



**NATIONAL GALLERIES OF SCOTLAND  
NGS/SGTC3  
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. DEFINITIONS**

In these Conditions:

'Client' means The Trustees of the National Galleries of Scotland;

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

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

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

'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;

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

## **2. 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 provide the Client with such reports of his work on the Project at such intervals in such form as the Client may from time to time require.

2.3 The Client reserves the right by notice to the Consultant to modify the Client's requirements in relation to the Project and any alteration to the Contract fee or the completion date arising by reason of such modification shall be agreed between the parties. Failing agreement the matter shall be determined by arbitration in accordance with the provisions of Condition 21 (Dispute Resolution).

## **3. CONSULTANT'S PERSONNEL**

3.1 The Consultant shall make available for the purposes of the Project 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 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. 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 licence 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 clause.

4.9 All decisions of the Client under this clause are final and conclusive.

4.10 Breach of this clause by the Consultant is a material breach for the purposes of condition 14.2 (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 and workers (including persons employed by a third party but working for and under the control of the Consultant);
- its agents, Consultants and carriers; and
- any sub-contractors of the Consultant (whether approved under Condition 17 (Assignment and sub-contracting) or otherwise).'

## **5. CHANGE TO CONTRACT REQUIREMENTS**

5.1 The Client may order any variation to any part of the Services that for any other reason shall in the Client's 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.

5.2 Save as otherwise provided herein, no variation of the Services as provided for in Clause 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.

5.3 Where any such variation of the Services made in accordance with Clauses 5.1 and 5.2 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 sums to be paid to the Consultant in accordance with the provisions of the Contract as are, in the Client's opinion, appropriate and reasonable in the circumstances.

## **6. 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.

6.3 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.

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

6.5 Notwithstanding Condition 17 (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 16 (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. AUDIT**

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 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 the Client's representatives such access to those records as may be required by the Client in connection with the Contract.

## **8. 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 Bribery Act 2010.

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

9.1 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 patent, trade mark, registered design, copyright or other right in the nature of intellectual property of any third party and the Consultant shall **indemnify** the Client and the Crown against all actions, claims, demands, costs and expenses which the Client or the Crown may suffer or incur as a result of or in connection with any breach of this Condition.

9.2 All rights (including ownership and copyright) in any reports, documents, specifications, instructions, plans, drawings, patents, models or designs whether in writing or on magnetic or other media:

(a) furnished to or made available to the Consultant by the Client shall remain vested in the Crown absolutely.

(b) prepared by or for the Consultant for use, or intended use, in relation to the performance of this Contract are hereby assigned to and shall vest in the Crown absolutely, and (without prejudice to Condition 13.2 (Official Secrets Acts, etc.)) the Consultant shall not and shall procure that the Consultant's servants and agents shall not (except to the extent necessary for the implementation of this 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 this Contract) which the Consultant may obtain pursuant to or by reason of this 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.

9.3 The provisions of this Condition 9 shall apply during the continuance of this Contract and after its termination howsoever arising.

## **10. INDEMNITIES AND INSURANCE**

10.1 The Consultant shall indemnify and keep indemnified the Client, the Crown, its servants and agents against all actions, claims, demands, costs and expenses incurred by or made against the Client or the Crown, 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 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.

10.2 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 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 this Contract.

10.3 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 £1 million at least in respect of

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

10.4 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. DISCRIMINATION**

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.

## **12. BLACKLISTING**

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 Act 1998 by unlawfully processing personal data in connection with any blacklisting activities. Breach of this clause is a material default which shall entitle the Client to terminate the Contract.

## **13. 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 Consultant 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 this 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 Client 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, (MSP's) or Members of the United Kingdom Parliament (MP's). Such disclosure shall not be treated as a breach of this agreement.

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

## **14. TERMINATION**

14.1 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 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 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.

14.2 On the occurrence of any of the events described in paragraph 14.1, 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.

14.3 The Client may terminate the Contract in the event that:

(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.

14.4 The Client may also terminate the Contract in the event 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.

14.5 In addition to his rights of termination under paragraph 14.2, 14.3 or 14.4, 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 the termination and making such recommendations as may be based on the work done prior to termination.

14.6 Termination under paragraphs 14.2, 14.3, 14.4 or 14.5 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 (Patents, information and copyright) and 13 (Official Secrets Acts, etc.).

## **15. RETURN OF DOCUMENTS**

15.1 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.

15.2 Where the Contract has been terminated pursuant to paragraph **14.5**, 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.

## **16. RECOVERY OF SUMS DUE**

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 this Contract or under any other agreement or contract with the Client or with any department, agency or authority of the Crown.

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

17.1 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.

17.2 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.

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

17.3.1 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 Purchaser has made payment to the Client

in respect of Services and the sub-contractor's invoice relates to such Services 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 sub-contractor 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;

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

17.3.3 in the same terms as that set out in this clause 17.3 (including for the avoidance of doubt this clause 17.3.3) 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.

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

17.4.1 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 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 14.3 occur; and

17.4.2 a requirement that the sub-contractor includes a provision having the same effect as 17.4.1 in any sub-contract which it awards.

In this condition 17.4, 'sub-contract' means a contract between two or more contractors, at any stage of remoteness from the Purchaser 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.

## **18. 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 by telex, telex message, facsimile transmission or other means of telecommunication resulting in the receipt of a written communication in permanent form 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.

## **19. STATUS OF CONTRACT**

Nothing in the Contract shall have the effect of making the Consultant the servant of the Client or the Crown.

## **20. COMPLIANCE WITH THE LAW ETC.**

In providing the services and otherwise when performing the Contract, the Consultant must comply in all respects with:

20.1 all applicable law;

20.2 any applicable requirements of regulatory bodies; and

20.3 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 Contractor under the same or similar circumstances.

## **21. DISPUTE RESOLUTION**

21.1 The parties must attempt in good faith to resolve any dispute between them arising out of or in connection with the Contract.

21.2 Any dispute or difference arising out of or in connection with the Contract, including any question regarding its existence, validity or termination which cannot be resolved in good faith, shall be determined by the appointment of a single arbitrator to be agreed between the parties, and failing agreement within 14 days after either party has given to the other a written request to concur in the appointment of an arbitrator, by an arbitrator to be appointed by the Scottish Arbitration Centre on the written application of either party. The seat of the arbitration shall be in Scotland. The language used in the arbitral proceedings shall be English.

21.3 Any arbitration under 21.2 is subject to the Arbitration (Scotland) Act 2010.

## **22. HEADINGS**

The headings to Conditions shall not affect their interpretation.

## **23. GOVERNING LAW**

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 Client 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.

**SUPPLEMENTARY NOTICE****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 Suppliers legal rights.

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