

General conditions of contract for the provision of services and consultancy

January 2010

1 Definitions

'Services' means the services to be provided as specified in the contract or specification.

'Premises' means the location where the service is to be performed, as detailed in the Contract or Specification.

'Contract' means the Contract between the parties consisting of this document, the Specification and any other documents (or parts thereof) specified in the Contract.

'Specification' means the document setting out the Commission's requirements for the Contract.

2 Commencement and continuation

- 2.1 The Contract shall commence and expire on those dates detailed within the Contract along with any possible extension period (if mentioned).

3 Contractor's obligations

- 3.1 The Contractor shall carry out the Services with reasonable skill, care and diligence in accordance with the Contract.
- 3.2 The Contractor shall make available for the purposes of the project any individuals named in the specification as key personnel. The Contractor shall provide the Commission, with a list of names and addresses of all other regarded by the Contractor as key personnel and, if and when instructed by the Commission, all other persons who may be at any time concerned with the project or any part of it, specifying in each case the capacities in which they are so concerned and giving such other particulars and evidence of identity and other supporting evidence as the Commission may reasonably require. The Commission may at any time by notice to the Contractor designate any person concerned with the project or any part of it as a key person. The Contractor shall not without the prior written approval of the Commission make any changes in the key personnel referred to in this paragraph.
- 3.3 The Contractor shall be solely responsible in every way for its employees, agents, associates and sub-contractors. The Contractor shall take the steps reasonably required by the Commission to prevent unauthorised persons being admitted to the premises. If the Commission gives the Contractor notice that any person is not to be admitted to or is to be removed from the premises or is not to become involved in or is to be removed from involvement in the performance of the Contract, the Contractor shall take all reasonable

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steps to comply with such notice. The Contractor shall bear the most of any notice, instruction or decision to the Commission under this condition.

- 3.4** The Contractor shall not at any time divulge or allow to be divulged to any person information which may come to the Contractors knowledge relating to the Contract or the business or affairs of the Commission. The Contractor shall treat all such information as strictly confidential unless such information is, through no fault of the Contractor already in the public domain. The provisions of this condition will apply for the duration of the Contract and after its termination.
- 3.5** The Contractor shall not assign or sub-contract any duties or obligations arising out of this Contract otherwise than with the prior written consent of the Commission and as expressly permitted under the terms and provisions of the Contract. Sub-contracting any part of the contract shall not relieve the Contractor of any obligation or duty attributable to him under the Contract or these conditions.
- 3.6** Where the Commission has consented to the placing of sub-contracts, the Contractor shall send copies of the sub-contract to the Commission is requested to do so. Where the Contractor enters into a sub-contract with a supplier to Contractor for the purpose of performing the Contract, he shall cause a term to be included in such sub-contract which requires payment to be made to the supplier or Contractor within a specified period not exceeding 30 days from receipt of a valid invoice as defined by the sub-contract requirements.
- 3.7** The Contractor shall not unlawfully discriminate within the meaning and scope of the provisions of the Race Relations Act 1976, Sex Discrimination Act 1975 or the Disability Discrimination Act 1995 or any statutory modification or re-enactment thereof relating to discrimination in employment or the provision of services. The Contractor shall take all reasonable steps to ensure the observance or these provisions by all servants; employees or agents of the Contractor and all sub-contractors employed in the execution of the Contract.
- 3.8** The Contractor shall indemnify and keep indemnified the Commission, its servants, employees, and agents against all loss, damage or liability (whether civil or criminal), claims, demands, costs and expenses incurred by or made against the Commission, its servants, employees, or agents in respect of any loss or damage or personal injury (including death) which arises from any advice given or anything done or omitted to be done under this Contract to the extent that such loss, damage or injury is caused by any act neglect or default or the other wrongful act of the Contractor, his servants or agents.
- 3.9** The Contractor shall maintain at their own cost a comprehensive policy of insurance to cover the liability of the Contractor in respect of any actual default for which it may become liable to indemnify the Commission under this Contract. Where appropriate the Contractor will hold Professional Indemnity Insurance in the sum of £500,000 at least in respect of any one incident, unless this is otherwise agreed in writing by the Commission. The Contractor should provide copies of any insurance certificates to the Commission including professional indemnity, employers' liability and public liability insurance.
- 3.10** The Contractor shall keep and maintain to the satisfaction of the Commission until two years after the contract has been completed accurate books and records in respect of the Services including the expenditures which are reimbursable by the Commission and of the hours worked and costs incurred by the Contractor or in connection with any employees of the Contractor paid for by the Commission on a time charge basis. The Contractor shall on request afford the Commission or his representatives such access to those records as may be required by the Commission in connection with the Contract and provide oral or written explanations and all other reasonable assistance to representatives of, the Commission, the Secretary of State, the European Commission of the European Court of Auditors and the National Audit Office for the purposes only of the examination and certification of the

