



CONTRACT FOR SERVICES:
Legal Services Framework Panel

July 2007

SOUTH EAST ENGLAND DEVELOPMENT AGENCY

SEEDA Ref: GUILD/RESOURCES/JAN/2007/08

GENERAL CONDITIONS OF CONTRACT FOR SERVICES

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1 DEFINITIONS AND INTERPRETATIONS

1.1 In this Contract, unless the context requires otherwise, the following words and phrases shall have the following meanings:

1.1.1 “the Agency” means South East England Development Agency, SEEDA Headquarters, Cross Lanes, Guildford, Surrey, GU1 1AY;

1.1.2 “Award Date” means the date of the award of the Contract by the Agency to the Contractor;

1.1.3 “Conditions” means these general conditions of contract for services;

1.1.4 “Contract” means the documents listed in the Agency’s acceptance letter, including these Conditions and the Specification. In case of discrepancy between these Conditions and other documents forming part of the Contract, these Conditions shall prevail unless otherwise agreed in writing;

1.1.5 “Contract Manager” means the official of the Agency, or other person employed in that capacity, appointed by the Agency to act on its behalf for the purpose of managing the Contract;

1.1.6 “Contract Price” means the price or prices payable to the Contractor by the Agency under the Contract for the full and proper performance by the Contractor of the Services;

1.1.7 “Contractor” means the person appointed by the Agency for the performance of the Services (including any approved successors or assignees);

1.1.8 “Intellectual Property” means any patent, patent application, know how, trade mark, service mark, trade name, registered design, copyright, moral right, design right, database right, semi conductor topography right or any other industrial or commercial right including any application for registration or protection of any of the same anywhere in the world;

1.1.9 “Key Personnel” means any person who, in the Agency’s opinion, is fundamental to the performance of the Contract;

1.1.10 “Month” means calendar month, unless otherwise defined;

1.1.11 “Personal Injury” includes without limitation sickness, injury and death;

- 1.1.12 “Person” means as the context may require, any individual, firm, company, corporation, Government Agency, the Agency or any association or partnership (whether or not having a separate legal personality);
- 1.1.13 “Premises” means the premises occupied, owned or leased by the Agency or any other servant of the Agency, or as described in the Contract;
- 1.1.14 “Programme” means any programme or timetable agreed by the parties to the Contract which regulates or specifies the period or periods for the performance of the Services or any part of them, together with any activities ancillary to the performance of the Services or the preparation and submission of reports;
- 1.1.15 “Service(s)” means all services detailed in the Specification and any other services which the Contractor is required to carry out by the Agency under the Contract;
- 1.1.16 “Specification” means the description of Services to be performed under the Contract contained in the Specification and Agency’s Invitation to Tender;
- 1.1.17 “Sub-Contractor” means any person firm or company under contract to the Contractor to perform work or provide professional services and/or supply goods including a barrister or consultant;
- 1.1.18 “Term” means the term of the Contract set out in the Invitation to Tender.
- 1.1.19 “Commercially Sensitive Information” means the subset of Confidential Information listed in a Schedule comprised of information:
- (a) which is provided by the Contractor to the Agency in confidence for the period set out in that Schedule; and/or
 - (b) that constitutes a trade secret;
- 1.1.20 “Confidential Information” means any information which has been designated as confidential by either party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information which relates to the business, affairs, properties, assets, trading practices, developments, trade secrets, Intellectual Property, know-how, personnel, customers and suppliers of either party, all personal data and sensitive personal data within the meaning of the Data Protection Act 1998 and any Commercially Sensitive Information;

- 1.1.21 “Contracting Authority” means any contracting authority as defined in Regulation 5(2) of the Public Contracts (Works, Services and Supply) Regulations 2000 other than the Authority;
 - 1.1.22 “EIR” means the Environmental Information Regulations 2004;
 - 1.1.23 “FOIA” means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such legislation;
 - 1.1.24 “Information” has the meaning given under section 84 of the Freedom of Information Act 2000;
 - 1.1.25 “Requests for Information” shall have the meaning set out in FOIA or any apparent request for information under the FOIA or the Environmental Information Regulations;
 - 1.1.26 “Schedule” means any schedule attached to any document supplied by either party to the other listing Commercially Sensitive Information and clearly identified as doing so.
- 1.2 Unless the context requires otherwise, the singular shall include the plural and vice versa, and the masculine shall include the feminine and vice versa.
 - 1.3 The headings are inserted for convenience only and shall not affect the interpretation of the Contract.
 - 1.4 Reference to any legislative and statutory requirement or similar instrument shall be deemed to include reference to any subsequent amendment to or enactment of them.

