

INVITATION TO TENDER  
CT/PROC/001(AccessTwo)  
  
FOR THE PROVISION OF  
SEA/AIR TRANSPORT SERVICES

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## 1. DEFINITIONS

## 1. DEFINITIONS

**1.1 The Tender** means these definitions together with Sections 2-6 and the Price Schedule Form GM02.

**1.2 The Contract** shall mean the Agreement concluded between the Contractor and The Government of Montserrat, including the Specification and other documents which are relevant to the contract and also such of these conditions as are included in the terms and conditions of the contract.

**1.3 The Contracting Authority** means The Government of Montserrat.

**1.4 The Contractor** means the Contractor who by the terms of the Agreement undertakes to render the Services of the Government of Montserrat as is provided by the Tender, and, where the Contractor is an individual or a partnership, the expression shall include the personal representatives of that individual or of the partners, as the case may be, and shall also include any person to whom the benefit of the contract may be assigned by the Contractor but only with the prior written consent of the Government of Montserrat.

**1.5 The Government of Montserrat - (GoM)** means the Contracting Authority or its authorised representative.

**1.6 CARICOM** means the Caribbean Community and Common Market.

**1.7 DFID** means the Department for International Development.

**1.8 The Contract Manager** means the Contracting Authority's representative responsible for the active management of all aspects of the relationship between the Contractor and the Government of Montserrat.

**1.9 The Services** includes all the services to be provided by, and to be performed by and obligations to be fulfilled by the Contractor.

**1.10 The Contract Price** means the price exclusive of VAT (where legislated and relevant), payable to the Contractor by the Government of Montserrat under the contract for the full and proper performance by the Contractor of his part of the contract as determined under the provisions of the contract.

**1.11 Government Property** means anything issued or otherwise furnished in connection with the contract by or on behalf of the Government of Montserrat.

**1.12 Issued Property** means Government property issued in connection with the contract.

**1.13 The Site(s)** means the land or place where the services are to be provided and any other land or place by the Contracting Authority for or in connection with the provision of the services.

**1.14 Loss** includes destruction.

**1.15 Month** means calendar month.

**1.16 Person** includes corporation.

**1.17 Gender** Where the context so admits denoting the masculine gender include the feminine and neuter genders and words denoting natural persons include corporations and firms and all such words shall be construed interchangeably in that matter.

**1.18 Headings** The headings of these conditions shall not affect the interpretation thereof.

## **2. INTRODUCTION**



## 2. INTRODUCTION

### 2.1 Montserrat

2.1.1 The Government of Montserrat is an internally self-governing overseas territory of the United Kingdom. Government is executed through a Governor appointed by the British Monarch, and is led by the premier as the head of government and three ministers.

2.1.2 The constitution provides for a governance process consisting of an Executive Council and a Legislative Council. Executive Council consists of the governor, the premier, 3 ministers, the attorney general and the finance secretary. Legislative council is made up of 11 seats. 9 members are elected to serve a five-year term, with the attorney general and financial secretary as the official Government representatives.

2.1.3 Elections are held once every five years. Following a public vote (the elections) the leader of the majority party, usually becomes the premier. Monarchy is hereditary and the Governor is appointed by Monarch.

2.1.4 Government operations are delivered through four ministries: i: the Ministry of Finance, Economic Development, Tourism & Culture; ii: the Ministry of Communications, Works & Labour; iii: the Ministry of Education, Health, Community Services, Sports & Youth; iv: the Ministry of Agriculture, Lands, Housing, Environment & Ecclesiastical Affairs.

2.1.5 The Government is located in Brades, in the Carrs Bay / Little Bay area in the Northwest end of Montserrat.



2.1.6 Montserrat is a mountainous Caribbean island on the continent of North America. The capital city Plymouth has remained abandoned since 1997 due to volcanic activity. Hurricane Hugo in 1989, and the volcanic eruptions a few years later devastated the islands economy. Since then there has been a heavy reliance on British Aid.

2.1.7 Montserrat has a population of 4,950 (2014 estimate) with a land area 16 km long and 11km wide, equating to 102km<sup>2</sup>. It is about 27 miles Southwest of Antigua and has a rich mixture of African, North American, and European influences. The official language of Montserrat is English and most Montserratians also speak a creole language, similar to that spoken in Jamaica. In the early 1990's the island population exceeded 10,000.

2.1.8 The National Vision of the Government of Montserrat is for: “A healthy and wholesome Montserrat, founded upon a thriving modern economy with a friendly, vibrant community, in which all our people through enterprise and initiative, can fulfill their hopes in a truly democratic and God-fearing society”

2.1.9 The Governments Headquarter are located in:

Brades  
MSR1110  
Montserrat

Further information about the Government's business can be found on our Internet site: [www.gov.ms](http://www.gov.ms)

### **3. INSTRUCTIONS & INFORMATION ON TENDERING PROCEDURE**

### **3. INSTRUCTIONS AND INFORMATION ON TENDERING PROCEDURES**

#### **3.1 About These Instructions**

3.1.1 These instructions are designed to ensure that equal and fair consideration is given at all times. It is important therefore that you provide all the information asked for in the format and order specified.

