



## Office of the Premier

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Our Ref: OP/1/3/22

July 19<sup>th</sup>, 2018

Dear Sir/Madam,

**Tender for Montserrat Ferry Services:**

**ADDENDUM No. 1: Revision to Section 7 – Standard Terms and Conditions for Services**

Please refer to the Revised Section 7 - Standard Terms and Conditions of Contract for Services below.

2. These Terms and Conditions supersede Section 7 that formed part of the Invitation To Tender for Montserrat Ferry Services issued on the 6th July 2018.
3. Kindly note that when completing and signing the Form of Tender you will be agreeing to accept these Standard Terms and Conditions. These terms and conditions are non-negotiable and will form part of the final contract issued to the successful bidder.
4. The successful bidder will be required to sign the contract immediately after accepting the award.

Yours sincerely,

Daphne Cassell (Mrs)  
Permanent Secretary  
Office of the Premier

## **7. Standard Terms and Conditions of Contract for Services**

### **7.1. Definitions**

7.1.1. In these Conditions: “the Condition(s)” mean the standard terms and conditions of Contract for services as set out in this document; “Charging Rates” shall be construed as those excluding any applicable Value Added Tax;

7.1.2. “the Contract” means the agreement concluded between the Contracting Authority and the Contractor for the supply of Services, including all specifications, plans, drawings and other documents which are relevant to the Contract and also such of these Conditions as are included (with or without modification) expressly or by reference in the terms and conditions of the Contract;

7.1.3. “the Contract Price” means the price exclusive of any applicable Value Added Tax, payable to the Contractor by the Contracting Authority under the Contract for the full and proper performance by the Contractor for the Contract;

7.1.4. “the Contracting Authority” means the Government of Montserrat;

7.1.5. “the Contractor” means the person who undertakes to supply the Services under and in accordance with the Contract and, where the Contractor assigns the rights and obligations under the Contract to another person with the prior written consent of the Contracting Authority, that other person;

7.1.6. “Government Property” means anything issued or otherwise furnished in connection with the Contract by or on behalf of the Contracting Authority or its authorised representative;

7.1.7. “Loss” includes destruction;

7.1.8. “Month” means calendar month;

7.1.9. “Person” includes a corporation, partnership, individual.

7.1.10. "the Services" means the services to be supplied under the Contract.

7.1.11. "Confidential Information" means information, data and material of any nature which either party to the Contract may receive or obtain in connection with the operation of the Contract and, which comprises Personal Data or Sensitive Personal Data (as both terms are defined by Montserrat Law, or in its absence defined by the UK Data Protection Act 1998); which is listed in the Schedule to the Contract; the release of which is likely to prejudice the commercial interests of the Contracting Authority or the Contractor respectively; or which is a trade secret;

## 7.2. Acts by the Contracting Authority

7.2.1. Any decision, act or thing which the Contracting Authority is required or authorised to take or do under the Contract may be taken or done by any person authorised, either generally or specifically, by The Contracting Authority to take or do that decision, act or thing.

## 7.3. Services of Notice

7.3.1. Any written notice or other written communication which any party to the Contract is required to give under the Contract shall be deemed to be sufficiently given if sent by recorded or registered post to the last known address of the other party to the Contract.

## 7.4. Assignment and Sub Contracting

7.4.1. The Contractor shall not use the services of self-employed individuals in connection with the Contract without the previous agreement in writing of the Contracting Authority.

7.4.2. Contractor shall not give, bargain, sell, assign, sub-Contract or otherwise dispose of the Contract or any part thereof without the previous consent in writing of the Contracting Authority.

## 7.5. Government Property

7.5.1. All Government Property issued in connection with the Contract shall remain the property of the Contracting Authority and shall be used in the execution of the Contract and for no other purpose whatsoever save with the prior approval in writing of the Contracting Authority.



7.5.2. All Government Property shall be deemed to be in good condition when received by or on behalf of the Contractor unless he notifies the Contracting Authority to the contrary within 14 days or such other time as is specified in the Contract.

7.5.3. The Contractor undertakes to return all Government Property so issued and will be responsible for all loss thereof or damage thereto from whatever cause to the full amount of such loss or damage.

