

**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 VisitScotland;

*'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 his 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 17.

## **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 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 him by this Condition shall be final and conclusive.

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

## **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 sums 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 The Client shall pay to the Consultant fees and expenses at the rate 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 his duties hereunder, 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.

## 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. FRAUD, CORRUPTION, CORRUPT GIFTS OR PAYMENTS

The Client is opposed to all forms of fraud and corruption and has an anti-fraud strategy designed to prevent and detect both. The Consultant, is expected to act with integrity and without intention to commit fraud or corruption against the Client. Fraud is defined as the intentional distortion of financial statements or other records which is carried out to conceal the misappropriation of assets or otherwise for gain. Corruption is defined as the offering, giving, soliciting or acceptance of an inducement or reward which may influence the action of any person.

The Consultant shall not offer or give, or agree to give, to any 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 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 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 Condition.
- 8.2 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 Client 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 Client absolutely, and (without prejudice to Condition 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 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.

- 8.3 The provisions of this Condition 8 shall apply during the continuance of this Contract and after its termination howsoever arising.

## 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 this 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 this Contract.
- 9.3 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.

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

## 10. RACIAL DISCRIMINATION

The Consultant shall not unlawfully discriminate within the meaning and scope of the provisions of the Race Relations Act 1976 or any statutory modification or re-enactment thereof relating to discrimination in employment. The Consultant shall take all reasonable steps to ensure the observance of these provisions by all servants, employees or agents of the Consultant and all sub-contractors employed in the execution of the Contract.

## 11. OFFICIAL SECRETS ACTS, CONFIDENTIALITY AND ACCESS TO GOVERNMENT INFORMATION

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

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

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

(a) references may be sought from banks, existing or past clients, or other referees proposed by the Consultant, and

(b) disclosure may be made of such information relating to the outcome of the procurement process as may be required to be published in the Official Journal of the European Communities or elsewhere in accordance with EC Directives or UK Government policy on the disclosure of information regarding government contracts. This disclosure may include the number of tenders received, the identity of the successful tenderer, the winning contract price, the specification of goods or services to be supplied, terms and conditions of contract, quality and performance standards, and subsequent performance against those quality and performance standards.

- 11.4 The provisions of this Condition 11 shall apply during the continuance of this Contract and after its termination howsoever arising.

## **12. TERMINATION**

12.1 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 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.

12.2 On the occurrence of any of the events described in paragraph 12.1, 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 he shall die or be adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Health Act 1983 or of Part V of the Mental Health (Scotland) Act 1984, the Client shall be entitled to terminate this Contract by notice to the Consultant with immediate effect.

12.3 In addition to his rights of termination under paragraph 12.2, 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.

12.4 Termination under paragraphs 12.2 or 12.3 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 8 and 11.

## **13. RETURN OF DOCUMENTS**

13.1 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.

13.2 Where the Contract has been terminated pursuant to paragraph 12.3, 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.

## **14. 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.

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

15.1 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.

15.2 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.

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

## **16. 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, telemessage, 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.

## **17. STATUS OF CONTRACT**

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

## **18. ARBITRATION**

All disputes, differences or questions between the parties to the Contract with respect to any matter or thing arising out of or relating to the Contract, other than a matter or thing as to which the decisions of the Client is under the Contract to be final and conclusive, and except to the extent to which special provision

for arbitration is made elsewhere in the Contract, shall be referred to a single arbiter to be mutually chosen by the parties or, failing agreement, nominated by the President of the Law Society of Scotland for the time being on the application of either party. Any such reference to arbitration shall be deemed to be an agreement to refer to arbitration within the meaning of the Arbitration (Scotland) Act 1894.

## **19. HEADINGS**

The headings to Conditions shall not affect their interpretation.

## **20. GOVERNING LAW**

These Conditions shall be governed by and construed in accordance with Scottish 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 VisitScotland are requested to address complaints regarding late payment of invoices to the Head of Finance, Ocean Point One, 94 Ocean Drive, Edinburgh EH4 3TP. Telephone 0131-332-2433. This procedure is suggested as the best practical way of ensuring problems of late payment are resolved, and is not intended to interfere with Consultants' legal rights.

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

