

Data Potentials Terms and Conditions for the Supply of Information, Data and Data Protection Consultancy



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These terms and conditions are based on the Home Office Standard terms and conditions for supply of consultancy services version 1.0 (07/05/2004).

1. DEFINITIONS

- **Authority** means the contracting organisation.
- **Consultant** means the person, firm or company whose name appears as the addressee in the Quotation.
- **Fees** means the price or day rate for the Project given in the Quotation.
- **Key Personnel** means any person named on the Quotation as key personnel or any person who the Authority notifies the Consultant is to be regarded as key personnel for the duration of the Project.
- **Order Number** means the unique number that appears on the Quotation.
- **Parties** means the Authority and the Consultant.
- **Premises** means any land or building where the Project is to be carried out.
- **Project** means the consultancy services described in the Quotation and any associated documentation.
- **Quotation** the Consultant's quotation including fees payable and any terms applying to the Project which are additional to these Terms and Conditions.
- **Proposal** means the Authority's proposal or specification for consultancy services served by the Authority on the Consultant which includes a description of the Project.
- **Terms and Conditions** means these terms and conditions for the supply of consultancy services

2. GENERAL

- 2.1 These Terms and Conditions together with the named parties, relevant Proposal and Quotation (added as schedules to the contract) and any other document, plan or specification referred to in the Quotation constitute the contract between the Parties for the Project ("the Contract").
- 2.2 In the event of any conflict between a clause in these Terms and Conditions and a term of the Quotation, the term of the Quotation shall prevail.
- 2.3 The Contract constitutes the entire agreement between the Parties relating to the Project and replaces all previous negotiations, agreements, understandings and representations whether oral or in writing. However, nothing in the Contract shall limit or exclude any liability for fraud.
- 2.4 Nothing in this Contract shall have the effect of making the Consultant an employee of the Authority.

3. THE PROJECT

- 3.1 The Consultant shall carry out and complete the Project:
- a) in accordance with the Quotation;
 - b) with reasonable skill, care and diligence;

- c) to the reasonable satisfaction of the Authority
- d) (where applicable) using staff or agents with appropriate skills and qualifications.

3.2 The Consultant shall not place or cause to be placed any orders with third parties or otherwise incur any liabilities to third parties in the name of the Authority without the prior written consent of the Authority.

4. TIME OF PERFORMANCE

4.1 The Consultant shall carry out the Project by the date or in accordance with the timescales set out in the Quotation or in accordance with any timescales reasonably notified to the Consultant by the Authority.

4.2 The Consultant shall submit such detailed programmes of work and progress reports as the Authority may from time to time require.

4.3 The Consultant shall notify the Authority immediately if it becomes aware of any event that it believes is likely to delay or impede the Project.

4.4 In the event that the Consultant fails to meet a date or dates set out in the Quotation or comply with the timescales contained in the Quotation it shall, on the request of the Authority, and without prejudice to the Authority's other rights and remedies, arrange to provide all such additional resources as are necessary to fulfil its obligations at no additional cost to the Authority.

5. REJECTION OF PROJECT

5.1 The Authority may at any time reject anything delivered or provided as part of the Project which, in the reasonable view of the Authority, does not comply with the Contract in any material way.

5.2 If the Authority rejects all or part of the Project under Condition 5.1 above, it shall serve a notice on the Consultant stating the reasons for such rejection.

5.3 Following receipt of a notice of rejection of the Services, the Consultant shall have 5 (five) working days (or such other period as the Parties may agree in writing) during which the Consultant shall correct the faults which caused the notice of rejection to be issued.

5.4 Without prejudice to the Authority's other rights under this Contract, if the Consultant fails to correct the faults which caused the notice of rejection to be issued to the reasonable satisfaction of the Authority within 5 (five) working days (or such longer period as the Parties have agreed), the Authority shall be entitled to terminate this Contract.

6. CONSULTANT'S PERSONNEL AND SECURITY

- 6.1 The Consultant shall make Key Personnel available for the purposes of the Project and shall not make any changes in the Key Personnel without the prior written approval of the Authority.
- 6.2 If and when requested by the Authority, the Consultant shall provide the Authority with a list of the names and addresses of any persons being used in the Project or any part of it specifying in each case the capacities in which they are involved and giving such other particulars, evidence of identity and other supporting evidence as the Authority may reasonably require.
- 6.3 The Consultant shall comply with any notice reasonably given by the Authority stating that a person named in the notice is not to be involved any further in the provision of the Project. The Consultant shall bear the cost of complying with such a notice.
- 6.4 Where the Project is being carried out at Premises owned or occupied by the Authority:
- a) the Consultant shall comply and shall ensure that its staff, subcontractors and agents comply with any rules or regulations applied by the Authority in relation to security at its premises.
 - b) if the Authority gives the Consultant notice that any person is not to be admitted to or is to be removed from its land or premises or is not to become involved in or is to be removed from involvement in the Project, the Consultant shall take all reasonable steps to comply with such notice and shall bear the cost of any such notice. The Consultant shall ensure that any person who is removed is replaced by someone of equivalent qualifications and experience.
- 6.5 If the Consultant employs anyone for the purposes of providing the Project, the Consultant shall not unlawfully discriminate within the meaning and scope of the provisions of any act of Parliament relating to discrimination in employment.