7.5.4. Without prejudice to the above provisions, the Contractor shall, except as Otherwise provided for in the Contract, make good or, at the option of the Contracting Authority, pay compensation for all damages occurring to any Government Property occasioned by the Contractor, or by his servants, agents or sub-Contractors whether arising from his or their performance of the Contract and whether on any Contracting Authority establishment or premises or elsewhere in connection with the Contract, provided that this Condition shall not apply to the extent that the Contractor is able to show that any such damage was not caused or contributed by his negligence or default or the neglect or default of his servants, agents, or sub-Contractors or by any circumstances within his or their control.

## 7.6. Waiver

7.6.1. The failure of either party at any time to enforce any provision of the Contract shall in no way affect its right thereafter to acquire complete performance by the other party, nor shall the waiver of any breach of any provision be taken or held to be a waiver of any subsequent breach of any such provision or be a waiver of the provision itself.

7.6.2. The rights, powers and remedies provided in this Contract are cumulative and not exclusive of any rights, powers and remedies provided by law.

## 7.7. Severability

7.7.1. If any condition, clause or provision of the Contract not being of a fundamental nature be held to be unlawful or unenforceable by a court in any proceedings relating to the Contract the validity or enforceability of the remainder of the Contract shall not be affected thereby.

7.7.2. In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of the Contract, the Contractor and the Contracting Authority shall immediately

7.7.3. commence good faith negotiations to remedy such invalidity.

## 7.8. Use and Safeguarding of Documents

7.8.1. Any document or thing bearing a Security Classification of "Confidential", "Secret" or "Top Secret" shall be examined or handled in a Contracting Authority establishment only and shall not be removed from such establishment unless the Contracting Authority's consents in writing to examination or handling or removal of that document or thing elsewhere.

7.8.2. The Contractor shall use all best endeavours to safeguard from loss or damage every document or thing supplied by or obtained from the

Contracting Authority or for the purposes of the Contract and to protect every such document or thing from unauthorised use, disclosure or copying and shall forthwith upon termination or expiry of the Contract or earlier if the Contracting Authority shall request return to the Contracting Authority in good and usable condition every such document and thing.

7.8.3. Subject to any rights of third parties, nothing in this Condition shall prevent the use for any purpose by the Contractor of any specifications, plans, drawings and other documents, the rights of which vested in him otherwise than as a result of work carried out under this Contract.

7.8.4. Any samples or patterns or any specifications, plans, drawings, or other documents issued by or on behalf of the Contracting Authority for the purposes of the Contract remain the property of the Contracting Authority and must be returned on completion or earlier termination of the Contract.

## 7.9. Confidentiality

7.9.1. In respect of any Confidential Information it may receive from the other party ("the Discloser") and subject always to the remainder of this Condition, each party ("the Recipient") undertakes to keep secret and strictly confidential and shall not disclose any such Confidential Information to any third party without the Discloser's prior written consent.

7.9.2. The Recipient shall not be prevented from using any general knowledge, patience or skills which were in its possession prior to the commencement of the Contract;



7.9.3. The provisions of this Condition shall not apply to any Confidential Information which:

- i. is in or enters into the public domain other than by breach of the Contract or other act or omissions of the Recipient;
- ii. is obtained by a third party who is lawfully authorised to disclose it
- iii. is authorised for release by the prior written consent of the discloser.

7.9.4. Nothing in this condition shall prevent the recipient from disclosing confidential information where it is required to do so by judicial, administrative, governmental or regulatory process in connection with any action, suit, proceedings or claim or otherwise by applicable law or, where the Contractor is the recipient, to the Contractor's immediate or ultimate holding company provided that the Contractor procures that such holding company complies with this condition as if any reference to the Contract in this condition were a reference to such holding company.

7.9.5. The Contractor agrees that subject to this Condition, the decision on whether any exemption applies to a request for disclosure of recorded information is a decision solely for the Contracting Authority;

7.9.6. The Contractor agrees that where the Contracting Authority is managing a request as referred to in this condition, the Contractor shall co-operate with the Contracting Authority and shall respond within five (5) working days of any request by it for assistance in determining how to respond to a request for disclosure.

7.9.7. The Contracting Authority will consult the Contractor in relation to any request for disclosure of the Contractor's confidential Information in accordance with all applicable guidance.