2 LAW

- 2.1 The Contract shall be governed by and interpreted in accordance with English Law and shall be subject to the jurisdiction of the Courts of England and Wales.

3 DURATION OF THE CONTRACT

- 3.1 Subject to the Agency’s rights of termination under these conditions, the Contract commences on the Award Date and the Services shall be provided throughout the Term or until the Contract is terminated in accordance with the Conditions.
- 3.2 The Agency reserves the right to extend the Contract for a period of not more than twelve months beyond the Term. The Contract Price shall continue to apply during any extension.

4 ALTERATION OF REQUIREMENT

- 4.1 The Agency reserves the right to alter the requirements of the Contract as detailed in the Specification, should this at any time become necessary.

5 DUTY OF CARE

- 5.1 The Contractor shall perform the Services with all reasonable skill, care and diligence and in accordance with the Contract and any legislative and statutory requirements.

6 CONTRACTOR'S PERFORMANCE

- 6.1 The Contractor shall provide the Services in consideration of the payment by the Agency of the Contract Price and immediately inform the Contract Manager if any aspect of the Contract is not being or is unable to be performed.

- 6.2 The Contractor shall provide all the necessary facilities, materials and any other equipment, and personnel of appropriate qualifications and experience to undertake the Services. All personnel deployed on work relating to the Contract shall have appropriate qualifications and competence, be properly managed and supervised and in these and any other respects be acceptable to the Agency. If the Agency gives the Contractor notice that any person is to be removed from involvement in the Services, the Contractor shall take immediate steps to comply with such notice. The decision of the Agency regarding the Contractor's personnel shall be final and conclusive.

- 6.3 The Contractor shall:

6.3.1 give the Agency, if so requested, full particulars of all persons who are or may be at any time employed on the Contract;

6.3.2 comply with any rules, regulations and any safety and security instructions from the Agency, including completion of any additional clearance procedures required by the Agency, and return of any passes as required.

- 6.4 The Contractor shall take all reasonable steps to avoid changes to any of the staff designated in the Contract as Key Personnel. The Contractor shall give at least one month's notice to the Contract Manager of any proposals to change Key Personnel and Condition 6.2 shall apply to the proposed replacement personnel.

- 6.5 Time of performance of the Contractor's obligations in respect of the provision of the Services in accordance with the timescales notified to the Contractor by the Agency shall be of the essence of the Contract. Accordingly, in the event

that any stage in the performance of the Services is not performed in accordance with such timescales, then the Agency shall be entitled to terminate the Contract forthwith and the provisions of Condition 16 shall apply.

- 6.6 Nothing in the Contract shall be construed as creating a partnership, a contract of employment or a relationship of principal and agent between the Agency and the Contractor.
- 6.7 The Contractor shall maintain such records in respect of the Contract as the Agency may reasonably require, and shall on request produce them for inspection by the Agency. The Contractor shall make available such records for the use of the Agency when required. They shall not be released, published or disposed of without the prior written approval of the Agency.

7 MEETINGS AND REPORTS

- 7.1 The Contractor shall attend all meetings arranged by the Agency for the discussion of or making any presentation in relation to matters connected with the performance of the Services.
- 7.2 Without prejudice to the submission of any reports as specified under the Contract, the Contractor shall render any additional reports as to the progress of the Services at such time or times, and in such form as the Contract Manager may reasonably require.

8 INSPECTION

- 8.1 During the course of the Contract the Agency shall have the power to inspect and examine any aspect of the provision of the Services at any reasonable time. Where the Services are being performed on the premises of the Contractor the Agency shall on giving reasonable notice to the Contractor be entitled to visit the Contractor's premises and the Contractor shall provide free of charge all such facilities as the Agency may reasonably require for such inspection and examination.

9 INVOICES AND PAYMENT

- 9.1 Except where otherwise provided in the Contract, the amount payable to the Contractor for the performance of the Services shall be inclusive of all incidental costs including all costs of staff, facilities, equipment, materials and all other expenses whatsoever incurred by the Contractor in discharging his obligations under the Contract.
- 9.2 To facilitate payment of the Contract Price the Contractor shall provide the name and address of its bank, the account name and number, the bank sort code and any other details, in whatever format the Agency may require.

