

# Standard Terms and Conditions of Contract for Services

## 1. Interpretation

1.1 In these Conditions:

- (a) "Charging Rates" shall be construed as those excluding Value Added Tax;
- (b) "the Agreement" means the agreement concluded between "the Contracting Authority" and the Contractor for the supply of services, including all specifications, plans, drawings and other documents which are relevant to the Agreement and also such of these Conditions as are included (with or without modification) expressly or by reference in the terms and conditions of the Agreement;
- (c) "the Agreement Price" means the price exclusive of Value Added Tax, payable to the Contractor by the Contracting Authority under the Agreement for the full and proper performance by the Contractor of the Agreement;
- (d) "the Contracting Authority" means the Gas and Electricity Markets Authority established under section 1 of the Utilities Act 2000 acting in the capacity indicated on the face of the Agreement to which these terms relate.
- (e) "the Contractor" means the person who undertakes to supply the services under and in accordance with the Agreement and, where the Contractor assigns his rights and obligations under the Agreement to another person with the prior written consent of the Contracting Authority, that other person;
- (f) "Government Property" means anything issued or otherwise furnished in connection with the Agreement by or on behalf of the Contracting Authority or his authorised representative;
- (g) "loss" includes destruction;
- (h) "month" means calendar month;
- (i) "person" includes a corporation;
- (j) "the Services" means the services to be supplied under the Agreement.
- (k) "Confidential Information" means information, the disclosure of which would constitute an actionable breach of confidence, which has either been designated as confidential by either the Contracting Authority or the Contractor in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including commercially sensitive information, information which relates to the business, affairs, properties, assets, trading practices, Services, developments, trade secrets, intellectual property rights, know-how, personnel, customers and suppliers of either party and all personal data and sensitive personal data within the meaning of the Data Protection Act 1998.

(l) "Environmental Information Regulations" means the Environmental Information Regulations 2004;

(m) "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;

(n) "Information" has the meaning given under section 84 of the Freedom of Information Act 2000;

(o) "Requests for Information" shall have the meaning set out in FOIA or any apparent request for information under the FOIA, the Environmental Information Regulations or The Code of Practice on the Discharge of Public Authorities' Functions under Part I of the FOIA (as all may be amended from time to time).

## **2. Acts by the Contracting Authority**

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

## **3. Service of Notice**

3.1 Any notice or other communication which the Contracting Authority is required to give under the Agreement shall be deemed to be sufficiently given if sent by recorded or registered post to the last known address of the Contractor.

## **4. Assignment and Sub-Contracting**

4.1 The Contractor shall not give, sell, assign, sub-agreement or otherwise dispose of the Agreement or any part thereof without the previous consent in writing of the Contracting Authority.

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

## **5. Government Property**

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

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

5.3 The Contractor undertakes to return 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.

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

## **6. Waiver**

6.1 The failure of either party at any time to enforce any provision of the Agreement shall in no way affect its 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.

## **7. Severability**

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

## **8. Safeguarding of Documents**

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

8.2 The Contractor shall use all best endeavours to safeguard from loss or damage every document or thing supplied by or obtained from the Contracting Authority or by or from the Crown for the purposes of the Agreement and to protect every such document or thing from unauthorised use, disclosure or copying and shall forthwith upon termination or expiry of the Agreement or earlier if the Contracting Authority shall request return to the Contracting Authority in good and usable condition every such document and thing.

## **9. Publicity and Use of Documents**

9.1 Except with the prior consent in writing of the Contracting Authority the Contractor shall not disclose the Agreement or any provision thereof to any

person other than a person employed by the Contractor in carrying out the Agreement or any sub-Contractor, supplier or other person concerned with the same. Such disclosure shall be made in confidence and shall extend so far only as may be necessary for the purposes of the Agreement.

- 9.2 Except with the prior consent in writing of the Contracting Authority the Contractor shall not make use of the Agreement or any information issued or furnished by or on behalf of the Contracting Authority otherwise than for the purposes of the Agreement.
- 9.3 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 Agreement.
- 9.4 Any samples or patterns or any specifications, plans, drawings, or other documents issued by or on behalf of the Contracting Authority for the purposes of the Agreement remain the property of the Contracting Authority and must be returned on completion of the Agreement.

