

# TERMS AND CONDITIONS OF PURCHASE FOR SERVICES AND WORKS

REF: JETC2 REVISION 3

DATE: DECEMBER 2018



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# SECTION 1 – CONDITIONS OF PURCHASE FOR SERVICES AND WORKS

## 1. DEFINITIONS

- 1.1 The term 'Company' shall mean Jersey Electricity plc.
- 1.2 'The Contract' shall mean the contract between the Company and the Contractor consisting of the Purchase Order, these terms and conditions and any other documents (or parts thereof) specified in the Purchase Order. Should there be any inconsistency between the documents comprising the Contract, they shall have precedence in the order herein listed.
- 1.3 The term 'Contract Price' shall mean the price set out in the applicable Purchase Order.
- 1.4 The term 'Contractor' shall mean the Person, Firm or Company to whom the Contract is awarded.
- 1.5 The term 'Days' shall mean calendar days.
- 1.6 The term "Dayworks" shall mean any and all work specifically instructed by the Company in addition to the Works where the likely incidence of unforeseen work cannot be covered by the provisions of the Contract Price. The price for which shall be calculated on the basis of cost of labour, materials and plant together with additional costs for overheads and profit.
- 1.7 The term 'Data Protection Legislation' shall mean any legislation relating to the privacy of information in force from time to time in Jersey, including, without limitation, the Data Protection (Jersey) Law 2018 and the General Data Protection Regulation (2016/679).
- 1.8 The term 'Force Majeure Event' means any circumstance that is unforeseeable, insurmountable, beyond the control of either party, and without the fault or negligence of the party who invokes it, and which prevents or impedes the due performance of the Contract by that party and may include, but is not limited to, the following:
- a) Earthquake, fire, tornado, flood, tsunami/tidal wave, named cyclone/hurricane/typhoon, or other acts of God;
  - b) Acts of war (whether declared or not), invasion, armed conflict or act of foreign enemy, blockade, embargo, revolution, riot, bombs, missiles or civil commotion or insurrection;
  - c) Sabotage, acts of terrorism or terrorist attack or threat of such acts.
- For the avoidance of doubt but not by way of limitation, the following events shall not constitute Force Majeure:
- a) Non-delivery or late and/or faulty delivery of Materials, Deliverables, construction equipment and/or temporary facilities;
  - b) Strikes, lock-outs and industrial unrest of Contractor's labour or that of its Sub-contractors;
  - c) Non-performance and/or late and/or faulty performance by a party, unless such non and/or late and/or faulty delivery or performance is itself caused by Force Majeure;
  - d) Financial distress or insolvency of either party;
  - e) Seasonal or abnormal variations in temperature, humidity or precipitation, or other weather conditions.
- 1.9 The term 'Intellectual Property' includes inventions designs (whether or not registrable), patents, databases, trademarks, service marks, logos, copyright, know how and trade secrets.
- 1.10 The term 'Intellectual Property Rights' means (in the context of a party) all rights (including moral rights) conferred by law, equity or legislation in relation to Intellectual Property.
- 1.11 The term 'Purchase Order' shall mean the Company's Purchase Order which specifies that these conditions apply to it.
- 1.12 'Services' means any and all services referred to in the Purchase Order and includes (but is not limited to) all engineering, design, procurement, advisory, professional, transportation, consultancy, training and construction management services provided by the Contractor to the Company under the Contract.

- 1.13 The 'Site' shall mean the location where the Works are to be performed.
- 1.14 The 'Statutory Requirements' means any statute, statutory instrument, regulation, rules or order made under any statute or directive having the force of law (include any amendment, modification, re-enactment or successor to such legislation) which affects the Works or performance on any obligations under this Contract and any regulation or bye-law or any local authority or statutory undertaker which has any jurisdiction with regards to the Works.
- 1.15 The term 'Take-Over' shall mean when the Company takes over the Works for use and when the Company pronounce in writing that it is satisfied with the Works.
- 1.16 The terms 'Works' shall mean all work to be undertaken, Services to be supplied and materials to be supplied, by the Contractor in performance of the Contract.

## 2. CONTRACTOR'S GENERAL OBLIGATIONS

- 2.1 The Contractor shall commence, execute with due expedition and safety, complete and maintain the Works to the reasonable satisfaction of the Company in accordance with the provisions specified in or reasonably to be inferred from the Contract or implied by law.
- 2.2 The materials supplied by the Contractor should be fit for the Company's intended purpose whether or not stated in the Contract and for the purpose for which such materials are commonly used and any other purpose made known to the Contractor or reasonably to be inferred by the Contractor.

