



allianceleisure

**UK LEISURE FRAMEWORK**

**FRAMEWORK ACCESS CONDITIONS AND AGREEMENT**

## **PART 1**

### **FRAMEWORK ACCESS CONDITIONS**

#### **BACKGROUND**

- (A) Denbighshire County Council (the **Council**) placed a contract notice 2016/5 137-246892 on 19<sup>th</sup> July 2016 in the Official Journal of the European Union seeking expressions of interest from potential service providers for the provision of services to itself and the other contracting bodies identified in the contract notice (**Clients**) under a framework agreement (the **UK Leisure Framework**).
- (B) The Client is one such body.
- (C) Following receipt of expressions of interest, the Council invited potential providers (including the Contractor) to tender for the provision of leisure and sports function works and services.
- (D) On the basis of the Contractor's Tender, the Council selected and entered into (on 2<sup>nd</sup> February 2017) a framework agreement with the Contractor (**the Framework Agreement**) to provide services to those Clients who place Projects for works and/or services in accordance with the UK Leisure Framework.
- (E) The Client has indicated its wish to utilise the UK Leisure Framework to scope and potentially procure a Project within its terms and these conditions sets out, inter alia, the terms and conditions upon which the Client will be afforded access to the UK Leisure Framework

#### **AGREED TERMS**

##### **1. TERM OF ACCESS AGREEMENT**

The Access Agreement shall take effect on the Commencement Date and (unless it is terminated in accordance with the terms of these conditions or is otherwise lawfully terminated) shall terminate at the end of the Term.

## **2. SCOPE OF ACCESS AGREEMENT**

- 2.1 These conditions govern the relationship between the Client and the Contractor in respect of the provision of the Scoping Works by the Contractor to the Client and the entering into of any Call Off Contract.
- 2.2 The Client appoints the Contractor as the provider of the Scoping Works.
- 2.3 The Contractor shall undertake or procure the undertaking of the Scoping Works.
- 2.4 At all times during the Term the Contractor shall be an independent service provider and nothing in these conditions shall create a contract of employment, a relationship of agency or partnership or a joint venture between the Parties and, accordingly, neither Party shall be authorised to act in the name of, or on behalf of, or otherwise bind the other Party except as expressly permitted by the terms of these conditions.

## **3. THE SCOPING WORKS**

- 3.1 The Contractor shall in respect of its obligation to undertake or procure the undertaking of the Scoping Works:
  - (a) perform such obligation in accordance with timeframes or milestones (if any) specified in the Access Agreement Schedule and (if applicable) such variation and/or addition thereof as is agreed by the Parties;
  - (b) use reasonable care and skill in performing such obligation;
  - (c) comply with good industry practice; and
  - (d) if on another person's premises, comply with that person's health and safety and site regulations made known to it.
  - (e) Only use subcontractors who are specified in the Access Agreement Schedule or such variation thereof as is reasonably agreed by the Parties
- 3.2 Except as provided for in condition 3.3, the Contractor shall:
  - (a) not be entitled to charge the Client for the provision of anything it provides or undertakes in connection with the Scoping Works; and
  - (b) be otherwise responsible for its own costs incurred in connection with the Scoping Works.