#### **3.2 Contract Duration**

3.2.1 It is proposed to let the contract for an initial **5 Months**. Following this initial term the Contracting Authority retains the right to extend the contract for a minimum of **1 Month** up to a maximum of **18 Months**. The overall contract duration will not exceed 18 months.

#### **3.4 Contract Award**

3.4.1 Notification of contract award to the successful tenderer will be made on or around the **20th May 2016**. A mobilisation plan will be agreed between the parties with the expectation that the successful contractor(s) will be ready to formally commence work on **8th June 2016**.

#### **3.5 Tender Validity Period**

3.5.1 All charges shown on the pricing schedule form **GM02** will remain valid from the date of receipt of proposal until this tender process is complete.

#### **3.6 Confidentiality**

3.6.1 All information supplied by the Contracting Authority in connection with this Invitation to Tender shall be regarded as confidential except that such information may be disclosed for the purpose of obtaining sureties and quotations necessary for the preparation of responses to this Invitation to Tender.

#### **3.7 Contact Points**

3.7.1 For general & contractual questions:-

- i: Camille Gerald  
Office of the Premier  
Ministry of Finance, Brades, Montserrat  
E-Mail: [geraldc@gov.ms](mailto:geraldc@gov.ms)  
Phone: (01) 664 491 25216

3.7.2 For operational questions:-

- i: David Dubbery  
Access Coordinator  
Office of the Premier  
Ministry of Finance, Brades, Montserrat  
E-Mail: [duberydi@gov.ms](mailto:duberydi@gov.ms)  
Phone: (01) 664 496 9044

### **3.8 Clarification**

3.8.1 Any queries to the meaning of this Invitation to Tender & Procurement Process must be directed to the contact point at section 3.7.1.

3.8.2 The Contracting Authority is committed to responding to queries within 3 working days of its receipt.

3.8.3 The Contracting Authority cannot promise to give appropriate response to any queries that they raise, when there are just 3 working days remaining before the tender close date.

3.8.4 The Contracting Authority retain the right to annul the tendering process and not award a contract.

### **3.9 Incomplete Tender**

3.9.1 The Contracting Authority may reject a proposal if all the information is not provided.

3.9.2 The Contracting Authority may reject an unsigned proposal.

### **3.10 Interviews & Cost of Tendering**

3.10.1 The Contracting Authority may require interviews with the tenderer. Such a requirement shall imply no obligation on the part of the Contracting Authority and the tenderer shall be responsible for any of its' own expenses incurred.

3.10.2 The Contracting Authority also retains the right to visit the tenderers premises or any nominated reference site prior to any contract award being made. The Contracting Authority will be responsible for any of its' own expenses incurred.

### **3.11 Acceptance of Tender**

3.11.1 The Contracting Authority does not bind itself to accept any tender. The Contracting Authority also reserves the right to accept a tender for part or for all the requirements.

### **3.12 Communications**

3.12.1 Nothing herein or in any communication made on behalf of the Contracting Authority shall be taken as constituting an agreement, offer or representation between the Contracting Authority and any other party (save for a formal award of contract made in writing by or on behalf of the Government of Montserrat) nor shall they be taken as constituting an agreement, offer or representation that an agreement shall be offered in accordance herewith or at all.

### **3.13 Value for Money**

3.13.1 Seeking value for money through procurement is an increasingly important aspect of the Government of Montserrat's business practices. Award of contract through this procurement process will be made on the basis of whole life cost/most economically advantageous considerations, over the full period of the contract.

Table 1 below details the 'value for money' evaluation criteria that will be used to assess responses to this Invitation to Tender. Each of the criteria have been allocated a number (weight), in accordance with the Contracting Authorities perceived importance it has placed on each criterion.

**TABLE.1 – Evaluation Criteria: Weighting Allocation**

Evaluation Criteria*		Weight 1= least important 5= most important
1	<b>Scheduling Timetables &amp; Routes</b> (Including creative solutions and the potential for meeting the success factors. See Section.6.3)	5
2	<b>The Mode of Transport</b> (Including the level of creative solutions and the potential for meeting the success factors. See Section 6.4)	5
3	<b>Harbor, Docking/Landing and Customs</b> (See Section 6.5)	2
4	<b>Collaborative Working</b> (See Section 6.6)	3
5	<b>Mobilisation Plan.</b> (Including the structure and capability of the key ‘staff resources’ See Section 6.7)	4
7	<b>Contract Management</b> (See Section 6.8)	4
8	<b>Reporting &amp; Management Information</b> (See Section 6.8)	3
9	<b>Previous Performance</b> (See Section 4.2.1 e)	3
10	<b>Overall Contract Price</b> (Including resource optimisation, confidence in costs being sustainable, potential to realise VFM, considering the success factors in 6.3.1 and 6.4.3)	3
11	<b>Presentation &amp; Overall Quality of the Response</b>	2
12	<b>Confirmations, including GoM’s Terms &amp; Conditions</b> (See Section 4.4)	2

\* Each criteria will be given a score of either 0, 1, 2, 3, 4 or 5.