## 3. CONTRACTOR'S SUPERINTENDENCE

The Contractor shall have a competent supervisor on the Site at all times and any instruction given to him or her shall be deemed to have been given to the Contractor.

## 4. INCLUSIONS IN CONTRACT PRICE

The Contract Price includes for all activities, Services, materials, labour, plant, equipment, transport, handling of materials and plant, tools and appliances and all other things necessary for the Works.

## 5. INSPECTION

- 5.1 The Contractor is deemed to have understood the nature and extent of the Works, and to have visited the Site and shall make no claim founded on his failure to do so. The Company shall, on request of the Contractor, grant such access as may be reasonable for this purpose.
- 5.2 The Company and any person authorised by it shall have the right of access to the Contractor's and its Sub-contractor's premises at all reasonable times to progress, inspect and test the Works, and to reject any part thereof that does not comply with the terms of the Contract. Any inspection, checking or approval whatsoever in this context or any other by or on behalf of the Company shall not relieve the Contractor or its Sub-contractors from any obligation under the Contract.

## 6. MANNER OF CARRYING OUT THE WORKS

- 6.1 The Contractor shall carry out and complete all of the Works in a proper and workmanlike manner in compliance with the Contract and all Statutory Requirements and using the degree of skill, care and diligence that would reasonably and ordinarily be expected from a skilled, experienced and properly-resourced contractor complying in all material respects with applicable law and engaged in the same type of undertaking under the same or similar circumstances as the Contractor who was seeking, in good faith, to perform its contractual undertakings.

- 6.2 Access to and possession of the Site shall not be exclusive to the Contractor but only such as shall enable him to carry out the Works concurrently with the execution of Works by others.
- 6.3 The Company shall have the right at any time during the progress of the Works to order in writing:
- a. The removal from the Site of any materials which in the opinion of the Company are not required or suitable for the performance of the Contract.
  - b. The substitution of proper and suitable materials.
  - c. The removal and proper re-execution (notwithstanding any previous test thereof or interim payment thereof) of any work which, in respect of material or workmanship, is not in the opinion of the Company in accordance with the Contract.
  - d. No work shall be laid in any excavation and no work shall be covered or hidden until approved by the Company.
- 6.4 All consignments to the Site shall be clearly marked with the Contractor's name, together with such other markings as may be required by the Company. These references shall also appear on all consignment notes. The Contractor shall be responsible for receiving and off-loading all such deliveries to Site, for storage to the Company's satisfaction and for all demurrage.
- 6.5 All materials (including free-issue materials) shall remain at the Contractor's risk until Take-Over.

## 7. SERVICES

- 7.1 To the extent that the Purchase Order includes for the provision of Services the Contractor warrants to and covenants with the Company that it has exercised and will continue to exercise all the reasonable skill care and diligence to be expected of an experienced and appropriately qualified professional.
- 7.2 Furthermore, the Company shall be deemed not to have any intrinsic expert knowledge or skill relating to the Services and the Contractor is deemed to be aware of and to accept the foregoing.
- 7.3 The Contractor shall maintain such insurance from the date of the commencement of the Services until 12 years after the completion of the Services provided such insurance remains available generally at commercially competitive premium rates (but this proviso shall not benefit the Contractor to the extent that such insurance is not available on such rates or terms due to the acts and/or defaults and/or claims record of the Contractor).
- 7.54 The Contractor shall promptly produce evidence of the professional indemnity insurance cover if requested by the Company.

## 8. ASSIGNMENT AND SUB-LETTING

- 8.1 The Contractor shall not assign or sub-let any portion of the Contract without the prior written consent of the Company. No sub-letting shall relieve the Contractor from the responsibility of the Contract or from active supervision of the Works during their progress. The Contractor shall be responsible for all work done and materials and articles supplied by Sub-contractors.
- 8.2 Where the Company has consented to the placing of Sub-contracts, copies of each sub-order shall be sent by the Contractor to the Company immediately it is issued. All copies shall be endorsed with the Company's Purchase Order number.