7.9.8. This condition shall remain in force without limit in time in respect of Confidential Information, which comprises personal data. Save as aforesaid and unless otherwise expressly set out in this Contract or the schedule to this Contract, this condition shall remain in force for a period of 3 years after the termination or expiry of this Contract."

7.10. Amendments and Variation

7.10.1. No amendment or variation in the terms of the Contract will be valid unless previously agreed in writing between the Contracting Authority and the Contractor and no payment will be made for unauthorised services.

## 7.11. Payment

7.11.1. On presentation of a correct invoice quoting the Contracting Authority purchase order or Contract number and confirming that the Contract has been performed, the Contracting Authority shall pay the Contract Price to the Contractor. Payment will normally be made within 30 days of receipt by the Contracting Authority of the invoice.

7.11.2. Invoices will show the period and the amount of the Services for which the payment is claimed together with the agreed Charging Rates.

7.11.3. Invoices for the Contract performed shall be rendered at the time and in the manner specified by the Contracting Authority.

7.11.4. Notwithstanding paragraph 7.11.1, the Contracting Authority may give the Contractor notice in writing of its intention not to pay such sums or a portion of such sum in instances where the Contractor has:

- (a) failed to carry out services to the agreed standards, or has inadequately or defectively carried out the services required by this Contract;
  - (b) by act or omission caused damage to personnel or Government property or any third party;
  - (c) breached any other provision of this Contract; or
  - (d) failed to deliver to the Contracting Authority valid reasons for such breach or breaches;
- and upon giving such notice the Contracting Authority may withhold payment accordingly.

7.11.5. If, for the purpose of performing the Contract, the Contractor enters into a Contract for the supply of goods or services to the Contractor by a third party, the Contractor shall include in that Contract a provision which requires the Contractor to pay for those goods or services within 30 days of the Contractor receiving a correct invoice from the third party.

7.11.6. If the Contractor believes that payment for a correctly submitted invoice is overdue, he should, in the first instance, speak to the named contact on the face of the Contract. In the event that the problem is not resolved to his satisfaction, he should write to the Director of



Procurement at the Contracting Authority setting out his case. The Director will ensure that the complaint is dealt with by an official who is independent of the Contract and that the Contractor is not treated adversely in future for having made a complaint.

#### 7.12. Accounts

7.12.1. The Contractor shall keep proper accounts and proper records and vouchers for all expenditure referable to the Contract.

7.12.2. The Contractor shall permit the Contracting Authority by its officers, agents or independent auditor on request and at all reasonable times to examine all accounts at the offices of the Contractor or at such other places as the Contracting Authority shall direct and to take copies and shall provide the Contracting Authority or its independent auditor with such explanations relating to that expenditure as it may request.

7.12.3. The Contractor shall ensure that the said accounts, records and vouchers are available for a period of two years after the termination or expiry date of the Contract.

#### 7.13. Recovery of Sums Due

7.13.1. Whenever under the Contract any sum of money shall be recoverable from or payable by the Contractor to the Contracting Authority, the same may be deducted from any sum then due, or which at any time thereafter may become due to the Contractor under this or any other Contract with the Contracting Authority.

#### 7.14. Performance

7.14.1. The Services shall be provided in accordance with the Contract to the satisfaction of the Contracting Authority, or its authorised representatives. During the course of the Contract, the Contracting Authority or its authorised representative shall have the power to inspect and



examine the work being performed either at the Contracting Authority's premises at any reasonable time or, where any part of the work is being performed on premises other than the Contracting Authority's premises, at those premises and reasonable notice shall be given to the Contractor.

7.14.2. If any part of the Services is found to be inadequate or in any way differing from the Contract, other than as a result of default or negligence on the part of the Contracting Authority or its authorised representative, the Contractor shall at his own expense re- schedule and perform the work correctly within such reasonable time as may be specified by the Contracting Authority.

7.14.3. If the provision of the Services or any part thereof is suspended by the Contracting Authority or its authorised representative (otherwise than in consequence of default or negligence on the part of the Contractor) or if the Contractor is delayed in proceeding with the provision of the Services by the Contracting Authority or its authorised representative, the Contracting Authority shall be responsible for any loss incurred by the Contractor as a result of such suspension or delay.