- 9.3 The Contractor shall submit an invoice to the Agency only as specified in the Contract.
- 9.4 The Contractor shall submit with the invoice, such records or details as the Agency may reasonably require including, but not limited to time records, expenses incurred, invoices paid or any other documents which would enable the Agency to verify the information and the amounts referred to in that invoice.
- 9.5 The Agency is committed to Prompt Payment and shall pay the Contractor within 30 days of the receipt of a valid invoice, provided that the Agency is satisfied that the Services for which the invoice relates have been performed fully in accordance with the Contract.

10 VALUE ADDED TAX

- 10.1 The Agency shall pay to the Contractor in addition to the Contract Price the amount of any VAT chargeable thereupon.
- 10.2 Any invoice or other request for payment of monies due to the Contractor under the Contract shall, if he is a taxable person, be in the same form and contain the same information as if the same were a VAT invoice for the purposes of Regulations made under the Value Added Tax Act 1994.

11 CORRUPT GIFTS AND PAYMENTS OF COMMISSION

- 11.1 The Contractor shall not receive or agree to receive from any person, or offer or agree to give to any person, or procure for any person any gift or consideration of any kind as an inducement or reward for doing or not doing anything, or for showing favour or disfavour to any person in relation to the Contract or any other contract with the Agency.
- 11.2 The Contractor shall not conspire with any person to do any of the acts mentioned in Condition 11.1.
- 11.3 Any,
- 11.3.1 breach by the Contractor of this Condition; or
- 11.3.2 commission of any offence by the Contractor under the Prevention of Corruption Acts 1889 to 1916 in relation to this or any other contract for Her Majesty's Service;

shall entitle the Agency to terminate the Contract and recover from the Contractor the amount of any loss resulting from such termination and recover from the Contractor the amount of value of any such gift, consideration or commission.

11.4 The decision of the Agency in relation to this Condition shall be final and conclusive.

12 CONFIDENTIALITY AND DISCLOSURE OF INFORMATION

12.1 Each party:

12.1.1 shall treat all Confidential Information belonging to the other party as confidential and safeguard it accordingly; and

12.1.2 shall not disclose any Confidential Information belonging to the other party to any other person without the prior written consent of the other party, except to such persons and to such extent as may be necessary for the performance of the Contract or except where disclosure is otherwise expressly permitted by the provisions of this Contract.

12.2 The Contractor shall take all necessary precautions to ensure that all Confidential Information obtained from the Agency under or in connection with the Contract:

12.2.1 is given only to such of the staff and professional advisors or consultants engaged to advise it in connection with the Contract as is strictly necessary for the performance of the Contract and only to the extent necessary for the performance of the Contract;

12.2.2 is treated as confidential and not disclosed (without prior Approval) or used by any staff or such professional advisors or consultants otherwise than for the purposes of the Contract.

12.3 The Contractor shall ensure that staff or its professional advisors or consultants are aware of the Contractor's confidentiality obligations under this Contract.

12.4 The Contractor shall not use any Confidential Information it receives from the Authority otherwise than for the purposes of the Contract.

12.5 The provisions of Clauses 1.1 to 1.4 shall not apply to any Confidential Information received by one party from the other:

12.5.1 which is or becomes public knowledge (otherwise than by breach of this Condition);

12.5.2 which was in the possession of the receiving party, without restriction as to its disclosure, before receiving it from the disclosing party;

12.5.3 which is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;

12.5.4 is independently developed without access to the Confidential Information; or

12.5.5 which must be disclosed pursuant to a statutory, legal or parliamentary obligation placed upon the party making the disclosure, including any requirements for disclosure under the FOIA or the EIR pursuant to Condition 12.7.

12.6 Nothing in this Condition shall prevent the Agency:-

12.6.1 disclosing any Confidential Information for the purpose of:-

12.6.1.1. the examination and certification of the Agency's accounts;
or

12.6.1.2. any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Agency has used its resources; or

12.6.2 disclosing any Confidential Information obtained from the Contractor:

12.6.2.1. to any government department or any other Contracting Authority. All government departments or Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other government departments or other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any government department or any Contracting Authority; or

12.6.2.2. to any person engaged in providing any services to the Agency for any purpose relating to or ancillary to the Contract;

provided that in disclosing information under sub-paragraph 12.6.2 the Agency discloses only the information which is necessary for the purpose concerned.