## 9. REJECTION

- 9.1 In the case of Works or any part thereof not conforming with the Contract for whatever reason, including without limitation reasons of quality or being unfit for the purpose for which they are specified in the Contract, or which can be reasonably inferred from the Contract or otherwise intended, the Company shall have the right at any time before Take-Over to reject such Works and the Contractor shall promptly rectify defects so that the Works conform with the Contract at the Contractor's sole expense.
- 9.2 In the event of the continuing failure of the Contractor to make the Works conform with the Contract the Company may terminate the Contract under

the provisions of Clause 22.2. The making of payment shall not prejudice the Company's rights under this Clause.

## 10. TIME

- 10.1 The Date for Completion of the Works shall be that specified in the Purchase Order.
- 10.2 Liquidated damages shall apply for late completion by the Contractor at the rate set out in the Purchase Order, or where no such figure is filled in on the Purchase Order then the liquidated damages provisions do not apply and general damages shall be recoverable in respect of delay pursuant to the law of Jersey.
- 10.3 Where the Purchase Order refers to liquidated damages, the parties agree that the liquidated damages are a genuine pre-estimate of the loss resulting to the Company as a consequence of the Contractor's failure to achieve Take-Over before the Date for Completion.

## 11. EXTENSION OF TIME (ONLY APPLICABLE WHERE THE PURCHASE ORDER CONTAINS LIQUIDATED DAMAGES)

- 11.1 The Contractor shall be entitled to an extension to the Date for Completion if the critical path of the Works is delayed such that TakeOver by the Date for Completion will also be delayed by reason of any of the following:
- a. suspension by the Company of the Works under the Contract pursuant to Clause [28,] save for where suspension arises as a direct result of an act or omission of Contractor;
  - b. any variation to the Works under Clause [13,] except where such variation is caused by or required due to an act or omission breach or default of Contractor;
  - c. Force Majeure events under Clause [12];
  - d. Any prevention by the Company
- 11.2 The procedure for processing extensions of time other than Force Majeure shall be as follows:
- a. Within ten (10) Days of the happening of the event which allegedly caused the delay, Contractor shall give notice in writing to the Company stating that the event causing delay has occurred, the cause of the delay, the length of the delay or the anticipated length of the delay and the steps taken to minimize the delay.
  - b. Within twenty (20) Days of the happening of the event which allegedly caused the delay, if Contractor is of the opinion that a claim for extension to the Date for Completion is justified for any of the reasons set out in Clause [11.1], Contractor shall make such a claim in writing to the Company and shall also submit in writing to the Company details of the extent and cause of the delay and all other facts on which the claim is based, showing direct effect on the critical path of the Works.
  - c. Within twenty (20) Days after the receipt of all the information that is necessary to fully evaluate the Contractor's claim, the Company shall notify the Contractor of any extension to the Date for Completion or that an extension has not been granted as the case may be.

## 12. FORCE MAJEURE (ONLY APPLICABLE WHERE THE PURCHASE ORDER CONTAINS LIQUIDATED DAMAGES)

- 12.1 If a party is prevented from, or delayed in performing the Contract by a Force Majeure Event, then it must notify the other party in writing of the occurrence of the Force Majeure Event and the circumstances resulting or arising from it within ten (10) Days after the start of the Force Majeure Event.

12.2 The affected party will use all reasonable endeavours to mitigate adverse affects of the Force Majeure Event and to minimise the delay in the performance of the affected party's obligations under the Contract.

12.3 When the period for which the affected party's obligations are affected by a Force Majeure Event ceases the affected party must recommence performance of all its obligations under the Contract as soon as practicable and the Company shall make an equitable adjustment to the Date for Completion to reflect the effect of the Force Majeure Event on the performance of the Contract. Such adjustment will be the Contractor's sole remedy for a Force Majeure Event and the Contractor shall not be entitled to any payment, damages or compensation for such Force Majeure Event.

## 13. VARIATION OF THE WORKS

13.1 The Contractor shall not vary any of the Works, except as directed in writing by the Company.

13.2 The Company shall have full power from time to time during the execution of the Contract to direct the Contractor in writing to alter, omit, add to or otherwise vary any of the Works and the Contractor shall carry out such variations.

13.3 Any adjustment to the Contract Price arising by reason of such modifications shall be agreed between the parties in writing. If the Contractor proceeds with variations in the Works without a written instruction the Contractor shall not be entitled to any adjustment in the Contract Price.

13.4 Dayworks shall only be resorted to on the specific written instructions of the Company.

## 14. VARIATION IN CONTRACT PRICE

Save as provided for under [Clause 13.2 and 13.3] the Contract Price shall be a firm price unless otherwise agreed in writing between the parties when the Contract is awarded.