7.14.4. If the performance of the Contract by the Contractor is delayed by causes mentioned in paragraph 7.14.3 of this condition or by reason of any act on the part of the Contracting Authority, or by industrial dispute or any other cause which the Contractor could not have prevented and for which he was not responsible then the Contractor shall be allowed a reasonable extension of time for completion.

7.14.5. The time of performance shall be of the essence and failure to commence the provision of the Services within the time promised or specified shall entitle the Contracting Authority (at its option) to be released from any obligation to accept and pay for the Services or to cancel all or part of the Services, in either case without prejudice to the other rights and remedies of the Contracting Authority.

#### 7.15. Progress Report

7.15.1. Where formal Progress Reports are specified in the Contract, the Contractor shall render such reports at the time and in such form as may be specified or as otherwise agreed between the Contractor and the Contracting Authority or its authorised representative.

7.15.2. The submission and acceptance of the Progress Reports shall not prejudice the rights of the Contracting Authority under any of the condition on the Contract.

## 7.16. Contractor's Personnel

7.16.1. The Contracting Authority reserves the right to refuse to admit to premises occupied by or on behalf of the Contracting Authority any person employed by the Contractor, or by a sub-Contractor, whose admission would be undesirable in the opinion of the Contracting Authority.

7.16.2. If and when directed by the Contracting Authority the Contractor shall provide a list of the names and addresses of all persons who may at any time require admission in connection with the performance of the Contract to any premises occupied by or on behalf of the Contracting Authority, specifying the capacity in which they are concerned with the Contractor and giving such other particulars as the Contracting Authority may require.

7.16.3. If the Contractor shall fail to comply with paragraph 7.16.2 of this condition and if the Contracting Authority decides that such failure is prejudicial to its interests, then the Contracting Authority may summarily determine the Contract by notice in writing to the Contractor always providing that such determination shall not prejudice or affect any right of action or remedy which shall have accrued, or shall accrue thereafter, to the Contracting Authority.

7.16.4. The decision of the Contracting Authority as to whether any person is to be refused admission to official premises and as to whether the Contractor has failed to comply with clauses 7.16.2 or 7.16.3 of this Condition shall be final and conclusive.

## 7.17. Indemnities and Insurance

7.17.1. Except as stated in Clause 7.17, where there has been misconduct, gross negligence, dishonesty by the Supplier or the Supplier's Personnel the Supplier's liability under this Contract shall be limited to the maximum amount that the insurance policy is capable of providing over the life of the policy, before any claims or pay outs have been made.

7.17.2. The Contractor and Contracting Authority do not limit their liability for:

- i. death or personal injury caused by its negligence, or that of its employees, agents or sub-Contractors (as applicable);
- ii. fraud or fraudulent misrepresentation by it or its employees;



iii. breach of any obligation as to title implied by any consumer laws. In the absence of consumer laws there will be a reliance on section 12 of the UK Sale of Goods Act 1979 or section 2 of the UK Supply of Goods and Services Act 1982; or

iv. any liability to the extent it cannot be limited or excluded by Law.

7.17.3. Subject always to Clauses 7.17.2; in no event shall the Contractor or Contracting Authority be liable to the other for any:

i. loss of profits, business, revenue or goodwill; and/or

ii. indirect or consequential loss or damage of any nature and howsoever caused, even if the losses were reasonably foreseeable or the Party has been advised of the possibility of such losses occurring.

7.17.4. The supplier shall not exclude liability for additional operational, administrative costs and/or expenses or wasted expenditure resulting from the direct Default of the Supplier.

7.17.5. Subject to Clauses 7.17.1 to 7.17.4 inclusive, the Contractor shall indemnify GoM in respect of any loss, damage or claim howsoever arising out of or in consequence of negligent acts or omissions by the Contractor or the Contractor's personnel or any claims made against GoM by third parties in respect thereof and in relation to this Contract.

7.17.6. The Contractor shall not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of GoM or GoM's employees, or by breach by GoM of its obligations under the Contract.

7.17.7. The Contractor shall effect and maintain, and shall procure that their sub-Contractors effect and maintain, with a reputable insurance company a policy or policies of insurance providing a level of cover not less than the financial limit in respect of all risks which may be incurred by the Contractor, arising out of the Contractor's and/or their sub-Contractors performance of their obligations under the Contract, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Contractor. Such insurance shall be maintained for the duration of the Contract period and for a minimum of 6 (six) years following the expiration or earlier termination of the Contract.

