

COMPILATION OF PPP TERMS AND CONDITIONS OF CONTRACT

PUBLIC SECTOR VERSION

CLAUSE 23: REPORTS

DBFOM CONTRACT

CONCESSION CONTRACT

DBOM CONTRACT

INTRODUCTION

This again is a practical issue, dealing with reporting by the PPP Co.

It would be considered advisable for the State Authority to commission a report identifying any changes to the contract after the initiation of the change mechanism. This report should act as a guide to the State Authorities representative for the ongoing management of the contract.

CORE CONTRACT DRAFTING

23 REPORTS

23.1 Required Reports

The PPP Co shall submit to the Authority's Representative the reports specified in Part 1 of [Clause 23 - Schedule] (Reports and Records) [below], in such numbers as provided therein, and such reports shall, at the Authority's Representative's request, be accompanied by a copy of such report or any part thereof on computer diskette or other electronic storage device in such form and compatible with such software as the Authority's Representative shall reasonably require.

23.2 Form

The form of the Reports shall be agreed with the Authority's Representative.

23.3 Further Information

The PPP Co shall at any time and from time to time at its own cost provide to the Authority's Representative such information (including any copy correspondence) with respect to the Project as the Authority's Representative may reasonably require.

23.4 Objections to Reports

(a) If the Authority's Representative (acting reasonably) considers that any Report either has not been compiled in accordance with the provisions of this Agreement or has been based on erroneous information or data, then he may serve a notice to that effect on the PPP Co within [•] ([•]) Working Days of receipt of such Report objecting to such Report.

- (b) If any such objection has not been resolved by agreement between the Authority's Representative and the PPP Co within [●] ([●]) Working Days after the service of such notice, then either of them may refer the matter to the Disputes Resolution Procedure.

23.5 Revisions to Reports

If the resolution (whether by agreement or determination under the Disputes Resolution Procedure) of any objection made pursuant to Clause 23.4(a) (Objections to Reports) requires any revision or adjustment to any Report, then the PPP Co shall, as soon as practicable, issue revised versions of each affected Report and such revised Report shall for all purposes of this Agreement take the place of the original Report.

[CLAUSE 23 - SCHEDULE]

REPORTS AND RECORDS

Comment: Much of this will be project-specific. The Core Contract drafting is included for illustration.

PART 1

Reports

1. Reports during the Works Design and Construction Period.

1.1 From the Commencement Date until the issue of the Service Commencement Certificate, the PPP Co shall submit to the Authority's Representative within [●] Working Days of the end of each calendar month that falls within such period 4 copies of the reports detailed in this Part 1.

1.1.1 A "Monthly Design and Construction Period Report" covering all relevant aspects of the Works, including without limitation:

- (a) a report on progress against programme;
- (b) value of works done;
- (c) any notable events;
- (d) report on consultations with Third Parties (as identified in Schedule [●] (Third Parties) of the Agreement);
- (e) all actual or potential departures from the requirements of this Agreement including the Construction Requirements and the Programme;
- (f) all grounds for a Dispute that have occurred or that may reasonably be foreseen as likely to occur, the status of the Dispute and the measures taken to resolve same;
- (g) all breaches of this Agreement, including the occurrence of any matter set out in [Clause 49 – Schedule] (Events of Default) of the Agreement;
- (h) all non-conformities in respect of the Quality & Environmental Management System which occurred during the month;
- (i) all substantial disagreements among the PPP Co, the Contractor, the Designer, the Testing Contractor, and the Checker which are material to the Design or the Construction of the Works;
- (j) the proposed measures to be taken by the PPP Co to overcome such departure, breach, non-conformity or occurrence or to resolve such grounds for a disagreement; and
- (k) the date on which the PPP Co expects the Works or a part of the Works to be completed:

- (i) to such extent that the [Project Facility] or any part of the [Project Facility] will be suitable and safe for use by members of the public; and
- (ii) to such extent as would require a Certificate to be issued in accordance with the Certification Procedures.

(l) The report shall specify the condition of the works during design and construction and shall state whether or not the condition satisfies the performance requirements set out in Schedule [●] (O&M Requirements) of the Agreement.