- 3.3 If the Access Agreement Schedule provides that the Client is responsible for paying to the Contractor any Charges, such Charges shall be invoiced and paid for by the Client in accordance with the provisions of condition 3.4.
- 3.4 If the Access Agreement Schedule provides that the Client will pay the Contractor any Charges in relation to the Scoping Works, the Contractor may issue invoices for such Charges:
- (a) in accordance with the invoicing procedure (if any) provided for in the Access Agreement Schedule; or
  - (b) if no invoicing procedure is provided for in the Access Agreement Schedule, at the end of each calendar month;
  - (c) containing all appropriate references and a detailed breakdown of the services supplied supported by any other documents reasonably required by the Client to substantiate the invoice; and
  - (d) the Contractor shall add VAT at the prevailing rate as applicable.
- 3.5 The Client shall pay an invoice issued to it in accordance with these conditions within 20 days of the date of receiving the invoice.
- 3.6 If the Client fails to make any payment due to the Contractor under these conditions by the due date for payment, then, without limiting the Contractor's remedies under these conditions, the Client shall pay interest on the overdue amount at the rate of 4% per annum above Barclays Bank Plc's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Client shall pay the interest together with the overdue amount.
- 3.7 In relation to payments disputed in good faith, interest under this condition is payable only after the dispute is resolved, on sums found or agreed to be due, from the due date until payment.
- 3.8 For the avoidance of doubt any Charges payable pursuant to a Call Off Contract shall be dealt with in accordance with that Call Off Contract.
- 3.9 The Contractor shall retain ownership of all Intellectual Property created by the Contractor or any Staff:
- (a) in the course of performing the Scoping Works; or
  - (b) exclusively for the purpose of performing the Scoping Works.

3.10 Where a Call Off Contract is entered into the ownership of Intellectual Property shall be dealt with in accordance with that Call Off Contract.

3.11 The Contractor shall at its own cost effect and maintain with a reputable insurance company a policy or policies of insurance providing the level of cover specified in the Access Agreement Schedule (the **Required Insurances**). The terms of any insurance or the amount of cover shall not relieve the Contractor of any liabilities under these conditions save that the limit of indemnity of any of the Required Insurances shall be a cap on the Contractor's liability to the Client in respect of the subject matter of that Required Insurance.

#### **4. CALL OFF CONTRACT PERFORMANCE AND PRECEDENCE OF DOCUMENTS**

4.1 The Parties shall perform their obligations in relation to a Call Off Contract in accordance with:

- (a) the requirements of these conditions; and
- (b) the terms and conditions of the respective Call Off Contracts.

4.2 In the event of, and only to the extent of, any conflict or inconsistency between the terms and conditions of these conditions and the terms and conditions of a Call Off Contract, such conflict or inconsistency shall be resolved according to the Call Off Contract.

4.3 On entering into a Call Off Contract the Client shall pay to the Contractor (which shall be held by the Contractor on trust for and shall be paid by the Contractor to Denbighshire County Council) a fee for its utilisation of the UK Leisure Framework calculated in accordance with Schedule 3 (Call Off procedure) to the Framework Agreement.

#### **5. PRICES FOR WORKS AND SERVICES**

5.1 The prices offered by the Contractor for Call Off Contracts to the Client shall be capped in accordance with its tender for the UK Leisure Framework as set out in Schedule 4 (Maximum Framework Prices) to the Framework Agreement in respect of the pricing elements set out therein.

**6. INFORMATION FLOW AND PROJECT MANAGEMENT**

6.1 Each party shall:

- (a) keep the other party informed about its own progress in relation to any Scoping Works; and
- (b) facilitate regular discussions between appropriate members of its personnel and those of the other party in relation to any Scoping Works.

6.2 Each party shall

- (a) supply to the other party information and assistance reasonably requested by it relating to a Project as is necessary to enable that other party to perform its own obligations in relation to the same.

**7. RECORDS AND AUDIT ACCESS**

7.1 The Contractor shall keep and maintain until six years after the date of termination or expiry (whichever is the earlier) of these conditions (or as long a period as may be agreed between the Parties), full and accurate records and accounts of the operation of these conditions, including the services provided under them and the amounts paid by the Client.

7.2 The Contractor shall keep the records and accounts referred to in condition 7.1 above in accordance with good accountancy practice.

7.3 The Contractor shall afford the Client such access to such records and accounts as may be required from time to time.

7.4 The Contractor acknowledges the right of the Client to independently verify any costings or information contained within any material produced by it pursuant to the Access Agreement Schedule whether by way of a Quantity Surveyor or other professional adviser and the Contractor shall provide all reasonable access and information (which shall include procuring that any prospective sub-contractor shall do likewise) to enable the Client to exercise this right.

7.5 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this condition 7.

## 8. CONFIDENTIALITY

- 8.1 **Confidential Information** means all confidential information (however recorded or preserved) disclosed by or on behalf of a party or its employees, officers, representatives or advisers (together its **Representatives**) to the other party and that party's Representatives whether before or after the date of these conditions in connection with the Project, including information which:
- (a) relates to the existence and terms of these conditions;
  - (b) would be regarded as confidential by a reasonable business person, relating to:
    - (i) the business, assets, affairs, customers, clients, suppliers, or plans, intentions, or market opportunities of the disclosing party; and
    - (ii) the operations, processes, product information, know-how, designs, trade secrets or software of the disclosing party;
  - (c) is developed by the parties in the course of carrying out these conditions and the Project; and
  - (d) is specified as confidential in these conditions or the Call Off Contract.
- 8.2 Subject to condition 8.3, the Parties shall keep confidential the Confidential Information of the other Party and shall use all reasonable endeavours to prevent their representatives from making any disclosure to any person of any matters relating hereto.
- 8.3 Condition 8.2 shall not apply to any disclosure of information:
- (a) required by any applicable law, provided that condition 9 shall apply where relevant to any disclosures required under the FOIA or the Environmental Information Regulations;
  - (b) that is reasonably required by persons engaged by a Party in the performance of that Party's obligations under these conditions;
  - (c) where a Party can demonstrate that such information is already generally available and in the public domain otherwise than as a result of a breach of condition 8.2;
  - (d) by the Client of any document to which it is a party and which the Parties to these conditions have agreed contains no Confidential Information;
  - (e) to enable a determination to be made under condition 12;

- (f) which is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party, and the disclosing party is not under any obligation of confidence in respect of that information;
- (g) by the Client to any other department, office or agency of the government, provided that the Client informs the recipient of any duty of confidence owed in respect of the information; and
- (h) by the Client relating to these conditions and in respect of which the Contractor has given its prior written consent to disclosure.

**9. FREEDOM OF INFORMATION [PUBLIC BODY ONLY]**

9.1 The Contractor acknowledges that the Client (if a Public Body) is subject to the requirements of the FOIA and the EIRs. the Contractor shall:

- (a) provide all necessary assistance and cooperation as reasonably requested by the Client to enable the Client to comply with its obligations under the FOIA and EIRs;
- (b) transfer to the Client all Requests for Information relating to these conditions that it receives as soon as practicable and in any event within 2 Working Days of receipt;
- (c) provide the Client with a copy of all Information belonging to the Client requested in the Request For Information which is in its possession or control in the form that the Client requires within 5 Working Days (or such longer period as the Client may reasonably specify) of the Client's request for such Information; and
- (d) not respond directly to a Request For Information unless authorised in writing to do so by the Client.

9.2 The Contractor acknowledges that the Client may be required under the FOIA and EIRs to disclose Information (including Confidential Information) without consulting or obtaining consent from the Contractor. The Client shall take reasonable steps to notify the Contractor of a Request For Information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in these conditions) the Client shall be responsible for determining in its absolute discretion whether any Confidential Information and/or any other information is exempt from disclosure in accordance with the FOIA and/or the EIRs.



## 10. TERMINATION

- 10.1 The Client may terminate this Access Agreement at any time by serving written notice on the Contractor with effect from the date specified in such notice

## 11. CONSEQUENCES OF TERMINATION AND EXPIRY

- 11.1 Notwithstanding the service of a notice to terminate these conditions, the Contractor shall continue to fulfil its obligations under these conditions until the date of expiry or termination of these conditions or such other date as required under this condition 11.
- 11.2 Unless expressly stated to the contrary, the service of a notice to terminate the Access Agreement shall not operate as a notice to terminate any Call Off Contract which, for the avoidance of doubt, shall remain in force unless and until it is terminated or expires in accordance with its terms.
- 11.3 Termination or expiry of these conditions shall be without prejudice to any rights, remedies or obligations of either Party accrued under these conditions before termination or expiry including for the avoidance of doubt the obligation on the Client's part to pay the Contractor any Charges for Scoping Works that have been incurred prior to termination.
- 11.4 The provisions of any condition which is either expressed to or by implication is intended to survive termination shall survive termination or expiry of the Access Agreement.

## 12. DISPUTE RESOLUTION

- 12.1 If a dispute arises out of or in connection with the Access Agreement or the performance, validity or enforceability of it (a **Dispute**) then the parties shall follow the procedure set out in this condition:
- (a) either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (**Dispute Notice**), together with relevant supporting documents. On service of the Dispute Notice, a senior officer of the Client nominated by it for this purpose and the Managing Director of the Contractor shall attempt in good faith to resolve the Dispute; and
  - (b) if they are for any reason unable to resolve the Dispute within 30 days of it being referred to them, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR Solve.

To initiate the mediation, a party must serve notice in writing (ADR notice) to the other party to the Dispute, requesting a mediation. A copy of the ADR notice should be sent to CEDR Solve. The mediation will start not later than 14 days after the date of the ADR notice.

- 12.2 No party may commence any court proceedings under condition 19 in relation to the whole or part of the Dispute until 30 days after service of the ADR notice, provided that the right to issue proceedings is not prejudiced by a delay.
- 12.3 If the Dispute is not resolved within 30 days after service of the ADR notice, or either party fails to participate or to continue to participate in the mediation before the expiration of the said period of 30 days, or the mediation terminates before the expiration of the said period of 30 days, the Dispute shall be finally resolved by the courts of England and Wales in accordance with condition 19.

### **13. PREVENTION OF BRIBERY**

- 13.1 The Contractor shall not, and shall procure that Staff shall not, in connection with the Access Agreement commit a Prohibited Act.
- 13.2 If any breach of condition 13.1 is suspected or known, the Contractor must notify the Client immediately.
- 13.3 If the Contractor notifies the Client that it suspects or knows that there may be a breach of condition 13.1, the Contractor must respond promptly to the Client's enquiries, cooperate with any investigation, and allow the Client to audit books, records and any other relevant documents.

### **14. SUBCONTRACTING AND ASSIGNMENT**

- 14.1 Subject to condition 14.2, neither party shall be entitled to assign, novate or otherwise dispose of any or all of its rights and obligations under these conditions without the prior written consent of the other party, neither may the Contractor subcontract the whole or any part of its obligations under these conditions except as provided in the Access Agreement Schedule or with the express prior written consent of the Client, such consent not to be unreasonably withheld.
- 14.2 The Client shall be entitled to novate the Access Agreement to any other body which substantially performs any of the functions that previously had been performed by the Client.

**15. VARIATIONS TO ACCESS AGREEMENT**

Any variations to the Access Agreement must be made by written agreement between the parties.

**16. THIRD PARTY RIGHTS**

16.1 A person who is not a party to this Access Agreement shall not have any rights under the Call Off Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Access Agreement.

16.2 The rights of the parties to terminate, rescind or agree any variation, waiver or settlement under these conditions are not subject to the consent of any other person.

**17. RIGHTS AND REMEDIES**

The rights and remedies provided under these conditions are in addition to, and not exclusive of, any rights or remedies provided by law.

**18. ENTIRE AGREEMENT**

18.1 The access agreement, the schedules and the documents annexed to it or otherwise referred to in it contain the whole agreement between the parties relating to the subject matter hereof and supersedes all prior agreements, arrangements and understandings between the parties relating to that subject matter, provided that nothing in this condition 18 shall operate to exclude any liability for fraud.

18.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in these conditions.

**19. GOVERNING LAW AND JURISDICTION**

19.1 These conditions and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

19.2 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with these conditions or its subject matter or formation (including non-contractual disputes or claims).

**20. DEFINITIONS AND INTERPRETATION**

20.1 The definitions and rules of interpretation in Part 2 apply in these conditions.

## **PART 2**

### **DEFINITIONS AND INTERPRETATION**

**Access Agreement:** means the conditions comprised within Part 1, these definitions (Part 2) and an agreement substantially in the form of that set out in Part 3A (the **Access Agreement Schedule**) as the same may be amended from time to time by completed of a variation/addition substantially in the form of that set out in Part 3B.

**Authorised Representative:** means the persons respectively designated as such by the Client and the Contractor the initial persons being those identified in the Access Agreement Schedule.

**Call Off Contract:** means a legally binding agreement (made pursuant to the provisions of the UK Leisure Framework) for the provision of the works and services made between the Contractor and the Client as contemplated by the Scoping Works.

**Charges:** the charges payable by the Client to the Contractor in relation to the Scoping Works (if any), as set out in the Access Agreement Schedule.

**Client:** means the person designated as such in the Access Agreement Schedule.

**Commencement Date:** means the date specified as such in the Access Agreement Schedule.

**Contractor:** means Alliance Leisure Services Limited incorporated and registered in England and Wales with company number 2723797 whose registered office is at 24 Angel Crescent, Bridgwater, Somerset TA6 3EW

**Confidential Information:** has the meaning given to it in condition 8

**Data Protection Legislation:** means the Data Protection Act 2018 (DPA), the EU Data Protection Directive 95/46/EC, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000, the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner.

**Environmental Information Regulations:** mean the Environmental Information Regulations 2004 (*SI 2004/3391*) together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.

**FOIA:** means the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.

**Information:** has the meaning given under section 84 of the FOIA.

**Intellectual Property Rights:** means patents, inventions, trade marks, service marks, logos, design rights (whether registrable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registrable or not in any country (including the United Kingdom) and the right to sue for passing off.

**Party:** means the Client and/or the Contractor.

**Project:** means the Scoping Works and any associated agreement for the works and/or services contemplated by the Scoping Works.

**Prohibited Act:** the following constitute Prohibited Acts:

1. to directly or indirectly offer, promise or give any person working for or engaged by the Client a financial or other advantage to:
  - (i) induce that person to perform improperly a relevant function or activity; or
  - (ii) reward that person for improper performance of a relevant function or activity;
- (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with these conditions;
- (c) committing any offence:
  - (i) under the Bribery Act 2010;
  - (ii) under legislation creating offences concerning fraudulent acts;
  - (iii) at common law concerning fraudulent acts relating to these conditions or any other contract with the Client; or
- (d) defrauding, attempting to defraud or conspiring to defraud the Client.

**Requests for Information:** means a request for information or an apparent request under the FOIA or the Environmental Information Regulations.

**Scoping Works:** means the works and/or services specified as such in the Access Agreement Schedule as amended, varied or added to from time to time in writing by the Parties.

**Staff:** means all persons employed by the Contractor together with the Contractor's servants, agents, suppliers and Subcontractors used in the performance of its obligations under the Access Agreement.

**Subcontract:** any contract between the Contractor and a third party pursuant to which the Contractor agrees to source the provision of any of the Scoping Works from that third party.

**Subcontractor:** the contractors, service providers and suppliers that enter into a Subcontract with the Contractor.

**Term:** means the period commencing on the Commencement Date and ending on the end date of the Project.

**Termination Date:** means the date of expiry or termination of these conditions.

2. The interpretation and construction of these conditions shall all be subject to the following provisions:
  - (a) subject to 2(b) below headings are included in the conditions for ease of reference only and shall not affect the interpretation or construction of the conditions;
    1. conditions that are designated “[Public Body]” only apply where the Client is a public body for whom the condition is applicable; and
    2. references in the conditions to any condition or sub=condition without further designation shall be construed as a reference to the condition or sub-condition to the condition so numbered.

**PART 3**

**ACCESS AGREEMENT SCHEDULE**

**PART 3A – INITIAL SCOPING WORKS**



**UK LEISURE FRAMEWORK**

**ACCESS AGREEMENT SCHEDULE – INITIAL SCOPING WORKS**

**THIS AGREEMENT INCORPORATES THE STANDARD CONDITIONS SET OUT IN PART 1 OF APPENDIX 3 TO SCHEDULE 3 OF THE FRAMEWORK AGREEMENT SAVE AS ARE SPECIFICALLY VARIED BY THIS SCHEDULE AND IS MADE BETWEEN ALLIANCE LEISURE SERVICES LIMITED INCORPORATED AND REGISTERED IN ENGLAND AND WALES WITH COMPANY NUMBER 2723797 WHOSE REGISTERED OFFICE IS AT 24 ANGEL CRESCENT, BRIDGWATER, SOMERSET TA6 3EW (THE CONTRACTOR) AND THE CLIENT SPECIFIED IN THE PARTICULARS THAT FOLLOW:**

**PARTICULARS:**

<b>CLIENT</b>	
<b>COMMENCEMENT DATE</b>	
<b>PROJECT Q'AIRE CONFIRMATION DATE</b>	
<b>WORKS AND OR SERVICES COMPRISING THE INITIAL <sup>1</sup> SCOPING WORKS</b>	

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<sup>1</sup> Note: The Initial Scoping Works may be varied or added to by agreement between the parties. In the event of such an agreement the parties should complete and sign a variation/addition form – see Part 3B.

<b>TIMEFRAME/ MILESTONES</b>		
<b>CHARGES (IF ANY)</b>		
<b>PAYMENT PROVISIONS IF DIFFERENT FROM CONDITION 3.4</b>		
<b>CONTRACTOR'S REPRESENTATIVE</b>		
<b>CLIENT'S REPRESENTATIVE</b>		
<b>REQUIRED INSURANCES</b>	Public Liability covering liability arising out of or in connection with the performance of this Access Agreement	£10 million any one claim or series of claims arising from the same incident
	Employers Liability	£10 million any one claim or series of claims arising from the same incident
	Professional Indemnity covering liability arising out of or in connection with the performance of this Access Agreement	£5 million any one claim or series of claims arising from the same incident
<b>SUBCONTRACTOR DETAILS</b>		
<b>VARIATIONS (IF ANY) TO STANDARD CONDITIONS</b>		

PART 3B – VARIATION FORM <sup>2</sup>

VARIATION AND/OR ADDITION TO INITIAL SCOPING WORKS

**PARTICULARS**

DATE OF AGREEMENT FOR INITIAL SCOPING WORKS	
This variation and/or addition is to be read in conjunction with the Agreement for the Initial Scoping Works between the Client and Contractor dated as above.	
CLIENT	
CONTRACTOR	
DETAILS OF VARIATION AND/OR ADDITION	
Signed for and on behalf of the Client	
Signed for and on behalf of the Contractor	
DATE	

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<sup>2</sup> **Note:** This form is NOT to be completed when the original Access Agreement Schedule is populated and the Agreement signed by the parties. The form should ONLY be completed (as a separate document) if/when agreement is reached on a variation and/or addition to the Initial Scoping Works.

## **Schedule 1 – Scope of Works and Costs**

Executed as a Deed by affixing the Corporate Common Seal of  
**[INSERT AUTHORITY]**  
in the presence of:

.....  
Authorised Person Signature

.....  
Name (print)

Executed as a Deed  
for and on behalf of **ALLIANCE LEISURE  
SERVICES LTD** by a Director:

.....  
Director signature

.....  
Name (print)

in the presence of:

.....  
Witness signature

.....  
Name (print)

.....  
Occupation (print)

.....  
Address (print)