7.17.8. Without limitation to Clause 7.17.4 the Contractor shall effect and maintain and shall procure that all agents, professional consultants and sub-Contractors effect and maintain, employer's liability insurance in respect of the Contractor's personnel in accordance with any

legal requirement from time to time in force. The Contractor shall also effect and maintain, and shall ensure that all agents, professional consultants and sub-Contractors involved in the Contract effect and maintain, appropriate professional indemnity insurance cover during the Contract period and for a minimum of 6 (six) years following the expiration or earlier termination of the Contract.

7.17.9. The Contractor shall give GoM, immediately on request, copies of all

insurance policies referred to in this Clause 7.17.7 to 7.17.8 inclusive, or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies. With regard to any breach of any obligations implied by Section 2 of the Supply of Goods and Services Act 1982, the Supplier shall maintain professional indemnity insurance cover of an amount not less than the maximum amount that the insurance policy is capable of providing over the life of the policy, before any claims or pay outs have been made.

#### 7.18. Dispute Resolution

7.18.1. The parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract.

7.18.2. If the dispute cannot be resolved by the parties pursuant to paragraph 7.18.1 of this condition, the dispute may, by agreement between the parties, be referred to mediation pursuant to paragraph 7.18.4 of this condition.

7.18.3. The performance of the Contract shall not cease or be delayed by the reference of a dispute to mediation pursuant to paragraph 7.18.2 of this Condition.

7.18.4. The procedure for mediation and consequential provisions relating to mediation are as follows:

i. a neutral adviser or mediator ("the Mediator") shall be chosen by agreement between the parties or, if they are unable to agree upon the identity of the Mediator within 14 days after a request by one Party to the other (provided that there remains agreement for mediation), or if the Mediator agreed upon is unable or unwilling to act, either party shall within 14 days from the date of the proposal to appoint a Mediator or within 14 days of notice to either party that he is unable or unwilling to act, request a neutral body to appoint a Mediator;

ii. the parties shall within 14 days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be



adopted for negotiations to be held. If considered appropriate, the parties may at any stage seek assistance from a neutral body to provide guidance on a suitable procedure;

iii. unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the parties in any future proceedings;

iv. if the parties reach agreement on the resolution of the dispute, the agreement shall be reduced to writing and shall be binding on the parties once it is signed by both the Contracting Authority and the Contractor;

v. failing agreement, either of the parties may invite a Mediator to provide a non-binding but informative opinion in writing. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Contract without the prior written consent of both parties;

vi. if the parties fail to reach agreement in the structured negotiations within 60 days of the Mediator being appointed or such longer period as may be agreed by the parties, then any dispute or difference between them may be referred to the courts.

#### 7.19. Termination

7.19.1. The GoM may terminate this Contract in any of the circumstances set out below by giving to the Contractor notice in writing where the Contractor; -

i. commits a material breach of any of its obligations under this Contract; and despite notice of such breach in writing by the GoM to the Contractor, the Contractor fails to remedy such breach within 14 days of the notice then the GoM may terminate the Contract forthwith.

ii. becomes bankrupt or makes a composition or arrangement with its creditors or has a proposal in respect of its company or partnership for the voluntary arrangement for the composition of debts or scheme or arrangement approved in accordance with the Companies Act or the Bankruptcy Act;

iii. Has a winding-up order made or (except for the purposes of amalgamation or Reconstruction) a resolution for voluntary winding-up passed;

iv. Has a provisional liquidator, receiver or manager of its business or undertaking duly appointed;

v. Is in circumstances which entitle a court or creditor to appoint or have appointed a receiver, a manager or administrative receiver or which entitle a court to make a winding-up

order; then in any such circumstances the GoM may without prejudice to any accrued rights or remedies under this Contract, terminate the Contract by giving notice in writing.

