

# AGREEMENT TO SUPPLY GOODS OR SERVICES

**Delib Limited**

Correspondence address:

35 King St  
Bristol  
BS1 4DZ  
UK

'the supplier'

undertakes to supply  
goods or services (as  
outlined) below to:

Government of British Columbia

617 Government Street  
Victoria  
British Columbia  
V8V 9V1  
Canada

'the client'

**Date:** 15 November 2011**Job Name / Number:** Advanced Budget Simulator Licence**Delib contact for this job:**

Name: Rowena Farr

Phone #: 0845 638 1848

Email: [rowena@delib.co.uk](mailto:rowena@delib.co.uk)

Responsibility: Account Manager

**Client contact for this job:**

Name: David Hume

Phone #: 01 250 589 9043

Email: [David.Hume@gov.bc.ca](mailto:David.Hume@gov.bc.ca)

Responsibility: Executive Director, Citizen Engagement

**Deliverables & Payment terms**

Advanced Budget Simulator Yearly Licence

4 Days of Customisation Work

YouGov Post Consultation Report

Off-Line Paper Simulator

S21

**Total (ex VAT):****\$ 18,630****Billing schedule:**

100% on commencement

*Errors and Omissions Excepted. This estimate is valid for 30 days from the date indicated above.*

Sign to complete agreement and indicate acceptance of Delib's standard terms of trade.

Signed on behalf of Delib Limited:

Signed for and on behalf of the client:

Print name:

Print name:

Position:

Position:

Date:

Date:

# **STANDARD TERMS AND CONDITIONS FOR SUPPLY OF SERVICES**

**OF**

**Delib**

## **1 INTERPRETATION**

In this document the following words shall have the following meanings::

- 1.1.1 "Agreement" means these Terms and Conditions together with the terms of any applicable Job Agreement Document.
- 1.1.2 "Customer Materials" means all documents, information and materials provided by the Customer which existed prior to the commencement of the relevant contract between the Customer and the Supplier, whether or not containing Intellectual Property Rights belonging to the Customer.
- 1.1.3 "Customer" means the organisation or person who purchases services from the Supplier;
- 1.1.4 "Intellectual Property Rights" means all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world;
- 1.1.5 "Job Agreement" means a document entitled "Job Agreement issued by the Supplier which describes the services to be provided by the Supplier;
- 1.1.6 "Supplier" means Delib Limited (company number 5158056 ), registered in England at 35 King Street, Bristol, BS1 4DZ.
- 1.1.7 a reference to "written" or "writing" includes faxes and emails.
- 1.2 In the event of any conflicts between a Job Agreement and these terms and conditions a Job Agreement shall take precedence.

## **2 GENERAL**

- 2.1 These Terms and Conditions shall apply to all contracts for the supply of services by the Supplier to the Customer, and shall prevail over any inconsistent terms or conditions contained, or referred to, in the Customer's purchase order, confirmation of order, acceptance of a quotation, or Job Agreement or other document supplied by the Customer, or implied by law, trade custom, practice or course of dealing.
- 2.2 Before the commencement of the services the Supplier shall submit to the Customer a Job Agreement which shall specify the services to be performed and the fees payable. The Customer shall notify the Supplier immediately if the Customer does not agree with the contents of the Job Agreement.
- 2.3 Each Job Agreement shall constitute a separate agreement between the Customer and the Supplier on the terms of these Terms and Conditions.
- 2.4 The Supplier shall use its reasonable endeavours to complete the services within estimated time frames but time shall not be of the essence in the performance of any services.

## **3 FEES AND PAYMENT**

- 3.1 The fees for the performance of the services are as set out in the Job Agreement. Unless specified otherwise in the Job Agreement, the Supplier may invoice the Customer for the services at any time after services have been commenced. Where payment has been agreed on completion of the work set out in the Job Agreement, the Supplier shall be entitled to invoice the Customer once the work set out in the Job Agreement has been delivered,
- 3.2 Invoiced amounts shall be due and payable within 30 days of delivery of the invoice.

- 3.3 The Supplier shall be entitled to charge interest on overdue invoices from the date when payment becomes due from day to day until the date of payment at a rate of 8% per annum above the base rate of the Bank of England.
- 3.4 In the event that the Customer's procedures require that an invoice be submitted against a purchase order to payment, the Customer shall be responsible for issuing such purchase order before the services are rendered.
- 3.5 Any prices referred to are exclusive of VAT unless otherwise stated, and the Supplier shall add VAT at the applicable rate.

