

ENWORKS

Standard Terms and Conditions

(December 2012)

Supported by

BIS
Department for Business
Innovation & Skills

 INVESTING IN
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EUROPEAN REGIONAL DEVELOPMENT FUND

1. Interpretation in these Conditions:

- a) "**Contract**" means the substantive terms of agreement concluded between the Company and the Contractor for the supply of the Services, as recorded in the documents, annexes and schedules which make up the Contract and the Conditions, and as referred to in the offer letter. The contract may take the form of a Framework Agreement, a Service Level Agreement, or other, as appropriate to the terms.
- b) "**the Company**" means ENWORKS (accountable body Economic Solutions Limited (ESL) also "ENWORKS");
- c) "**Contractor**" means the person, company or other organisation, which undertakes to supply the Services under and in accordance with the Contract;
- d) "**Company Property**" means anything issued or otherwise furnished in connection with the Contract by or on behalf of the Company or its authorised representative;
- e) "**the Conditions**" mean the standard terms and conditions of contract for Services as set out in this document;
- f) "**Confidential Information**" means information, data and material of any nature which either party may receive or obtain in connection with the operation of the Contract and
 - i. Which comprises Personal Data or Sensitive Personal Data (as both terms are defined in the Data Protection Act 1998);
 - ii. Which is listed in any Annex to this Contract;
 - iii. The release of which is likely to prejudice the commercial interests of the Company [or the Recipient Business] or the Contractor; or
 - iv. Which is a trade secret.
- g) "**Charging Rates**" shall be construed as those agreed between ENWORKS and the Contractor as set out in the Contract and shall exclude Value Added Tax;
- h) "**Contract Price**" means the price exclusive of Value Added Tax, payable to the Contractor under the Contract for the full and proper performance by the Contractor of the Contract.
- i) "**Eligible Grant Claim**" means the amount owing to the Contractor for delivering the service where the Contractor is contracted on a grant funding basis.
- j) "**FOIA**" means the Freedom of Information Act 2000.
- k) "**EU Procurement Requirements**" means all applicable United Kingdom and European Procurement Legislation and any implementing measures and any other legislation in connection with the procurement of works, supplies or services;
- l) "**loss**" includes destruction;
- m) "**month**" means calendar month;

- n) **"person"** includes a corporation;
- o) **"Recipient Business"** means the business on behalf of which the Contract is being carried out;
- p) **"Services"** means the services to be supplied under the Contract.
- q) Words in the singular shall include the plural and vica versa;
- r) A reference to one gender shall include a reference to the other genders

Payment Provisions

2. Payment

- 2.1 On presentation of a correct invoice quoting the Company purchase order or contract number and/or project/job number and confirming that the Contract has been performed, ENWORKS shall pay the Contract Price/Eligible Grant Claim as the case may be to the Contractor. Payment shall be made within 30 days of invoice, subject to receipt of claim payments from funding bodies. The address for invoices will be provided to the Contractor.
- 2.2 Invoices shall show the period and the details/value of the Services for which the payment is claimed together with the agreed Charging Rates/value of Eligible Grant Claim as the case may be.
- 2.3 Invoices for the Contract performed shall be produced within 5 days of completion of the Services (or within a time period specified by the Company for a specific aspect of the Services) and should be submitted to the Company together with all relevant documentation / receipts.
- 2.4 If the Contractor believes that payment for a correctly submitted invoice is overdue, he/she 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/her satisfaction, he/she should write to the Programme Director at ENWORKS setting out his/her case. The Programme Director shall ensure that the complaint is dealt with by an official who is independent of the main contact and that the Contractor is not treated adversely in future for having made a complaint.

3. Accounts

- 3.1 The Contractor shall keep proper accounts and proper records and vouchers for all expenditure referable to the Contract.
- 3.2 Subject to prior written notice, the Contractor shall permit the Company by its officers, servants and agents or independent auditor on request and at all reasonable times to examine all accounts relating to the Services at the offices of the Contractor or at such other places as the Company shall direct, and to take copies, and shall provide the Company or its independent auditor with such explanations relating to that expenditure as it may request.
- 3.3 The Contractor shall ensure that the said accounts, records and vouchers are available for a period of two years after the expiry / termination date of the Contract, or for a longer period as set out in the Contract.