12.6.3 Nothing in this Condition shall prevent either party from using any techniques, ideas or know-how gained during the performance of the Contract in the course of its normal business, to the extent that this does not result in a disclosure of Confidential Information or an infringement of Intellectual Property.

12.6.4 In the event that the Contractor fails to comply with this Condition 1, the Agency reserves the right to terminate the Contract by notice in writing with immediate effect.

- 12.6.5 The provisions under this Condition 1 are without prejudice to the application of the Official Secrets Acts 1911 to 1989 to any Confidential Information.
- 12.7 The Contractor acknowledges that the Agency is subject to the requirements of the FOIA and the EIR and shall assist and cooperate with the Agency (at the Contractor's expense) to enable the Agency to comply with these Information disclosure requirements.
- 12.8 The Contractor shall and shall procure that its sub-contractors shall:
- 12.8.1 transfer the Request for Information to the Agency as soon as practicable after receipt and in any event within two Working Days of receiving a Request for Information;
- 12.8.2 provide the Agency with a copy of all Information in its possession or power in the form that the Agency requires within five Working Days (or such other period as the Agency may specify) of the Agency requesting that Information; and
- 12.8.3 provide all necessary assistance as reasonably requested by the Agency to enable the Agency to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.
- 12.9 The Agency shall be responsible for determining at its absolute discretion whether any Commercially Sensitive Information and/or any other Information:
- 12.9.1 is exempt from disclosure in accordance with the provisions of the FOIA or the EIR;
- 12.9.2 is to be disclosed in response to a Request for Information; and in no event shall the Contractor respond directly to a Request for Information unless expressly authorised to do so by the Agency.
- 12.10 The Contractor acknowledges that the Agency may, acting in accordance with the Department for Constitutional Affairs' Code of Practice on the Discharge of Functions of Public Authorities under Part I of the Freedom of Information Act 2000, the FOIA or the EIR to disclose Information:-
- 12.10.1 without consulting with the Contractor, or
- 12.10.2 following consultation with the Contractor and having taken its views into account.
- 12.11 The Contractor shall ensure that all information produced in the course of the Contract or relating to the Contract is retained for disclosure and shall permit the Agency to inspect such records as requested from time to time.

12.12 The Contractor acknowledges that any lists or schedules provided by it outlining Confidential Information are of indicative value only and that the Agency may nevertheless be obliged to disclose Confidential Information in accordance with Clause 12.10.

12.13 No information regarding the Services being provided under the Contract or facilities to photograph or film shall be given or permitted by the Contractor except with prior written permission of the Agency, to whom any press or other enquiry or any such matter should be referred.

12.14 The Contractor shall not communicate with representatives of the general or technical press, radio, television or other communications media unless specifically granted permission to do so in writing by the Agency.

13 DISCRIMINATION

13.1 The Contractor shall not unlawfully discriminate within the meaning and scope of the provisions of the Race Relations Act 1976, the Sex Discrimination Acts 1975 and 1986 and the Disability Discrimination Act 1995 and shall take all reasonable steps to ensure that all servants, employees or agents of the Contractor and all Sub-Contractors do not unlawfully discriminate. This condition shall not in any way relieve the Contractor of his general obligations to comply with any legislative and statutory requirements as provided in Condition 35.

14 MERGER, TAKE-OVER OR CHANGE OF CONTROL

14.1 The Contractor shall forthwith inform the Agency in writing of any proposal or negotiations which may or will result in a merger, take-over, change of control, change of name or status, of the Contractor or the Contractor (being a company as defined in the Companies Act 1985) shall inform the Agency of any such change as defined in section 416 of the Income and Corporation Taxes Act 1988. A change of control shall mean in the case of a partnership if as a result of the proposal more than 50% of the partners in any firm shall cease to be partners or those partners who were partners in the firm prior to the change will cease to be 50% or more of the partners in the firm. The Contractor shall comply with any request by the Agency for information arising from this condition.

15 UNSATISFACTORY PERFORMANCE

15.1 If, during the currency of the Contract, the Contractor in the reasonable opinion of the Agency fails to perform the whole or any part of the Services, with the standard of skill, care and diligence which a competent and suitably qualified person performing the same Services could reasonably be expected to exercise, or in accordance with the Contract, the Agency may give the Contractor a notice specifying the way in which his performance falls short of the requirements of the Contract, or is otherwise unsatisfactory.