3.13.2 The evaluation criteria detailed in table.1 will be scored on merit, by evaluation team members, independently of each other. Initial results will then be discussed with the evaluation team at formal team meetings.

3.13.3 The Contracting Authority will award a contract based on identified optimum value for money solution(s) that best meets its’ needs. To identify this each criteria will be scored on the capabilities demonstrated by the tenderer. The score for each criteria will be multiplied by its weight, provided in table.1. The following details the scoring method:

- i: 0.....No answer or inadequate answer;
- ii: 1.....Very poor answer;
- iii; 2.....Poor answer;
- iv: 3.....Good answer;
- v: 4.....Very good answer;
- vi: 5.....Excellent answer.

### 3.14 Project Milestones

3.14.1 Table.2 below details the key milestones for this project

**Table.2 – Project Milestones**

<b>Key Milestone</b>	<b>Date</b>
Close Date for Responses to ITT	Monday 9 <sup>th</sup> May @ 11am
<b>Support Meeting (open to all Tenderers)</b>	Tuesday 26 <sup>th</sup> April
Evaluation Process	Monday 9 <sup>th</sup> May to Friday 20 <sup>th</sup> May
<b>Award Contract</b>	Friday 20 <sup>th</sup> May
Contract Start Date	Wednesday 8 <sup>th</sup> June



## **4. INFORMATION TO BE PROVIDED**

## 4. INFORMATION TO BE PROVIDED

### 4.1 Structure of Responses

4.1.1 The tenderer shall take note of and fully comply with the notices and instructions set out below.

4.1.2 To assist in the evaluation process, Invitation to Tender responses (your proposal) must have a structure to include appropriate page and paragraph numbers and must be ordered into 4 clearly marked sections **General Information**, **Specific Information**, **Confirmations** and **Contract Pricing**.

### 4.2 General Information

4.2.1 The tenderer shall include the following in the section headed **General Information**:

- a) the Project Number **CT/PROC/001(AccessTwo)** to which the tender relates;
- b) the full name of the tenderer together with any trading name, the address of the tenderer and the address for communications under any resultant contract;
- c) the name(s) and telephone number(s) of the tenderer(s) or their representative(s) whom the Contracting Authorities may contact in relation to the tender;
- d) details of the relevant levels of insurance cover you have in order to operate the service detailed in Section.6 the Specification. Where appropriate that must include cover for sea and air transportation. As well as travel where Including where appropriate sea and air travel, as well as professional indemnity, public liability and employers liability. A copy of your most recent insurance policies/schedules, must be included in this section.
- e) an account of previous performance when delivering similar services, in the past 3 years. You must include information about success levels, including how you have been able to manage passenger demands. Also include an overview of how difficulties had been overcome, and resolution procedures followed.

### 4.3 Specific Information

4.3.1 The tenderer shall include the following in the section headed **Specific Information**:

- a) Full detail of the Scheduling Timetables and Routes, in response to the information detailed in Section 6.3 of the Specification;
- b) Full detail of the mode of transport, in response to response to the information detailed in Section 6.4 of the Specification;

- c) An account of how you will manage the Harbor, Docking/Landing and Customs services, in response to the information provided in Section 6.5 of the Specification;
- d) An overview of how you will facilitate collaborative working in response to the information detailed in Section 6.6 of the Specification;
- e) A comprehensive mobilisation plan, in response to the information detailed in Section 6.7.1 of the Specification;  
**Note: The plan must conclude with a simple statement about how you will provide the quality plan, in section 6.7.2, within one month of the service commencement.**
- f) An outline on how you will undertake contract management and performance, in response to the information provided in Section 6.8 of the Specification;
- g) Detail on how you will provide reporting and management information, in response to the information provided in Section 6.9 of the Specification.

#### 4.4 Confirmations

4.4.1 The tenderer shall include the following in the section headed **Confirmations**:

- a) confirmation that the services tendered for are those specified in Section 6 the Specification;
- b) confirmation that the Terms and Conditions in Section 7 shall govern the provision of the service specified in section 6, the Specification and any resultant contract;
- c) confirmation that this is a bona fide competitive tender and that the tenderer has not fixed or adjusted the amount of the tender by arrangement with other tenderers.
- d) confirmation that the tenderer has not communicated to any other persons (and will not do so before the tender closing date) the amount or approximate amount of this tender. This must be accompanied by a signed anti collusion form, provided in Annex A;

#### 4.5 Contract Pricing

4.5.1 The tenderer shall include the following in the section headed **Contract Pricing**:

- a) a completed and signed Price Schedule, **form GM02**, including a breakdown of costs using the tables provided;
- b) where the tenderer makes any manuscript alteration to any charges on the **form GM02**, such alteration shall not be considered by the Contracting Authority unless authorised by the tenderers representative;

4.5.2 The charges tendered shall remain valid from the date of receipt of the proposal until this tender process is complete and a contract has been awarded.

