

[TO BE DELETED BEFORE ISSUE]

[Drafting Note: this contract is designed to assist the parties in circumstances where 1) the supplier is using a personal service company, and 2) it has been assessed that intermediaries tax legislation (aka "IR35") does not apply. The contract should only be used if NSS is happy to accept the practical implications of its terms.]



Consultancy Services Contract

Between [name of Personal Services Company]

and

**NHS National Services Scotland legally known as the
Common Services Agency**

CONDITIONS OF
CONTRACT -
REQUIREMENT FOR
CONSULTANCY

THIS CONTRACT IS
BETWEEN:-

[name of Personal Services
Company] incorporated and
registered in [jurisdiction] with
Company Number [number], whose
registered office is at [address] (the
“Supplier”)

AND

THE COMMON SERVICES
AGENCY for the Scottish Health
Service, a body corporate established
under Section 10 of the National
Health Service (Scotland) Act 1978,
as amended, and having its principal
office at Gyle Square, 1 South Gyle
Crescent, Edinburgh, EH12 9EB
(the “Authority”)

hereinafter referred to as the ‘Parties’ and ‘Party’ shall be construed
accordingly

WHEREAS

The Authority has a requirement for an organisation to provide consultancy
services for the Project as outlined in the Authority Tender Document.

Appendix 1

Authority Tender Document

Appendix 2

Supplier Response

Appendix 3

Milestone and Milestone Payments

1. DEFINITION

In these Conditions:

'Authority Tender Document' means the Authority tender document detailed in Appendix 1 of this Contract;

'Contract' means the contract between the Authority and the Supplier consisting of the Tender document and Supplier response, these Conditions and any other documents/specification (or parts thereof) specified;

'Data Protection Legislation' means (i) the GDPR and any applicable national implementing Laws as amended from time to time; (ii) the Data Protection Act 2018 to the extent that it relates to the Processing of Personal Data and privacy; and (iii) any other law in force from time to time with regards to the Processing of Personal Data and privacy, which may apply to either Party in respect of its activities under this Agreement;

'GDPR' means the General Data Protection Regulation (Regulation (EU) 2016/679);

'Intermediaries Tax Legislation' means all intermediaries tax legislation including The Income Tax (Pay As You Earn) Regulations 2015 which may be amended from time to time;

'Key Personnel' means the key personnel as defined in Condition 3.1;

'Milestone Payments' means the milestone payments as detailed in Appendix 3 of this Contract;

'Milestones' means the milestones as detailed in Appendix 3 of this Contract;

'Premises' means the location where the Project is to be performed, as specified in the Purchase Order; Gyle Square, 1 South Gyle Crescent, Edinburgh, EH12 9EB;

'Project' means the services to be provided as specified in the Authority Tender Document and Supplier Response;

[*'Purchase Order'* means the purchase order issued by the Authority to the Supplier from time to time;][TBC]

'Substitute' means a substitute for any individuals named as key personnel appointed in accordance with Condition 3.5;

'Supplier Response' means the Supplier response as detailed in Appendix 2 of this Contract.

2. THE PROJECT

- 2.1. The Supplier shall complete the Project with reasonable skill, care and diligence in accordance with the Contract
- 2.2. The Supplier shall provide the Authority with such reports of its work on the Project at such intervals in such form as the Authority may from time to time require.
- 2.3. The Authority reserves the right by notice to the Supplier 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 21.

3. SUPPLIER'S PERSONNEL

- 3.1. The Supplier shall make available for the purposes of the Project any individuals named as key personnel ('Key Personnel'). The Supplier shall provide the Authority with a list of the names and addresses of all others regarded by the Supplier as key personnel and, if and when instructed by the Authority, 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 Authority may reasonably require. The Authority may at any time by notice to the Supplier designate any person concerned with the Project or any part of it as a key person. Any changes to the Key Personnel referred to in this paragraph shall follow the procedure as detailed in Condition 3.5.
- 3.2. The Supplier shall take the steps reasonably required by the Authority, to prevent unauthorised persons being admitted to the Premises. If the Authority gives the Supplier 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 Supplier shall take all reasonable steps to comply with such notice
- 3.3. The decision of the Authority 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 Supplier has furnished the information or taken the steps required of him by this Condition shall be final and conclusive.