## 15. STATUTORY DUTIES AND SAFETY

15.1 The Works shall be carried out with all proper regard to safety and the Contractor shall observe and conform to all Statutory Requirements including but not limited to the Health and Safety at Work (Jersey) Law 1989 (or any amendment, modification, re-enactment or successor to such legislation) and the appropriate Codes of Practice, applicable to the Works or generally to the Site where the Works are carried out, the cost of supplying and/or doing all things required for the purpose being deemed to be included in the Contract Price. The Contractor shall ensure that its employees and the employees of its Sub-contractors (if any) so comply.

15.2 Any additional expenses reasonably incurred by the Contractor in conforming with any such statutory enactments, by-laws and regulations made subsequently to the formation of the Contract shall be added to the Contract price, provided that such additional expenses were not ascertainable at the date of tender.

15.3 The Contractor shall also observe and conform to the Company's Standard Instructions to Contractors on Health, Safety and Environment ref: JE-H, S&E-PROC-009 (See section 2) applicable to the Site where the Works are carried out and shall ensure that its employees and the employees of its Sub-contractors (if any) so comply.

15.4 The Company shall have the right to require the Contractor immediately on receipt of notice in writing to remove any of its employees or its Sub-contractor's employees on the Site who has:

- (1) failed to comply with the Company's Standard Instructions to Contractors on Health, Safety and Environment ref: JE-H, S&E-PROC-009 or
- (2) in the opinion of the Company misconducted himself, or been negligent or incompetent.

Any such person shall not again be employed upon the Site without the permission of the Company.

15.5 The Contractor shall conform to the Regulation of Undertakings and Development Law (Jersey) 1973 (or any amendment, modification, reenactment or successor to such

legislation). Non-resident Contractors must obtain a licence to carry out works on the Island of Jersey. The Contractor shall obtain this licence before the commencement of any works.

15.6 The Contractor shall not permit any person to visit the Site whose presence is not necessary for the performance of the Works without the consent of the Company.

## 16. INSURANCES

16.1 The Contractor shall have in force and shall require any Sub-contractor to have in force:

- a. Employer's Liability Insurance
- b. Public Liability Insurance shall be held for a minimum sum of £5,000,000 (Five million pounds sterling) for any one accident unless otherwise agreed by the Company in writing.
- c. Professional indemnity insurance with a limit of indemnity of not less than two million pounds (£2,000,000) for each and every claim in any one period of insurance and with an excess of not more than one hundred thousand pounds (£100,000).
- d. The Contractor's Insurance Policies shall be shown to the Company if it is requested.

## 17. NOTIFICATION PROCEDURE

17.1 The Contractor shall give immediate notice to the Company in the event of any accident, incident or near miss which is likely to cause injury to persons or damage to property, plant or equipment. All accidents, incidents and near misses are to be fully investigated by the Contractor with a written report sent to the Company detailing measures to prevent any recurrence.

17.2 In the event of an accident or incident likely to form the subject of a claim under the Company's insurance, the Contractor shall give all the information and assistance required by the Company's insurers. The Contractor shall not negotiate, pay, settle, admit or repudiate any claim without the Company's written consent, and shall permit the insurers to take proceedings in the name of the Contractor to recover compensation or secure an indemnity from any third party in respect of any of the matters covered by the said insurance.

## 18. FREE-ISSUE MATERIALS

18.1 Where the Company for the purposes of the Contract issues materials free of charge to the Contractor, such materials shall be and remain the property of the Company. The Contractor shall maintain all such materials in good order and condition and shall use such materials solely in connection with the Contract. Any surplus materials shall be disposed of at the Company's discretion. Waste of such materials arising from bad workmanship or negligence of the Contractor shall be made good at the Contractor's expense. Without prejudice to any other of the rights of the Company, the Contractor shall deliver up such materials whether further processed or not to the Company on demand. The Contractor shall be liable for any loss, theft or damage to such materials prior to Take-Over.

18.2 Prior to using such free-issue materials the Contractor shall satisfy itself that the free-issue materials are in good order, free from defects and suitable for use.

## 19. INTELLECTUAL PROPERTY

19.1 The Intellectual Property Rights in any Intellectual Property provided by the Contractor shall remain vested in the Contractor and the Contractor grants to the Company and its successors in title an irrevocable royalty free licence to copy and use the Intellectual Property to include reproducing the designs contained within them for any purpose relating to the Works including but without limiting the generality of the foregoing the construction completion reconstruction modification reinstatement maintenance repair alteration and renewal of the Works.