4.5.3 The contract price shall be fixed for the first 12 months and any negotiations on price adjustments shall be mutually agreed between the parties. It is expected that any increase will be in line with agreed indices less any efficiency savings gained throughout the contract period.

## **5. BACKGROUND**

## 5. BACKGROUND

### 5.1 Improving Access for Montserrat

5.1.1 Montserrat does not currently have a sea transport service, with all access for people travelling to and from the island of Montserrat through air travel. In recent years there has been a docking, and customs facility operational at Little Bay as well as the John A Osborne Airport. The docking and customs facility at Little Bay was operational for passengers traveling by sea up to and including 6th April 2016. There was regular boarding and disembarking between three to six days a week, and the facilities at Little Bay are currently in a ready state to recommence operations.

5.1.2 Docking at little bay is always subject to sea conditions. With passenger safety always of paramount importance. When the facilities at little bay were in operation, that were occasions when decisions were made not to dock due to heavy swells in the local vicinity.

5.1.3 Improving access to and from Montserrat is a key priority for The Government of Montserrat. This contract is an important part of that improvement process, bringing increased emphasis to the delivery of value for money, quality, and increased options, which could also include a balance of sea and air services.

5.1.4 During the term of this contract the Government will be working closely with all its' key stakeholders, in order to consider the best options for making further progress. This is likely to involve considering options for services that can meet needs much further into the future. This could include adopting more fully integrated approaches, and setting in place longer term contracting processes.

### 5.2 Historic Passenger Numbers

The number of passengers that travelled by sea to and from Montserrat during 2015 is detailed in table.1 below. These passenger numbers may be helpful when designing the type of service you propose to offer. This will include scheduling (timetables), routing and vessel(s). In this regard the Government of Montserrat encourage innovative responses, that are capable of demonstrate the delivery of value for money. This can include showing your ability for: improving traveler choice; providing for an excellent passenger experience; increasing passenger numbers; controlling/ maintaining /reducing the level of financial support required to operate the service.

*Table.3 Sea Travelling Passenger Numbers - Montserrat*

2014/2015 – Period		Passenger Numbers
1	October to December 2014	5,593
2	January to March	4,329
3	April to June	2,698
4	July to September	3,539
<b>OVERALL TOTAL</b>		<b>16,359</b>

## **6. THE SPECIFICATION**

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### 6.1 The Requirement

6.1.1 The requirement is for the provision of transport services, for people traveling to and from Montserrat. Tenderers are invited to propose creative solutions, which could include offering a combination of different sea vessels as well combinations of sea and air transport services.

### 6.2 Objectives & Success Factors for the Requirement

6.2.1 The overall objectives and outcomes for this contract include, but are not exclusive of:

i: **flexible, consistent and frequent travel options/choice**, capable of increasing interest of people in travelling to and from Montserrat.

ii: a **‘best in class’ level of service**. One of the key focuses for this level of quality is so that passengers/travellers have the best possible experience whilst travelling to and from Montserrat, whatever the reason for their travel.

iii: **accommodating changing passenger needs/demands**, in a way that optimises the cost of the service, without unnecessarily compromising i: and ii: above, i.e. maintaining flexible, consistent and frequent travel option as well as a ‘best in class’ level of service.

iv: **affordable travel options for passengers**, balanced with achieving an optimum value for money service.

v: **safe and comfortable travel**, where health and safety is not compromised in any circumstance.

vi: **simplified booking** and ticket purchase systems.

vi: **collaborative and coordinated working** with all key stakeholders. This will include the way information is shared, day to day communications, monthly contract meetings.

### 6.3 Scheduling, Timetables and Routes. The Scope of Service.

6.3.1 The contractor will be responsible for identifying, designing and making available options for scheduling, timetables and routes. I.e. the scope of service. It is critical that the scheduling of services provide flexible, consistent and frequent travel options to and from Montserrat, with ‘a ‘regular service’ routes, and ‘additional services’.

The scheduling and service proposed must consider how it would manage and provide for a range of well-known situations including: 1) *Regular Travel Options*; 2) *Lifeline Support/Support required by the Emergency Services*; 3) *Special Events, including Christmas Festivals, St Patrick’s Festival, Easter Celebrations and Calabash*; 4) *Day Tours to*



*Montserrat, which have historically run to and from Antigua, St Kitts/Nevis, Guadeloupe and St Maarten. 5) Special Charter Services.*

6.3.2 Tenderers are encouraged to offer scheduling and routes that are capable of increasing the interest of people in travelling to and from Montserrat. In this regard the Government of Montserrat are looking for and welcome creative options. It is recognised that tenderers with their expert industry knowledge and experience are best placed to identify the best way to meet the needs of this contract and its' critical success factors outlined in 6.3.1 below.

