

COMPILATION OF PPP TERMS AND CONDITIONS OF CONTRACT

PUBLIC SECTOR VERSION

CLAUSE 19: DISCLAIMERS

DBFOM CONTRACT

CONCESSION CONTRACT

DBFM CONTRACT

DBF CONTRACT

DBOM CONTRACT

DBM CONTRACT

OMF CONTRACT

O&M CONTRACT

INTRODUCTION

This issue is closely related to the issue in Clause 15 (Warranties) and the discussion under that heading applies here. Apart from specific factual information that the Authority warrants to the PPP Co, the Authority will disclaim any further liability in relation to background information provided, site conditions or anything else.

CORE CONTRACT DRAFTING

19. DISCLAIMERS

19.1. Disclosed Data

The Authority has made available to the PPP Co certain materials, documents and data related to the Project and other matters which are or may be relevant to the Project and the obligations undertaken by the PPP Co under this Agreement (the “**Disclosed Data**”). The Disclosed Data includes, without limitation, all such materials, documents and data which were provided to the PPP Co in connection with the invitation to tender and the tender process in respect of the Project.

19.2. Deficiencies in Disclosed Data

The Authority, its advisers, consultants, servants, contractors and/or agents, shall not be liable to the PPP Co (whether in contract, tort, by statute or otherwise howsoever and whether or not arising out of any negligence on the part of the Authority, its advisers, consultants, servants, contractors and/or agents) in respect of any inaccuracy, error, omission, unfitness for purpose, defect or inadequacy of any kind whatsoever in the Disclosed Data.

19.3. No Warranty on Disclosed Data

The Authority, its advisers, consultants, servants, contractors and/or agents give no warranty or undertaking that the Disclosed Data represents all of the information in their possession or power (whether before or after the Commencement Date) relevant or material to the Project or the obligations undertaken by the PPP Co under this Agreement. The Authority, its advisers, consultants, servants, contractors and/or agents shall not be liable to the PPP Co in respect of any failure to disclose or make available (whether before or after the Commencement Date) to the PPP Co any information, documents or data, nor to keep the Disclosed Data up to date, nor to inform the PPP Co (whether before or after the Commencement Date) of any inaccuracy, error, omission, unfitness for purpose, defect or inadequacy in the Disclosed Data.

19.4. PPP Co Acknowledgement

The PPP Co acknowledges and confirms that:

- (a) it has conducted its own analysis and review of the Disclosed Data and has before the Commencement Date satisfied itself as to the accuracy, completeness and fitness for purpose of all such Disclosed Data upon which it places reliance;
- (b) it shall not be entitled to make any Claim against the Authority, its advisers, consultants, servants, contractors and/or agents whether in damages or for extensions of time or additional payments under this Agreement on the grounds of any misunderstanding or misapprehension in respect of the Disclosed Data or the matters referred to in Clause 15.5 (Site Inspection) or Clause 19.4(a) above or on the grounds that incorrect or insufficient information relating thereto or to the Site[, the Off-Site Areas] or the Project was given to it by any person, whether or not in the employment of the Authority, its advisers, consultants, servants, contractors and/or agents; and
- (c) it shall not be relieved from any risks or obligations imposed on or undertaken by it under this Agreement on any grounds contemplated by this Clause 19.4,

provided that the acknowledgement and confirmation given in this Clause 19.4 shall not constitute grounds for bringing an action against the PPP Co by the Authority, or give rise to a right of termination on the part of the Authority, but the Authority may rely on such acknowledgement and confirmation for the purpose of defending or contesting any action brought against it or Claim made by the PPP Co.

19.5. Contractual Liability

Save as expressly provided in this Agreement, the Authority, its advisers, consultants, servants, contractors and/or agents shall not under any circumstances be liable to the PPP Co, whether in contract, tort, by statute or otherwise and whether or not arising from any negligence on the part of the Authority, its advisers, consultants, servants, contractors and/or agents, for any Claim or Loss of any person (other than the PPP Co) arising out of, or in the course of, or in connection with, the Project. For the avoidance of doubt, this clause shall not prevent the PPP Co from bringing Claims against the Authority and obtaining redress whether by way of damages, injunction or otherwise, for any Loss suffered or incurred by the PPP Co as a result of Claims from the PPP Co's sub-contractors arising from any breach of contract or any negligence on the part of the Authority, its advisers, consultants, servants, contractors and/or agents.

Comment: The last sentence should be deleted if such liability is to be excluded.

CROSS REFERENCES

This clause is referred to in the following clauses of the Compendium:

- Clause 3 (Effectiveness of this Agreement)
- Clause 15 (Warranties)

There are no references to this clause in the Risk Matrix.