

COMPILATION OF PPP TERMS AND CONDITIONS OF CONTRACT

PUBLIC SECTOR VERSION

CLAUSE 61: AGENCY

DBFOM CONTRACT

CONCESSION CONTRACT

DBFM CONTRACT

DBF CONTRACT

DBOM CONTRACT

DBM CONTRACT

OMF CONTRACT

O&M CONTRACT

INTRODUCTION

There are specific rules relating to a contract of agency, and most contracts will contain a clause indicating that they do not constitute such a contract in order to avoid these rules.

CORE CONTRACT DRAFTING

61. AGENCY

61.1 No Delegation

For the avoidance of doubt, no provision of this Agreement shall be construed as a delegation by the Authority of any of its statutory authority to the PPP Co.

61.2 No Agency

Save as otherwise provided in this Agreement, neither party shall be nor be deemed to be an agent of the other party and neither shall hold itself out as having authority or power to bind the other in any way. For the avoidance of doubt, neither party shall have the benefit of any state immunity and, unless otherwise agreed by the Authority, the PPP Co shall apply for and obtain all consents, licences and permissions which the PPP Co would otherwise be obliged to obtain under any Law or Legal Requirement on the basis that neither the PPP Co nor the Authority has the benefit of any such immunity.

61.3 PPP Co Responsibility

As between the parties, the PPP Co shall be responsible for the acts, defaults, omissions and neglect of the Staff, as fully as if they were the acts, defaults, omissions or neglect of the PPP

Co.

61.4 PPP Co Knowledge

Without limitation to its actual knowledge, the PPP Co shall, for all purposes of this Agreement, be deemed to have such knowledge in respect of the Project as is held (or as ought reasonably to be held) by the Staff in the relevant circumstances.

61.5 Independent Contractor

For the avoidance of doubt, the PPP Co shall at all times be an independent contractor and nothing in this Agreement shall be construed as constituting a partnership, joint venture, agency or relationship of employer and employee between the Authority and the PPP Co or any of its Staff and the PPP Co shall not (and shall procure that no member of its Staff shall) hold itself out as having any such relationship with the Authority.

CROSS REFERENCES

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

- Clause 3 (Effectiveness of this Agreement)

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