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Commission's accounts and for the purpose of any examination of the economy, efficiency and effectiveness with which the Commission has used its resources.

- 3.11** The Contractor shall grant access to the Commission, its agents or employees to monitor the performance of the Services under this Contract at any reasonable time.
- 3.12** The Contractor shall take all reasonable measures in the management of health and safety and comply with all relevant health and safety legislation.
- 3.13** The Contractor shall comply fully with all rules and regulations of the Commission in force from time to time especially when on Commission premises.
- 3.14** The Contractor shall comply with any Code of Practice issued by Her Majesty's Government of the Commission from time to time on access to information and shall promptly respond to reasonable requests for information.

4 Commission's obligations

- 4.1** The Commission shall throughout the period of this Contract afford the Contractor such access to the Commission's premises and the Commission's information records and other material relevant to the provision of the Services as the Contractor may require to provide the Services. The Commission shall only be obliged to afford such access as is reasonable and during its normal business hours.
- 4.2** The Commission shall advise the Contractor of all rule and regulations which are then in force for the conduct of the personnel at the Commission's premises and the Contractor shall ensure that its personnel comply with any such rules and regulations.
- 4.3** The Commission shall provide reasonable working conditions and facilities.

5 Quality assurance

- 5.1**
 - a) The Contractor undertakes to the Commission that it has the resources and skills necessary to carry out the obligations pursuant to this Contract.
 - b) The Contractor shall ensure the all activities carried out pursuant to this Contract shall be documented in accordance with the requirements of the Commission and shall provide such documentation to the Commission as the Commission shall request from time to time.
 - c) The Contractor shall regularly evaluate the activities carried out pursuant to this Contract and inform the Commission of the results of such evaluation on a regular basis, as agreed from time to time with the Commission.
- 5.2** The Contractor shall keep in place a system for dealing with any failure to provide the Services at the level and to the standard required by the Commission and shall carry out a review of such system and report the results to the Commission at such times as the Commission shall reasonably require.

6 Payment

- 6.1** In consideration of the Services to be provided by the Contractor, the Commission will make the payments set out in Schedule 2 of the Contract Schedule within 30 days of receipt of Invoices from the Contractor. Invoices will be presented in accordance with the intervals defined in the Schedule.
- 6.2** Payments shall be made on the basis of Invoices presented by the Contractor which shall be accurate in all respects.

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- 6.3** Payment by the Commission shall be without prejudice to any claims or rights which the Commission may have against the Contractor and shall not constitute any admission by the Commission as to the performance by the Contractor of its obligations hereunder. Prior to any such payment, the Commission shall be entitled to make deductions or deferments in respect of any disputes or claims whatsoever with or against the Contract between the Contractor and the Commission.
- 6.4** All sums payable under this Contract unless otherwise stated are exclusive of VAT and other duties or taxes.

7 Prohibited activities

- 7.1** The Contractor shall not offer or give, or agree to give, to any member, employee or representative of the Commission any gift or consideration or any kind as an inducement or reward for doing or refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of this or any other Contract with the Commission or for showing or refraining from showing favour or disfavour to any person in relation to this or any such Contract. The attention of the Contractor is drawn to the Criminal Offences created by the Prevention of Corruption Acts 1889 to 1916.
- 7.2** The Contractor shall not enter into any Contract with any political or religious organisation if the effect of that Contract would be promote a particular political or religious point of view.
- 7.3** The Contractor shall not hold itself out as acting on behalf of the Commission without the Commission's permission.