7. PAYMENT

- 7.1 In consideration of the carrying out of the Project by the Consultant the Authority shall pay the Consultant the Fees.
- 7.2 The Consultant shall submit an invoice for the Project to the Authority's address for invoices given in the Quotation. This might be based on a monthly payment, end of phase payments or at the end of the Project, depending on the nature and size of the Project. The invoice shall contain the Order Number, a description of the part of the Project to which it refers and the applicable Fees.
- 7.3 The Consultant shall be entitled to be reimbursed its reasonable expenses actually and reasonably incurred in connection with the Project subject to production of such receipts and documentation as the Authority reasonable requires. Expenses shall be reimbursable at the standard civil service rates which the Authority shall provide on request.
- 7.4 The Authority shall pay the Consultant within 30 days of receipt and agreement of invoices, submitted monthly in arrears, for work completed to the satisfaction of the Authority.

7.5 In addition to the Price, the Authority shall pay the Consultant a sum equivalent to any Value Added Tax chargeable in respect of the Project. Value Added Tax shall be shown as a separate item on the Consultant's invoice.

7.6 The Consultant shall be entirely responsible for the payment of all and any income tax, national insurance contributions and any similar liabilities on any Fees earned under this Contract.

7.7 The Contractor shall implement any legislative requirement to account for goods and services in Euro instead of or as well as Sterling at no cost to the Authority. The Authority shall provide all reasonable assistance to facilitate any such requirement

8. RECOVERY OF SUMS DUE

8.1 If any sum is recoverable from or payable by the Consultant under the Contract, that sum may be deducted from any sum then due or which at a later date becomes due to the Consultant under the Contract or under any other agreement with the Authority.

9. AUDIT

9.1 The Consultant shall keep and maintain until two years after the Contract has been completed records to the satisfaction of the Authority of all costs and expenditures connected with the Project which are reimbursable by the Authority. This shall include records of the hours worked and costs incurred by the Consultant and the costs of any employees of the Consultant paid for by the Authority. The Consultant shall on request afford the Authority or any person reasonably specified by the Authority access to those records.

10. INTELLECTUAL PROPERTY

10.1 The intellectual property rights (including the copyright) in any reports, documentation or materials are hereby assigned to and shall vest in the Authority. This condition shall survive the termination of this Contract.

10.2 Save where the Project uses documentation and materials supplied by the Authority, the Consultant warrants that none of the documentation and materials used or created as part of the Project shall infringe any patent, trademark, registered design, copyright or other rights in industrial property of any third party.

10.3 The Consultant shall indemnify the Authority against all actions, demands, charges, expenses and costs (including legal costs on a solicitor and Authority basis) which the Authority may incur as a result of or in connection with any breach of clause 10.2.

11. HEALTH AND SAFETY

11.1 The Consultant shall notify the Authority of any health and safety hazards that may arise in connection with the performance of this Contract.

11.2 Where the project is being carried out at Premises owned or occupied by the Authority, the Authority shall notify the Consultant of any health and safety hazards which may exist or arise at its premises, and which may affect the Consultant. The Consultant shall draw these hazards to the attention of any of its employees, subcontractors or agents who may be affected by them and instruct such persons in connection with any necessary safety measures.

12. CONFIDENTIALITY AND OFFICIAL SECRETS

12.1 The Consultant undertakes to comply and to procure that its employees comply with the provisions of the Official Secrets Acts 1911 to 1989.

12.2 The Consultant undertakes to keep secret and not to disclose and to procure that its employees, sub-contractors and agents keep secret and do not disclose any information of a confidential nature which it has obtained by reason of this Contract. Nothing in this clause applies to information that is already in the public domain or the possession of the Consultant other than by reason of breach of this clause.

12.3 The provisions of this Condition shall survive the termination of this Contract however that occurs.

12.4 The Consultant and any employees, sub-contractors agree to sign non-disclosure agreements provided by the Authority if it is deemed necessary.

13. CONFLICTS OF INTEREST

13.1 The Consultant shall disclose to the Authority any actual or potential conflict of interest arising from the Project as soon as is reasonably practicable after becoming aware of the conflict.

13.2 If the Parties are unable to resolve the conflict to the reasonable satisfaction of the Authority, the Authority shall be entitled to terminate the Contract with immediate effect.