4. Recovery of Sums Due

- 4.1 Whenever under the Contract any sum of money shall be recoverable from or payable by the Contractor, 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 Company.
- 4.2 Any over-payment by the Company to the Contractor whether of charges or Value Added Tax shall be a sum of money recoverable from the Contractor.

5. Value Added Tax

- 5.1 Where applicable, the Company shall pay to the Contractor, in addition to the Contract Price, a sum equal to the Value Added Tax chargeable on the value of the Services provided in accordance with the Contract.
- 5.2 Any invoice or other request for payment of monies due to the Contractor under the Contract shall, if he/she is a taxable person, be in the same form and contain the same information as if the same were a tax invoice for the purposes of any regulations made under the Value Added Act 1994.
- 5.3 The Contractor shall, if so requested by ENWORKS, furnish such information as may reasonably be required by the Company as to the amount of Value Added Tax chargeable on the Services in accordance with the Contract and payable by the Company to the Contractor in addition to the Contract Price. Any overpayments by the Company to the Contractor shall be a sum of money recoverable from the Contractor for the purposes of Condition 4.

Service Level & Reporting

6. Performance

- 6.1 The Services shall be provided in accordance with the Contract using all due skill and diligence ordinarily exercised by professionals performing substantially similar services. During the course of the Contract, the Company or its authorised representative, shall have the power to inspect and examine the Services being performed either at the Company's premises at any reasonable time or, where any part of the work is being performed on premises other than the Company's premises, at those premises and reasonable notice shall be given to the Contractor.
- 6.2 If any part of the Services provided is found to be inadequate or in any way differing from the Contract, the Contractor shall at his/her own expense re-schedule and perform the work correctly within such reasonable time as may be specified.
- 6.3 The Contractor will provide the Services in accordance with the times, dates and in a manner as specified in the Contract and failure to complete the services in accordance with the Contract shall entitle the Company (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 Company.
- 6.4 Where the Contractor has been unable to provide the Services in accordance with the timescales set out in the Contract through no fault of their own, the Contractor should inform the Company of the reason for such delay. The Company will consider the Contractor's submission in good faith and where it considers appropriate shall grant an extension to the date for delivery of the Services or any part thereof. All invoices and

associated documentation shall be submitted within 5 days of this extended date (or within a time period specified by the Company for a specific aspect of the Services)

7. Company Assistance

7.1 The Company shall provide all reasonable assistance required by the Contractor in connection with delivering the Services, including any assistance specified in the Contract

8. Progress Report

8.1 Where formal progress reports are specified in the Contract, the Contractor shall render such reports at such time and in such form as may be specified or as otherwise agreed between the Contractor and the Company or its authorised representative.

8.2 The submission and acceptance of progress reports shall not prejudice the rights of the Company under any other Condition of the Contract.

Liability

9. Indemnities and Insurance

9.1 The Contractor shall not be liable for any loss, damage or delay suffered by the Company to the extent that such loss, damage or delay is solely attributable to instructions given by the Company.

9.2 Subject to paragraph 9.1 of this Condition, the Contractor shall indemnify the Company and any of its staff or agents against:

- a) any loss or damage caused either to any property of the Company or its staff or agents or any injury (including injury resulting in death) sustained by the staff or agents of the Company by reason of any act or omission of the Contractor, his/her employees or agents during the performance of the Contract;
- b) any claim, demand or liability made against or incurred by the Company or any agent of the Company in respect of any loss of, or damage to, any property of the Contractor's personnel or injury (including injury resulting in death) sustained by the Contractor unless such loss, damage or injury is caused by the negligent act or omission of the Company or any of its staff or agents;
- c) any claim, demand or liability made against or incurred by the Company or any agent of the Company in respect of any loss, damage or injury (including injury resulting in death) sustained by any third party during the delivery of the Contract in consequence of any act or omission of the Contractor, his/her employees or agents.

9.3 The Contractor shall effect with a reputable insurance company a policy or policies of insurance covering all the matters which are the subject of indemnities under these Conditions in the sum of £1,000,000, in respect of any one incident under this Contract and shall at the request of the Company produce a certificate of the relevant policy or policies.

9.4 Without prejudice to the provision of Condition 13, the Contractor shall reimburse the Company for all reasonable payments or additional payments made by the Company to third parties which have become necessary as a consequence of delay in the performance of the Contract which the Contractor had failed to remedy after being given reasonable notice thereof by the Company.