6.3.1 Scheduling, Timetables and Routes are a fundamental and critical aspect of the service requirement. Success factors will include:

- i: The levels of interest of people travelling to Montserrat, including actual passenger numbers, that can be offset against subsistence arrangements;
- ii: The reliability and consistency of the scheduling and routes;
- iii: The way changing demands are managed, whilst maintaining value for money and affordable travel. Including timetable certainty, well informed and communicated timetable updates, based on passenger traffic;
- iv: The level of choice available for those wishing to travel to and from Montserrat. Including the variety and regularity of routes available;
- v: The ability to manage and deal with unknown events that fall outside the scope of service. E.g. because of emergency, 'ad-hoc', changing / unknown needs;
- vi: The affective use of 'core' and support resources, including staff and non-staff resource.

6.3.2 Options for scheduling/timetables and routes are not limited, and could also include combined options for sea and air travel. Costs/Profitability and Value for Money are key considerations. In this regard there is a very strict ceiling on the level of financial support/subsistence being made available.

**Inventive ways of offering traveler choice, whilst 'reducing' the level of reliance on financial support and subsistence,** is encouraged.

6.3.3 When proposing scheduling, timetables and routes, as part of their service provision, tenderers must demonstrate their ability to sustain and maintain their service provision, in a value for money way. Some of Montserrat's neighboring islands include: Antigua & Barbuda (the central hub); St Maarten; Guadeloupe; St Kitts & Nevis; Dominica; St Vincent & the Grenadines; St Lucia; Barbados; San Juan.

6.3.4 The instruction about providing the required information on scheduling/timetables and routes is provided in Section 4.3.1 a. The way this information will be evaluated and the level of importance it has to the Government of Montserrat is provided in Section 13.3.

## 6.4 Mode of Transport

6.4.1 The mode of transport will be through the operation of sea faring vessels, or a combination of sea faring vessels and air transportation. In this regard tenderers must provide in detail information about the mode of transport it proposes to use.

6.4.2 Tenderers must detail the number type and full capability of the sea faring vessels/air transport it proposes to use, in order to meet the needs of this requirement. Including proposed back-up. The type and number of the vessels/air transport being proposed must be capable of meeting the scheduling and routes that are being offered, as well as meeting changing passenger demands.

6.4.3 The solution should focus on value for money, considering: ‘all’ operational costs. It can also include any ‘added benefits’ or extras that would be made available. These could include, but are not limited to: efficient travel time; efficient air and sea links; passenger luggage or light cargo options. Success factors will include but are not limited to:

- i: efficient travel time;
- ii: the sea vessel(s)/air transport(s) capability and ‘capacity’;
- iii: the ease, comfort and practicality of travel;
- iv: vessel/air transport facilities/refreshments;
- v: ability to accommodate those with disabilities;
- vi: efficient fuel consumption;
- vii: vessel reliability, including proactive maintenance and cleaning;
- viii: clear back up plans that safeguard against vessels being out of operation;
- ix: added benefits or extras.

6.4.2 Tenderers are encouraged to come up with creative ideas for the type and number of vessels/aircraft they propose using to meet the needs of this requirement. This can include offering value for money opportunities, which could have a positive impact on the level of financial support/subsistence available.

6.4.3 The instruction about providing the required information on the solutions being proposed for sea vessel(s)/air transport, is outlined in Section 4.3.1 b. The way this information will be evaluated and the level of importance it has to the Government of Montserrat is provided in Section 3.13.

## **6.5 Harbors, Docking/Landing and Customs Services**

6.5.1 The Government of Montserrat operate a docking, ticket & tax collection, border control and customs service, at Little Bay, Montserrat. In addition to this the Government also operate a docking, ticket & tax collection service and passenger waiting area at St John’s in Antigua.

6.5.2 Montserrat also has a small airport, located at Gerald’s. John A Osborne airport has a 600-metre runway, passenger waiting facilities, and ticketing and customs services.

6.5.3 The contractor will need to work closely with these operations, when delivering its service. In advance of the service starting the contractor and the contracting authority will agree the practical day to day use of these facilities. This will include the support services available, the practicalities of accessing the facilities, the availability of buildings, land and equipment. GoM do not currently operate these services on any other islands.

## 6.6 Collaborative Working

6.6.1 The contractor will need to facilitate close collaborative working, across a range of teams that will be critical to the success of this contract. In this regard the smooth operation of sea passenger services to and from Montserrat is reliant on the involvement of several key stakeholders, including: Tourism; Customs; Booking Agents (currently Jenny Tours); Docking and Harbor Services, on Montserrat & Antigua.

6.6.2 Working closely with all key stakeholders, will therefore be one the most critical success factor for this contact. It will involve determining the best way for information to be shared and communicated; the degree and levels that collaboration can take place, including sharing of resources; the sharing of management and performance information; and, the way monthly contract meetings are supported.