## **10. Amendments and Variations**

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

## **11. Payment**

- 11.1 On presentation of a correct invoice quoting the Contracting Authority purchase order or agreement number and confirming that the Agreement has been performed, the Contracting Authority shall pay the Agreement Price to the Contractor. Payment will normally be made within 30 days of receipt by the Contracting Authority of the invoice.
- 11.2 Invoices will show the period and the amount of the Services for which the payment is claimed together with the agreed Charging Rates.
- 11.3 If the Contractor believes that payment for a correctly submitted invoice is overdue, he should, in the first instance, speak to the named contact on the face of the Agreement. In the event that the problem is not resolved to his satisfaction, he should write to the Contracting Authority setting out his case. The Contracting Authority will 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.

## **12. Accounts**

- 12.1 The Contractor shall keep proper accounts and proper records and vouchers for all expenditure referable to the Agreement.

- 12.2 The Contractor shall permit the Contracting Authority by its officers, servants and agents or independent auditor on request and at all reasonable times to examine all accounts at the offices of the Contractor or at such other places as the Contracting Authority shall direct and to take copies and shall provide the Contracting Authority or its independent auditor with such explanations relating to that expenditure as it may request.
- 12.3 The Contractor shall ensure that the said accounts, records and vouchers are available for a period of two years after the termination date of the Agreement.

### **13. Recovery of Sums Due**

- 13.1 Whenever under the Agreement 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 Agreement with the Contracting Authority or with any other department or office of Her Majesty's Government.
- 13.2 Any over-payment by the Contracting Authority to the Contractor whether of charges or Value Added Tax shall be a sum of money recoverable from the Contractor.

### **14. Value Added Tax**

- 14.1 The Contracting Authority shall pay to the Contractor, in addition to the Agreement Price, a sum equal to the Value Added Tax chargeable on the value of the Services provided in accordance with the Agreement.
- 14.2 Any invoice or other request for payment of monies due to the Contractor under the Agreement shall, if he 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 Regulations made under the Value Added Act 1983.
- 14.3 The Contractor shall, if so requested by the Contracting Authority, furnish such information as may reasonably be required by the Contracting Authority as to the amount of Value Added Tax chargeable on the Services in accordance with the Agreement and payable by the Contracting Authority to the Contractor in addition to the Agreement Price, any over-payments by the Contracting Authority to the Contractor shall be a sum of money recoverable from the Contractor for the purposes of Condition 13.

### **15. Performance**

- 15.1 The Services shall be provided in accordance with the Agreement to the satisfaction of the Contracting Authority, or its authorised representatives. During the course of the Agreement the Contracting Authority or its authorised representative shall have the power to inspect and examine the work being performed on the Contracting Authority's premises at any reasonable time or where any part of the work is being performed on premises other than the Contracting Authority's premises reasonable notice shall be given to the Contractor.

- 15.2 If any part of the Services provided is found to be inadequate or in any way differing from the Agreement, other than as a result of default or negligence on the part of the Contracting Authority or its authorised representative, the Contractor shall at his own expense reschedule and perform the work correctly within such reasonable time as may be specified.
- 15.3 The time of commencement shall be of the essence and failure to commence the provision of the Services within the time promised or specified shall entitle the Contracting Authority (at his option) to be released from any obligation to accept and pay for the Services or to cancel all or part of the Services, in either case without prejudice to the other rights and remedies of the Contracting Authority.

## **16. Progress Report**

- 16.1 Where formal progress reports are specified in the Agreement, the Contractor shall render such reports at the time and in such form as may be specified or as otherwise agreed between the Contractor and the Contracting Authority or his authorised representative.
- 16.2 The submission and acceptance of progress reports shall not prejudice the rights of the Contracting Authority under any other condition of the Agreement.

## **17. Contractor's Personnel**

- 17.1 The Contracting Authority reserves the right to refuse to admit to premises occupied by or on behalf of the Contracting Authority any person employed by the Contractor, or by a sub-Contractor, whose admission would be undesirable in the opinion of the Contracting Authority.
- 17.2 If and when directed by the Contracting Authority the Contractor shall provide a list of the names and addresses of all persons who may at any time require admission in connection with the performance of the Agreement to any premises occupied by or on behalf of the Contracting Authority specifying the capabilities in which they are concerned with the Contractor and giving such other particulars as the Contracting Authority may require.
- 17.3 If the Contractor shall fail to comply with paragraph 17.2 of this Condition and if the Contracting Authority decides that such failure is prejudicial to its interests, then the Contracting Authority may summarily determine the Agreement by notice in writing to the Contractor always providing that such determination shall not prejudice or affect any right of action or remedy which shall have accrued, or shall accrue thereafter, to the Contracting Authority.
- 17.4 The decision of the Contracting Authority as to whether any person is to be refused admission to official premises and as to whether the Contractor has failed to comply with clause 17.2 of this Condition shall be final and conclusive.