8 Intellectual property rights

- 8.1** The Contractor agrees to assign to the Commission all right, title and interest in and to Confidential Information made, originated or developed during the course of or otherwise related to the services, together with any other intellectual property rights arising out of the provision of the services and to do everything necessary to effect such as assignment. Confidential information includes all designs, drawings, data, specifications and all other technical business and similar information relating to the Services including all readable or computer or other machine readable data or material and any material relating to or comprising software which may be part of the provision of the Services.
- 8.2** Copyright and right in the nature of copyrights, in the material produced in the performance, and during the currency of this Contract, and in all materials submitted under the terms of this Contract, shall vest in the Commission. Such material shall not be reproduced or disseminated for any other purpose, by the Contractor without the written permission of the Commission.
- 8.3** The provisions of this Condition 8 shall apply during the continuance of this Contract and after its termination howsoever arising.

9 Termination

- 9.1** The Contractor shall notify the Commission in writing immediately upon the occurrence of any of the following events:
- where the Contractor is an individual and if a petition is presented for the Contractor's bankruptcy or a criminal bankruptcy order is made against the Contractor, or it makes any composition or arrangements 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; or
 - where the Contractor is not an individual but a firm; or a number of persons acting together in any capacity; if any event as above or below of this condition occurs in

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respect of any partner in the firm or any of those persons or a petition is presented or the Contractor to be wound up as an unregistered company; or

- where the Contractor is a company, if the company passes a resolution for winding-up or the court makes an administrative order or a winding-up order, or the company makes a composition or management with its creditors, or a 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.

9.2 On the occurrence of any of the events described in paragraph 9 (a), or if the Contractor shall have committed a material breach of this Contract and (if such breach is capable of remedy) shall have failed to remedy such breach within thirty days of being required by the Commission in writing to do so, where the Contractor 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 the Commission shall be entitled to terminate this Contract by notice to the Contractor with immediate effect.

9.3 In addition to the rights or termination under paragraph 9 (b), either party shall be entitled to terminate this Contract by giving to the other not less than 30 days notice to that effect without the need to give a reason for termination.

9.4 Termination under 9 (b) and 9 (c) shall not prejudice or affect any right of action or remedy, which shall have accrued or shall thereupon accrue to the Commission and shall not affect the continued operation of Clause 3 and 8 of this Contract.

9.5 The Contractor shall upon termination of the Contract immediately deliver up to the Commission all correspondence, documents, specification papers and property belonging to the Commission which may be in its possession or under control.

9.6 The Contractor shall upon termination of the Contract comply with all reasonable requests by the Commission to facilitate the handover of services.

10 Force majeure

10.1 Neither party shall be liable for any delay or failure to meet its obligations under this Contract due to any cause outside its reasonable control, including (without limitation), inclement weather, Acts of God, war, riot, malicious acts of damage, civil commotion, strike, lockout, industrial dispute, refusal of licence, power failure or fire. If performance of the service is substantially prevented for a continuous period of 6 months by virtue of any of the aforesaid events, then either party may terminate this Contract by written notice to the other.

11 Data protection

11.1 The parties shall ensure that they at all times comply with the provisions and obligations imposed by the Data Protection Act 1998 and the Data Protection Principles together with any subsequent re-enactment or amendment thereof in storing and processing personal data, and all personal data acquired by either party from the other shall be returned to the disclosing party on request. Both parties hereby acknowledge that performance of a duty imposed by the Act, shall not constitute a breach of any obligation in respect of confidentiality which may not be owed to the other party. The clause shall not affect the Commission's ability to make a search with a credit reference agency.

12 Limitation of liability

12.1 The Commission shall not be liable to the Contractor for any indirect or consequent loss, damage, injury or costs whatsoever which arise out of or are connected with the Commission's adherence or non-adherence to the terms and conditions of this Contract.