## 6.7 Quality

### 6.7.1 The Mobilisation Plan

- i: The tenderer must provide a detailed mobilisation plan in their proposal. The plan must demonstrate how the initial commencement of the contract would be managed, from the contract award date of 20<sup>th</sup> May to the contract start date of 7<sup>th</sup> June, and its first months of operation. The plan should include, but not exclusively:
- ii: The resources that will be used for the mobilisation and full operation of the services. This can include staff and non-staff resources. As a minimum it must include a structured diagram, resumes/CV's together with a professional overview of the 'key staff' resources. Including the senior management team with overall responsibility for the contract; the 'core' members of the vessel/aircraft crew; the 'core' members of the support/ground crew;
- iii: Information about how you will deal with the transition from the current air travel service. The service is currently provided by SVG and Fly Montserrat, working in close partnership with the Government of Montserrat. If you will need more time from the point contract award to commencement of the service, this must be clearly stated, together with the reasons why;
- iv: An overview of how you will work with all key stakeholders (including those detailed in section 6.5.1 above), to help minimise disruption during the first day and immediate weeks of the service starting;
- v: Approaches for making available the timetables, routes and booking procedures, in advance of the first day that the service will start.
- vi: A brief statement about how you will implement the Quality Plan, detailed in Section 7.6.2, within one month of commencing the service.

## 6.7.2 The Quality Plan

- i: The tenderer must provide a detailed quality plan within 1 month of the service commencing. The plan must show how the contractor will provide a ‘customer first’ focus, when managing all aspects of quality control under the service provision. Including how the different elements of the operations & their key stakeholders are working.
- ii: The contractor will be responsible for developing and maintaining a ‘system’ of quality control and must ensure that all staff under their control are fully familiar with and implement the policy.
- iii: On commencement of the contract the Contractor must ensure that their management and staff are able to identify sources of problems regarding quality and standards of customer/passenger service. This will include being able to quickly communicate and implement solutions. ‘All’ elements of the operations and their key stakeholders (identified in 6.5.1), will be a fundamental aspect of any communications and resolutions.
- iv: The detailed quality plan should include but not exclusive of or limited to:
- a) The flexible, consistent and frequent levels of travel. Including levels of passenger choice and interest;
  - b) The plans for providing a ‘best in class’ type level of service quality. Service quality can include, but is not exclusive to: travel options offered; reliability of the service; ease of accessing and using the service; speed of travel; comfort and safety of travel; on board ambiance, e.g. cleanliness, amenities/ refreshments, information, etc.; booking & ticketing options; levels of service disruption; after sales care;
  - c) How you are able to accommodate changing passenger needs and demands;
  - d) The operation of scheduling, timetables and routes;
  - e) Vessel / Aircraft options. This can include, but is not exclusive of or limited to: capacity & capability; health & safety, including sea worthiness; facilities, amenities/refreshments; service reliability; vessel/aircraft back up plans; fuel consumption; passenger luggage capacity.
  - f) Coordination of the different aspects of the operations. This can include: sharing information; regular meetings; points of contact in each service area, listed in 6.3.1; policy and implementation of collaborative work.
  - g) Maintenance regime. This must outline the practices followed and policies adopted. Proactive maintenance regimes, such as the principles of vessel or aircraft condition monitoring programmes, are recognised as efficient regimes. The regime must include any legislative obligations and industry standards.
  - h) Health & Safety policy and regime. This must detail how practices are

compliant to relevant legislation, and industry standards. It should outline the practices followed and how that provides for safe, healthy and environmentally considerate operations. It can include adopting standards and practices such as those under International Safety Management Code Standards and International Aviation Standards.

## **6.8 Contract Management & Performance**

6.8.1 It is considered essential that in order to maintain a high standard of quality and performance that the contractor and contracting authority take lead roles in holding regular ‘coordinated’ monthly contract management meetings. The frequency of these will be reviewed after an initial three month period.

6.8.2 To maintain a high quality of service the successful contractor must facilitate a coordinated and integrated approach to all aspects of the service. This will require the contractor to develop and manage collaborative arrangements with all relevant key stakeholders, e.g. through supporting regular performance and quality working groups.

6.8.3 For the Government of Montserrat the Permanent Secretary to the Office of the Premier will be taking on the responsible for the overall performance and contract management aspects of this contract.

## **6.9 Reporting and Management Information**

6.9.1 The contractor shall provide monthly management information reports directly to the Permanent Secretary for the Office of the Premier. The focus of the monthly reporting, will be to help maintain and improve quality and performance. In this regard they will be a fundamental aspect of the monthly contract meetings. As a minimum the monthly management information must include:

### **i: Scheduling, Timetables & Routes.**

Covering the customer friendly nature of the service. This will relate to the routes serviced, the regularity of servicing the routes; availability of timetables, including change controls; and, any service down time.

