever arising by reason of any circumstances whereby the Council is alleged or determined to have been assumed or imposed with the liability or responsibility for the Staff (or any of them) as an employer of the Staff and/or any liability or responsibility to HM Revenue or Customs as an employer of the Staff whether during the Contract Period or arising from termination or expiry of the Contract.

**21. TERMINATION ON INSOLVENCY OR RELATED EVENTS**

Without affecting any other right or remedy available to it, the Council may terminate this Contract with immediate effect by giving written notice to the Contractor if:

**22. TERMINATION ON CHANGE OF CONTROL**

The Contractor shall notify the Council immediately if the Contractor undergoes a change of Control. The Council may terminate the Contract by notice in writing with immediate effect within six (6) Months of:

**23. TERMINATION ON DEFAULT**

Without prejudice to the above the Council may terminate the Contract by giving written notice to the Contractor with immediate effect if the Contractor commits a Default and if:

**24.** Notwithstanding Clause the above the Council may terminate the Contract by giving written notice to the Contractor with immediate effect if:

**25. TERMINATION FOR CONVENIENCE**

The Council may terminate this Contract at any time by giving three (3) Months' written notice to the Contractor.

**26. CONSEQUENCES OF TERMINATION OR EXPIRY**

**27. DISPUTE RESOLUTION PROCEDURE**

**28. INSURANCE**

**29. LIABILITY**

Nothing in the Contract shall be construed to limit or exclude either Party's liability for:

- a) death or personal injury caused by its negligence; or
- b) fraud or fraudulent misrepresentation; or
- c) 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.

**30. INTELLECTUAL PROPERTY**

The Council shall retain ownership of all its Intellectual Property Rights in any specifications, instructions, plans, data, drawings, databases, patents, patterns, models, designs or other material provided to the Contractor by the Council.

**31. CONFIDENTIALITY AND PUBLICITY**

Subject to Clause F2.2, the Parties shall keep confidential the Confidential Information of the other Party and shall use all reasonable endeavours to prevent their Staff, Sub-Contractors and/or representatives from making any disclosure to any person of any matters relating thereto both during the Contract Period and for a period of 6 years following termination or expiry of the Contract.

**32. DATA PROTECTION**

The Parties' rights and obligations under this Contract and the Data Protection Legislation, the Parties acknowledge that the Council is a Data Controller and that the Contractor is a Data Processor.

**33. FREEDOM OF INFORMATION AND ENVIRONMENTAL INFORMATION REGULATIONS**

The Contractor acknowledges that the Council is subject to the requirements of the FOIA and the EIR.

**34. DISCRIMINATION**

The Contractor shall not unlawfully discriminate within the meaning and scope of any Law, enactment, order or regulation relating to discrimination (whether in race, gender, religion, disability, sexual orientation, age or otherwise).

The Contractor shall take all reasonable steps to secure the observance of this provision by its Staff.

**35. RECORD KEEPING, AUDIT ACCESS AND MONITORING**

The Contractor shall keep and maintain until six (6) years after the end of the Contract Period (or as long a period as may either be agreed between the Parties or as required by Law), full and accurate records and accounts of the operation of the Contract including the Services provided under it, the Contract entered into with the Council and the amounts paid by the Council.

**36. REPLACEMENT OF CORRUPTED DATA**

**37. HEALTH AND SAFETY – GENERAL**

The Contractor shall comply, and it shall procure that all Staff shall comply, with all health and safety legislation in force and any health and safety policies of the Council as supplied by the Authorised Officer.

**38. CORPORATE REQUIREMENTS**

**39. PREVENTION OF PROHIBITED ACTS, FRAUD, BRIBERY AND CORRUPTION**

**40. LAW AND CHANGE IN LAW**

**41. TUPE, PENSIONS AND RE-TENDERING**

**42. CONTRACT VARIATION**

**43. RIGHTS AND REMEDIES**

**44. THIRD PARTY RIGHTS**

**45. WAIVER**

**46. SEVERANCE**

**47. ASSIGNMENT, SUB-CONTRACTING AND RESPONSIBILITY**

The Contractor shall not assign, novate, sub-contract or in any other way dispose of the Contract or any part of it without Approval.

**48. FORCE MAJEURE**

Neither Party shall be liable for failure to perform its obligations under the Contract if such failure results from Force Majeure.

**49. DISRUPTION AND BUSINESS CONTINUITY**

**50. CONFLICT OF INTEREST**

**51. COSTS AND EXPENSES**

Each of the Parties will pay their own costs and expenses incurred in connection with the negotiation, preparation, execution, completion and implementation of this Contract.



52. **NON SOLICITATION**

53. **GOVERNING LAW AND JURISDICTION**

54. **WELSH LANGUAGE STANDARDS**

55. **WELL-BEING OF FUTURE GENERATIONS (WALES) ACT 2015**