19.2 The Contractor shall be responsible for any errors or omissions in drawings, specifications, calculations or other information provided by the Contractor or its Sub-contractors whether the same have been approved by the Company or not and the Contractor shall rectify all errors and omissions. The Contractor shall be responsible for the cost of such rectification of the Works as shall be necessitated thereby unless the errors and omissions are due to inaccurate information provided in

writing by the Company, save insofar as an inaccuracy would have been reasonably apparent to an experienced contractor or should have been or were detected by the Contractor and the Contractor failed to bring it promptly to the attention of the Company.

19.3 The Contractor shall indemnify the Company against any claim for infringement of Intellectual Property Rights in connection with the use or construction of the Works and against all costs and damages which the Company may incur in any action for such infringement or for which the Company may become liable in any such action. If, however, the subject of the patented invention or design is embodied in the Works or the Contract on the express instructions of the Company, then the responsibility thereof shall rest with the Company.

## 20. INDEMNITY

The Contractor shall take every practicable precaution not to damage or injure any property or persons. The Contractor shall satisfy all claims founded on any such damage or injury which arise out of or in consequence of any operations under the Contract whether such claims are made by the Company or by a third party against the Contractor or against the Company, and the Contractor shall indemnify the Company against all actions, demands, damages, costs, charges and expenses arising in connection therewith, provided, however, that nothing in this condition shall render the Contractor liable for any injury or damage resulting from any negligent act or omission of the Company, his servants or agents, or any other Contractor employed by the Company and the Company shall indemnify the Contractor against all demands and expenses arising in connection with any such neglect or omission.

## 21. WRITTEN AND VERBAL COMMUNICATIONS

All persons employed by the Contractor to carry out the Works or perform services or functions hereunder, shall have a reasonable comprehension of English to enable them to understand written and verbal instructions of the Company's staff.

## 22. CONTRACTOR'S DEFAULT

22.1 If the Contractor fails to carry out promptly any of the Company's instructions, and fails within ten (10) days of notice by the Company drawing attention to such failure to take such steps as reasonably satisfy the Company, the Company may, without prejudice to any other of his rights, carry out the Works at the risk and expense of the Contractor.

22.2 If the Contractor commits a material breach of the Contract and fails within ten (10) days of notice by the Company to take such steps as reasonably satisfy the Company to rectify such breach, the Company may, without prejudice to any other of his rights, terminate the Contract forthwith by notice to the Contractor. Thereupon, without prejudice to any other of its rights, the Company may complete the Works or have them completed by a third party, and the Company shall not be liable to make any further payment to the Contractor until the Works have been completed in accordance with the requirements of the Contract, and shall be entitled to deduct from the Contract Price (ascertained in accordance with the terms and conditions of the Contract) any additional cost incurred by the Company. If the total cost to the Company exceeds the said Contract Price, the difference shall be recoverable by the Company from the Contractor as a debt and the Company shall have a right to set-off or withhold such monies from the Contractor.

22.3 If the Contractor fails to obtain a licence in accordance with the Regulation of Undertakings Law (Jersey) 1973 (including any amendment, modification, re-enactment or successor to such legislation) the Company may, without prejudice to any other of his rights, terminate the Contract forthwith by notice to the Contractor.

## 23. INSOLVENCY AND BANKRUPTCY

If the Contractor becomes insolvent or bankrupt or (being a Company or other corporate body) makes an arrangement with its creditors or has an administrative receiver or administrator appointed or commences to be wound up (other than for the purposes of amalgamation or reconstruction) or goes into any similar insolvency process the Company may, without prejudice to any other of its rights, terminate the Contract forthwith by

notice to the Contractor or any person in whom the Contract may have become vested. In the event that the Company gives such notice to the Contractor it shall be lawful for the Company to enter the premises where Works are situated and take possession of the same and of any material thereon.

## 24. PRICE AND TERMS OF PAYMENT

24.1 The Company shall pay to the Contractor in the manner laid down in the Contract the agreed Contract Price which is calculated in accordance with or is recorded in the Contract. Goods and Services Tax, where applicable, shall be shown separately on all invoices as a strictly net extra charge.