7.19.2. If the Contract is terminated as provided in this condition, then the GoM shall: -

- i. Cease to be under any obligation to make further payment until the costs or loss resulting from or arising out of the termination of this Contract shall have been calculated, and shall make such payment only in accordance with a court order or pursuant to the applicable law;
- ii. Be entitled to repossess any of its Equipment (if any) in the possession of the Contractor;
- iii. Be entitled to deduct any losses to the GoM resulting from or arising out of the termination of this Contract (from any sum or sums which would but for the termination of the Contract as aforesaid have been due from the GoM to the Contractor as a debt). Such loss shall include the reasonable cost to the
- iv. GoM of the time spent by them in the termination of the Contract as aforesaid have been due to the Supplier.

## 7.20. Corrupt Gifts and Payments of Commission

1. The Contractor shall not:

- i. offer or give, or agree to give, to any person employed by or on behalf of the Contracting Authority any gift or consideration of any kind as an inducement or reward for doing or having done or not doing any act in relation to the obtaining or execution of this or any other Contract with the Contracting Authority or for showing or for not showing favour or dis-favour to any person in relation to this or any other Contract with the Contracting Authority;
- ii. enter into the Contract or any other Contract with the Contracting Authority in connection with which commission has been paid or agreed to be paid by him or on his behalf, or to his knowledge, unless before the Contract is made particulars of any such commission and of the terms and conditions of any agreement for the payment thereof have been disclosed in writing to any person duly authorised by the Contracting Authority to act as its representative for the purpose of this condition.

2. Any breach of this condition by the Contractor or by anyone employed by him or acting on his behalf (whether with or without his knowledge) or the commission of any offence by the



Contractor or by anyone employed by him or acting on his behalf under Montserrat Law in relation to this or any other Contract with the Contracting Authority shall entitle the Contracting Authority to determine the Contract and recover from the Contractor the amount of any loss resulting from such determination and the amount of the value of any such gift, consideration or commission as the Contracting Authority shall think fit.

3. Where the Contract has been determined under paragraph 7.20.2 of this condition, the powers given by paragraph 7.14.5 of Condition 7.14 shall apply as if there had been a failure to commence the work.

- i. In any dispute, difference or question arising in respect of:
- ii. the interpretation of this Condition (except so far as the same may relate to the amount recoverable from the Contractor under paragraph 7.20.3 of this Condition in respect of any loss resulting from such determination of the Contract); or
- iii. the right of the Contracting Authority to determine the Contract; or
- iv. the amount or value of any gift, consideration or commission;
- v. the decision of the Contracting Authority shall be final and conclusive.

#### 7.21. Special Provisions

In the case of any conflict or inconsistency between these general conditions and any conditions contained within the Contract, the latter conditions shall prevail.

#### 7.22. Conflict of Interest

7.22.1. The Contractor shall ensure that there is no conflict of interest as to be likely to prejudice his independence and objectivity in performing the Contract and undertakes that upon becoming aware of any such conflict of interest during the performance of the Contract (whether the conflict existed before the award of the Contract or arises during its performance) he shall immediately notify the Contracting Authority in writing of the same, giving particulars of its nature and the circumstances in which it exists or arises and shall furnish such further information as the Contracting Authority may reasonably require.

- i. Where the Contracting Authority is of the opinion that the conflict of interest notified to it under paragraph 7.22.1 above is capable of being avoided or removed, the Contracting Authority may require the Contractor to take such steps as will, in its opinion, avoid, or as the case may be, remove the conflict and:

(if the Contractor fails to comply with the Contracting Authority requirements in this respect; or

i. if, in the opinion of the Contracting Authority, compliance does not avoid or remove the conflict, the Contracting Authority may determine the Contract and recover from the Contractor the amount of any loss resulting from such determination.

ii. Where the Contracting Authority is of the opinion that the conflict of interest which existed at the time of the award of the Contract could have been discovered with the application by the Contractor of due diligence and ought to have been disclosed as required by the tender documents pertaining to it, the Contracting Authority may determine the Contract immediately for breach of a fundamental condition and, without prejudice to any other rights, recover from the Contractor the amount of any loss resulting from such determination.