#### **4 CUSTOMER'S OBLIGATIONS**

- 4.1 To enable the Supplier to perform its obligations under this Agreement the Customer shall:
- 4.1.1 co-operate with the Supplier's reasonable directions and requests;
  - 4.1.2 provide the Supplier with any information reasonably required by the Supplier;
  - 4.1.3 obtain all necessary permissions and consents which may be required before the commencement of the services; and
  - 4.1.4 comply with such other requirements as may be set out in the Job Agreement or otherwise agreed between the parties.
- 4.2 The Customer shall be liable to compensate the Supplier for any expenses incurred by the Supplier as a result of the Customer's failure to comply with Clause 4.1.
- 4.3 Without prejudice to any other rights to which the Supplier may be entitled, in the event that the Customer terminates or cancels the services under a particular Job Agreement pursuant to clause 9.2, or the Supplier terminates pursuant to clause 9.1, the Customer shall pay to the Supplier as agreed damages and not as a penalty:
- 4.3.1 the full amount of any third party costs to which the Supplier has committed (whether such third party cost was noted in the Job Agreement or not); and
  - 4.3.2 the value of any work undertaken by the Supplier up to and including the date of termination by the Customer, calculated on the basis of the Supplier's usual daily rate of <sup>s21</sup> plus VAT. The Supplier shall give the Customer an estimate of such costs if asked by the Customer before notice of termination is served.
- 4.4 The Customer agrees that clause 4.3 represents a genuine pre-estimates of the Supplier's losses in the event of a relevant breach by the Customer.
- 4.5 For the avoidance of doubt, the Customer's failure to comply with any obligations under Clause 4.1 shall be a breach capable of remedy for the purposes of clause 9.1.2 and if the Customer does not remedy the breach within 14 days of notice the Supplier shall be entitled to terminate the services and claim the damages set out in clause 4.3.
- 4.6 In the event that the Customer (or any third party other than a sub-contractor of the Supplier), shall do or fail to do anything (including but not limited to the dependencies limited in the Job Agreement) which prevents or delays the Supplier from undertaking or complying with any of its obligations under this Agreement, then the Supplier shall notify the Customer as soon as possible and:
- 4.6.1 the Supplier shall have no liability in respect of any delay to the completion of any project;
  - 4.6.2 if applicable, the timetable for the project will be modified accordingly;
  - 4.6.3 the Supplier shall notify the Customer at the same time if it intends to make any claim for additional costs, and such notification shall act as a binding amendment to the relevant Job Agreement.

#### **5 ALTERATIONS TO THE JOB AGREEMENT**

- 5.1 The parties may at any time mutually agree upon revisions to a Job Agreement. Any alterations in the scope of services to be provided under this Agreement shall be set out in the Job Agreement which shall reflect the changed services and fees and any other terms agreed between the parties. Anything which is not con-

tained in a Job Agreement or these terms and conditions shall not form part of the agreement between the parties and shall not be binding.

- 5.2 The Customer may at any time request alterations to the Job Agreement by notice in writing to the Supplier. On receipt of the request for alterations the Supplier shall advise the Customer by notice in writing of the effect of such alterations on the fees (if any) and on any other terms already agreed between the parties.
- 5.3 Where the Supplier gives written notice to the Customer agreeing to perform any alterations on terms different to those already agreed between the parties, the Customer shall, advise the Supplier by notice in writing whether or not it wishes the alterations to proceed.
- 5.4 Where the Supplier gives written notice to the Customer agreeing to perform alterations on terms different to those already agreed between the parties, and the Customer confirms in writing that it wishes the alterations to proceed on those terms, the Job Agreement shall be amended to reflect such alterations and thereafter the Supplier shall perform this Agreement upon the basis of such amended Job Agreement.

## **6 WARRANTY**

- 6.1 The Supplier warrants that the services performed under this Agreement shall be performed using reasonable skill and care, and of a quality conforming to generally accepted industry standards and practices.
- 6.2 Without prejudice to Clause 6.1, and except as expressly stated in this Agreement, all warranties whether express or implied, by operation of law or otherwise, are hereby excluded in relation to the services to be provided by the Supplier.
- 6.3 The Supplier warrants to the Customer that, for a period of 30 days after completion of the work listed in the Job Agreement, any of the Supplier's deliverables shall continue to comply with the Job Agreement, and the Supplier shall use its reasonable endeavours to repair any faults, errors or non-compliance at the Supplier's own cost. After such time:
  - 6.3.1 the Supplier shall use its reasonable endeavours to correct the fault, error or non-compliance and the Customer shall pay the Supplier's usual daily rate for the Supplier doing so; and
  - 6.3.2 the Supplier shall have no further liability to the Customer for any faults or errors or the failure of any deliverables to comply with the Job Agreement.