### **ii: Vessels/Aircraft Used.**

Detailing the type and functional aspects of the vessels/aircraft used and the routes operated during the month;

### **iii: Levels and Trends.**

Including: the number of people interested in travelling to and from Montserrat; the number of passengers that actually travelled;

### **iv: Passenger Experiences.**

This can include the type and regularity of information made available; ease of boarding; on-board experience & comfort; facilities and refreshments (if relevant); ease of disembarking;

**v: Vessel/Aircraft Performance.**

Vessel/Aircraft performance will include but is not limited to: travel time; punctuality; reliability; number of breakdowns; speed of travel.

**vi: Health & Safety**

Including the number of passenger and staff incidents; follow up actions & resolution.

**vii: Day to Day Activities**

This will provide information about staff moral; the number of positive day to day experiences; any problems/issues being received, including those needing resolution, and those requiring escalation.

**viii: Vessel/Aircraft Performance and Maintenance**

This will provide information about planned vessel/flight servicing; detail about how the how service will continue; and, any proactive condition reporting.

**ix: Efficiency Outcomes & Performance Improvement**

This information will detail achievements in connection with efficiencies and improvements being realised under the contract. It will include, but is not exclusive of or limited to: the regularity and attendance levels at contract management meetings; reductions in unnecessary processes for 'all' the different aspects of the service; use of standards that result in avoiding costs. E.g. sharing IT systems; use of condition based maintenance processes, as preventative measures against increased costs for replacement parts; the number and areas of service improvement considered; invoice and payment handling; increased.

## **7. STANDRAD TERMS & CONDITIONS OF CONTRACTFOR FOR SERVICE**

## 7. STANDARD TERMS AND CONDITIONS OF CONTRACT FOR SERVICES

### 7.1 Interpretation

In these Conditions:

7.1.1 “the Condition(s)” mean the standard terms and conditions of contract for services as set out in this document;

7.1.2 “Charging Rates” shall be construed as those excluding any applicable Value added Tax;

7.1.3 “the Contract” means the agreement concluded between the Contracting Authority and the Contractor of 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;

7.1.4 “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 of the Contract;

7.1.5 “the Contracting Authority” means the Government of Montserrat;

7.1.6 “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;

7.1.7 “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;

7.1.8 “Loss” includes destruction;

7.1.9 “Month” means calendar month;

7.1.10 “Person” includes a corporation, partnership, individual;

7.1.11 “the Services” means the services to be supplied under the Contract.

7.1.12 “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;

7.1.13 “FOI” means Freedom of Information and associated Montserrat Law and Guidance



7.1.14 “FOIA” means the United Kingdom Freedom of Information Act 2000;

7.1.15 “EI” means Environmental Information and any associated Montserrat Law and Guidance as may be issued from time to time.

7.1.16 “EIR” means the United Kingdom Environmental Information Regulations 2004 and any subsequent amended Regulations as may be issued from time to time.

## **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 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.

7.4.2 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.

## **7.5 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 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 vest 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 provided that:

7.9.2 The Recipient shall not be prevented from using any general knowledge, experience 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; or
- iv: the disclosure of which is required to ensure the compliance of the Contracting Authority with any applicable FOI guidance or codes of practice.

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 acknowledges that the Contracting Authority is subject to Montserrat law relating to FOI and EI. In the absence of this, that it will consider the principles laid down in the United Kingdom FOIA and the EIR.

7.9.6 The Contractor notes and acknowledges any Montserrat law and guidance on FOI and EI. In the absence of this it will consider the principles of the United Kingdom FOIA and both the respective Codes of Practice on the Discharge of Public Authorities’ Functions and on the Management of Records (which are issued under sections 45 and 46 of the FOIA respectively) as may be amended, updated or replaced from time to time and the EIR.

7.9.7 The Contractor will act in accordance with Montserrat Law and guidance on FOI and EI. In the absence of this will follow the principles of the United Kingdom FOIA and these Codes of Practice (and any other applicable codes of practice or guidance notified to the

Contractor from time to time) and the EIR to the extent that they apply to the Contractor's performance under the Contract.

7.9.8 The Contractor agrees that without prejudice to the generality of paragraph 8.9.4, of this Condition the provisions of this Condition are subject to the respective obligations and commitments of the Contracting Authority under Montserrat law and guidance on FOI and EI. In the absence of this the principles of the United Kingdom FOIA and the Codes of Practice and the EIR;

7.9.9 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;

7.9.10 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.

7.9.11 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.

7.9.12 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.”

7.9.13 When entering into contracts it is advisable to put all information that may be subject to any exemption under Montserrat law, or in the absence of this any considerations towards the key principles of FOIA followed in a Schedule to the Contract rather than having to consider exemptions when a request for information is received by the Contracting Authority relating to the 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 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.

7.11.5 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.

7.11.6 The Contractor shall be entitled to charge interest at the rate of 1% above the Eastern Caribbean Central Bank's Prime Rate for Montserrat, for the time being in force from the relevant date ("the Relevant Date") should the Contracting Authority fail to pay the Contract Price. The Relevant Date shall be deemed to be the first day immediately following a period of 30 days commencing on the day when the invoice was presented by the Contractor to the Contracting Authority. The Relevant Date shall apply unless the invoice was presented before the Contractor fully performed his obligations under the Contract and in these circumstances, the Relevant Date shall be deemed to be the first day immediately following a period of 30 days commencing on the day when the Contractor performed his obligations under the Contract.

