

# NHS GREATER GLASGOW AND CLYDE

## CONDITIONS OF CONTRACT FOR CONSULTANCY SERVICES

(other than Works Consultancies)

### 1. DEFINITIONS

In these Conditions (unless the context otherwise requires):

'Client' means NHS GG&C;

'Confidential Information' means all and any (i) information relating to the identity, condition or medical history of any patient or which otherwise constitutes sensitive personal information and (ii) information the disclosure of which would or would be likely to substantially prejudice the commercial interests of any person including trade secrets;

'Consultant' means the person, firm or company to whom the Contract is issued;

'Contract' means the contract between the Client and the Consultant consisting of the Purchase Order, these Conditions and any other documents (or parts thereof) specified in the Purchase Order;

'Intellectual Property Rights' means copyright, patents, trademarks, design rights (either registered or unregistered), database rights, proprietary information rights and all other similar proprietary rights as may exist anywhere in the world, any applications for protection or registration of these rights and all revisals and extensions thereof throughout the world;

'Premises' means the location where the Services are to be performed, as specified in the Purchase Order;

'Price' means the fees and expenses payable by the Client to the Consultant as further described in Clause 5.

'Purchase Order' means the document setting out the Client's requirements for the Contract.

'Services' means the services to be provided by the Consultant as specified in the Purchase Order.

### 2. THE PROJECT

2.1 The Consultant shall complete the Services with reasonable skill, care and diligence in accordance with the Contract and in compliance with all relevant laws and guidance.

2.2 The Consultant shall provide the Client with such reports of his work on the Services at such intervals in such form as the Client may from time to time require.

2.3 The Client agrees to provide the Consultant with such assistance as the Consultant may reasonably require in connection with the provision of the Services, including where required, access to the Client's Premises.

### 3. CONSULTANT'S PERSONNEL

3.1 The Consultant shall make available for the performance of the Services any individuals named on the Purchase Order as key personnel. The Consultant shall provide the Client with a list of the names and addresses of all others regarded by the Consultant as key personnel and, if and when instructed by the Client, all other persons who may at any time be concerned with the Services or any part thereof, 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 Client may reasonably require. The Client may at any time by notice to the Consultant designate any person concerned with the Services or any part thereof as a key person. The Consultant shall not without the prior written approval of the Client make any changes in the key personnel referred to in this paragraph.

3.2 The Consultant shall take the steps reasonably required by the Client, to prevent unauthorised persons being admitted to the Premises. If the Client gives the Consultant 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 Services, the Consultant shall take all reasonable steps to comply with such notice.

3.3 The decision of the Client as to whether any person is 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 Services or as to the designation or approval of key personnel and as to whether the Consultant has furnished the information or taken the steps required of him by this Clause shall be final and conclusive.

3.4 The Consultant shall bear the cost of any notice, instruction or decision of the Client under this Clause.

### 4. CHANGE TO CONTRACT REQUIREMENTS

4.1 The Client may order any variation to any part of the Services that for any other reason shall in its opinion be desirable. Any such variation may include (but shall not be restricted to)

additions, omissions, alterations, substitutions to the Services and changes in quality, form, character, kind, timing, method or sequence of the Services.

- 4.2 Save as otherwise provided herein, no variation of the Services as provided for in Clause 4.1 hereof shall be valid unless given or confirmed in the form of an order given by the Client. All such orders shall be given in writing provided that if for any reason the Client shall find it necessary to give any such order orally in the first instance the Contractor shall comply with such oral order which must be confirmed in writing by the Client within 2 working days of the giving of such oral order by the Client, failing which the variation made by such oral order shall cease to have effect on the expiry of the said 2 working day period.
- 4.3 Where any such variation of the Services made in accordance with Clauses 4.1 and 4.2 has affected or may affect the costs incurred by the Consultant in providing the Services, the Consultant will notify the Client in writing of the effect which it has had or may have on the said costs and such notification shall be considered by the Client, who shall take all of the facts into account (including such information as may be provided by the Consultant in respect of the effect which such variation has had or may have on the costs incurred by the Consultant in providing the service) and may authorise such alteration to the Price to be paid to the Consultant in accordance with the provisions of the Contract as are, in his opinion, appropriate and reasonable in the circumstances.

## **5. FEES AND EXPENSES**

- 5.1 In consideration of the performance of the Services the Client shall pay to the Consultant the Price at the rates specified in the Purchase Order.
- 5.2 The Consultant shall be entitled to be reimbursed by the Client only for expenses reasonably and properly incurred by him in the performance of the Services, subject to production of such evidence thereof as the Client may reasonably require.
- 5.3 Unless otherwise stated in the Contract, payment will be made within 30 days of receipt and agreement of invoices, submitted monthly in arrears, for work completed to the satisfaction of the Client.
- 5.4 Value Added Tax, where applicable, shall be shown separately on all invoices as a strictly net extra charge.
- 5.5 Notwithstanding Clause 16 of the Contract the Consultant may assign to another person (an "assignee") the right to receive payment of the

Price or any part thereof due to the Consultant under the Contract subject to (i) deduction of sums in respect of which the Client exercises its right of recovery under Clause 15 of the Contract and (ii) all the related rights of the Client under the Contract in relation to the recovery of sums due but unpaid. The Consultant shall notify or procure that any assignee notifies the Client of any variations to the arrangements for payment of the Price or for handling invoices, in each case in good time to enable the Client to redirect payments or invoices accordingly. In the absence of such notification the Client shall be under no obligation to vary its arrangements for payment of the Price or for handling invoices.

## **6. AUDIT**

The Consultant shall keep and maintain until 2 years after the Contract has been completed records to the satisfaction of the Client of all expenditures which are reimbursable by the Client and of the hours worked and costs incurred by the Consultant or in connection with any employees of the Consultant paid for by the Client on a time charge basis. The Consultant shall on request afford the Client or his representatives such access to those records as may be required by the Client in connection with the Contract.

## **7. CORRUPT GIFTS OR PAYMENTS**

The Consultant shall not offer or give or agree to give, to any member, employee or representative of the Client any gift or consideration of 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 Client 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 Consultant is drawn to the criminal offences created by the Prevention of Corruption Acts 1889 to 1916.

## **8. PATENTS, INFORMATION AND COPYRIGHT**

- 8.1 It shall be a condition of the Contract that, except to the extent that the Services incorporate designs furnished by the Client, that nothing done by the Consultant in the performance of the Services shall infringe any Intellectual Property Rights of any third party and the Consultant shall **indemnify** the Client against all actions, claims, demands, costs and expenses which the Client may suffer or incur as a result of or in connection with any breach of this Clause 8.1.
- 8.2 All Intellectual Property Rights in any reports, documents, specifications, instructions, plans, drawings, patents, models, or designs audio or visual media whether in writing or on magnetic or other media or held electronically:

- (a) furnished to or made available to the Consultant by the Client shall remain vested in the Client.
- (b) prepared by or for the Consultant for use, or intended use, in relation to the performance of the Contract are hereby assigned to and shall vest in the Client absolutely, and (without prejudice to Clause 11.2) the Consultant shall not and shall procure that his servants and agents shall not (except to the extent necessary for the implementation of the Contract) without the prior written consent of the Client use or disclose any such reports, documents, specifications, instructions, plans, drawings, patents, models, designs or other material as aforesaid or any other information (whether or not relevant to the Contract) which the Consultant may obtain pursuant to or by reason of the Contract, except information which is in the public domain otherwise than by reason of a breach of this provision, and in particular (but without prejudice to the generality of the foregoing) the Consultant shall not refer to the Client or the contract in any advertisement without the Client's prior written consent.

8.3 The Consultant shall do all such things and acts and sign all such documents reasonably necessary in the opinion of my Client to confirm or vest in the Client the Intellectual Property Rights assigned or otherwise transferred to the Board under the Contract.

#### **9. INDEMNITIES AND INSURANCE**

- 9.1 The Consultant shall **indemnify** and keep **indemnified** the Client, its servants and agents against all actions, claims, demands, costs and expenses incurred by or made against the Client,, its servants 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 the Contract to the extent that such loss, damage or injury is caused by the negligence or other wrongful act of the Consultant, his servants or agents.
- 9.2 The Consultant (if an individual) represents that he is regarded by both the Inland Revenue and the Department of Social Security as self-employed and accordingly shall indemnify the Client against any tax, national insurance contributions or similar impost for which the Client may be liable in respect of the Consultant by reason of the Contract.
- 9.3 The Consultant shall effect with a reputable insurance company or companies acceptable to the Client a policy or policies of insurance covering all the matters which are the subject of the indemnities and undertakings on the part of the Consultant contained in the Contract in the sum of £2 million at least in respect of any one

incident and unlimited in total, unless otherwise agreed by the Client in writing.

9.4 If requested, a certificate evidencing the existence of such policies shall be provided by the Consultant to the Client.

#### **10. DISCRIMINATION**

The Consultant shall not unlawfully discriminate either directly or indirectly on such grounds as race, colour, ethnic or national origin, disability, sex or sexual orientation, religion or belief, or age and without prejudice to the generality of the foregoing the Consultant shall not unlawfully discriminate within the meaning and scope of the Sex Discrimination Act 1975, the Race Relations Act 1976, the Equal Pay Act 1970, the Disability Discrimination Act 1995, the Employment Equality (Sexual Orientation) Regulations 2003, the Employment Equality (Religion or Belief) Regulations 2003, the Employment Equality (Age) Regulations 2006, the Equality Act 2006, the Equality Act (Sexual Orientation) Regulations 2007, the Human Rights Act 1998 or other relevant or equivalent legislation, or any statutory modification or re-enactment thereof. The Consultant shall take all reasonable steps to secure the observance of this Clause by all employees and representatives of the Consultant.

#### **11. CONFIDENTIALITY AND FREEDOM OF INFORMATION**

11.1 The Consultant warrants and undertakes that:-

- (a) it and its personnel shall only use Confidential Information for the purpose of performing the Services;
- (b) it and its personnel shall not reveal; any Confidential Information to a third party without prior written consent of the Client; and
- (c) it shall take all necessary precautions to ensure that all Confidential Information is treated as confidential and not revealed (save as aforesaid) or used other than for the purposes of the performance of the Services.

11.2 The Client shall treat as confidential all Confidential Information obtained from the Consultant and shall not, subject to Clause 11.3(b), disclose to any third party without the prior written consent of the Consultant any Confidential Information obtained from the Consultant.

11.3 The provisions of Clauses 11.1 and 11.2 shall not apply to any information which:-

- (a) is or becomes public knowledge other than by breach of this Clause 11;

- (b) is in the possession of the receiving party without restriction in relation to disclosure before the date of receipt from the disclosing party;
- (c) is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;
- (d) is required to be disclosed by law.

11.4 Nothing in this Clause 11 shall be deemed or construed to prevent the Client from disclosing any Confidential Information obtained from the Consultant:

- (a) to any department of her Majesty's Government, provided that the Client has required that such information is treated as confidential by such department; and
- (b) to any consultant, contractor or other person engaged by the Client provided that they shall have obtained from the consultant, contractor or other person a signed confidentiality undertaking on substantially the same terms as are contained in this Clause 11.

11.5 No term of the Contract, whether express or implied (including this Clause 11), shall preclude the Client from making public under the Freedom of Information (Scotland) Act 2002 and/or any codes applicable from time to time relating to access to public authorities' information, details of all matters relating to the Contract unless (i) such details constitute a trade secret; (ii) the disclosure of such details would or would be likely to prejudice substantially the commercial interests of any person (including but not limited to the Consultant or the Client; or (iii) such details fall within such terms of the said Act; provided that the Client will take all reasonable steps to consult with the Consultant prior making such information public.

11.6 The Consultant and the Client agree to ensure that they will at all times comply with the provisions and obligations imposed by the Data Protection Act 1998 (as amended) and the Data Protection Principles set out in that Act in storing and processing personal data, and all personal data acquired by either party from the other will be returned to the disclosing party on request. Both parties agree to indemnify each other in respect of any authorised disclosure of personal data.

## **12. ALCOHOL AND DRUGS**

12.1 The consumption of alcohol or the use of illicit drugs is not permitted on any of the purchasers premises by supplier personnel.

12.2 Supplier personnel must be free from the effects of alcohol and illicit drugs while performing any duties required by this contract.

12.3 Should any supplier personnel suspected to be in breach of these conditions the purchaser reserves the right to require the employee to be temporarily suspended from the delivery of the service whilst this is being investigated and subsequently permanently be suspended should the breach be proven.

## **13. TERMINATION**

13.1 The Consultant shall notify the Client in writing immediately upon the occurrence of any of the following events:

- (a) where the Consultant is an individual and if a petition is presented for the Consultant's bankruptcy or the sequestration of his estate or a criminal bankruptcy order is made against the Consultant, or he makes any composition or arrangement with or for the benefit of creditors, or makes any conveyance or assignation for the benefit of creditors, or if an administrator or trustee is appointed to manage his affairs; or
- (b) where the Consultant is not an individual but is a firm, or a number of persons acting together in any capacity, if any event in (a) or (c) of this Clause 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 as an unregistered company; or
- (c) where the Consultant is a company, if the company passes a resolution for winding-up or the court makes an administration order or a winding-up order, or the company makes a composition or arrangement with its creditors, or an administrator, 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.

13.2 On the occurrence of any of the events described in Clause 13.1, or if the Consultant shall have committed a material breach of the Contract and (if such breach is capable of remedy) shall have failed to remedy such breach within 7 days of being required by the Client in writing to do so, or, where the Consultant is an individual, if he shall die or be adjudged incapable of managing his affairs within the meaning of Schedule 7 Mental Capability Act 2005 the Mental Health Act 1983 or of Part 5 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (both as amended) , the Client shall be entitled to terminate the Contract by notice to the Consultant with immediate effect.

13.3 In addition to his rights of termination under Clause 13.2, the Client shall be entitled to terminate the Contract by giving to the Consultant not less than 7 days' written notice to that effect. In the event of such termination, the Consultant shall, if required to do so by the

Client, prepare and submit to the Client a report on the work done prior to the termination and making such recommendations as may be based on the work done prior to termination.

13.4 On the breach of clause 12.1 or 12.2 the purchase reserves the right to terminate the contract with immediate effect.

#### **14. RETURN OF DOCUMENTS**

14.1 The Consultant will return to the Client promptly upon the termination of the Contract any document, paper, material or information supplied by or obtained from the Client in connection with the Contract, or extracted from such documents, papers, materials or information.

14.2 Where the Contract has been terminated pursuant to Clause 13.3, the Consultant may retain any documents papers, materials or information which shall be required by him to prepare any report required under that paragraph. Promptly upon submission of the report to the Client, the Consultant will return any documents, papers, materials or information which he may have retained in terms of this paragraph.

#### **15. RECOVERY OF SUMS DUE**

Wherever under the Contract any sum of money is recoverable from or payable by the Consultant, that sum may be deducted from any sum then due or which at any later time may become due, to the Consultant under the Contract or under any other agreement or contract with the Client.

#### **16. ASSIGNATION AND SUB-CONTRACTING**

16.1 The Consultant shall not assign or sub-contract any portion of the Contract without the prior written consent of the Client. Sub-contracting any part of the Contract shall not relieve the Consultant of any obligation or duty attributable to him under the Contract or these conditions.

16.2 Where the Client has consented to the placing of sub-contracts, copies of each sub-contract shall be sent by the Consultant to the Client immediately it is issued.

16.3 Where the Consultant enters a sub-contract with a Consultant or contractor for the purpose of performing the Services, he shall cause a term to be included in such sub-contract which requires payment to be made to the Consultant or contractor within a specified period not exceeding 30 days from receipt of a valid invoice as defined by the sub-contract requirements.

#### **17. NOTICES**

Any notice given under or pursuant to the Contract may be sent by hand or by post or by registered post or by the recorded delivery service or transmitted and if so sent or transmitted to the address of the party shown on the Purchase Order, or to such other address as the party may by notice to the other have substituted therefor, shall be deemed effectively given on the day when in the ordinary course of the means of transmission it would first be received by the addressee in normal business hours.

#### **18. STATUS OF CONTRACT**

Nothing in the Contract is intended to or shall authorise either party to act as an agent for the other.

#### **19. GENERAL**

19.1 If any provision of the Contract is held to be invalid or unenforceable by any court of competent jurisdiction, the parties shall promptly seek to substitute such provision with an alternative valid and/or enforceable provision which seeks to replicate, so far as is possible, the legal, financial and economic effect of the Contract as if the invalid or unenforceable provision were valid and/or enforceable. In the absence of any such agreement, either party may, on reasonable notice, terminate the Contract.

19.2 The waiver of or acquiescence by any party to any terms or provision of the Contract or the failure of any party to insist upon strict compliance with any warranty, representation, term, or condition of the Contract, shall not constitute a waiver of any subsequent default or failure, whether similar or dissimilar.

19.3 The Contract and the documents referred to in it contain the entire agreement between the parties in relation to its subject matter and save in respect of any fraudulent misrepresentation by either party supersedes all prior representations by either party supersedes all prior representations, agreements arrangements and understandings relating to its subject matter between the parties, whether written or oral.

19.4 The Contract may only be amended by the agreement, in writing of both parties.

19.5 Termination of the Contract shall be without prejudice to the rights and obligations of the parties that have accrued prior to termination. The provisions of Clauses 1, 5, 7, 8, 9, 11, 14, 15, 19 and 20 shall survive termination of the Contract.

19.6 Where possible, all written communication to The Board must be on double-sided print.

19.7 The supplier shall comply with The Environmental Protection Act 1990, The Control of

Pollution (Amendment) Act 1989, The Waste Management Licensing Regulations 1994 (as amended) and The Controlled Waste (Registration of Carriers and Seizure of Vehicles) Regulations 1991 (or any other equivalent legislation giving effect in any part of the European Economic Area to the Directive on Waste 75/442/EEC).

## **20. GOVERNING LAW**

These Conditions shall be governed by and construed in accordance with Scottish law and the parties hereby irrevocably submit to the exclusive jurisdiction of the Scottish courts.

### **SUPPLEMENTARY NOTICE**

#### **LATE PAYMENT OF INVOICES**

Suppliers to NHS GG&C are requested to address complaints regarding late payment of invoices to, in the first instance, the addressee of the invoice and, in the second instance to the relevant commodities manager. This procedure is suggested as the best practical way of ensuring problems of late payment are resolved, and is not intended to interfere with Suppliers' legal rights.

**THIS NOTICE DOES NOT FORM PART OF THE CONDITIONS OF CONTRACT**