#### 7.23. Copyright and Property Information and Equipment

i. (Subject to any prior rights and to the rights of third parties, copyright and every other property right in all reports, documents and things produced under the Contract shall be vested as to copyright in the Contracting Authority and as to every other property right in the Contracting Authority, and the Contractor warrants to the Contracting Authority that all staff are and will be engaged in relation to the Contract on terms which do not entitle any of them to copyright or any other such right in any such report, document and thing. The Contractor hereby assigns copyright in every such report, document and thing to the Contracting Authority for the full period of copyright therein and all renewals and extensions and agrees to each shall carry a copyright legend in the following form: "(C) Copyright 20..." "Applications for reproduction should be made to the Contracting Authority ". All moral rights relating to the work under the Contract are hereby waived by the Contractor.

ii. Any information collected pursuant to the Contract (excluding any information which in the opinion of the Contracting Authority is confidential to the Contractor or which has been communicated to the Contractor under a condition that it shall be confidential to the Contractor) shall be the property of the Contracting Authority, and all original documents in whatever form which contain that information, including any computer tape or disk, any voice recording and any special computer program written to give access to the information, shall on request be deposited with the Contracting Authority.

iii. Nothing in the Contract or done under the Contract shall be taken to diminish y copyright or rights to any other intellectual or industrial property which would apart from this Contract vest in the Contracting Authority.

iv. Without prejudice to the generality of the foregoing, there shall be vested in the Contracting Authority all copyright, patent rights and rights to other intellectual or industrial property in or over any information, specification, plan, drawing, pattern, sample or other thing supplied by the Contracting Authority, or any Government Department, to the Contractor in



relation to the Contract or in and over anything made or derived from or arising out of any such information, specification, plan, drawing, sample or other thing.

v. Any right of use in or over property (including any copyright or licence to use copyright material and also including intellectual property rights of all kinds) which is acquired by the Contractor or by his staff pursuant to or for the purposes of the Contract, and whether acquired by transfer, assignment, license, sub-license, grant or by any other means whatsoever, and the costs of acquisition of which are to be reimbursed to the Contractor by the Contracting Authority shall be acquired by the Contractor upon terms which will enable it upon request by the Contracting Authority to perform at the Contractor's expense all acts and to execute all documents necessary to vest such rights of use in the Contracting Authority to the full extent enjoyed by the Contractor without need for any or other permission, authorisation or consent.

vi. If the cost of any equipment is reimbursed to the Contractor such equipment shall be the property of the Contracting Authority and shall on request be delivered to the Contracting Authority. The Contractor will keep a proper inventory of such equipment and will deliver that inventory to the Contracting Authority on request and on completion of all work under the Contract.

#### 7.24. Force Majeure

i. For the purposes of the Contract "Force Majeure" shall include but not be limited to the following:

- i. war, civil war, riots, revolution;
- ii. natural disasters such as earthquakes, hurricane, volcanic activity, tidal waves and floods;
- iii. explosions and fires not caused by neglect of duty by the Contractor

ii. Neither the Contractor nor the Contracting Authority shall in any circumstances be liable to the other for any loss of any kind whatsoever by reason of any failure or delay in the performance of its obligations hereunder to the extent resulting from a Force Majeure event. Notwithstanding the foregoing, each party shall use all reasonable endeavours to continue to perform, or resume performance of, such obligations here under for the duration of such Force Majeure event.

iii. If any of the parties shall become aware of circumstances of Force Majeure

which give rise to or which are likely to give rise to any such failure or delay on its part, it shall forthwith notify the others by the most expeditious method then available and shall inform the others of the period which it is estimated that such failure or delay shall continue.

#### 7.25. No Partnership

i. Nothing in the Contract and no action taken by the parties under the Contract shall constitute a partnership, association, joint venture or other co-operative entity between the parties or constitute any party a partner, agent or legal representative of the other.

#### 7.26. Rights of Third Parties

i. The Contract does not in any way whatsoever entitle a person who is not a party to the Contract (including, without any limitation, any employee, officer, agent, representative, or sub-Contractor of either the Contracting Authority or the Contractor) to enforce any term of the Contract, which expressly, or by implication, confers a benefit on him pursuant to any Montserrat Rights of Third Parties Legislation or in its absence, consideration to the United Kingdom Contract (Rights of Third Parties) Act 1999, without prior agreement in writing of both parties.

#### 7.27. Language

i. This Contract shall be signed in English, which shall bind the parties and be an official language of the Contract for all matters relating to the meaning or interpretation of this Contract.

#### 7.28. Law

i. The Contract shall be considered as a Contract made in Montserrat and shall be governed by and construed in accordance with the provision of Laws of Montserrat.