24.2 Unless otherwise stated in the Purchase Order, payment will be effected within 30 days from the date of invoice.

## 25. CONFIDENTIALITY

25.1 No photographs of any of the Company's equipment, installations or property shall be taken without the Company's prior consent in writing. The Contractor shall keep confidential and shall not divulge to any third party (except Sub-contractors accepting a like obligation of confidentiality, and then only to the extent necessary for the performance of the Sub-contract) all information given by the Company in connection with the Contract or which becomes known to the Contractor through his performance of such Work under the Contract. This shall not prevent normal communications to the Contractor's bankers, auditors, advisers and any government officers.

25.2 The Contractor shall not mention the Company's name in connection with the Contract or disclose the existence of the Contract in any publicity material or other similar communication to third parties without the Company's prior consent in writing.

## 26. CLEARANCE OF SITE

26.1 The Contractor shall remove rubbish progressively and maintain the Site tidily as the Works proceed unless otherwise instructed by the Company.

26.2 On completion of the Works the Contractor shall remove his plant, equipment and unused materials and shall clear away from the Site all rubbish arising out of the Works, and leave the Site and the Works in a clean and tidy condition to the satisfaction of the Company.

## 27. LOAN OF COMPANY'S PLANT AND EQUIPMENT

27.1 The inclusion of this condition does not imply that the Company assumes any obligations to provide 'Loaned Plant', which means plant or equipment owned by the Company and used by or on behalf of the Contractor by agreement.

27.2 Where Loaned Plant is operated by a servant of the Company ('Operator'):

- (1) The Operator shall not become the servant of the Contractor but shall carry out with the Loaned Plant such work as he may be directed to do by the Contractor.
- (2) The Contractor shall be liable for any damage to the Loaned Plant caused by misdirection or misuse of it due to negligence on the part of the Contractor, his servants or agents.

27.3 Where Loaned Plant is operated by a servant of the Contractor, Sub-contractor or an independent Contractor, the Contractor shall be liable for all damage to the Loaned Plant unless he can show that it was caused by a defect present in the plant at the commencement of the loan and he shall be liable for any loss (including loss by theft) of the said plant.

27.4 The Company shall have the right to withdraw Loaned Plant at any time and shall be under no liability whatever in connection with the Company failing to lend plant at any time.

## 28. SUSPENSION

28.1 The Contractor shall suspend the Works or any part thereof on the written instruction of the Company.

28.2 The Contractor shall be entitled to its reasonable costs proved to have arisen directly from such suspension.

## 29. TERMINATION FOR CONVENIENCE

29.1 The Company for its convenience in accordance with this clause may terminate the Contractor's performance under this Contract whenever the Company shall elect. Any such termination shall be effected by delivery to the Contractor of a notice of termination specifying that the Contract is terminated under this Clause and the date upon which such termination becomes effective.

29.2 Upon receipt of such notice the Contractor shall, unless the notice requires otherwise immediately discontinue the Works on the date and to the extent specified in the notice.

29.3 The Company will pay to the Contractor as full compensation all amounts due and not previously paid to the Contractor for Works completed in accordance with the Contract up to the date upon which such termination becomes effective together with a reasonable payment in respect of incomplete work at such date. The total sum to be paid to the Contractor under this clause shall not exceed the Contract Price as reduced by the amount of payments otherwise made and will not include any consideration for loss of anticipated profits on the terminated works all claims for which the Contractor waives. Apart from the payment of this sum the Company shall have no liability whatsoever to the Contractor in respect of or arising out of termination of the Contract under this Clause.

## 30. PROVISION OF DRAWINGS AND MANUALS

The Contractor shall if so required supply at no cost to the Company:-

- a) as-built drawings;
- b) recommendations for the future maintenance of the Works; and
- c) operation manuals

## 31 OTHER CONTRACTOR OBLIGATIONS

For the avoidance of doubt the Contractor owes the Company an obligation in both tort and delict arising out of and in connection with the Works.

## 32. WAIVER

A provision or right created under this Contract shall not be waived except in writing signed by the party granting the waiver.

## 33. ANTI-BRIBERY

33.1 The Contractor shall:

- 33.1.1 Comply with all applicable laws, statutes, and regulations relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (Relevant Requirements);
- 33.1.2 Have and shall maintain in place throughout the term of the Contract its own policies and procedures, including adequate procedures to ensure compliance with the Relevant Requirements, and will enforce them where appropriate;
- 33.1.3 Promptly report to the Company any request or demand for any undue financial or other advantage of any kind received by the Contractor in connection with the performance of the Contract;
- 33.1.4 Provide such supporting evidence of compliance as the Company may reasonably request.