- 1.2 The PPP Co shall submit to the Authority's Representative such other reports as may be reasonably required.
- 1.3 The PPP Co shall submit all reports required by Relevant Authorities.
- 1.4 The PPP Co shall submit all other reports during the Design and Construction Period required by the provisions of the Agreement.

2. Reports during the Period of the Operations.

2.1 Within [●] Working Days after the end of each calendar month which falls within the period from commencement of the Operations to the Expiry Date, the PPP Co shall provide to the Authority's Representative 4 copies, save as expressly provided below, of a report, the "Monthly Operations Report".

2.1.1 Monthly and Annual reports shall be prepared including, but not limited to:-

- (a) Performance Measurement in accordance with Performance Monitoring Programme ("Performance and Payment Report" as defined in paragraph 14 of Part 9 of Schedule [Clause 11 – Schedule] (Payment Mechanism) of the Agreement).
- (b) A summary of Service Failures.
- (c) Number, duration and nature of events.
- (d) Number of delegates registered at events.
- (e) Numbers of visitors to exhibitions or other public events.
- (f) Exhibitions and numbers of exhibitors.
- (g) Number of covers in dining areas and Banqueting Hall.
- (h) Operating expenditures and income.
- (i) Maintenance activity.
- (j) Maintenance costs.
- (k) [Project Facility] Staff and Industrial Relations matters.
- (l) Forecast of events (over 12 month, 23 month and 36 month horizons).
- (m) Marketing activity.
- (n) Events of special interest.
- (o) The report shall specify the condition of the works during operation and shall state whether or not the condition satisfies the performance requirements set out in Schedule [●] (O&M Requirements) of the Agreement.
- (p) Other reporting requirements, as may be required by Schedule [●] (O&M Requirements) of the Agreement.
- (q) Other reporting requirements as may be agreed with the Authority.

The reports shall clearly identify the Functional Area and or Service in which any Service Failure and or Failure Event has occurred.

The Authority shall notify PPP Co within [●] Working Days of receipt as to whether it accepts the contents of the Report(s) and shall provide full details of any matter which is not resolved.

2.1.2 Monthly Operations Reports shall also contain information on all relevant aspects of the Operations, including without limitation:

- (a) all actual or potential departures from the provisions of Schedule [●] (O&M Requirements) of the Agreement;
- (b) all breaches of this Agreement, including the occurrence of any matter set out in [Clause 49 – Schedule] (Events of Default) of the Agreement;
- (c) all non-conformities in respect of the Quality & Environmental Management System which occurred during the month;
- (d) all grounds for a Dispute that has occurred or that may reasonably be foreseen as likely to occur;
- (e) the proposed measures to be taken by the PPP Co to overcome such departure, breach, non-conformity or occurrence or to resolve such grounds for a Dispute;
- (f) details of all Accidents on the [Project Facility] during such month;
- (g) details of Defects identified; and
- (h) an account of the number and type of complaints received from Users and others in respect of the [Project Facility] and the conduct of Operations.

2.1.3 The PPP Co shall submit all reports required by Relevant Authorities.

2.1.4 The PPP Co shall submit all other reports during the Operational Period required by the provisions of this Agreement.

2.1.5 **Accident Reports**

2.1.5.1 Within [●] hours of any accident (excluding minor injury), including any incident which involves a fatality the PPP Co shall submit to the Authority's Representative an Accident Report. The PPP Co shall thereafter promptly report to the Authority's Representative any additional details of such accident or its causes which become known to it. These reports do not replace any statutory obligations. The Accident Report shall contain:-

- (1) time and date of the incident;
- (2) the location (marked on a scale plan, if possible);
- (3) brief description of circumstances, including photographs and any CCTV videotape recording of the area;
- (4) casualties involved; and
- (5) other relevant information, eg., Events being held at the time, weather.

3. **Annual Report and Annual Performance Report**

3.1 As soon as reasonably practicable and in any event not later than [●] Working Days following the end of each Contract Year, the PPP Co shall provide to the Authority's Representative 4 copies of a report, the "Annual Report", in accordance with the Certification Procedure in respect of such Contract Year containing:

3.1.1 a statement showing any revisions to the Monthly Construction Period and/or Operations Reports in accordance with Clause 23.5.