## **18. Indemnities and Insurance**

- 18.1 The Contractor shall not be liable for any loss, damage or delay suffered by the Contracting Authority to the extent that such loss, damage or delay is attributable to instructions given by or on behalf of the Contracting Authority.
- 18.2 Subject to paragraph 18.1 of this Condition, the Contractor shall indemnify the Contracting Authority and any of his staff or agent against:
- (a) any loss of or damage caused either to any physical property of the Contracting Authority or its staff or agents or any physical injury (including injury resulting in death) sustained by the staff or agents of the Contracting Authority by reason of any negligent act or omission of the Contractor, his employees or agent during the performance of the Agreement.
  - (b) any claim, demand or liability made against or incurred by the Contracting Authority or any agent of the Contracting Authority 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 Contracting Authority or any of its staff or agents.
  - (c) any claim, demand or liability made against or incurred by the Contracting Authority or any agent of the Contracting Authority in respect of any loss, damage or injury (including injury resulting in death) sustained by any third party during the currency of the Agreement in consequence of any negligent act or omission of the Contractor, his employee or agent.
- 18.3 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 £500,000 at least or such other sum as may be specified in the Agreement in respect of any one incident and shall at the request of the Contracting Authority produce the relevant policy or policies together with receipt or other evidence of payment of the latest premium due thereunder.
- 18.4 Without prejudice to the provision of Condition 13 the Contractor shall reimburse the Contracting Authority for all reasonable payments or additional payments by the Contracting Authority to third parties which have become necessary as a direct consequence of delay in the performance of the Agreement which the Contractor had failed to remedy after being given reasonable notice thereof by the Contracting Authority, provided always that the Contracting Authority shall take all reasonable steps to minimise the need to make such payments and shall not claim for any payments arising as a result of the Contracting Authority's neglect to take such reasonable steps.
- 18.5 Nothing in these Conditions nor in any part of the Agreement shall impose any liability on any member of the staff of the Contracting Authority, or its representatives in their personal capacity.
- 18.6 The Contractor shall indemnify the Contracting Authority 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 property right used by or on behalf of the Contractor for the

purpose of the Agreement, providing that any such infringement is not knowingly caused by, or contributed to, by any act of the Contracting Authority.

- 18.7 The Contracting Authority 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 property right used at the request of the Contracting Authority by the Contractor in the course of undertaking the Agreement.

## **19. Termination due to Insolvency**

- 19.1 The Contractor shall notify the Contracting Authority 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 the Contractor bankruptcy or a criminal bankrupt order is made against the Contractor or he makes any composition or arrangement with or for the benefit of creditors or any of them, or makes any conveyance or assignment for the benefit of creditors or any of them, or if an administrator is appointed to manage his affairs; or

(b) where the Contractor is not an individual but is a firm or a number of persons acting together in any capacity, if any event in sub-paragraph (a) or (c) of this paragraph occurs in respect of any partner in the firm or any of those persons or a petition is presented for the Contractor to be wound up as an unregistered company; or

(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 any of them, or an administration receiver, receiver or manager is appointed by a creditor or by the court, or possession is taken of any of its property under the terms of a floating charge.

- 19.2 On receipt of the notice under paragraph 19.1 above or earlier discovery by the Contracting Authority of the occurrence of any of the events described in that paragraph, the Contracting Authority may, by notice in writing to the Contractor, summarily terminate the Agreement without compensation to the Contractor and without any prejudice to any right of action or remedy which may accrue to the Contracting Authority thereafter.

## **20. Termination for breach of Agreement**

- 20.1 If a party commits a material breach of the Agreement 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 Agreement with immediate effect by notice in writing to the other party and without prejudice to any rights of the parties accrued to the date of the determination of the Agreement.