- 9.5 In addition to any other liability which the Contractor shall incur, and without prejudice to the foregoing provisions, the Contractor shall be liable to the Company for any loss, damage, injury or expense (whether direct, consequential or otherwise) arising out of or in connection with the performance of the Contract, including the operation of any computer software contained in or contributing to the performance of the Contract, where such loss, damage, injury or expense arises from the breach of contract or the breach of duty or fault or negligence of the Contractor, his/her employees or his/her agents.
- 9.6 Nothing in these Conditions nor in any part of the Contract shall impose any liability on any member of the staff of the Company or its representatives in their personal capacity.
- 9.7 The Contractor shall indemnify the Company against all actions, claims, demands, costs, charges and expenses arising from or incurred by reason of any infringement or alleged infringement of copyright, patent, registered design or other intellectual property right used by or on behalf of the Contractor for the purpose of the Contract, providing that any such infringement is not knowingly caused by, any act of the Company. The Contractor's liability under this Contract shall be limited to £1,000,000 for any one incident covered by this clause 9.
- 9.8 The Company shall indemnify the Contractor against all actions, claims, demands, costs, charges and expenses arising from or incurred by reason or any infringement or alleged infringement of copyright, patent, registered design or other intellectual property right used at the request of the Company by the Contractor in the course of undertaking the Contract.
- 9.9 No claim may be presented to or court proceedings commenced under this Condition after six years from the date the Contractor finishes the performance of the Services.
- 9.10 The Contractor agrees to maintain the insurances referred to in this clause for the period of six years from the date when the Contractor finishes the Services or from the date of the contract (whichever is the earlier).

Termination Provisions

10. Termination due to Insolvency or on Change of Control

- 10.1 The Contractor shall notify ENWORKS in writing immediately upon the occurrence of any of the following events:
- a) where the Contractor is an individual and if a petition is presented for his/her bankruptcy, or he/she 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/her affairs; or
 - b) where the Contractor is not an individual but is a firm or a number of persons acting together in any event in sub-paragraph (a) or (c) of this paragraph occurs in respect of any partner in the firms or any of those persons, or a petition is presented for the Contractor to be wound up as an unregistered company; or
 - c) where the Contractor is a company, if the company passes a resolution to wind up or the court makes an administration order or a winding-up order, or the company makes a composition or arrangement with its creditors, or an administrative 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.

- 10.2 The Contractor undergoes a Change of Control, within the meaning of Section 416 of the Income and Corporation Taxes Act 1998.
- 10.3 On receipt of the notice under paragraph (1) and (2) above or earlier discovery by ENWORKS of the occurrence of any of the events described in that paragraph, ENWORKS may, by notice in writing to the Contractor, summarily terminate the Contract without compensation to the Contractor and without any prejudice to any right or action or remedy which may accrue to the Company thereafter.

11. Termination for breach of Contract

If either 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 or remedies of the parties accrued to the date of the termination of the Contract.

12. Cancellation

The Company 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 Company for breach of Contract. Where the Company terminates the Contract under this clause, the Company shall pay the Contractor for all Services satisfactorily completed at the date of termination.

Protection of Company Property, Information and Intellectual Property

13. Company Property

- 13.1 All Company Property issued in connection with the Contract shall remain the property of the Company and shall only be used in the execution of the Contract and for no other purpose whatsoever save with the prior written approval of the Company.
- 13.2 All such property shall be deemed to be in good condition when received by or on behalf of the Contractor unless he/she notifies the Company to the contrary within 7 days of receipt.
- 13.3 The Contractor undertakes to return all such 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.
- 13.4 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 Company, pay compensation for all damages occurring to any Company Property occasioned by the Contractor, or by his/her servants, agents or sub-contractors whether arising from his/her or their performance of the Contract and wherever occurring.

14. Disclosure of Information and Safeguarding of Documents

- 14.1 Information relating to the Contract obtained in the course of providing the Services may be communicated by the Contractor to such persons only and to such extent only as shall be necessary for the purposes of the Contract, unless prior consent in writing has been obtained from the Company or the Recipient Business to provide such information to other persons.