## **7 CUSTOMER MATERIALS**

- 7.1 If the Customer requests the Supplier to use any Customer Materials then the Customer warrants to the Supplier that such Materials do not infringe the Intellectual Property Rights of any third party.
- 7.2 The Customer shall compensate the Supplier on a pound for pound basis against all damages, losses costs (including legal costs) and expenses arising as a result of (i) any action or claim that such Customer Materials infringe any third party's Intellectual Property Rights and (ii) any actions taken by the Supplier to remove of the infringing Materials.

## **8 LIMITATION OF LIABILITY**

- 8.1 Nothing in these terms shall limit the Supplier's liability for death or personal injury due to negligence, or for fraud
- 8.2 Subject to clause 8.1, the entire liability of the Supplier to the Customer in respect of any claim whatsoever or breach of this Agreement, whether or not arising out of negligence, shall be limited to the amount of fees paid by the Customer as set out in the Job Agreement to which the claim relates.
- 8.3 In no event shall the Supplier be liable to the Customer for any loss of business, loss of opportunity or loss of profits or for any other indirect or consequential loss or damage whatsoever. This shall apply even where such a loss was reasonably foreseeable or the Supplier had been made aware of the possibility of the Customer incurring such a loss.
- 8.4 Nothing in these Terms and Conditions shall exclude or limit the Supplier's liability for death or personal injury resulting from the Supplier's negligence or that of its employees, agents or sub-contractors.

## **9 TERMINATION**

- 9.1 Either party may terminate in respect of a particular Job Agreement forthwith by notice in writing to the other if:
- 9.1.1 the other party commits a material breach of this Agreement and, in the case of a breach capable of being remedied, fails to remedy it within 14 calendar days of being given written notice from the other party to do so;
  - 9.1.2 the other party commits a material breach of this Agreement which cannot be remedied under any circumstances;
  - 9.1.3 the other party passes a resolution for winding up (other than for the purpose of solvent amalgamation or reconstruction), or a court of competent jurisdiction makes an order to that effect;
  - 9.1.4 the other party ceases to carry on its business or substantially the whole of its business; or
  - 9.1.5 the other party is declared insolvent, or convenes a meeting of or makes or proposes to make any arrangement or composition with its creditors; or a liquidator, receiver, administrative receiver, manager, trustee or similar officer is appointed over any of its assets.
- 9.2 The Customer may terminate a particular Job Agreement at any time by giving notice to the Supplier, although the payments set out in clause 4.6 will apply.

## **10 INTELLECTUAL PROPERTY RIGHTS**

- 10.1 Unless the Job Agreement provides otherwise, all Intellectual Property Rights produced from or arising as a result of the performance of this Agreement (with the exception of any Customer Materials) shall, so far as not already vested, become the absolute property of the Supplier, and the Customer shall do all that is reasonably necessary to ensure that such rights vest in the Supplier by the execution of appropriate instruments or the making of agreements with third parties.
- 10.2 Except as expressly provided by the Job Agreement or these terms and conditions, nothing shall be construed as granting the Customer any right, title or interest in the Supplier's Intellectual Property Rights, specifically the Supplier's contacts database and seeding technology.
- 10.3 The Customer grants to the Supplier a non-exclusive, worldwide, royalty-free license to use the Customer Materials. If the contract terminates this licence shall automatically terminate, and if the Job Agreement provides for the Supplier's services to end after a certain period, this licence shall end after such period.
- 10.4 As between the Customer and the Supplier, all Intellectual Property Rights shall be owned by the Supplier. The Supplier licenses all such rights in any deliverables to the Customer free of charge and on a non-exclusive, worldwide basis to such extent only as is necessary to enable the Customer to make use of the Services and any deliverables. If the Contract terminates, this licence shall automatically terminate.
- 10.5 Any use by the Customer of any Intellectual Property Rights other than as envisaged by and provided for in the Job Agreement shall not be covered by the licence in clause 10.4.
- 10.6 The Customer acknowledges that, where the Supplier does not own any Pre-existing Materials, the Customer's use of rights in Pre-existing Materials is conditional on the Supplier obtaining a written licence (or sub-licence) from the relevant licensor or licensors on such terms as will entitle the Supplier to license such rights to the Customer.