## **21. Cancellation**

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

## **22. Confidentiality and Freedom of Information**

### **Confidentiality**

22.1 If any information is given to the Contractor by a third party under a condition that such information shall be treated as confidential to the Contractor and shall not be disclosed to the Contracting Authority without the consent of the informant, the Contractor will respect the confidential nature of that information, and will provide to the Contracting Authority the name of the informant (if not confidential to the Contractor) and such other details as shall be necessary to enable the Contracting Authority to seek the informant's consent to disclosure.

22.2 Each party:-

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

(b) 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 Agreement or except where disclosure is otherwise expressly permitted by the provisions of this Agreement.

22.3 The Contractor shall take all necessary precautions to ensure that all Confidential Information obtained from the Contracting Authority under or in connection with the Agreement:-

(a) is given only to such of its members of staff and professional advisors or consultants engaged to advise it in connection with the Agreement as is strictly necessary for the performance of the Agreement and only to the extent necessary for the performance of the Agreement;

(b) is treated as confidential and not disclosed (save with the prior approval in writing of the Contracting Authority) or used by any member of its staff or such professional advisors or consultants otherwise than for the purposes of the Agreement.

22.4 Where it is considered necessary in the opinion of the Contracting Authority, the Contractor shall ensure that all its members of staff or such professional advisors or consultants sign a confidentiality undertaking before commencing work in connection with the Agreement.

22.5 The Contractor shall not use any Confidential Information received otherwise than for the purposes of the Agreement.

22.6 The provisions of clauses 22.2 to 22.5 shall not apply to any Confidential Information received by one party from the other:-

- (a) which is or becomes public knowledge (otherwise than by breach of this Agreement);
- (b) which was in the possession of the receiving party, without restriction as to its disclosure, before receiving it from the disclosing party;
- (c) which is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;
- (d) is independently developed without access to the Confidential Information; or
- (e) 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, The Code of Practice on the Discharge of Public Authorities' Functions under Part I of the FOIA or the Environmental Information Regulations (Freedom of Information) as all may be amended from time to time.

22.7 Nothing in this clause 22 shall prevent the Contracting Authority:

- (a) disclosing any Confidential Information for the purpose of:-
  - (i) the examination and certification of the Contracting Authority's accounts; or
  - (ii) any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Contracting Authority has used its resources; or
- (b) disclosing any Confidential Information obtained from the Contractor:-
  - (i) to any other department, office or agency of the Crown; or
  - (ii) to any person engaged in providing any services to the Contracting Authority for any purpose relating to or ancillary to the Agreement;
- (c) provided that in disclosing information under sub-paragraph (b) (i) or (ii) the Contracting Authority discloses only the information which is necessary for the purpose concerned and requires that the information is treated in confidence and that a confidentiality undertaking is given where appropriate.

22.8 In the event that the Contractor fails to comply with this clause 22, the Contracting Authority reserves the right to terminate the Agreement by notice in writing with immediate effect.

22.9 The provisions under this clause 22 are without prejudice to the application of the Official Secrets Acts 1911 to 1989 to any Confidential Information.

22.10 The provisions of clauses 22.2 to 22.9 above shall apply during the period of this Agreement and at any subsequent time.

## **Freedom of Information**

- 22.11 The Contractor acknowledges that the Contracting Authority is subject to the requirements of The Code of Practice on the Discharge of Public Authorities' Functions under Part I of the FOIA, the FOIA and the Environmental Information Regulations (as all may be amended from time to time) and shall assist and cooperate with the Contracting Authority (at the Contractor's expense) to enable the Contracting Authority to comply with these Information disclosure requirements.
- 22.12 The Contractor shall and shall procure that its sub-contractors shall:
- (a) transfer the Request for Information to the other party as soon as practicable after receipt and in any event within two working days of receiving a Request for Information;
  - (b) provide the Contracting Authority with a copy of all Information in its possession or power in the form that the Contracting Authority requires within five working days (or such other period as the Contracting Authority may specify) of the Contracting Authority requesting that Information; and
  - (c) provide all necessary assistance as reasonably requested by the Contracting Authority to enable the Contracting Authority to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA.
- 22.13 The Contracting Authority shall be responsible for determining at its absolute discretion whether:-
- (a) the Information is exempt from disclosure under the Code of Practice on the Discharge of Public Authorities' Functions under Part I of the FOIA, the FOIA and the Environmental Information Regulations;
  - (b) the Information is to be disclosed in response to a Request for Information, and
  - (c) in no event shall the Contractor respond directly to a Request for Information unless expressly authorised to do so by the Contracting Authority.
- 22.14 The Contractor acknowledges that the Contracting Authority may, acting in accordance with the Department of Constitutional Affairs' Code of Practice on the Discharge of Functions of Public Authorities under Part I of the FOIA, be obliged under The Code of Practice on the Discharge of Public Authorities' Functions under Part I of the FOIA, the FOIA, or the Environmental Information Regulations (as all may be amended from time to time) to disclose Information:-
- (a) without consulting with the Contractor, or

(b) following consultation with the Contractor and having taken its views into account.