- 14.2 Any document or thing bearing a classification of "Confidential" shall be examined or handled at the Company's [or the Recipient Business]' offices only and shall not be removed from said establishment unless the Company or the Recipient Business respectively consent in writing to examination or handling or removal of that document or thing elsewhere.
- 14.3 The Contractor shall use all reasonable endeavours to safeguard from loss or damage every document or thing supplied by or obtained from the Company or the Business Recipient 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 Company shall request, return to the Company or the Recipient Business in good and usable condition every such document and thing.

15. Use of Documents, Information, etc.

- 15.1 Except with the prior written consent of the Company, the Contractor shall not disclose the Contract or any provision thereof to any person other than an employee, agent or advisor having a need-to-know and who have been advised of the obligations and restrictions assumed hereunder.
- 15.2 Except with the prior written consent of the Company, the Contractor shall not make use of the Contract or any information issued or furnished by or on behalf of the Company otherwise than for the purposes of the Contract.
- 15.3 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.
- 15.4 Any samples or patterns or any specifications, plans, drawings, or other documents issued by or on behalf of the Company for the purposes of the Contract remain the property of the Company and must be returned on completion or earlier termination of the Contract.

16. Copyright and Property in Information and Equipment

- 16.1 Subject to any prior rights and to the rights of third parties, copyright and every other intellectual property right in all reports, documents, data, information and things produced under the Contract shall be vested in the Company as copyright or any other intellectual property right and the Contractor warrants to the Company 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 claim ownership of any other intellectual property right in any such report, document, data, information or thing in relation to the Services. The Contractor hereby assigns copyright in every such report, document, data, information and thing to the Company for the full period of copyright therein and all renewals and extensions and agrees that each shall carry a copyright legend in the following form: "(C) Copyright ENWORKS 20XX..." "Applications for reproduction should be made to ENWORKS ". All moral rights relating to the work under the Contract are hereby waived by the Contractor. Nothing in this Contract affects the ownership of any Intellectual Property in any material that exists prior to the date of this Contract ("Background IP) and the Contractor grants to (or will procure for) the Company a permanent, irrevocable, royalty free, world-wide, non-exclusive licence to use and reproduce the Background IP used in the Services for any purposes related to the Services subject to the Contractor having received payment of all fees and disbursements properly due under this agreement.

- 16.2 Any information collected pursuant to the Contract (excluding any information which in the opinion of the Company 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 Company, and all original documents in whatever form which contain that information, including, but without limitation 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 Company.
- 16.3 Nothing in the Contract or done under the Contract shall be taken to diminish any copyright, patent rights or rights to any other intellectual or industrial property which would apart from this Contract vest in the Company.
- 16.4 Without prejudice to the generality of the foregoing, there shall be vested in the Company 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 Company, to the Contractor in relation to the Contract or in or over anything made or derived from or arising out of any such information, specification, plan, drawing, sample or other thing.
- 16.5 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/her 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 Company, shall be acquired by the Contractor upon terms which shall enable the Contractor upon request by the Company to perform at the Contractor's expense all acts and to execute all documents necessary to vest such rights of use in the Company to the full extent enjoyed by the Contractor without need for any or other permission, authorisation or consent.
- 16.6 If the cost of any equipment is reimbursed to the Contractor such equipment shall be the property of the Company and shall on request be delivered to the Company. The Contractor shall keep a proper inventory of such equipment and shall deliver that inventory to the Company on request and on completion of all work under the Contract.

17. Confidentiality

In respect of any Confidential Information it may receive from the other party (the "Discloser") and subject always to the remainder of this Clause, 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:

- 17.1 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;
- 17.2 The provisions of this Condition shall not apply to any Confidential Information which:
- a) Is in or enters the public domain other than by breach of the Contract or other act or omissions of the Recipient;
 - b) Is obtained by a third party who is lawfully authorised to disclose it; or
 - c) Is authorised for release by the prior written consent of the Discloser.
- 17.3 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 Contractor in this condition were a reference to such holding company.

17.4 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 the Contract, this clause shall remain in force for a period of 5 years after the termination or expiry of this Agreement.

17.5 The Contractor may retain a copy of any Confidential Information and any other information provided by the Company to the extent that the same forms part of the permanent records of the Contractor which it is bound by law or regulatory requirements to retain. In addition, the Contractor may retain any reports, notes or other material prepared by or for it which includes parts of the Confidential Information ("Secondary Information") provided that such Secondary Information is at all times kept securely and maintained as confidential.