## **11 FORCE MAJEURE**

Neither party shall be liable for any delay or failure to perform any of its obligations if the delay or failure results from events or circumstances outside its reasonable control, including but not limited to acts of God, strikes, lock outs, accidents, war, fire, the act or omission of government, highway authorities or any telecommunications carrier, operator or administration or other competent authority, or the delay or failure in manufacture, production, or supply by third parties of equipment or services, and the party shall be entitled to a reasonable extension of its obligations after notifying the other party of the nature and extent of such events.

## **12 INDEPENDENT CONTRACTORS**

The Supplier and the Customer are contractors independent of each other, and neither has the authority to bind the other to any third party or act in any way as the representative of the other, unless otherwise expressly agreed to in writing by both parties. The Supplier may, in addition to its own employees, engage sub-

contractors to provide all or part of the services being provided to the Customer and such engagement shall not relieve the Supplier of its obligations under this Agreement.

### **13 ASSIGNMENT**

The Customer shall not be entitled to assign its rights or obligations or delegate its duties under this Agreement without the prior written consent of the Supplier.

### **14 SEVERABILITY**

If any provision of this Agreement is held invalid, illegal or unenforceable for any reason by any Court of competent jurisdiction such provision shall be severed and the remainder of the provisions herein shall continue in full force and effect as if this Agreement had been agreed with the invalid illegal or unenforceable provision eliminated.

### **15 WAIVER**

The failure by either party to enforce at any time or for any period any one or more of the Terms and Conditions herein shall not be a waiver of them or of the right at any time subsequently to enforce all Terms and Conditions of this Agreement.

### **16 NOTICES**

Any notice to be given by either party to the other may be served by email, fax, personal service or by post to the address of the other party given in the Job Agreement or such other address as such party may from time to time have communicated to the other in writing, and if sent by email shall unless the contrary is proved be deemed to be received on the day it was sent, if sent by fax shall be deemed to be served on receipt of an error free transmission report, if given by letter shall be deemed to have been served at the time at which the letter was delivered personally or if sent by post shall be deemed to have been delivered in the ordinary course of post.

### **17 ENTIRE AGREEMENT**

This Agreement contains the entire agreement between the parties relating to the subject matter and supersedes any previous agreements, arrangements, undertakings or proposals, oral or written. Unless expressly provided elsewhere in this Agreement, this Agreement may be varied only by a document signed by both parties.

### **18 NO THIRD PARTIES**

Nothing in this Agreement is intended to, nor shall it confer any rights on a third party.

### **19 CONFIDENTIALITY**

19.1 The Customer shall keep in strict confidence all technical or commercial know-how, Job Agreements, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Customer by the Supplier, its employees, agents, consultants or subcontractors and any other confidential information concerning the Supplier's business or its products which the Customer may obtain.

19.2 The Customer may disclose such information:

19.2.1 to its employees, officers, representatives, advisers, agents or subcontractors who need to know such information for the purposes of carrying out the Customer's obligations under the Contract; and

19.2.2 as may be required by law, court order or any governmental or regulatory authority.

19.3 The Customer shall ensure that its employees, officers, representatives, advisers, agents or subcontractors to whom it discloses such information comply with this condition 19.

19.4 The Customer shall not use any such information for any purpose other than to perform its obligations.

19.5 All materials, equipment and tools, drawings, Job Agreements and data supplied by the Supplier to the Customer (including Pre-existing Materials and the Supplier's Equipment) shall, at all times, be and remain as between the Supplier and the Customer the exclusive property of the Supplier, but shall be held by the Customer in safe custody at its own risk and maintained and kept in good condition by the Customer until returned to the Supplier, and shall not be disposed of or used other than in accordance with the Supplier's written instructions or authorisation.

## **20 GOVERNING LAW AND JURISDICTION**

This Agreement shall be governed by and construed in accordance with the law of England and Wales and the parties hereby submit to the exclusive jurisdiction of the English courts.