22.15 The Contractor shall ensure that all information produced in the course of the Agreement or relating to the Agreement is retained for disclosure and shall permit the Contracting Authority to inspect such records as requested from time to time.

22.16 The Contractor acknowledges that any lists or schedules provided by it outlining Confidential Information are of indicative value only and that the Contracting Authority may nevertheless be obliged to disclose Confidential Information in accordance with clause 22.14.

### **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 Contracting Authority any gift or consideration of any kind as an inducement or reward for doing or having done or not doing any act in relation to the obtaining or execution of this or any other agreement with the Contracting Authority or for showing or not showing favour or disfavour to any person in relation to this or any other agreement with the Contracting Authority;

(b) enter into the Agreement or any other agreement with the Contracting Authority or any other department or office of Her Majesty's Government in connection with which commission has been paid or agreed to be paid by him or on his behalf, or to his knowledge, unless before the Agreement is made particulars of any such commission and of the terms and conditions of any agreement for the payment thereof have been disclosed in writing to any person duly authorised by the Contracting Authority to act as its representative for the purpose of this condition.

Nothing contained in this condition prevents the Contractor paying such commission or bonuses to his own staff as are within their agreed agreement 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 knowledge) or the commission of any offence by the Contractor or by anyone employed by him or acting on his behalf under the Prevention of Corruption Acts 1889-1916 in relation to this or any other agreement with the Contracting Authority shall entitle the Contracting Authority to determine the Agreement and recover from the Contractor the amount of any loss resulting from such determination and the amount of the value of any such gift, consideration or commission as the Contracting Authority shall think fit.

23.3 Where the Agreement has been determined under paragraph (2) of this Condition the powers given by paragraph (3) of Condition 15 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 determination of the Agreement); or

(b) the right of the Contracting Authority to determine the Agreement; or

(c) the amount or value of any gift, consideration or commission;

the decision of the Contracting Authority shall be final and conclusive.

## **24. Official Secrets**

24.1 The Contractor's attention is drawn to the provisions of the Official Secrets Acts 1911 to 1989 and to any statutory amendment or re-enactment thereof. The Contractor shall take all reasonable steps by display of notices or by other appropriate means to ensure that all persons employed in connection with the Agreement have notice that these statutory provisions apply to them and will continue so to apply after the completion or early determination of the Agreement.

24.2 If and when directed by the Contracting Authority the Contractor shall secure that any person employed by him, or by a subcontractor, who is specified in the direction, or is one of a class of persons who may be so specified, shall sign a statement that he understands that the Official Secrets Acts 1911 to 1989 apply to the person signing the statement both during the carrying out and after completion or determination of the Agreement.

## **25. Special Provisions**

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

## **26. Conflict of Interest**

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

26.2 Where the Contracting Authority is of the opinion that the conflict of interest notified to it under paragraph (1) above is capable of being avoided or removed, the Contracting Authority may require the Contractor to take such steps as will, in its opinion, avoid, or as the case may be, remove the conflict and

(a) if the Contractor fails to comply with the Contracting Authority requirements in this respect, or

(b) if, in the opinion of the Contracting Authority compliance does not avoid or remove the conflict,

The Contracting Authority may determine the Agreement and recover from the Contractor the amount of any loss resulting from such determination.

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

## **27. Copyright and Property in Information and Equipment**

27.1 Subject to any prior rights and to the rights of third parties, copyright and every other property right in all reports, documents, and things produced under the Agreement shall be vested as to copyright in the Crown, and as to every other property right in the Contracting Authority, and the Contractor warrants to the Contracting Authority that all staff are and will be engaged in relation to the Agreement on terms which do not entitle any of them to copyright or any other such right in any such report, document or thing. The Contractor hereby assigns copyright in every such report, document and thing to the Crown 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: "© Copyright 20..." "Applications for reproduction should be made to HMSO". All moral rights relating to the work under the Agreement are hereby waived by the Contractor.