14. INDEMNITY AND INSURANCE

14.1 Without prejudice to any rights or remedies of the Authority the Consultant shall indemnify the Authority against all actions, demands, losses, expenses and costs (including legal costs on a solicitor and client basis) which the Authority may suffer or incur as a result of or in connection with any damage to property or any injury (whether fatal or otherwise) to any person which may result directly or indirectly from any negligence or breach of this Contract by the Consultant.

14.2 The Consultant (if an individual) warrants and represents that they are regarded by both the Inland Revenue and the Department of Works and Pensions as self-employed and accordingly shall indemnify the Authority against any tax, national insurance contributions or similar liability which may arise in relation to this Contract.

14.3 The Consultant warrants that it has in place with a reputable insurance company a policy or policies of insurance relating to all matters that are the subject of indemnities and

undertakings on the part of the Consultant contained in this Contract. In particular, unless the Authority agrees that such insurance is unnecessary the Consultant warrants that the work done in relation to the Project is covered by a policy of professional indemnity insurance. At the request of the Authority the Supplier shall produce the relevant policy of insurance together with evidence of payment of its latest premium.

15. CHANGE CONTROL

- 15.1 This Contract may not be varied or amended unless the variation or amendment is in writing and agreed by both the Authority and the Consultant.
- 15.2 The price of any variation (if applicable) shall be the fair and reasonable price considering the market price available to the Authority for similar work or services.
- 15.3 If any change is agreed to anything included on the Quotation the Authority reserves the right to issue a replacement Quotation. These terms and conditions shall apply to any replacement Quotation in the same way as they apply to the original Quotation.

16. ASSIGNMENT OR SUB-CONTRACTING

- 16.1 The Consultant shall not assign or sub-contract any part of the Project without the written consent of the Authority.
- 16.2 No sub-contracting of this Contract shall in any way relieve the Consultant of its obligations under the Contract.
- 16.3 Where the Consultant enters a sub-contract for the purpose of performing this Contract it shall ensure that the sub-contract has a term requiring the Consultant to pay the sub-contractor within 30 days of receipt of a valid invoice.

17. RIGHTS OF THIRD PARTIES

- 17.1 This Contract shall not create any rights which are enforceable by anyone other than the Parties.

18. TERMINATION

- 18.1 The Consultant shall notify the Authority in writing immediately upon the occurrence of any of the following events:
- a) (where the Consultant is an individual) if a petition is presented for the Consultant's bankruptcy or a criminal bankruptcy order is made against the Consultant, or the Consultant makes any composition or arrangement with or for the benefit of creditors, or makes any conveyance or assignment for the benefit of creditors, or if an administrator is appointed to manage his affairs

b) (where the Consultant is a firm; or a number of persons acting together in any capacity) if any event in (a) of this Condition occurs in respect of any partner in the firm or any of those persons or a petition is presented for the Consultant to be wound up.

18.2 The Authority shall be entitled to terminate this Contract by notice to the Consultant with immediate effect if:

- a). any of the events described in Condition 18.1 occurs; or
- b). the Consultant has committed a material breach of this Contract which is not capable of remedy; or
- c). the Consultant has committed a material breach of this Contract which is capable of remedy but has failed to remedy such breach within thirty days of being required by the Authority in writing to do so; or
- d). (where the Consultant is an individual), if he shall die or be adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Health Act 1983.

18.3 The Authority shall be entitled to terminate this Contract at any time by giving to the Consultant not less than thirty days' notice to that effect.

19. NOTICES

19.1 Any notice or other communication given under or pursuant to this Contract must be given in writing and must be delivered in person or sent by post. Communications must be sent to the address for communications given in the Quotation (which may be altered at any time by the altering Party giving the other Party 15 days notice of a changed address). Communications to the Authority must be sent to the address given for the buyer contact in the Quotation and not to the address for invoices.

19.2 A notice or communication shall be deemed to have been received 2 working days after posting in the case of first-class delivery and 4 working days after posting in the case of second-class delivery unless the receiving party proves otherwise.

20. DISPUTES AND MEDIATION

20.1 Before resorting to litigation, the Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with this Contract.

20.2 If the Parties are unable to resolve the dispute, either party may, at any time, refer the dispute to mediation by a neutral advisor or mediator ("the Mediator").

20.3 If the Parties are unable to agree on a Mediator within 7 days of the request by one party to refer the dispute to mediation, they shall apply to the Centre for Dispute Resolution ("CEDR") to appoint a Mediator.

20.4 The Parties shall seek to agree directions for how the mediation is conducted and, failing agreement, they shall seek directions from the Mediator.

20.5 If the Parties reach agreement on the resolution of their dispute the agreement shall be reduced to writing and shall be binding.

21. GOVERNING LAW

21.1 Unless the Quotation specifies otherwise, this Contract shall be governed by and construed in accordance with the law of England and Wales and shall be subject to the exclusive jurisdiction of the courts of England and Wales.