# DIRECT AWARD JUSTIFICATION AND PRE-APPROVAL REQUEST

CLIFF #: s

## FORM USAGE AND ROUTING:

This form must be completed by the contract manager to clearly document the justification for direct awarding a service contract and ensures compliance with government contract policy. Unless the contract is an emergency, this form must be completed and pre-approved prior to any discussions with or commitment to the vendor. Pre-approval is required by the expense authority, program assistant deputy minister and if \$25,000 or greater, the ministry executive financial officer. The original completed and signed form must be retained in the program contract file. Send completed form(s) to [FSAHELP](#) for routing and approval processing

## CONTRACT INFORMATION

Ministry: Finance

Program: CAMSS - Ministry Initiative

Contract Manager Name and Phone #: Brian Savage - Manager Governance and Strategy - Phone Number - (250)387-7888

Legal Contractor Name: DELIB LIMITED

Contract Value: \$20,000

Term: Nov 18/11-Mar 30/12

STOB: 6330

Contract Type: ☒ New ☐ Multi-year ☐ Renewal

### Commonly Used Contract STOBs:

**6001/02** - Operational - Fees/expenses for contracts that provide for a direct provision of goods or services in the delivery of government programs (e.g., project mgmt.).

**6003/04** - Regulatory - Fees/expenses for contracts that provide for a direct provision of goods or services required by statute or regulation.

**6020/21** - Education and Training - Fees/expenses for contracts that deliver training to government employees.

**6101/02** - Advisory - Fees/expenses for contracts with the provision of advisory services to the ministry (e.g., management consulting).

**6302** - Data Operations Non-WTS - Fees/expenses for contracts that provide for a direct provision of IT related goods/services in the delivery of government programs (e.g., data processing, operating lease rentals).

**6309/10** - Data Consulting Non-WTS - Fees/expenses for consulting contracts related to information systems.

## RATIONALE FOR ALL DIRECT AWARD CONTRACTS

1. Describe the services required and provide an explanation of why you need to acquire these services.

Delib will provide development, testing and hosting services for an on-line buget simulator to support the minister's budget consultation process.

In addition, Delib will provide budget simulator reporting services.

Delib is a recognized leader in buget simulation. The ministry analysis determined that Delib is in the best postion to meet the needs of the ministry.

2. What is the financial or other impact if this direct award is not approved and a competitive process is required?

There would be a significant delay to the budget consultation process or the process would have to go ahead without the benefit of this technology.

3. Under which Core Policy and Procedures Manual exception is this direct award request being made (see section 6.3.3)?

☐ Public Sector Organization

☐ Emergency

☒ Sole Source

☐ Confidentiality

☐ Sole Source - Notice of Intent

☐ No Exceptions Apply - \$25,000 or Greater

☐ Security, Order, etc.

☐ No Exceptions Apply - Less than \$25,000

4. Explain the reasons why this contract meets the criteria of the above selection (i.e., how would a competitive process compromise government confidentiality, cause economic disaster or be contrary to the public interest)?

Delib was the only service provider that was able to deliver an off-the-shelf product within the timelines of this project. The timeline from the identification of the need to the delivery date of the solution was not long enough for a competitive procurement process.

5. Has your program used these services in the past? If yes, who was the vendor and was the opportunity competitively bid or direct awarded? Provide the most recent date and contract value.

No

6. Will this purchase obligate government to this vendor for future purchases (e.g., maintenance, licensing or continuing need)? If yes, provide details.

No

7. Were alternative vendors evaluated? If yes, who were they and why were they unacceptable? If no, why were alternatives not evaluated?

The timelines did not allow for an exhaustive evalation of other venedors.

## ADDITIONAL RATIONALE FOR SOLE SOURCE CONTRACTS ONLY

1. Why is the requested vendor the only one that can meet your requirements? Provide specific, quantifiable factors and/or qualifications and explain why they are necessary.

Delib was the only service provider that was able to deliver an off-the-shelf product within the timelines of this project.

2. What other suppliers did you consider before arriving at the conclusion that the sole source direct award criteria was met and the requested vendor was the only one that met your needs?

Research indicated no other vendors could meet the service needs and requirements.

## PRE-APPROVALS

FIN 2012 00011

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A R T 4	Exp. Auth. Name: Philip Twyford	ADM Name: Deborah Fayad	**EFO Name:
	Signature & Date	Signature & Date	Signature & Date
	**EFO sign-off is only required if the contract is \$25,000 or greater.		

FIN FSA 052 REV APRIL 2009 This form is available on the FSA web site at <http://www.min.fin.gov.bc.ca/CAMSS/FSA/index.html>.