3.1.2 a complete summary for each month of such Contract Year of the information required by the Monthly Construction Period and/or Operations Reports, as so revised, with appropriate totals for the Contract Year.

- 3.2 As soon as reasonably practicable and in any event not later than [●] Working Days following the end of each Contract Year, or at such other time as may reasonably be required by the Authority, the PPP Co shall prepare, in a form suitable for publication, and shall, if so instructed by the Authority, publish a report, distinct from the Annual Report, on the performance of the [Project Facility], the “Annual Performance Report”, which shall recognise the PPP Co's accountability to Users and the local communities which the [Project Facility] serves and provide relevant information, including:
- 3.2.1 a report on the performance of the PPP Co in such Contract Year compared against the Annual Performance Targets for such Contract Year and the relevant Five Year Management Plan, each as determined in accordance with Part 3 of this Schedule, including analysis of the extent to which such Annual Performance Targets and the Five Year Performance Targets have been met and any explanation of any failure to meet the same; and
 - 3.2.2 the Annual Performance Targets for the current Contract Year, determined in accordance with Part 3 of this Schedule, together with details of:-
 - (1) how such Annual Performance Targets are to be met;
 - (2) how the PPP Co's Five Year Performance Targets are to be met;
 - (3) how any previous failure to meet the PPP Co's Annual Performance Targets or the PPP Co's Five Year Performance Targets will be remedied;
 - 3.2.3 statistics of personal injury accidents, including accident severities;
 - 3.2.4 information on planned periods of Unavailability;
 - 3.2.5 names, business telephone numbers and addresses of relevant persons employed by the PPP Co; and
 - 3.2.6 such other information as may reasonably be required by the Authority.
- 3.3 The PPP Co shall provide 4 copies of the Annual Performance Report to the Authority's Representative and, on publication, free of charge to all relevant Interested Parties.
- 3.4 The Authority may incorporate all or any part of the Annual Report, the Annual Performance Report or any other report prepared by the PPP Co in any annual or other report published by the Authority.
- 4. Accounts**
- 4.1 The PPP Co shall provide to the Authority's Representative:
- 4.1.1 as soon as possible and in any event within [●] days after the end of the first [●] months of each of its financial years, certified true copies of the unaudited accounts of the PPP Co and, if appropriate, consolidated accounts of the PPP Co and its subsidiaries as at the end of and for that 6 month period; and
 - 4.1.2 as soon as the accounts of the PPP Co shall have been finalised but no later than [●] Working Days after the end of each of its financial year a copy of the audited accounts of the PPP Co and, if appropriate, consolidated accounts of the PPP Co and its subsidiaries in respect of that period, together with copies of all related directors' and auditors' reports.

5. Auditor's Report

5.1 If at any time after the provision to the Authority of the documents referred to in Paragraph 4 above the Authority's Representative notifies the PPP Co of any matter which gives him concern and which arises in connection with anything in such documents, the PPP Co shall instruct its auditors to prepare as soon as is reasonably practicable a report on that matter, giving such further information, amplification or explanation as is reasonable having regard to the contents of the Authority's notification; and the PPP Co shall provide the Authority with a copy of that report (the "Auditor's Report") within [●] days of the PPP Co's receipt of it from its auditor.

6. Additional Information

6.1 The PPP Co shall supply to the Authority's Representative within [●] Working Days of the issue of the Completion Certificate:

6.1.1 detailed, accurately scaled, and sequentially numbered plans of the relevant Works as As-Built Records.

6.1.2 copies of all geotechnical, borehole and other survey/investigation reports obtained by the PPP Co in preparation for and during Construction; and

6.1.3 the PPP Co shall supply to the Authority's Representative copies of all information, records and test results, including any interpretation of such test results, resulting from any ground, physical or geophysical investigation or archaeological or ecological survey of the Site or adjacent areas.

6.1.4 Operation and Maintenance manual for the [Project Facility].

6.1.5 The Safety File in accordance with the Safety, Health and Welfare at Work (Construction) Regulations [2006] and any amendment thereof.

CROSS REFERENCES

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

- Clause 53 (Effect of Termination)

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