## **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, servants and 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.

7.13.2 Any over-payment by the Contracting Authority to the Contractor whether of charges or of any Value Added Tax (“VAT”), where a VAT scheme is adopted, shall be a sum of money recoverable from the Contractor.

#### **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 8.14.3 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 8.16.2 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 7.17.2, 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 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 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.

7.17.10 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 Termination Due To Insolvency**

7.18.1 The Contractor shall notify the Contracting Authority in writing immediately upon the occurrence of any of the following events:



- i: where the Contractor is an individual and if a petition is presented for the Contractor's bankruptcy or a criminal bankrupt order is made against the Contractor or he makes any composition or arrangement with or for the benefit of creditors, or makes any conveyance or assignment for the benefit of creditors, or if an administrator is appointed to manage his affairs; or
- ii: where the Contractor is not an individual but is a firm or a number of persons acting together in any capacity if any event in sub-paragraph i or iii of this paragraph occurs in respect of any partner in the firm or any of those persons or a petition is presented for the Contractor to be wound up as an unregistered company; or
- iii: where the Contractor is a company, if the company passes a resolution to wind-up or the court makes an administrator order or a winding-up order, or the company makes a composition or arrangement with its creditors, or an administration receiver, receiver or manager is appointed by a creditor or by the court or possession is taken of any of its property under the terms of a floating charge.

7.18.2 On receipt of the notice under paragraph 7.18.1 above or earlier discovery by the Contracting Authority of the occurrence of any of the events described in that paragraph, the Contracting Authority may, by notice in writing to the Contractor, summarily terminate the Contract without compensation to the Contractor and without any prejudice to any right of action or remedy which may accrue to the Contracting Authority thereafter.

## **7.19 Termination for Breach of Contract**

7.19.1 If a party commits a material breach of the Contract and, in the case of a breach which is capable of remedy, fails to remedy such breach within **28 days** of being required by the other party in writing to do so, the injured party shall be entitled to terminate the Contract with immediate effect by notice in writing to the other party and without prejudice to any rights of the parties accrued to the date of the determination of the Contract.

## **7.20 Cancellation**

7.20.1 The Contracting Authority shall be entitled to terminate the Contract by giving to the Contractor not less than **28 days'** notice in writing to that effect without prejudice to any rights or remedies of the Contractor for breach of Contract.

## **7.21 Dispute Resolution**

7.21.1 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.

7.21.2 If the dispute cannot be resolved by the parties pursuant to paragraph 7.21.1 of this Condition, the dispute may, by agreement between the parties, be referred to mediation pursuant to paragraph 7.21.4 of this Condition.

7.21.3 The performance of the Contract shall not cease or be delayed by the reference of a dispute to mediation pursuant to paragraph 7.21.2 of this Condition.

7.21.4 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;
- vii: 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.

## **7.22 Corrupt Gifts and Payments of Commission**

7.22.1 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.

7.22.2 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.

7.22.3 Where the Contract has been determined under paragraph 7.22.2 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.

7.22.4 In any dispute, difference or question arising in respect of:

- i: the interpretation of this Condition (except so far as the same may relate to the amount recoverable from the Contractor under paragraph 7.22.3 of this Condition in respect of any loss resulting from such determination of the Contract); or
- ii: the right of the Contracting Authority to determine the Contract; or
- iii: the amount or value of any gift, consideration or commission;
- iv: the decision of the Contracting Authority shall be final and conclusive.

### **7.23 Special Provisions**

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

### **7.24 Conflict Of Interest**

7.24.1 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.

7.24.2 Where the Contracting Authority is of the opinion that the conflict of interest notified to it under paragraph 7.24.1 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

- i: if the Contractor fails to comply with the Contracting Authority requirements in this respect; or
- ii: 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.

7.24.3 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.

## **7.25 Copyright and Property Information and Equipment**

7.25.1 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.

7.25.2 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.

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

7.25.4 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 form or arising out of any such information, specification, plan, drawing, sample or other thing.

7.25.5 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, licence, sub-licence, 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.

7.25.6 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.

## **7.26 Force Majeure**

7.26.1 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, tidal waves and floods;
- iii: explosions and fires; or
- iv: strikes and labour disputes of all kinds; provided always that any act, event, omission, occurrence or non-occurrence will only be considered Force Majeure if it is not attributable to the wilful act, neglect or failure to take reasonable precautions of the affected party, its agents or employees.

7.26.2 Neither the Contractor or 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.

7.26.3 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.

## **7.27 No Partnership**

7.27.1 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.

## **7.28 Rights of Third Parties**

7.28.1 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.

## **7.29 Language**

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.

## **7.30 Law**

7.30.1 The Contract shall be considered as a contract made in Montserrat and shall be governed by, and construed in accordance with the provision of Montserrat Law.