18 Conflict of Interest

18.1 The Contractor shall ensure that there is no conflict of interest likely to prejudice his/her 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/she shall immediately notify the Company 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 Company may reasonably require.

18.2 Where the Company is of the opinion that the conflict of interest notified to it under paragraph 18.1 above is capable of being avoided or removed, the Company may require the Contractor to take such steps as will, in its opinion, avoid, or as the case may be, remove the conflict and:

- a) if the Contractor fails to comply with the Company requirements in this respect;
or
- b) if, in the opinion of the Company, compliance does not avoid or remove the conflict, the Company may terminate the Contract.

18.3 Where the Company 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 Company may terminate the Contract immediately for breach of a fundamental condition.

19. Restrictions

19.1 In order to protect the intellectual property, confidential information, trade secrets and connections of the Company, the Contractor shall not during the term of the Contract or for 12 months after termination or expiry of the same be involved as agent, consultant, director, employees, owner, partner or shareholder with any business concern which is (or intends to be) in competition with the Company or provide similar work to the Services to any current or potential client of the Company.

- 19.2 The restrictions imposed on the Participant by this Condition 19 apply to them acting: a) directly or indirectly; and b) on their own behalf or on behalf of, or in conjunctions with, any firm, company or person.
- 19.3 Each of the restrictions in this Condition is intended to be separate and severable. If any of the restrictions are held to be void, but would be valid if part of their wording were deleted, such restriction shall apply with such deletion as may be necessary to make it valid or effective.

Regulatory and Best Practice

20. Data Protection

- 20.1 The Contractor agrees that it shall, in relation to personal data processed in connection with the Contract ("**Personal Data**"):
- a) process the Personal Data in accordance with the Data Protection Act 1998 (**1998 Act**) and any other applicable data protection legislation;
 - b) process the Personal Data only so far as is necessary for the purpose of performing its obligations under the Contract;
 - c) not disclose Personal Data to or allow access to it other than to employees or third parties engaged by the Contractor to perform its obligations under the Contract and ensure that such employees or third parties are subject to written contractual obligations concerning the Personal Data which are no less onerous than those imposed by this agreement; and
 - d) use all reasonable efforts to assist the Company to comply with such obligations as are imposed on the Company by the 1998 Act.

21. Public Procurement

- 21.1 The Contractor agrees that to the extent necessary it shall comply with the application of all EU Procurement Requirements, in connection with the procurement of any part of the Contract or any services in respect of which funding is to be provided by the Company and shall promptly provide to the Company any information which the Company may request in order to satisfy itself that the Contractor has done so.
- 21.2 All procurement of works, equipment, goods and services shall be based on value for money. In determining how this requirement should be met, the Contractor must take account of public sector accountability and probity, and shall document the decision-making process accordingly.

22. Freedom of Information Act 2000 ("FOI")

If the Company is a public authority or the Contractor, based on the nature of its work is or may be deemed to be a public authority, within the meaning of FOI or similar regulations and either the Company or the Contractor receives a request to disclose any advice, documentation or information relating to the Services, including for the avoidance of doubt a request to disclose whether or not such information is held by Company or the Contractor, the party receiving the request will promptly consult the other party, and take the other party's comments into account prior to making any disclosure and, if requested by the other party, work with the other party to ensure that exemptions or other legitimate means of ensuring that no disclosure is made are utilised to the extent reasonably possible.

23. Corrupt Gifts and Payments of Commission

23.1 The Contractor shall not:

- a) offer or give, or agree to give, to any person employed by or on behalf of the Company 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 Contract or any other contract with the Company, or for showing or not showing favour or dis-favour to any person in relation to this Contract or any other contract with the Company;
- b) enter into this Contract or any other contract with the Company in connection with which Commission has been paid, or agreed to be paid by him/her or on his/her behalf, or to his/her knowledge, unless, before the Contract is made, particulars of any such Commission and the terms and conditions of any agreement for the payment thereof, have been disclosed in writing to any person duly authorised by the Company to act as its representative for the purpose of this Condition. Nothing contained in this Condition prevents the Contractor paying such Commission or bonuses to his/her own staff in accordance with their agreed contracts of employment.

23.2 Any breach of this Condition by the Contractor, or by anyone employed by him or acting on his behalf (whether with or without his/her knowledge), or the Commission of any offence by the Contractor or by anyone employed by him or acting on his/her behalf under the Prevention of Corruption Acts 1889-1916, in relation to this Contract or any other contract with the Company, shall entitle the Company to terminate the Contract and recover from the Contractor the amount of any loss resulting from such termination and the amount of the value of any such gift, consideration or Commission.