15.2 Where the Contractor has been notified of a failure in accordance with Condition 15.1, and has failed to remedy it to the satisfaction of the Agency, the Agency may:

15.2.1 request that the Contractor at its own expense and as specified by the Agency, re-schedules and performs the Services to the Agency's satisfaction within such period as may be specified by the Agency in the notice, including where necessary, the correction or re-execution of any Services already carried out; and/or

15.2.2 withhold or reduce payments to the Contractor, in such amount as the Agency deems appropriate in each particular case; and/or

15.2.3 hold the Contractor liable to compensate the Agency for all reasonable loss and damage in accordance with Condition 21;

15.2.4 terminate the Contract in accordance with Condition 16.

16 TERMINATION OF THE CONTRACT

16.1 Without prejudice to any other power of termination, the Agency may terminate the Contract without notice, for any of the following reasons:

16.1.1 the breach by the Contractor of any of Conditions 11 (Corrupt Gifts & Payments of Commission), 12 (Disclosure of Information) 6 (Contractor's Performance), or any other material breach of contract;

16.1.2 the failure by the Contractor to comply with a notice given under Condition 15 (Unsatisfactory Performance);

16.1.3 the Contractor ceases or proposes to cease to carry on his business;

16.1.4 there is a change of control of the type referred to in Condition 14 (Merger, Take-over or Change of Control), and the Agency has not agreed in advance in writing to the particular change of control, save that in this event the Agency shall give one month's notice in writing to the Contractor;

16.1.5 the Contractor is insolvent as defined in clause 24.

17 BREAK

17.1 The Agency shall in addition to his powers under any other of these Conditions have power to terminate the Contract at any time by giving to the Contractor one month's written notice. Upon the expiry of the notice the Contract shall be terminated without prejudice to the rights of the parties accrued to the date of termination.

18 CONSEQUENCES OF TERMINATION AND BREAK

18.1 Where the Contract is terminated under Condition 16 (Termination of the Contract), the following provisions shall apply:

18.1.1 a sum due or accruing from the Agency to the Contractor may be withheld or reduced by such amount as the Agency considers reasonable and appropriate in the circumstances to reflect any loss, damage or additional cost suffered by the Agency as a result of such termination;

18.1.2 the Agency may make all arrangements which are in its view necessary to procure the orderly completion of the Services including the letting of another contract.

18.2 Where the Contract is terminated under Condition 16.1.4 or Condition 17 (Break) the provisions of Condition 18.1.1 shall not apply.

18.3 Where the Contract is terminated under Condition 16 (Termination of the Contract) or Condition 17 (Break), the Agency may, during any notice period:

18.3.1 direct the Contractor, where the Services have not been commenced, to refrain from commencing such Services or where the Services have been commenced, to cease work immediately;

18.3.2 direct the Contractor to complete in accordance with the Contract all or any of the Services, or any part or component thereof, which shall be paid at the Contract Price.

19 ASSIGNMENT, SUB-CONTRACTORS AND SUPPLIERS

19.1 The Contractor shall not sub-contract or transfer, assign, charge, or otherwise dispose of the Contract or any part of it or the benefit or advantage of it otherwise than as provided in the Contract without the prior written consent of the Agency.

19.2 The Contractor shall ensure that any Sub-Contractor complies with the terms and Conditions so far as they are applicable. Any sub-contract shall not relieve the Contractor of his obligations under the Contract.

19.3 Where the Contractor enters into a contract with a supplier or sub-contractor for the purpose of performing the Contract or any part of it, he shall cause a term to be included in such contract which requires payment to be made by the Contractor to the supplier or Sub-Contractor within a specified period not exceeding 30 days from receipt of a valid invoice as defined by the Contract requirements.