13 Public reputation of the parties/press releases

- 13.1** Both parties recognise their respective public reputations and legal responsibilities. Each party shall use all reasonable endeavours not to harm or compromise these.
- 13.2** The text of any press release or other communication to be published on behalf of the Contractor by or in the media concerning the subject matter of this Contract shall require the advance approval of the Commission.

14 Status of contract

- 14.1** Nothing in this Contract shall have the effect of making the Contractor the servant of the Commission. The Contractor (if an individual) represents that they are regarded by both the Inland Revenue and the Department of Social Security as self employed and accordingly shall indemnify the Commission against tax, national insurance contributions or similar impost for which the Commission may be liable in respect of the Contractor by reason of the Contract.

15 TUPE

- 15.1** If requested to do so by the Commission, the Contractor shall, within 20 working days and in writing, fully and accurately disclose to the Commission for the purposes of the Transfer of Undertakings (Protection of Employment) Regulations 2006 (the TUPE Regulations) all information requested by the Commission relating to its employee engaged in providing services under the Contract.
- 15.2** The Contractor shall permit the Commission to use the information for the purposes of the TUPE Regulations and of re-tendering.
- 15.3** The provisions of this Condition shall apply during the continuance of this Contract and indefinitely after its termination.

16 Waiver

- 16.1** No failure or delay on the part of either party hereto to exercise any right or remedy under this Contract shall be construed or operate as a waiver thereof nor shall any single or partial exercise of any right or remedy as the case may be. The rights and remedies provided in this Contract are cumulative and are not exclusive of any rights or remedies provided by law.

17 Notice

- 17.1** Any notice or other document to be given under this Contract shall be in writing and shall be deemed to have been duly given if left at or sent by first class post or express or air mail or other fast postal service; or registered post; or facsimile or other electronic media to a party at the address or relevant telecommunications number from such party or such other address as the party may from time to time designate by written notice to the other(s).
- 17.2** All such notices and documents shall be in the English language. Any notice or other document shall be deemed to have been received by the addressee two working days following the date of despatch of the notice or other document by post or, where the notice or other document is sent by hand or is given by facsimile or other electronic media, simultaneously with the delivery or transmission. To prove the giving of a notice or other document it shall be sufficient to show that it was despatched.

18 Governing/jurisdiction

18.1 This Contract shall be governed by and construed in accordance with English Law and the parties hereby submit to the exclusive jurisdiction of the English Courts.

19 Arbitration

19.1 All disputes, differences of questions between the parties to the Contract with respect to any matter or thing arising out of or relating to the Contract other than a matter or thing as to which the decision of the Commission is under the contract to be final and conclusive, and except to the extent to which special provision for arbitration is made elsewhere in the Contract, shall be referred to the arbitration of two persons one to be appointed by the Commission and one by the Contractor or their Umpire, in accordance with the provisions of the Arbitration Act 1950 or any statutory modification or re-enactment thereof.

20 Third party rights

20.1 None of the terms of this Contract are intended to be enforceable by any third party.

21 Headings

21.1 The headings to Conditions shall not affect their interpretation.

22 Entire contract/amendments

22.1 The Contract shall comprise of this Contract and Schedule 1 – Service Specification; Schedule 2 – Finance Schedule; and Schedule 3 – Special Conditions of the Contract Schedule.

22.2 This Contract constitutes the entire Contract between the parties and shall not be varied except by an instrument in writing signed by the parties.

23 Biodiversity

23.1 Tenderers' attention is drawn to the General Conditions of Contract requiring the Service Provider to take all reasonable steps to minimise and where possible avoid adverse impacts on the environment when performing the contract and to take all reasonable steps to restore, maintain and enhance biodiversity on the Commission's premises or any related thirty party premises.

23.2 In addition to submitting a tender based on the Contract specification drafted by the Commission and included with the tender documentation issued, tenderers are invited to submit variant bids that exceed the minimum environmental criteria set by the contract specification or that offer alternative solutions to meeting the specified outputs.

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Keeping gambling fair and safe for all

For further information or to register your interest in the Commission please visit our website at:
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