- 3.4. The Supplier shall bear the cost of any notice, instruction or decision of the Authority under this Condition.
- 3.5. The Authority confirms that the Supplier may provide a suitably qualified and skilled Substitute in respect of the performance of the Services, with the prior written consent of the Authority, such consent not to be unreasonably withheld. The Supplier shall ensure that the Substitute fully understands the requirements of and the progress made in the Project. The Substitute shall be required to enter into direct undertakings with the Authority, including with regard to confidentiality. If the Authority accepts the Substitute, the Supplier shall continue to invoice the Authority, and the Supplier shall be responsible for remuneration of the Substitute.

4. AUTONOMY OF SUPPLIER

- 4.1. Subject to the over-arching obligation to perform the Project as specified in the Authority Tender Document, the Supplier is free to set the hours and place of work for its personnel, and to determine how the work of performing the Project is completed.
- 4.2. The Supplier will provide its own equipment, subject to the necessary security checks (including antivirus, spyware and malware checks) being carried out by the Authority on any such equipment that may be connected by the Supplier to the Authority's network.
- 4.3. The Supplier will promptly correct any errors which it commits and subsequently identifies, or which the Authority identifies, in the course of performing the Project.

5. CHANGE TO CONTRACT REQUIREMENTS

- 5.1. The Authority may order any variation to any part of the Project 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 Project and changes in quality, form, character, kind, timing, method or sequence of the Project. The Parties will have regular progress review meetings to ensure delivery of the Project is as per the Milestones . At the said review meetings, the Parties may discuss and seek to agree re-prioritisation of tasks to achieve the Milestones . The Authority will not otherwise prescribe how the Supplier delivers the Project other than as detailed in the Authority Tender Document.
- 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 Authority. All such orders shall be given in writing.

- 5.3. Where any such variation of the Project made in accordance with Condition 5.1 and 5.2 has affected or may affect the costs incurred by the Supplier in providing the Project, the Supplier will notify the Authority in writing of the effect which it has had or may have on the said costs and such notification shall be considered by the Authority, who shall take all of the facts into account (including such information as may be provided by the Supplier in respect of the effect which such variation has had or may have on the costs incurred by the Supplier in providing the service) and may authorise such alteration to the sums to be paid to the Supplier in accordance with the provisions of the Contract as are, in his opinion, appropriate and reasonable in the circumstances.

6. INTERMEDIARIES TAX LEGISLATION

- 6.1. The Authority will require to assess whether any Key Personnel (or Substitute) are to be treated as employees of the Authority for tax purposes under the Intermediaries Tax Legislation.
- 6.2. The Supplier will provide the Authority with any information which the Authority reasonably requires and requests for the purpose of carrying out this assessment, and will do so without unreasonable delay.

7. FEES AND EXPENSES

- 7.1. The Authority shall pay to the Supplier fees at the rate specified in the Authority Tender Document.
- 7.2. No expenses shall be paid over the prices contained in the Authority Tender Document.
- 7.3. Unless otherwise stated in the Contract, Milestone Payments will be made by the Authority to the Supplier within 30 days of the relevant Milestone being achieved to the satisfaction of the Authority. The Authority shall have five working days to evaluate delivered Project taking into account the Authority's staff availability.
- 7.4. Value Added Tax, where applicable, shall be shown separately on all invoices as a strictly net extra charge.
- 7.5. In the event that any Key Personnel (or Substitute) are deemed to be employees of the Authority for tax purposes, the Authority shall deduct from the Milestone Payments any taxes or National Insurance contributions or apprenticeship levy payments which are due in respect of the Project provided by the Supplier. The Supplier will provide the Authority with any relevant information which the Authority requests in this regard, and will do so without unreasonable delay. Such information may include, in respect of the Key Personnel (or

Substitute), the NI number, identity details and a copy of the most recent P45 (or other relevant tax declaration).

- 7.6. In the event that any Key Personnel (or Substitute) are deemed to be employees of the Authority for tax purposes, this will not change the contractual relationship of the Parties, and in particular, any such Key Personnel (or Substitute) will not be employees of the Authority, either in contractual terms or for the purpose of employment protection legislation, such as (but not limited to) the Employment Rights Act 1996.

8. AUDIT

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

9. CORRUPT GIFTS OR PAYMENTS

- 9.1. The Supplier shall not offer or give or agree to give, to any member, employee or representative of the Authority 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 Authority 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 Supplier is drawn to the criminal offences created by the Bribery Act 2010.