20 INSURANCE

- 20.1 The Contractor shall effect and maintain insurance necessary to cover the Contractor and all his Sub-Contractors for the risks under the Contract and for the avoidance of doubt all the risks as defined in Condition 21 (Loss or Damage).
- 20.2 Where, in compliance with Condition 20.1 above the Contractor takes out and maintains professional indemnity insurance, the Contractor shall:
- 20.2.1 take out and maintain appropriate professional indemnity insurance in respect of its businesses generally throughout the period from the date of commencement of his Services under the Contract and for a period of 6 years from the date of expiry or termination of the Contract, and
 - 20.2.2 ensure that any Sub Contractor commissioned as a consultant by it takes out and maintains appropriate professional indemnity insurance in respect of their businesses generally throughout the period from the date of commencement of their Services under the Contract or commission and in addition for a period of 6 years from the date of completion as specified in the Contract.
- 20.3 The Contractor shall, whenever required by the Agency, produce to the Agency certificates signed on behalf of the Contractor and its Sub-Contractor's insurers stating that insurance complying with the requirements set out in Conditions 20.1 and 20.2 above (where applicable) is in force and the period for which it has been taken out.
- 20.4 If, for whatever reason, the Contractor fails to maintain the insurance described in this Condition or without the approval of the Agency obtains a different policy of insurance from that which he notified to the Agency at the time when he submitted his tender, the Agency may make alternative arrangements necessary to protect his interests and recover the cost from the Contractor.
- 20.5 The terms of any insurance or the amount of cover shall not relieve the Contractor of any liabilities under the Contract.

21 LOSS OR DAMAGE

- 21.1 The Agency will be relying upon the Contractor's skill, expertise and experience in providing the Services and also upon the accuracy of all representations or statements made and the advice given by the Contractor in connection with the provision of the Services and the validity of any Intellectual Property Rights conceived, originated made or developed by the Contractor in connection with the provision of the Services and the Contractor hereby agrees to indemnify the Agency against all loss, damage, costs, legal costs and professional and other expenses of any nature whatsoever incurred or suffered by the Agency whether direct or consequential (including but without

limitation any economic loss or other loss of turnover profits, business or goodwill) as a result of such reliance.

21.2 In addition to the indemnity referred to in Condition 21.1 the Contractor shall indemnify the Agency against any loss of property, and Personal Injury and any other loss, damage, costs, legal costs and professional and other expenses of any nature whatsoever incurred or suffered by the Agency whether direct or consequential (including but without limitation any economic loss or other loss of turnover profits business or goodwill) as a result of:

21.2.1 any breach by the Contractor of its contractual obligations arising under the Contract; and

21.2.2 any representation or tortious act or omission including negligence arising under or in connection with the Contract.

21.3 The Agency shall notify the Contractor as soon as possible of any claim made, or proceedings brought against the Agency in respect of any loss or damage.

21.4 In this condition loss or damage includes:

21.4.1 loss or damage to property;

21.4.2 Personal Injury;

21.4.3 loss of profit or loss of use;

21.4.4 any other loss.

22 RECOVERY OF SUMS DUE

22.1 Whenever under the Contract any sums of money shall be recoverable from or payable by the Contractor to the Agency, the same may be deducted from any sum then due, or which at any later time may become due, to the Contractor under the Contract or under any other contract with the Agency.

23 DATA PROTECTION

23.1 The Contractor shall comply fully with all data protection legislation from time to time in force.

23.2 The Contractor shall indemnify the Agency against all claims and proceedings, and all costs and expenses incurred in connection therewith, made or brought against the Agency by any person in respect of information subject to the Data Protection Acts of 1984 and 1998 which claims would not have arisen but for some act, omission, misrepresentation or negligence on the part of the Contractor or its Sub-Contractors.

24 INSOLVENCY OF THE CONTRACTOR

24.1 The Contractor shall inform the Agency:

24.1.1 if being an individual, or where the Contractor is a firm, any partner in that firm, shall at any time become bankrupt, or shall have a receiving order or administration order made against him, or shall make any composition or arrangement with or for the benefit of his creditors, or shall make any conveyance or assignment for the benefit of his creditors, or shall purport to do so, or if in Scotland he shall become insolvent or notour bankrupt, or any application shall be made under any bankruptcy Act for the time being in force for sequestration of his estate, or a trust deed shall be granted by him for the benefit of his creditors; or

24.1.2 if being a company, he passes a resolution, or the Court makes an order, that the company be wound up otherwise than for the purpose of reconstruction or amalgamation, or if a receiver or manager on behalf of a creditor shall be appointed, or if circumstances shall arise which entitle the Court otherwise than for the purposes of amalgamation or reconstruction to make a winding-up order.

24.2 If any of the events in the conditions 24.1.1 or 24.1.2 occur (whether or not the Contractor has informed the Agency) the Agency may at any time by notice in writing summarily terminate the Contract without compensation to the Contractor. Provided always that such termination shall not prejudice or affect any right of action or remedy which shall have accrued before that date or shall accrue thereafter to the Agency.