33.2 Breach of this Clause shall be deemed a material breach of the Contract.

33.3 For the purpose of this Clause, the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively. For the

purpose of this Clause, a person associated with the Contractor includes but is not limited to any subcontractor of the Contractor.

## 34. MODERN SLAVERY

- 34.1. In performing its obligations under the Contract, the Contractor shall:
  - 34.1.1. comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force;
  - 34.1.2. include in contracts with its direct subcontractors and suppliers provisions which are at least as onerous as those set out in this clause 34;
  - 34.1.3. maintain a complete set of records to trace the supply chain of all Works provided to the Company in connection with the Contract, and permit the Company and its third party representatives to inspect the Supplier's premises, records, and to meet the Supplier's personnel to audit the Supplier's compliance with its obligations under this clause 34.
- 34.2. The Company may terminate the Contract with immediate effect by giving written notice to the Contractor if the Contractor commits a breach of this clause 34.

## 35. DATA PROTECTION

- 35.1. Each party shall at all times comply with all applicable provisions of Data Protection Legislation.
- 35.2. The Company shall collect, store, process and delete any personal data in respect of Supplier's in accordance with its [privacy notice](#).

## 36. ENTIRE AGREEMENT

No general or printed conditions submitted with or referred to in the Contractor's tender or other documentation submitted by the Contractor shall form part of the Contract unless expressly agreed in writing by the Company.

## 37. CONSTRUCTION OF CONTRACT

The construction, validity and performance of the Contract shall be governed by the law of Jersey and shall be subject to the exclusive jurisdiction of the Royal Court of Jersey.



## SECTION 2 – HEALTH, SAFETY & ENVIRONMENT

### PROCEDURE - STANDARD INSTRUCTIONS TO CONTRACTORS

#### 1. GENERAL SAFETY REQUIREMENTS

It should be understood that the Company in relation to certain operations may stipulate requirements additional to those set out herein in order to improve the health, safety and environment measures being taken in relation to specific work activities taking place on Company sites and premises.

#### 2. APPLICABLE TO ALL CONTRACTORS AND SUB-CONTRACTORS

2.1 The Contractor and all persons (including Sub-Contractors) employed by him on the Contract works shall comply fully with the Health & Safety at Work (Jersey) Law 1989, all other relevant statutory safety requirements, with appropriate Approved Codes of Practice and Environment legislation.

2.2 After placing of the Contract, the Project Manager or his/her Nominated Person shall establish contact by arranging site meetings as necessary with the Contractor, the objects of which will include:

2.2.1 Ensuring full compliance with the safety and environment requirements in the Contract;

2.2.2 Taking full account of health and safety of not only their employees but also JE employees, other contractor and the general public;

2.2.3 The adequacy of the measures taken and to be taken to ensure the proper instruction and training of Contract personnel during the Contract period.

2.3 Throughout the Contract period the Contractor shall take the following particular steps with the object of establishing high standards of safety:

2.3.1 Ensure that all relevant information on health, safety and environment aspects is effectively communicated in both directions between (a) his Management, (b) his Supervisors, (c) his labour force, (d) his Sub-Contractors, and (e) the Project Manager or his/her Nominated Person;

2.3.2 Employ competent personnel to control execution of the work and compliance with safety and environment procedures;

2.3.3 Ensure that his Supervisors and Workmen and those of his SubContractors required to enter or work on the site are adequately trained and instructed to meet the required standards and to ensure their own safety and that of others who may be affected by their activities;

2.3.4 Comply with Jersey Electricity plc Safety Rules, including Permits to Work and other Company safety documents;

2.3.5 Comply with standard site procedures particularly in regard to security, fire and other emergencies;

2.3.6 Consult the Project Manager or his/her Nominated Person prior to commencing delivery of potentially hazardous materials to site, giving particular attention to COSHH risk assessments, labelling, protection, storage and use of these materials. Provide information if requested on toxicity and other hazardous characteristics of the materials;

2.3.7 Provide suitable tools and equipment and arrange for their safe storage and security when not in use and for their regular

inspection and maintenance, ensuring particularly that all relevant regulations are complied with;

2.3.8 Provide guards, barriers, warning notices, height gauges, warning lights, etc. as appropriate;

2.3.9 Ensure personnel are provided with appropriate personal protective clothing and equipment as necessary for their health and safety;

2.3.10 Obtain prior agreement with the Project Manager or his/ her Nominated Person to proposals for scaffolding, ladders and all other means of access and excavations and ensure that statutory inspections are carried out and recorded as required;

2.3.11 Monitor safety and environment aspects throughout the Contract and keep all necessary records to show that this has been done;

2.3.12 Notify the Project Manager or his/her Nominated Person of all proposals to employ Sub-Contractors and obtain his prior written approval before employing them;

2.3.13 Obtain clearance to work on each occasion by procedure to be agreed with the Project Manager or his/her Nominated Person where work is to be carried out by periodic visits (e.g. routine maintenance)

2.3.14 Ensure all persons working on site have received the appropriate site induction.

2.4 The Company may require removal from the site of any person who fails to adopt adequate standards of health, safety and Environment.

2.5 Significant or persistent failure to comply with any of the foregoing Instructions shall entitle the Company to suspend or terminate the work either in whole or in part.

#### 3. ACTIONS TO BE TAKEN BY CONTRACTORS MANAGEMENT OFF-SITE

3.1 Nominate Site Supervisors who are not only knowledgeable in safe working and environment practices but must also be familiar with all relevant statutory regulations within the requirements of the Contract and with these instructions (providing them with a copy).

3.2 Appoint Deputy and Assistant Supervisors as necessary to cover work locations and times not covered by the nominated Supervisors ensuring that an appropriate level of supervision continues in operation at all times not withstanding holidays, sickness, termination, etc.

3.3 Appoint Safety and Environment Supervisors as required by the Construction (Safeguarding of Workers) Jersey Regulations 1970.

3.4 Advise the Project Manager or his/her Nominated Person of the Site Supervisors nominated initially. Keep him advised of changes in supervision as they occur and keep him/her informed of arrangements for Deputies and Assistants.

3.5 Empower the Site Supervisor to take immediate action on any matters of safety or environment arising from the work and to authorise appropriate delegated powers to Deputies and Assistants.

3.6 Carry out appropriate and regular inspections and checks to ensure the Site Supervisor is carrying out their full responsibilities and is advising the Project Manager or his/her Nominated Person or the appointed auditor in writing.

- 3.7 Keep in touch with new or revised regulations and ensure they are brought to the attention of the Site Supervisors for implementation.
- 3.8 Direct Site Supervisors that these Instructions should be followed implicitly.
- 3.9 Notify the Project Manager or his/her Nominated Person when difficulties in complying with these Instructions are met or envisaged.
- 3.10 Ensure that no arrangements are made for Sub-Contractors to carry out work without the prior written approval of the Project Manager or his/her Nominated Person.
- 3.11 Ensure that "Best Practice" is followed at all times where Health, Safety & Environment is concerned.

## **4. ACTIONS TO BE TAKEN BY CONTRACTORS      SITE SUPERVISORS**

- 4.1 On receiving Contractor's instructions to carry out the Contract works, establish contact with the Project Manager or his/her Nominated Person for the purpose of the preliminary site meeting (see Clause 5).
- 4.2 Collaborate with the Project Manager or his/her Nominated Person to ensure full compliance with these Instructions and with any detailed safety or environment requirements laid down by him.
- 4.3 Keep the Project Manager or his/her Nominated Person informed of all changes in site or working conditions which may affect the safety or environment of any persons on site and which may arise as a result of the Contract work or activities. Also, keep the Project Manager or his/her Nominated Person informed of changes in circumstances which might create a safety hazard to Contractor's employees or others due to the activities of other persons in the vicinity of the Contract works.
- 4.4 Control operations so that all appropriate safeguards are provided and ensure that all relevant information and instructions are received and understood by the workmen.
- 4.5 Notify the Project Manager or his/her Nominated Person of all proposals to employ Sub-Contractors and obtain his prior written approval before employment.
- 4.6 Provide the Project Manager or his/her Nominated Person with a list of personnel employed on the site for security and emergency use.
- 4.7 Notify the Project Manager or his/her Nominated Person when difficulties in complying with these Instructions are met or envisaged.

## **5. SUPERVISION AND TERMINATION OF WORK**

- 5.1 On closure of the Contractor's operations, either temporarily or permanently:-
  - 5.1.1 The site of the works shall be jointly inspected by the Project Manager or his/her Nominated Person and Site Supervisor to establish that the affected areas have been left safe to the satisfaction of the Project Manager or his/her Nominated Person;
  - 5.1.2 Permits to Work and other Company safety documents shall be cleared.