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

27.3 Nothing in the Agreement or done under the Agreement shall be taken to diminish any Crown copyright, patent rights or rights to any other intellectual or industrial property which would apart from this Agreement vest in the Crown or the Contracting Authority.

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

anything made or derived from or arising out of any such information, specification, plan, drawing, sample or other thing.

- 27.5 Any right of use in or over property (including any copyright or licence to use copyright material and also including intellectual property rights of all kinds) which is acquired by the Contractor or by his staff pursuant to or for the purposes of the Agreement, and whether acquired by transfer, assignment, licence, sub-licence, grant or by any other means whatsoever, and the costs of acquisition of which are to be reimbursed to the Contractor by the Contracting Authority shall be acquired by the Contractor upon terms which will enable it upon request by the Crown to perform at the Contractor's expense all acts and to execute all documents necessary to vest such rights of use in the Crown to the full extent enjoyed by the Contractor without need for any or other permission, authorisation or consent.
- 27.6 If the cost of any equipment is reimbursed to the Contractor such equipment shall be the property of the Contracting Authority and shall on request be delivered to the Contracting Authority. The Contractor will keep a proper inventory of such equipment and will deliver that inventory to the Contracting Authority on request and on completion of all work under the Agreement.

## **28. Data Protection**

- 28.1 The Contractor's attention is drawn to the Data Protection Act 1998, Directive 95/46/EC of the European Parliament and any legislation and/or regulations implementing them or made in pursuance of them and any associated legislation that arises in connection with the Agreement ("Data Protection Requirements").
- 28.2 Both parties warrant that they will duly observe all their obligations under the Data Protection Requirements. Both parties shall have regard to and take into consideration any codes of practice or other relevant guidance issued under such legislation.
- 28.3 Where the Contractor or any sub-contractor as part of the services under the Agreement processes personal data on behalf of the Contracting Authority it shall:
- (a) act only on instructions from the Contracting Authority, as data controller, in processing the personal data; and
  - (b) comply with the Contracting Authority's instructions in relation to the processing of personal data as such instructions are given and varied from time to time by the Contracting Authority; and
  - (c) at all times take all appropriate technical and organisational measures against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data.
- 28.4 The Contracting Authority may from time to time serve on the Contractor an information notice requiring the Contractor within such time and in such form as is specified in the information notice, to furnish to the Contracting Authority

such information as the Contracting Authority may reasonably require relating to:

(a) compliance by the Contractor or by its sub-contractors with the Contractor's obligations under the Agreement in connection with the processing of personal data; and/or

(b) the rights of data subjects, including but not limited to subject access rights.

28.5 For the purposes of this Clause, "data controller", "data processor", "data subject", "personal data" and "processing" shall have the meanings ascribed to them in the Data Protection Act 1998.

28.6 Where the Contractor or any sub-contractor as part of the services under the Agreement processes personal data as a data controller, the Contractor warrants that it will obtain any personal data fairly and lawfully. Further, the Contractor warrants that it is able to disclose such data to the Contracting Authority and that it has designed the services under the Agreement in such a way to ensure that the use by the Contracting Authority of the personal data obtained in connection with those services shall not breach any provisions of the Data Protection Requirements by reason of the design of those services, provided that the Contractor shall not be responsible for the Contracting Authority's compliance with the Data Protection Requirements where such use by the Contracting Authority is not a usual or acceptable use of such personal data for the purposes envisaged by this Agreement.

28.7 The Contractor shall assist the Contracting Authority at no additional charge in meeting any reasonable requests for information in relation to the Agreement which are made to the Contracting Authority in connection with the Freedom of Information Act 2000 or any statutory modification or re-enactment thereof or any related guidelines or codes of practice. The Contracting Authority may, from time to time, serve on the Contractor an information notice requiring the Contractor within such time and in such form as is specified in the information notice, to furnish to the Contracting Authority such information as the Contracting Authority may reasonably require relating to such requests for information.

28.8 The Contractor acknowledges that in responding to requests for information described in Clause 28.7 the Contracting Authority shall be entitled to provide information relating to the Agreement. The Contracting Authority shall not, in responding to such requests for information, disclose any information which is exempt as described within any provision of Part II of the Freedom of Information Act 2000.

## **29. Law**

29.1 The Agreement shall be considered as an agreement made in England and shall be governed by, and construed in accordance with, the provisions of English Law.