25 DRAWINGS, SPECIFICATION, SOFTWARE, DESIGNS AND INTELLECTUAL PROPERTY

25.1 Any drawings, specification, software, designs or other data (including working documents, maps and photographs) completed or provided in connection with the Contract shall become or, as the case may be, remain the property of the Agency and be delivered up to the Agency on completion or termination of the Contract. Where the Agency has agreed to accept modern storage media, drawings and other documents shall be supplied by the Contractor in the agreed form.

25.2 All Intellectual Property Rights arising from the Services shall vest in and be the absolute property of the Agency, and accordingly, in consideration of the mutual undertakings under the Contract, the Contractor hereby assigns to the Agency all such Intellectual Property Rights therein and all for the full term during which the said rights and any renewals of extensions shall subsist.

- 25.3 For the avoidance of doubt, the Agency shall be entitled to use the resulting Intellectual Property Rights or any part thereof for any purpose whatsoever without limitation or licence.
- 25.4 The contractor agrees to execute any documents necessary to assign to the Agency all right, title and interest in the Intellectual Property Rights referred to above and to do all such acts and things as the Agency may determine are necessary or desirable in connection with any such assignment.
- 25.5 The Contractor shall indemnify and hold harmless the Agency against any damages (including costs) that may be awarded to agreed to be paid to any third party in respect of any claim or action that the Intellectual Property Rights referred to above infringe the intellectual property rights of any third party (an “Intellectual Property Infringement”).
- 25.6 In the event of an Intellectual Property Infringement the Contractor shall forthwith make without charge to the Agency such alterations, modifications, or adjustments to the Intellectual Property as shall be necessary to make them non-infringing.

26 RETENTION OF DOCUMENTATION

- 26.1 The Contractor shall retain and produce when required such accounts, documents (including working documents) and records as the Agency, or the Contract Manager, may request, (and explain these as necessary) in connection with the Contract, at any time during the Contract and for a period of 2 years from the date of expiry or termination or such longer period as may be agreed between the Agency and the Contractor in writing and afford such facilities as the Agency may reasonably require for his representatives to visit the Contractor’s premises and examine the records under this Condition.

27 TRANSFER OF RESPONSIBILITY

- 27.1 In the event that a different organisation is required to take over the Services at the expiry or termination of the Contract, the Contractor shall co-operate in the transfer, under arrangements to be notified to him by the Agency.
- 27.2 The transfer shall be arranged between the Agency and the Contractor so as to reduce to a minimum any interruption in the Services.

28 SERVING OF NOTICES

- 28.1 Any notice required to be given or served under the Contract by the Agency shall be sufficiently given or made if it is in writing and sent by first-class post to the Contractor’s last known place of business or registered office, when it shall be deemed to be served on the day when, in the ordinary course of the post it would have been delivered.

29 CONTRACT DOCUMENTS

- 29.1 In any case of discrepancy between these Conditions and other documents forming part of the Contract these Conditions shall prevail unless the inconsistent provision of such other document is expressed to be, or if the context indicates it to be, an amendment of these Conditions and the same have been effected in accordance with Condition 29.2.
- 29.2 Any variation of any provision of this Contract must be effected in writing signed by the Chief Executive or the Contract Manager, and no purported variation by any other means shall bind the Agency.

30 ROYALTIES AND LICENCE FEES

- 30.1 The Contractor shall ensure that all royalties, licence fees or similar expenses in respect of all intellectual property used in connection with the Contract, have been paid and are included within the Contract Price. The Contractor shall indemnify the Agency from and against all claims and proceedings, which may be made or brought against the Agency and any damages, costs and expenses incurred by the Agency in respect of such supply or use.

31 CONTRACTOR'S OBLIGATIONS IN CONNECTION WITH TUPE

- 31.1 Where requested to do so the Contractor shall provide such information (including any changes to and interpretations thereof) in connection with The Transfer of Undertakings (Protection of Employment) Regulations 1981 (TUPE), as the Agency may require, to the Agency and/or to any other person authorised by the Agency who is to be invited to submit a tender in relation to the provision of similar Services, within 10 days of the request.
- 31.2 During the 8 month period preceding the expiry of this Contract or within any period of notice of Termination or notice of Break, the Contractor shall not without the prior written agreement of the Agency, which shall not be unreasonably withheld or delayed:
- 31.2.1 materially amend the terms and conditions of employment of any employee whose work, wholly or mainly falls within the scope of this Contract; or
 - 31.2.2 materially increase the number of employees whose work (or any part of it) is work undertaken for the purposes of this Contract.
- 31.3 The Contractor shall not knowingly do or omit to do anything which may adversely affect an orderly transfer of responsibility for provision of the Services. The Contractor agrees to indemnify the Agency fully and to hold it harmless at all times from and against all actions, proceedings, claims, expenses, awards, costs and all other liabilities whatsoever in any way

connected with or arising from or relating to the provision of TUPE related information.