10. PATENTS, INFORMATION AND COPYRIGHT

- 10.1. It shall be a condition of the Contract that, except to the extent that the Project incorporate designs furnished by the Authority, that nothing done by the Supplier in the performance of the Project shall infringe any patent, trade mark, registered design, copyright or other right in the nature of industrial property of any third party and the Supplier shall indemnify the Authority against all actions, claims, demands, costs and expenses which the Authority may suffer or incur as a result of or in connection with any breach of this Condition 10.
- 10.2. All rights (including ownership and copyright) in any reports, documents, specifications, instructions, plans, drawings, patents, models, software or designs whether in writing or on magnetic or other media:

- (a) furnished to or made available to the Supplier by the Authority shall remain vested in the Authority absolutely.
- (b) prepared by or for the Supplier for use, or intended use, in relation to the performance of this Contract are hereby assigned to and shall vest in the Authority absolutely, and (without prejudice to Condition 13.2) the Supplier 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 Authority 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 Supplier 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 Supplier shall not refer to the Authority or the contract in any advertisement without the Authority's prior written consent.

10.3. The provisions of this Condition 10 shall apply during the continuance of this Contract and after its termination howsoever arising.

11. INDEMNITIES AND INSURANCE

- 11.1. The Supplier shall indemnify and keep indemnified the Authority, its servants and agents against all actions, claims, demands, costs and expenses incurred by or made against the Authority, its servants or agents in respect of any loss or damage or personal injury (including death) which rises 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 Supplier, his servants or agents.
- 11.2. The Supplier shall indemnify the Authority against any tax, national insurance contributions or similar impost for which the Authority may be liable in respect of the Supplier by reason of this Contract.
- 11.3. The Supplier shall effect with an insurance company or companies acceptable to the Authority a policy or policies of insurance covering all the matters which are the subject of the indemnities and undertakings on the part of the Supplier 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 Authority in writing.
- 11.4. If requested, a certificate evidencing the existence of such policies shall be provided by the Supplier to the Authority.

12. RACIAL DISCRIMINATION

12.1. The Supplier shall not unlawfully discriminate within the meaning and scope of the provisions of the Equality Act 2010 or any statutory modification or re-enactment thereof relating to discrimination in employment. The Supplier shall take all reasonable steps to ensure the observance of these provisions by all servants, employees or agents of the Supplier and all sub-contractors employed in the execution of the Contract.

13. CONFIDENTIALITY AND ACCESS TO INFORMATION

13.1. The Supplier 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.

13.2. All information related to the Contract with the Supplier will be treated as commercial in confidence by the Authority except that:

- (a) references may be sought from banks, existing or past clients, or other referees proposed by the Supplier, 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.

13.3. 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 Supplier shall notify the Authority in writing immediately upon the occurrence of any of the following events:

- (a) a petition is presented for the Supplier to be wound up as an unregistered company; or
 - (b) if the Supplier 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 Condition 14.1, or if the Supplier 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 seven days of being required by the Authority in writing to do so, the Authority shall be entitled to terminate this Contract by notice to the Supplier with immediate effect.
- 14.3. In addition to his rights of termination under Condition 14.2, the Authority shall be entitled to terminate this Contract by giving to the Supplier not less than seven days' notice to that effect. In the event of such termination, the Supplier shall, if required to do so by the Authority, prepare and submit to the Authority 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. In respect of software production the contract may only be terminated on the basis of a breach.
- 14.4. Termination under Condition 14.2 or 14.3 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereupon accrue to the Authority and shall not affect the continued operation of Conditions 10, 13 and 17.

15. RETURN OF DOCUMENTS

- 15.1. The Supplier will return to the Authority promptly upon the termination of the Contract any document, paper, material or information supplied by or obtained from the Authority or any UK 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 Condition 14.3, the Supplier 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 Authority, the Supplier return any documents, papers, materials or information which he may have retained in terms of this paragraph.

16. ASSIGNATION AND SUB-CONTRACTING

- 16.1. The Supplier shall not assign or sub-contract any portion of the Contract without the prior written consent of the Authority. Sub-contracting any part of the Contract shall not relieve the Supplier of any obligation or duty attributable to him under the Contract or these conditions.
- 16.2. Where the Authority has consented to the placing of sub-contracts, copies of each sub-contract shall be sent by the Supplier to the Authority immediately it is issued.
- 16.3. Where the Supplier 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.

17. RECOVERY OF SUMS DUE

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

18. DATA PROTECTION

- 18.1. For the purposes of the following provisions of this Condition 18, the terms “Controller”, “Processor”, “Data Subject(s)”, “Personal Data”, “Process” and “Processing” shall have the meanings given to them in Data Protection Legislation.
- 18.2. The Processor agrees only to Process Personal Data for and on behalf of the Controller in accordance with the instructions of the Controller and only for the purpose of the Project.
- 18.3. The Processor agrees to comply with the obligations applicable to Processors described by Article 28 of the GDPR which include, but are not limited to the following:
 - 18.3.1. to implement and maintain appropriate technical and organisational security measures sufficient to comply at least with the obligations imposed on the Controller by Article 28(1);
 - 18.3.2. to not engage another Processor without the prior written authorisation of the Controller (Article 28(2));

- 18.3.3. to act only on documented instructions from the Controller (Article 28(3)(a)). The Processor shall immediately inform the Controller if, in its opinion, an instruction infringes any Data Protection Legislation;
- 18.3.4. to ensure that personnel authorised to process Personal Data are under contractual confidentiality obligations to the Processor (Article 28(3)(b));
- 18.3.5. to take all measures required by Article 32 GDPR in relation to the security of Processing (Article 28(3)(c));
- 18.3.6. to respect the conditions described in Article 28(2) and (4) for engaging another Processor (Article 28(3)(d));
- 18.3.7. to assist the Controller, by appropriate technical and organisational measures, insofar as this is possible, to respond to requests for exercising the rights of Data Subjects (Article 28(3)(e));
- 18.3.8. to assist the Controller, as appropriate, to ensure compliance with the obligations pursuant to Articles 32 to 36 GDPR taking into account the nature of the Processing and the information available (Article 28(3)(f));
- 18.3.9. to destroy or return all Personal Data to the Controller on completion the Project, unless storage by the Processor is legally required (Article 28(3)(g)) or unless it is agreed between the Parties that the Processor will archive same;
- 18.3.10. to maintain a record of Processing activities as required by Article 30(2) GDPR; and
- 18.3.11. to allow the Controller to audit the Processor's compliance with the obligations described in this Condition 18, on reasonable notice subject to the Controller complying with all relevant health and safety and security policies of the Processor and to provide the Controller with evidence of its compliance with the obligations set out in this Condition 18;

18.4. The Processor shall:

- 18.4.1. not transfer the Personal Data outwith the United Kingdom;
- 18.4.2. obtain the prior agreement of the Controller to store or Process Personal Data outside the European Economic Area (comprising the countries of the European Union,

Norway, Iceland and Liechtenstein) and where the Processor does Process Personal Data, to do so in compliance with GDPR; and

18.4.3. notify the Controller as soon as practicable after becoming aware of a Personal Data Breach concerning the Personal Data.

18.5. The provisions of this Condition 18 shall apply during the continuance of this Contract and after its termination howsoever arising.

19. NOTICES

19.1. 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 electronic mail 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.

20. STATUS OF CONTRACT

20.1. Nothing in the Contract shall have the affect of making any employee of the Supplier the employee of the Authority.

21. ARBITRATION

21.1. 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 Authority 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 2010.

22. HEADINGS

22.1. The headings to Conditions shall not affect their interpretation.

23. GOVERNING LAW

23.1. These Conditions shall be governed by and construed in accordance with Scottish law and the Supplier 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 Authority to take proceedings against the Supplier in any other court of competent jurisdiction, nor shall the taking or proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdiction, whether concurrently or not.

IN WITNESS WHEREOF, these presents consisting of this and the preceding thirteen (13) pages and the appendix in three (3) parts are executed in duplicate as follows:-

For and on behalf of Common Services Agency

Place

Date

Signed by

Witnessed by

Print Name

Print Name

Designation

Designation

Address

For and on behalf of [•]

Place

Date

Signed by

Witnessed by

Print Name

Print Name

Designation

Designation

Address

APPENDIX 1 – AUTHORITY TENDER DOCUMENT

APPENDIX 2 – SUPPLIER RESPONSE

APPENDIX 3 – MILESTONE AND MILESTONE PAYMENTS