23.3 Where the Contract has been terminated under paragraph 23.2 of this Condition, the powers given by 6.3 shall apply as if there had been a failure to commence the work.

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

- a) the interpretation of this Condition (except so far as the same may relate to the amount recoverable from the Contractor under paragraph (2) of this Condition in respect of any loss resulting from such termination of the Contract); or
- b) the right of the Company to terminate the Contract; or
- c) the amount or value of any gift, consideration or Commission; the decision of the Company shall be final and conclusive.

General

24. Acts by the Company

24.1 Any decision, act or thing which the Company 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 Company to take or do that decision, act or thing.

25. Dispute Resolution

25.1 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.

- 25.2 If the dispute cannot be resolved by the parties pursuant to paragraph (1) of this Condition, the dispute may, by agreement between the parties, be referred to mediation pursuant to paragraph (4) of this Condition.
- 25.3 Performance of the Services shall not cease or be delayed by the reference of a dispute to mediation pursuant to paragraph (2) of this Condition, unless the dispute materially impacts on the ability of the Contractor to provide the Services.
- 25.4 The procedure for mediation and consequential provisions relating to mediation are as follows:
- (a) 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/she is unable or unwilling to act, apply to the Centre for Dispute Resolution ("CEDR") to appoint a Mediator;
 - (b) 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 the CEDR to provide guidance on a suitable procedure;
 - (c) 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;
 - (d) 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 Company and the Contractor.
 - (e) Failing agreement, either of the parties may invite the 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;
 - (f) 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.

26. Service of Notice

Any notice or other communication which the Company 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 Contractor.

27. Assignment and Sub-contracting

- 27.1 The Contractor shall not give, bargain, sell, assign, sub-contract or otherwise dispose of the Contract or any part thereof without the prior written consent of the Company.
- 27.2 The Contractor shall not use the services of self-employed individuals in connection with the Contract without the previous agreement in writing of the Company. In either case

the Contractor will bring these Conditions to the attention of the third party and will ensure that they are bound by terms which are equivalent and in no way less onerous than the Conditions.

28. Waiver

The failure of either party at any time to enforce any provision of the Contract shall in no way affect either parties' right thereafter to require 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.

29. Severability

If any Condition, clause or provision of the Contract not being of a fundamental nature is 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.

30. Amendments and Variations

No amendment or variation to the terms of the Contract shall be valid unless previously agreed in writing between the Company and the Contractor. In particular, but without limitation, no payment shall be made for unauthorised services or any deviation from the contents of the Contract.

31. Force Majeure

31.1 Price and time commitments under the Contract are subject to equitable adjustments for delays and changed conditions caused by circumstances beyond the reasonable control of either party, such as fires, floods, earthquakes, strikes, riots, war, kidnapping, terrorism, threat of terrorism and any resulting security measures, acts of God, changes in applicable law or regulations of any governmental authority, or the presence of hazardous materials or waste or a nature or in locations, quantities, concentrations or conditions which could not reasonably have been expected by the Contractor "(Force Majeure)".

31.2 If the Contractor determines that, based on circumstances surrounding the Services, the health or safety of its personnel or any subcontractor's personnel or the environment or property of Company or others is or may be at risk in performing the Services such circumstances shall constitute a Force Majeure and the Contractor shall have the right to take whatever measures it deems necessary to prevent any threatened damage, injury or loss and recover the reasonable and actual costs of such measures from the Company. Where it is impracticable in an emergency situation to obtain prior Company authorisation, the Contractor shall be entitled to act pursuant to this Condition at its discretion.

32. Rights of Third Parties

The Contract does not in anyway 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 Company or the Contractor) to enforce any term of the contract, which expressly, or by implication, confers a benefit on him pursuant to the Contract (Rights of Third Parties) Act 1999, without prior agreement in writing of both parties.

33. Special Provisions

In the case of any conflict or inconsistency between these Standard Conditions and any specific/special conditions within the Contract, the Company reserves the right to revert to the terms most favourable to the Company.

34. Law

The Contract shall be considered as a contract made in England and shall be governed by, and construed in accordance with, the provisions of English Law.