32 SEVERABILITY

32.1 If any provision of the Contract is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions of the Contract shall continue in full force and effect as if the Contract had been executed with the invalid, illegal or unenforceable provision eliminated. In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of the Contract, the Agency and the Contractor shall immediately commence negotiations in good faith to remedy the invalidity.

33 WAIVER

33.1 The failure of the Agency or the Contractor to exercise any right or remedy shall not constitute a waiver of that right or remedy.

33.2 No waiver shall be effective unless it is communicated to either the Agency or the Contractor in writing.

33.3 A waiver of any right or remedy arising from a breach of contract shall not constitute a waiver of any right or remedy arising from any other breach of the Contract.

34 NATIONAL AUDIT OFFICE ACCESS

34.1 For the purpose of:

34.1.1 the examination and certification of the Agency accounts, or

34.1.2 any examination pursuant to Section 6(1) of the National Audit Act 1983 or any re-enactment thereof of the economy, efficiency and effectiveness with which the Agency has used its resources, the Comptroller and Auditor General may examine such documents as he may reasonably require which are owned held otherwise within the control of the Contractor and may require the Contractor to produce such oral or written explanations as he considers necessary. For the avoidance of doubt it is hereby declared that the carrying out of an examination under Section 6(3)(d) of the National Audit Act 1993 or any re-enactment thereof in relation to the Contractor is not a function exercisable under the Contract.

35 STATUTORY OBLIGATIONS

- 35.1 The Contractor shall comply with all legislation relating directly or indirectly to the provision of the Services.
- 35.2 In particular, the Contractor will note the Agency's current and future obligations under the Data Protection Act 1998, Freedom of Information Act 2000, Human Rights Act 1998, Disability Discrimination Act 1995, Sex Discrimination Act 1975, Health and Safety at Work etc. Act 1974 and Race Relations Act 1976 (all as amended from time to time) and any codes of practice and best practice guidance issues by the Government and the appropriate enforcement agencies.
- 35.3 The Contractor will comply with the above legislation in so far as it places obligations upon the Agency in the performance of its obligations under the Contract.
- 35.4 The Contractor will facilitate the Agency's compliance with the Agency's obligations under these provisions and comply with any reasonable request from the Agency for that purpose.
- 35.5 The Contractor will act in respect of any person who receives or requests services under the Contract as if the Agency were a public authority for the purpose of the Human Rights Act 1998.
- 35.6 The Contractor notes particularly that the Agency may be required to provide information relating to the Contract or the Contractor to a person in order to comply with its obligations under these provisions.

36 LIQUIDATED DAMAGES

- 36.1 Agency within the time or times specified in the Contract, the Contractor shall be liable to pay to the Agency as liquidated damages for delay in delivery in relation to the Services the sum of £300 for each day of such delay up to a maximum of £30,000.
- 36.2 The provisions of this condition 35 are without prejudice to any other rights of the Agency under the Contract and in particular, those under Condition 15 (Unsatisfactory Performance). Accordingly, damages shall be payable hereunder in respect of any material period during which the Contract subsists, notwithstanding its ultimate determination under Condition 15.
- 36.3 No payment or concession to the Contractor by the Agency shall in any way affect the rights of the Authority to recover the said liquidated damages or be deemed to be a waiver of the right of the Agency to recover any such damages unless a waiver has been expressly stated in writing by the Agency.

Signed on behalf of the Firm (Contractor)

Signed on behalf of the Authority

Signature:

Signature:

Name:

Name:

Title:

Title:

Name of Firm:

Address:

Address: SEEDA HQ
Cross Lanes
Guildford
Surrey, GU1 1YA

Date:

Date:

Contact details (including Name, Postal Address, Email Address, Fax Number and Phone Number) of the Firm's Panel Contract/Client Services Manager: