

**NATIONAL GALLERIES OF SCOTLAND
NGS
CONDITIONS OF CONTRACT FOR CONSULTANCY SERVICES
(other than Works Consultancies)**

National Galleries of Scotland is a charity registered in Scotland (No. SC003728).

These Conditions may only be varied with the written agreement of the Client. No terms or conditions put forward at any time by the Consultant shall form any part of the Contract unless specifically agreed in writing by the Client.

1.0 CONDITIONS

In these Conditions:

“Board” means The Board of Trustees for the National Galleries of Scotland (Scottish Charity Number SC003728) established under the National Galleries of Scotland Act 1906 (as amended by the National Heritage (Scotland) Act 1985) having their Administrative Office at The Scottish National Gallery of Modern Art Two, Seventy Three Belford Road, Edinburgh, EH4 3DS, United Kingdom (“the Client”);

“Contract” means the contract between the Client and the Consultant consisting of the Purchase Order, these Conditions, any Schedules annexed and other documents including any tender document and acceptance thereof, Contract Award Letter, Specification (or parts thereof) specified in the Purchase Order;

“Contract Price” means the sum to be paid by the Client to the Contractor calculated in accordance with the fees and expenses detailed under in the Purchase Order;

“Client” means whichever of the Board or NGS trading is described on the Purchase Order in question as the contracting party;

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

“Data Controller”, “Data Processor”, “Data Subject” and “Data Subject Access Request” have the meanings given in the Data Protection Laws;

“Data Protection Laws” means any law, statute, subordinate legislation regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body which relates to the protection of individuals with regard to the processing of Personal Data to which a Party is subject including the Data Protection Act 1998 and any statutory modification or re-enactment thereof and the GDPR;

“GDPR” means the General Data Protection Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC;

“Intellectual Property Rights” means all copyright, patent, trademark, design right, database right and any other right in the nature of intellectual property whether or not registered, in any materials or works in whatever form (including but not limited to any materials stored in or made available by means

of an information technology system and the computer software relating thereto) which are created, produced or developed as part of the Services by or on behalf of the Consultant;

“NGS Trading” means the trading company called NGS Trading Limited (company number SC312797) which the Board has granted certain rights for the purposes of carrying out certain trading activities;

“NGS” means whichever of the Board or NGS Trading is described on the Purchase Order in question as the contracting party;

“Personal Data” has the meaning given in the Data Protection Laws;

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

“Processing” has the meaning given in the Data Protection Laws and cognate expressions shall be construed accordingly;

“Project” means the services to be provided as specified in the Purchase Order;

“Purchase Order” means the document setting out the Client’s requirements for the Contract;

“Supervisory Authority” has the meaning given in the Data Protection Laws; and

“Written notice” includes e-mail and letter but excludes faxes.

2.0 THE PROJECT

- 2.1 The Consultant shall complete the Project with reasonable skill, care and diligence in accordance with the Contract.
- 2.2 The Consultant shall begin performing the Project on the date stated in the Purchase Order and shall complete the Project by the date stated in the Purchase Order or continue to perform them for the period stated in the Purchase Order (whichever is applicable). Time is of the essence of the Contract.
- 2.3 The Consultant shall provide the Client with such reports of their work on the Project at such intervals in such form as the Client may from time to time require.
- 2.4 The Client reserves the right by notice to the Consultant to modify the Client’s requirements in relation to the Project. Any alteration to the Contract fee arising by reason of such modification shall be agreed between the parties in accordance with Condition 5. Any alteration to the completion date arising by reason of such modification shall be agreed between the parties and failing agreement, the matter shall be determined in accordance with the provisions of Condition 25 (Dispute Resolution).

3.0 CONSULTANT’S PERSONNEL

- 3.1 The Consultant shall make available for the purposes of the Project and 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 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 Client may reasonably require. The Client may at any time by notice to the Consultant designate any person concerned with the Project or any part of it 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 Project, the Consultant shall take all reasonable steps to comply with such notice.
- 3.3 The decision of the Client shall be final and conclusive 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 Project 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 the Consultant by this Condition.
- 3.4 The Consultant shall bear the cost of any notice, instruction or decision of the Client under this Condition.

4.0 SECURITY AND ACCESS TO THE CLIENT'S PREMISES

- 4.1 Any access to, or occupation of, the Client's premises which the Client may grant the Consultant from time to time is on a non-exclusive license basis free of charge. The Consultant must use the Client's premises solely for the purpose of performing its obligations under the Contract and must limit access to the Client's premises to such individuals as are necessary for that purpose.
- 4.2 The Consultant must comply with the Client's policies concerning Baseline Personnel Security Standard checks and such modifications to those policies or replacement policies as are notified to the Consultant from time to time
- 4.3 The Consultant must notify the Client of any matter or other change in circumstances which might adversely affect future Baseline Personnel Security Standard clearance.
- 4.4 At the Client's written request, the Consultant must provide a list of the names and addresses of all persons who may require admission to the Client's premises in connection with the Contract, specifying the capacities in which they are concerned with the Contract and giving such other particulars as the Client may reasonably request.
- 4.5 The Consultant must ensure that any individual Consultant Representative entering the Client's premises has completed the process for obtaining Baseline Personnel Security Standard clearance. The Consultant acknowledges that the Client has the right to deny entry to any individual that has not completed the process for obtaining Baseline Personnel Security Standard clearance.
- 4.6 In accordance with the Client's policies concerning visitor access, entry to the Client's premises may be granted to individual Consultant Representatives for the purposes of meetings, notwithstanding that the process for obtaining Baseline Personnel Security Standard clearance has not commenced or completed.
- 4.7 The Client may, by notice to the Consultant, refuse to admit onto, or withdraw permission to remain on, the Client's premises any Consultant Representative whose admission or continued presence would, in the opinion of the Client acting reasonably, be undesirable.

- 4.8 The Client must provide advice and assistance acting reasonably to the Consultant to facilitate the Consultant's compliance with this Condition.
- 4.9 All decisions of the Client under this Condition are final and conclusive.
- 4.10 Breach of this Condition by the Consultant is a material breach for the purposes of condition 18.2 (Termination).

In this Condition 4, the following terms have the meanings given to them below:

'Baseline Personnel Security Standard' means the pre-employment controls for all civil servants, members of the Armed Forces, temporary staff and government contractors generally.

'Consultant Representatives' means all persons engaged by the Consultant in the Performance of its obligations under the Contract Including:

- its employees, workers, interns, volunteers and invitees (including persons employed by a third party but working for and under the control of the Consultant);
- its agents, consultants and carriers; and
- and sub-contractors of the Consultant (whether approved under Condition 21 (Assignment and Sub-Contracting) or otherwise).

5.0 CHANGE TO CONTRACT REQUIREMENTS

- 5.1 The Client may from time to time order any variation to any part of the Contract that for any other reason shall in the Client's opinion be desirable on giving the Consultant a minimum of 7 days' notice. Any such variations may include (but shall not be restricted to) additions, omissions, reductions, alterations, substitutions to the Project and changes in quality, quantity, form, character, kind, timing, method or sequence of the Project.
- 5.2 Save as otherwise provided herein, no variation of the Project as provided for in Condition 5.1 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. The Consultant shall, when carrying out such variations, be bound by the Contract.
- 5.3 If the Consultant considers that any directions given under Conditions 5.1 and 5.2 above vary the Project and/or will then or later justify a change to the Contract Price, the Consultant shall promptly notify the Client giving details thereof.
- 5.4 Any adjustment to the Contract Price shall be determined in accordance with the fees or expenses specified in the Purchase Order (if applicable). If the Purchase Order shall not contain such fees or expenses, then reasonable rates/prices/expenses shall be agreed by the parties and the Consultant shall provide whatever supporting evidence the Client may reasonably require, to enable such reasonable rates/prices to be determined.

5.5 If: -

5.5.1 Following receipt of notice under Conditions 5.1 and 5.2 the Client does not agree that its directions vary the Project or will reduce or increase the Contract Price, or

5.5.2 Reasonable fees or expenses are not agreed between Client and the Consultant under Condition 5.4,

The Client shall determine the Scope and fees or expenses and notify the Consultant in writing of its reasons. Notwithstanding such disagreement the Consultant shall, unless otherwise notified by the Client, carry out such variations.

5.6 The Consultant shall on receipt of notice from the Client suspend with immediate effect the whole of the Project or any part thereof and shall take all measures necessary to protect and secure the same. Following such suspension any additional fees or expenses shall be notified to the Client by the Consultant together with substantiation thereof to the satisfaction of the Client. If, in the opinion of the Client, such fees or expenses are reasonably and necessarily incurred by the Consultant, such suspension shall be treated as a variation in accordance with Condition 5. The Consultant shall use its best endeavours to mitigate the financial and other effects of such suspension.

5.7 Notwithstanding Condition 5.6, no additional fees or expenses shall be payable by the Client if the suspension arises as a result of any act, omission, default or negligence on the part of the Consultant.

5.8 The Client may at any time by written notice to the Consultant authorise resumption of all or any part of the suspended Project and the Consultant shall, on being given such notice, promptly resume performance of the Project or part thereof in accordance with the terms of such notice.

6.0 FEES AND EXPENSES

6.1 The Client shall pay to the Consultant fees and expenses at the rate specified in the Purchase Order.

6.2 The Consultant shall be entitled to be reimbursed by the Client only for expenses reasonably and properly incurred by the Consultant in the performance of the duties hereunder, subject to production of such evidence thereof as the Client may reasonably require.

In this Condition 6, 'invoice' includes an electronic invoice meeting all the requirements set out in regulation 70A of the Public Contracts (Scotland) Regulations 2015 or regulation 44A of the Concession Contracts (Scotland) Regulations 2016.

6.3 Value Added Tax, where applicable, shall be shown separately on all invoices as a strictly net extra charge.

6.4 Notwithstanding Condition 21 (Assignment and sub-contracting) of this Contract the Consultant may assign to another person (an "assignee") the right to receive payment of the fees or expenses or any part thereof due to the Consultant under this Contract subject to (i) deduction of sums in respect of which the Client exercises its right of recovery under Condition 20 (Recovery of Sums Due) of this Contract and (ii) all the related rights of the Client under this 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 fees and expenses 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 the Client's arrangements for payment of the fees or expenses or for handling invoices.

7.0 AUDIT

- 7.1 The Consultant shall keep and maintain until 5 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 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 the Client's representatives such access to those records as may be required by the Client in connection with the Contract.
- 7.2 The provisions of this Clause 7 shall apply during the continuance of this Contract and after its termination howsoever arising.

8.0 CORRUPT GIFTS OR PAYMENTS

- 8.1 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 Bribery Act 2010.
- 8.2 The Consultant acknowledges that any breach of this clause would constitute a material breach of contract for which the Client would be entitled to terminate this Contract with immediate effect.

9.0 INTELLECTUAL PROPERTY RIGHTS

- 9.1 All Intellectual Property Rights in any material including but not limited to reports, guidance, specification, instructions, toolkits, plans, data, drawing, databases, patents, patterns, models, designs which are created or developed by the Consultant on behalf of the Client for use, or intended use, in relation to the performance by the Consultant of its obligations under the Contract are hereby assigned to and shall vest in the Client absolutely.
- 9.2 Except as may expressly be provided for in the Contract, neither party acquires any interest in or license to use the other party's Intellectual Property Rights owned or developed prior to or independently of the Contract.
- 9.3 The Consultant must not infringe any Intellectual Property Rights of any third party in carrying out the project or otherwise performing its obligations under the Contract. The Consultant shall indemnify the Board and NGS Trading (as appropriate) and the Board and NGS Trading's agents, servants, consultants, contractors, sub-contractors, volunteers or invitees against all actions, claims, demands, losses, charges, costs and expenses which the Board and NGS Trading or the Board and NGS Trading's agents, servants, consultants, contractors, sub-contractors, volunteers or invitees may suffer or incur as a result of or in connection with any breach of this Condition 9.3 by the Consultant or any of the Consultant's agents, servants, consultants, contractors, sub-contractors, or invitees.
- 9.4 The provisions of this Condition 9 shall apply during the continuance of this Contract and after its termination howsoever arising.

10.0 INDEMNITY AND INSURANCE

- 10.1 The Consultant shall indemnify and keep indemnified the Board and NGS Trading (as appropriate), its servants, agents, volunteers, interns, consultants, contractors, sub-contractors and invitees against all actions, claims, demands, costs and expenses incurred by or made against the Board and NGS Trading, its servants agents, volunteers, consultants. Contractors, sub-contractors and invitees in respect of any loss or damage (including but not limited to any damage to any properties owned by or leased to the Board, any damage to art works owned by the Board and/or any damage to art works lent to the Board from third parties) 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 the negligence or other wrongful act of the Consultant, or the Consultant's servants or agents consultants, contractors, sub-contractors or invitees.
- 10.2 The Client shall indemnify the Consultant in respect of all claims, proceedings, actions, damages, fines, costs, expenses or other liabilities which may arise out of, or in consequence of, a breach of the Data Protection Laws where the breach is the direct result of the Consultant acting in accordance with the Client's specific written instructions. This indemnity provision shall not apply if the Consultant:
- (a) acts on the Client's specific written instructions but fails to notify the Client in accordance with Condition 28.12(c) (Data Protection) of this Contract;
 - (b) fails to comply with any other obligation under the Contract.
- 10.3 The Consultant (if an individual) represents that the Consultant is regarded by both the Inland Revenue and the Department of Social Security as self-employed and accordingly shall indemnify the Board and NGS Trading (as appropriate) against any tax, national insurance contributions or similar impost for which the Board and NGS Trading (as appropriate) may be liable in respect of the Consultant by reason of this Contract.
- 10.4 The Consultant shall effect with an 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 this Contract in the sum of £5million at least, in respect of any one incident and unlimited in total, unless otherwise agreed in writing.
- 10.5 If requested by the Client the Consultant shall produce to the Client the relevant policy or policies together with receipts or other evidence of payment of premiums, including the latest premium due thereunder.

11.0 DISCRIMINATION

- 11.1 The Consultant must not unlawfully discriminate against any person within the meaning of the Equality Act 2010 in its activities relating to the Contract or any other contract with the Client.
- 11.2 The Consultant acknowledges that any breach of this clause would constitute a material breach of contract for which the Client would be entitled to terminate this Contract with immediate effect.

12.0 BLACKLISTING

- 12.1 The Consultant must not commit any breach of the Employment Relations Act 1999 (Blacklists) Regulations 2010 or section 137 of the Trade Union and Labour Relations (Consolidation) Act 1992

or commit any breach of the Data Protection Laws by unlawfully processing personal data in connection with any blacklisting activities.

- 12.2 The Consultant acknowledges that any breach of this clause would constitute a material breach of contract for which the Client would be entitled to terminate this Contract with immediate effect.

13.0 OFFICIAL SECRETS ACTS, CONFIDENTIALITY AND ACCESS TO GOVERNMENT INFORMATION

- 13.1 The Consultant undertakes to abide and procure that the Consultant's employees abide by the provisions of the Official Secrets Acts 1911 to 1989.

- 13.2 The Consultants shall keep secret and not disclose and shall procure that the Consultant's employees keep secret and do not disclose any information of a confidential nature obtained by the Consultant by reason of the Contract except information which is in the public domain otherwise than by reason of a breach of this provision.

- 13.3 All information related to the Contract with the Consultant will be treated as commercial in confidence by the parties except that:

- (a) The Consultant may disclose any information as required by law or judicial order to be disclosed.
- (b) The Client may disclose any information as required by law or judicial order to be disclosed. Further, the Client may disclose all information obtained by the Client by virtue of the Contract to the Scottish or United Kingdom Parliament or any other department, office or agency of Her Majesty's Government in Scotland or the United Kingdom, and their servants or agents. When disclosing such information to either the Scottish Parliament or the United Kingdom Parliament it is recognised and agreed by both parties that the Client shall, if the Client sees fit, disclose such information but is unable to impose any restrictions upon the information that the Client provides to Members of the Scottish Parliament, (MSPs) or Members of the United Kingdom Parliament (MPs). Such disclosure shall not be treated as a breach of this Contract.

- 13.4 The provisions of this Condition 13 shall apply during the continuance of the Contract and after its termination howsoever arising.

- 13.5 The Parties acknowledge that, except for any Information which is exempt from disclosure in accordance with the provisions of the FOISA, the content of the Contract is not confidential information and the Consultant hereby gives its consent for the Client to publish the Contract in its entirety to the general public (but with any Information that is exempt from disclosure in accordance with the FOISA redacted) including any changes to the Contract agreed from time to time.

- 13.6 The Consultant acknowledges that any breach of this clause would constitute a material breach of contract for which the Client would be entitled to terminate this Contract with immediate effect.

14.0 OFFENCES

- 14.1 The Consultant must not commit or attempt to commit any offence:

- 14.1.1 under the Bribery Act 2010;
- 14.1.2 under the Modern Slavery Act 2015
- 14.1.3 under the Human Trafficking and Exploitation (Scotland) Act 2015;

- 14.1.4 of fraud, uttering or embezzlement at common law; or
 - 14.1.5 of any kind referred to in regulation 58(1) of the Public Contracts (Scotland) Regulations 2015
- 14.2 The Consultant acknowledges that any breach of this clause would constitute a material breach of contract for which the Client would be entitled to terminate this Contract with immediate effect.

15.0 FREEDOM OF INFORMATION ACT (SCOTLAND) ACT 2002

- 15.1 The Consultant acknowledges that the Board and/or NGS Trading (as appropriate) are subject to the requirements of FOISA and the Environmental Information Regulations and undertakes to assist and cooperate with the Board and NGS Trading (as appropriate) to enable them to comply with FOISA and the Environmental Information Regulations.
- 15.2 If the Consultant receives a Request for Information the Consultant must promptly respond to the applicant. Where the Request for Information appears to be directed to information held by the Board and/or NGS Trading (as appropriate), the Consultant must promptly inform the applicant in writing that the Request for Information can be directed to the Board and/or NGS Trading (as appropriate).
- 15.3 Where the Board and/or NGS Trading (as appropriate) receives a Request for Information concerning this Contract (including the Consultant Sensitive Information), the Board and NGS Trading (as appropriate) is responsible for determining at its absolute discretion whether information requested is to be disclosed to the applicant or whether the information requested is exempt from disclosure in accordance with FOISA or the Environmental Information Regulations.
- 15.4 The Consultant acknowledges that the Board and/or NGS Trading (as appropriate) may, acting in accordance with the Code of Practice on the Discharge of Functions of Public Authorities issued under section 60 of FOISA and regulation 18 of the Environmental Information Regulations (as may be issued and revised from time to time), be obliged under FOISA or the Environmental Information Regulations to disclose information requested concerning the Consultant or this Contract (including the Consultant Sensitive Information):
- 15.4.1 in certain circumstances without consulting the Consultant, or
 - 15.4.2 following consultation with the Consultant and having taken its views into account.
- 15.5 Where clause 15.4.1 applies the Board and/or NGS Trading (as appropriate) must take reasonable steps, where practicable, to give the Consultant advance notice of the fact of disclosure or, failing that, draw the fact of disclosure to the attention of the Consultant after such disclosure.
- 15.6 Where a Request for Information concerns Consultant Sensitive Information (having regard to the justifications and durations set out there), the Board and/or NGS Trading (as appropriate) must take reasonable steps, where practicable, to consult with the Consultant before disclosing it pursuant to a Request for Information but (notwithstanding any other provision in this Contract) the Board and/or NGS Trading (as appropriate) shall be responsible for determining in its absolute discretion whether any Consultant Sensitive Information and/or any other information is exempt from disclosure in accordance with the FOISA and/or the Environmental Information Regulations.

16.0 TAX EVASION AND TAX ARRANGEMENTS

- 16.1 The Parties represent, warrant and undertake to each other that:

- 16.1.1 neither it nor any other group companies have been the subject of legal proceedings or regulatory action relating to tax evasion or the facilitation of Tax Evasion (as defined in the Criminal Finances Act 2017);
- 16.1.2 Neither it nor any other group companies shall commit Tax Evasion nor undertake any activities which would facilitate any associated person (as defined in the Criminal Finances Act 2017) committing Tax Evasion, in undertaking its obligations under this Agreement.
- 16.2 Where the Consultant is liable to be taxed in the UK in respect of consideration received under this Contract, it shall at all times comply with the Income Tax (Earnings and Pensions) Act 2003 (ITEPA) and all other statutes and regulations relating to income tax in respect of that consideration.
- 16.3 Where the Consultant is liable to National Insurance Contributions (NICs) in respect of consideration received under this Contract, it shall at all times comply with the Social Security Contributions and Benefits Act 1992 (SSCBA) and all other statutes and regulations.
- 16.4 The Client may, at any time during the Contract, request the Consultant to provide information which demonstrates how the Service Provider complies with sub-clauses 16.2 and 16.3 above or why those clauses do not apply at all.
- 16.5 Where the Consultant enters into any Sub-contract, the Consultant must ensure that a provision is included which is in the same terms as this clause 16.
- 16.6 The Consultant shall indemnify the Client against any income tax, national insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with the provision of the services by the Consultant.
- 16.7 The Consultant acknowledges that any breach of this clause would constitute a material breach of contract for which the Client would be entitled to terminate this Contract with immediate effect.

17.0 MODERN SLAVERY ACT 2015

- 17.1 In performing its obligations under the Agreement, the Consultant shall:
 - 17.1.1 comply with all applicable anti-slavery and human trafficking laws, statues, regulations and codes from time to time in force including but not limited to the Modern Slavery Act 2015 and the Human Trafficking and Exploitation (Scotland) Act 2015;
 - 17.1.2 have and maintain throughout the term of this agreement its own policies and procedures to ensure its compliance;
 - 17.1.3 not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4, of the Modern Slavery Act 2015 or the Human Trafficking and Exploitation (Scotland) Act 2015, if such activity, practice or conduct were carried out in the UK;
 - 17.1.4 Include in its contracts with its subcontractors and Consultants antislavery and human trafficking provisions that are at least as onerous as those set out in this Clause 17 to ensure compliance with the Modern Slavery Act 2015 and the Human Trafficking and Exploitation (Scotland) Act 2015.

- 17.2 The Consultant acknowledges that any breach of this clause would constitute a material breach of contract for which the Client would be entitled to terminate this Contract with immediate effect.

18.0 TERMINATION

- 18.1 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 the Consultant's estate or a criminal bankruptcy order is made against the Consultant, or the Consultant is apparently insolvent, or 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 or trustee is appointed to manage the Consultant's 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 Condition occurs in respect of the firm or 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 of dissolution (otherwise than for the purposes of and followed by an amalgamation or reconstruction) 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;
- (d) where the Consultant's financial position deteriorates to such an extent that in the Client's opinion the Consultant's capability to adequately fulfil its obligations under this contract has been placed in jeopardy.

- 18.2 On the occurrence of any of the events described in condition 18.1 or, if the Consultant 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 7 days of being required by the Client in writing to do so or, where the Consultant is an individual, if the Consultant shall die or be adjudged incapable of managing his or her affairs within the meaning of the Adults with Incapacity (Scotland) Act 2000 or the Mental Health (Care and Treatment) (Scotland) Act 2003, the Client shall be entitled to terminate this Contract by notice to the Consultant with immediate effect.

- 18.3 The Client may terminate the Contract in the event:

- (a) the Contract has been subject to substantial modification which would have required a new procurement procedure in accordance with regulation 72(9) (modification of contracts during their term) of The Public Contracts (Scotland) Regulations 2015;
- (b) the Consultant has, at the time of contract award, been in one of the situations referred to in regulation 58(1) (exclusion grounds) of The Public Contracts (Scotland) Regulations 2015, including as a result of the application of regulation 58(2) of those regulations, and should therefore have been excluded from the procurement procedure; or
- (c) the Contract should not have been awarded to the Consultant in view of a serious infringement of the obligations under the Treaties and the Directive 2014/24/EU that

has been declared by the Court of Justice of the European Union in a procedure under Article 258 of the Treaty on the Functioning of the European Union.

In this Condition, 'the Treaties' has the meaning given in the European Communities Act 1972.

- (d) of a failure by the Consultant to comply in the performance of the Contract with legal obligations in the fields of environmental, social and employment law or in the event of illegal conduct of a Consultant for example, where the Consultant shall act or act in concert with any person who has been convicted of any crime of theft, fraud, tax evasion, bribery or other dishonest act or offences against children or vulnerable people; or
- (e) of other detrimental conduct by the Consultant where the Client considers in its sole discretion that the Consultant's behaviour risks bringing either the Board and/or NGS Trading (as appropriate) into disrepute or causing any detriment to the Board's standing as a charity and as a non-departmental public body.

18.4 In addition to the rights of termination under Condition 18.2 and 18.3, the Client shall be entitled to terminate this Contract by giving to the Consultant not less than 7 days' 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 termination.

18.5 Termination under condition 18.2, 18.3 or 18.4 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereupon accrue to the Client and shall not affect the continued operation of Conditions 7 (Audit), 9 (Intellectual Property Rights), 10 (Indemnity & Insurance), 13 (Official Secrets Acts etc.), 15 (Freedom of Information), 19 (Return of Documents), 22 (Notices), 25 (Dispute Resolution), 27 (Governing Law), 28 (Data Protection), 29 (Entire Agreement), 31 (Cyber Security), 33 (Board & NGS Trading) and 34 (Safeguarding).

19.0 RETURN OF DOCUMENTS

19.1 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 or any Government Department in connection with the Contract, or extracted from such documents, papers, materials or information.

19.2 If the Contract has been terminated pursuant to Condition 18.5, the Consultant may retain any documents papers, materials or information which shall be required by the Consultant 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 the Consultant may have retained in terms of this paragraph.

20.0 RECOVERY OF SUMS DUE

20.1 Wherever under this 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.

21.0 ASSIGNATION AND SUB-CONTRACTING

21.1 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 the Consultant under the Contract or these Conditions.

21.2 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.

21.3 Where the Client enters into a sub-contract must ensure that a provision is included which:

21.3.1 requires payment to be made of all sums due by the Consultant to the sub-contractor within a specified period not exceeding 30 days from the receipt of a valid invoice as defined by the sub-contract requirements and provides that, where the Client has made payment to the Consultant in respect of the Project and the sub-contractor's invoice relates to such Project then, to that extent, the invoice must be treated as valid and, provided the Consultant is not exercising a right of retention or set-off in respect of a breach of contract by the subcontractor or in respect of a sum otherwise due by the sub-contractor to the Consultant, payment must be made to the sub-contractor without deduction;

21.3.2 notifies the sub-contractor that the sub-contract forms part of a larger contract for the benefit of the Client and that should the subcontractor have any difficulty in securing the timely payment of an invoice, that matter may be referred by the sub-contractor to the Client; and

21.3.3 in the same terms as that set out in this Condition 21.3 (including for the avoidance of doubt this Condition 21.3.3) subject only to modification to refer to the correct designation of the equivalent party as the Consultant and sub-contractor as the case may be.

21.4 The Consultant shall also include in every sub-contract:

21.4.1 a right for the Consultant to terminate that sub-contract if the relevant sub-contractor fails to comply in the performance of its contract with legal obligations in the fields of environmental, social or employment law commits or attempts to commit any offence under the Bribery Act 2010; under the Modern Slavery Act 2015, the Human Trafficking and Exploitation (Scotland) Act 2015; fraud, uttering or embezzlement at common law; or any kind referred to in regulation 58(1) of the Public Contracts (Scotland) Regulations 2015 or if any of the termination events (involving substantial modification of the Contract, contract award despite the existence of exclusion grounds or a serious infringement of EU legal obligations) specified in Condition 21.3 occur; and

21.4.2 a requirement that the sub-contractor includes a provision having the same effect as 21.4.1 in any sub-contract which it awards.

In this Condition 21.4, 'sub-contract' means a contract between two or more Consultants, at any stage of remoteness from the Client in a sub-contracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Contract.

21.5 The Consultant acknowledges that any breach of this clause would constitute a material breach of contract for which the Client would be entitled to terminate this Contract with immediate effect.

22.0 NOTICES

- 22.1 Any notice or other communication given under or pursuant to the Contract shall be:
- 22.1.1 given in writing; and
 - 22.1.2 sent by letter (delivered by hand, first class post, first class prepaid recorded delivery post or special delivery) or e-mail to the address (including a valid e-mail 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.
- 22.2 Provided the relevant notice or communication is not returned or rejected as undelivered, the notice or communication is deemed to have been given:
- 22.2.1 2 Working Days after the day on which the letter was posted; or
 - 22.2.2 4 Working Hours, in the case of e-mail.

23.0 STATUS OF CONTRACT

- 23.1 Nothing in the Contract shall have the effect of making the Consultant the servant of the Client.

24.0 COMPLIANCE WITH THE LAW ETC.

In carrying out the Project and otherwise when performing the Contract, the Consultant must comply in all respects with:

- 24.1 all applicable law;
- 24.2 any applicable requirements of regulatory bodies; and
- 24.3 Good Industry Practice.

In this Condition, 'Good Industry Practice' means standards, practices, methods and procedures conforming to legal and regulatory requirements and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking as the Consultant under the same or similar circumstances.

- 24.4 The Consultant acknowledges that any breach of this clause would constitute a material breach of contract for which the Client would be entitled to terminate this Contract with immediate effect.

25.0 DISPUTE RESOLUTION

- 25.1 The parties must attempt in good faith to resolve any dispute between them arising out of or in connection with the Contract. In the event that a party considers there to be a dispute between it and the other party, the parties will agree, upon written request, to meet in good faith at least twice in order to resolve the dispute. Such meeting may be conducted in person, by videoconference or by telephone. Failure to reach a satisfactory resolution after such efforts will be considered a "Deadlock".
- 25.2 In the event of Deadlock arising in respect of a particular matter, the matter will be referred to an authorised representative of each party (or equivalent) (a "Representative") to meet in good faith

to discuss and use best endeavours to reach resolution on the Deadlock within 30 days of the Deadlock arising. Such meeting may be conducted in person, by video- conference or by telephone.

- 25.3 If the relevant Representatives cannot reach resolution in respect of the Deadlock within those 30 days, no party may commence any court proceedings in relation to any Deadlock arising out of this Agreement without first giving the other party a minimum of 14 days' notice of its intention to commence court proceedings.
- 25.4 The deadlock procedure set out in this clause shall not apply to the termination rights set out in Clause 18.

26.0 HEADINGS

- 26.1 The headings to Conditions shall not affect their interpretation.

27.0 GOVERNING LAW

- 27.1 These Conditions shall be governed by and construed in accordance with Scots law and the Consultant hereby irrevocably submits to the jurisdiction of the Scottish courts. The submission to such jurisdiction shall not (and shall not be construed so as to) limit the right of the Board and NGS Trading to take proceedings against the Consultant in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdiction, whether concurrently or not.

28.0 DATA PROTECTION

- 28.1 The Consultant acknowledges that Personal Data described in the scope of the Schedule (Data Protection) will be Processed in connection with the Project under this Contract. For the purposes of any such Processing, Parties agree that the terms of this Condition 28 will apply where the Consultant acts as the Data Processor and the Client acts as the Data Controller.
- 28.2 Both Parties agree to negotiate in good faith any such amendments to this Contract that may be required to ensure that both Parties meet all their obligations under Data Protection Laws. The provisions of this Condition 28 are without prejudice to any obligations and duties imposed directly on the Consultant under the Data Protection Laws and the Consultant hereby agrees to comply with those obligations and duties.
- 28.3 The Consultant will, in conjunction with the Client and in its own right and in respect of the Project, make all necessary preparations to ensure it will be compliant with the Data Protection Laws.
- 28.4 The Consultant will provide the Client with the contact details of its data protection officer or other designated individual with responsibility for data protection and privacy to act as the point of contact for the purpose of observing its obligations under the Data Protection Laws.
- 28.5 The Consultant must:
- 28.5.1 process Personal Data only as necessary in accordance with obligations under the Contract and any written instructions given by the Client (which may be specific or of a general nature), including with regard to transfers of Personal Data outside the European Economic Area unless required to do so by European Union or Member state law or Regulatory Body to which the Consultant is subject; in which case the Consultant must, unless prohibited by that law, inform the Client of that legal requirement before processing unless prohibited by that law the Personal Data only to the extent, and in

such manner as is necessary for the performance of the Consultant's obligations under this Contract or as is required by the Law;

- 28.5.2 subject to Condition 28.5.1 only process or otherwise transfer any Personal Data in or to any country outside the European Economic Area with the Client's prior written consent;
- 28.5.3 take all reasonable steps to ensure the reliability and integrity of any Consultant Personnel who have access to the Personal Data and ensure that the Consultant Personnel:
- (a) are aware of and comply with the Consultant's duties under this Condition;
 - (b) are subject to appropriate confidentiality undertakings with the Consultant or the relevant Sub-contractor;
 - (c) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Client or as otherwise permitted by this Contract; and
 - (d) have undergone adequate training in the use, care, protection and handling of Personal Data.
- 28.5.4 implement appropriate technical and organisational in accordance with Article 32 of the GDPR to protect Personal Data against unauthorised or unlawful Processing and against accidental loss, destruction, damage, alteration or disclosure, such measures being appropriate to the harm which might result from any unauthorised or unlawful Processing accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected.
- 28.6 The Consultant shall not engage a sub-contractor to carry out Processing in connection with the Project without prior specific or general written authorisation from the Client. In the case of general written authorisation, the Consultant must inform the Client of any intended changes concerning the addition or replacement of any other sub-contractor and give the Client an opportunity to object to such changes.
- 28.7 If the Consultant engages a sub-contractor for carrying out Processing activities on behalf of the Client, the Consultant must ensure that same data protection obligations as set out in this Contract are imposed on the sub-contractor by way of a written and legally binding contract, in particular providing sufficient guarantees to implement appropriate technical and organisational measures. The Consultant shall remain fully liable to the Client for the performance of the sub-contractor's performance of the obligations.
- 28.8 The Consultant must provide to the Client reasonable assistance including by such technical and organisational measures as may be appropriate in complying with Articles 12-23 of the GDPR.
- 28.9 The Consultant must notify the Client if it:
- (a) receives a Data Subject Access Request (or purported Data Subject Access Request);
 - (b) receives a request to rectify, block or erase any Personal Data;

- (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Laws;
- (d) receives any communication from the Supervisory Authority or any other regulatory authority in connection with Personal Data processed under this Contract; or
- (e) receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by law or regulatory order; and

such notification must take place as soon as is possible but in any event within 3 business days of receipt of the request or any other period as agreed in writing with the Client from time to time.

28.10 Taking into account the nature of the Processing and the information available, the Consultant must assist the Client in complying with the Consultant's obligations concerning the security of personal data, reporting requirements for data breaches, data protection impact assessments and prior consultations in accordance with Articles 32 to 36 of the GDPR. These obligations include:

- (a) ensuring an appropriate level of protection through technical and organisational measures that take into account the circumstances and purposes of the processing as well as the projected probability and severity of a possible infringement of the law as a result of security vulnerabilities and that enable an immediate detection of relevant infringement events;
- (b) notifying a Personal Data breach to the Client without undue delay and in any event no later than 24 hours after becoming aware of a Personal Data breach;
- (c) assisting the Client with communication of a personal data breach to a Data Subject;
- (d) supporting the Client with preparation of a data protection impact assessment;
- (e) supporting the Client with regard to prior consultation of the Supervisory Authority.

28.11 At the end of the Contract in relation to any processing carried out by the Consultant in respect of the Project, the Consultant must, on written instruction of the Client, delete or return to the Client all Personal Data and delete existing copies unless EU or Member State law requires storage of the Personal Data.

28.12 The Consultant must:

- (a) provide such information as is necessary to enable the Client to satisfy itself of the Consultant's compliance with this Condition 28;
- (b) allow the Client, its employees, auditors, authorised agents or advisers reasonable access to any relevant premises, during normal business hours, to inspect the procedures, measures and records referred to in this Condition 28 and contribute as is reasonable to those audits and inspections;

- (c) inform the Client if, in its opinion, an instruction from the Client infringes any obligation under the Data Protection Laws.

- 28.13 The Consultant must maintain written records including in electronic form, of all Processing activities carried out in performance of the Contract or otherwise on behalf of the Client. Such records must contain the information set out in Article 30(2) of the GDPR and may be kept in electronic format.
- 28.14 If requested, the Consultant must make such records referred to Condition 28.13 available to the Supervisory Authority on request and co-operate with the Supervisory Authority in the performance of its tasks.
- 28.14 Parties acknowledge that the inspecting party will use reasonable endeavours to carry out any audit or inspection under Condition 28.14 with minimum disruption to the Consultant's day to day business.

29.0 ENTIRE AGREEMENT

- 29.1 This Contract and any contract award letter, all invitation to tender documentation, tender response and, purchase order/s contains the entire agreement of the parties with respect to the subject matter of this Contract and supersedes all prior agreements and arrangements (whether written or oral) in relation to such subject matter between the parties and is not intended to benefit or be enforceable by anyone else and no person who is not a party shall have any rights to enforce any term of this Agreement under the Contract (Third Party Rights) (Scotland) Act 2017 provided that regardless of which of the Board and NGS Trading is the Client for the purpose of the Purchase Order, either the Board or NGS Trading shall be entitled to enforce against the Consultant any provision of the Purchase Order and of this Contract that purports to confer any benefit on it.

30.0 SEVERABILITY

- 30.1 If any of the provisions of this Contract are judged to be illegal or unenforceable, the continuation in full force and effect of the remainder of them will not be prejudiced.

31.0 CYBER SECURITY

- 31.1 The Consultant shall as a minimum have a valid Cyber Essentials Scheme Basic Certificate in place throughout the duration of this Contract. The Client may at any time ask the Consultant for a copy of the Certificate.
- 31.2 The Consultant shall use throughout the duration of this Contract the latest versions of anti-virus definitions and software available from an industry accepted anti-virus software vendor (unless otherwise agreed in writing between the Parties) to check for, contain the spread of, and minimise the impact of Malicious Software in relation to the Client's System, the Consultant's System and/or the Consultant's Solution.
- 31.3 Notwithstanding clause 31.2, if Malicious Software is found, the Parties shall co-operate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of Data, assist each other to restore the Services to their desired operating efficiency.
- 31.4 Where the Malicious Software originates from the Consultant's Software, the Third Party Software supplied by the Consultant or the Data (whilst the Data was under the control of the Consultant) unless the Consultant can demonstrate that such Malicious Software was present and not

quarantined or otherwise identified by the Client when provided to the Consultant, the Consultant shall be responsible for any cost arising out of the actions of the Parties taken in compliance with the provisions of clause 31.3.

- 31.5 The Consultant acknowledges that any breach of this clause would constitute a material breach of contract for which the Client would be entitled to terminate this Contract with immediate effect.

32.0 ENVIRONMENTAL POLICY

- 32.1 The Consultant is expected to take environmental concerns into consideration throughout the whole project. The Consultant shall in the performance of this Contract have due regard to the Board's Sustainability and Environmental Management Policy, a copy of which is attached and in addition, shall assist the Board and/or NGS Trading (as appropriate) in meeting Scottish Government targets associated with the Climate Change Act.

33.0 THE BOARD AND NGS TRADING

- 33.1 The Consultant acknowledges that the Board sometimes retains staff and provides services through its trading company, NGS Trading and vice versa. The obligations of NGS under this Agreement may therefore be satisfied through either the Board or NGS Trading and the Consultant accepts that both the Board and NGS Trading shall have the same rights against the Consultant under this Contract.
- 33.2 Notwithstanding any subcontracting of the obligations of the Board to NGS Trading (or vice versa) whichever of the Board and NGS Trading is the NGS/Client for the purposes of the Purchase Order shall remain liable to the Consultant for all acts or omissions of the other as if they were their acts or omissions.

34.0 SAFEGUARDING

- 34.1 The Consultant warrants that it has adopted and will enforce an appropriate safeguarding policy and will make it available to the Client on request.
- 34.2 The Consultant shall comply with the Client's safeguarding policies and procedures, to protect children and vulnerable adults and if required, ensuring that relevant Consultant Personnel undertake training and Baseline Personnel Security Standard checks before being permitted access to the Client's Site. The Consultant shall bear the costs of all required Baseline Personnel Security Standard checks that the Client in its sole discretion, determines are necessary (on its own behalf, and on behalf of all Consultant Personnel).
- 34.3 The Consultant shall report immediately to the Client any safeguarding incidents it becomes aware of in connection with the Services provided under the Contract and shall also report without delay any other incidents it becomes aware of concerning its own activities (or otherwise) which could have a detrimental effect on the Client's reputation.
- 34.4 The Consultant shall, if requested, assist the Client to prepare any incident reports other reports or notifications required by any authority or regulator (including OSCR) and shall assist all relevant authorities with any subsequent enquiries.
- 34.5 The Consultant acknowledges that any breach of this clause would constitute a material breach of contract for which the Client would be entitled to terminate this Contract with immediate effect.

SCHEDULE (Data Protection)

Data Processing provision as required by Article 28(3) GDPR.

This Schedule includes certain details of the Processing of Personal Data in connection with the Services:

Subject matter and duration of the Processing of Personal Data:

The subject matter and duration of the Processing of Personal Data are [insert description here].

The nature and purpose of the Processing of Personal Data:

[Include description here]

The type of Personal Data to be Processed:

[Include list of data types here]

The categories of Data Subject to whom Personal Data relates:

[Include categories of data subjects here]

The obligations and rights of the Client:

The obligations and rights of the Client as the Data Controller are set out in Condition 28 of the Contract.

SUPPLEMENTARY NOTICE

1.0 LATE PAYMENT OF INVOICES

Consultants to the National Galleries of Scotland 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 Finance Department, National Galleries of Scotland, 73 Belford Road, Edinburgh, EH4 3DS. Telephone 0131-624-6200. This procedure is suggested as the best practical way of ensuring problems of late payment are resolved and is not intended to interfere with Consultant's legal rights.

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