

**DATED 29th March 2018**

**NHS Medway CCG**

**and**

**[ NAME OF INDEPENDENT CONTRACTOR ]**

---

**INDEPENDENT CONTRACTOR AGREEMENT**

---

**This Agreement is made on the 29<sup>th</sup> March 2018**

**Between**

1. **NHS Medway Clinical Commissioning Group, Fifty Pembroke Court, Chatham Maritime, Kent ME4 4EL** (the “**CCG**”); and
2. **Generic** a Independent contractor incorporated in England and Wales whose registered office is at ABC United Kingdom, (the “**Independent contractor**”)

**WHEREAS**

The CCG wishes to appoint the Independent Contractor to provide consultancy services as set out in clauses 1 and 3.1 of this Agreement.

**IT IS AGREED** as follows

**1. Consultancy Services**

The CCG shall engage the Independent Contractor to provide services relating to the performance of the specification / brief, as detailed further in 3.1 below.

**2. Duration**

- 2.1 This Agreement shall commence on 3<sup>rd</sup> April 2018 and shall continue until 1<sup>st</sup> October 2018 (the “**Term**”) when it will terminate without further notice from either party or until terminated by either party in accordance with the provisions of clause 13.
- 2.2 This Agreement may only be extended or renewed once by the mutual agreement of the parties in writing and the total value shall not exceed 50% of the original fee structure.

**3. Provision of the Independent Contractor’s Services**

- 3.1 The Independent Contractor is retained on a non-exclusive as required basis to provide the services specified in the Schedule to this Agreement (the “**Services**”) to the CCG at such times as the CCG and the Independent Contractor shall agree from

time to time.

3.2 Throughout the Term the Independent Contractor shall:

- a. perform the Services in accordance with the terms of this Agreement;
- b. provide the Services with reasonable skill and care and to the best of the Independent Contractor's ability;
- c. perform such duties in relation to the Independent Contractor's provision of the Services as the CCG may reasonably request;
- d. provide to the CCG such written or oral advice or information regarding any of the Services as the CCG may reasonably require;
- e. exercise such powers as may from time to time be vested in or given to the Independent Contractor by the CCG;
- f. not hold himself/herself out as an employee of the CCG;
- g. not incur any expenditure in the name of or for the account of the CCG or hold himself/herself out as having authority to bind the CCG;
- h. comply with any statutory or other reasonable rules or obligations including but not limited to:
  - i. those relating to health and safety while providing the Services and to take all reasonable steps to safeguard his own safety and the safety of any other person who may be affected by the Independent Contractor's actions in performing the Services;
  - ii. the requirements of data protection legislation;
  - iii. the CCG's Diversity, Dignity at Work and Whistleblowing policies;
  - iv. The CCG's Safeguarding policies;

- v. the CCG's Information Governance Policy;
  - i. unless prevented by ill health or circumstances beyond the Independent Contractor's control be available, at reasonable times and upon reasonable notice, to the CCG for the purposes of consultation and advice, attend such meetings with representatives of the CCG and third parties as the CCG may reasonably specify;
  - j. not engage in any conduct detrimental to the interests of the CCG or contrary to the instructions of the CCG; and
  - k. provide the Services at the CCG's premises at Fifty Pembroke Court, Chatham Maritime, Kent ME4 4EL or at such other premises as the parties agree from time to time are appropriate for the performance of the Services.
- 3.3 If the Independent Contractor is undertaking work which requires professional/state registration, the Independent Contractor is responsible for ensuring that they are so registered and that they comply with any Codes of Conduct applicable to that profession. Proof of registration must be produced on commencement of the services and on request by the CCG, and, if renewable, proof of renewal must also be produced. Failure to be registered, to maintain registration, or loss of registration will be treated as a serious breach of this contract, entitling the CCG to terminate this Agreement or suspend performance of obligations under clause 13.2.
- 3.4 If the Independent Contractor has held himself/herself out as possessing any relevant educational, vocational, professional and any other relevant qualifications, he/she warrants that he holds these qualifications and undertakes to update and undergo any new training, at his/her own expense, as may be required to undertake the Services.
- 3.5 If the Independent Contractor is unable to provide the Services to the CCG on any given day, because of illness, injury, holiday or other circumstances, the Independent Contractor shall notify the CCG forthwith and, if so required by the CCG, shall use his/her best endeavours to provide another individual to undertake the Services on that day (the "Substitute"). For the avoidance of doubt, no fee shall be payable in accordance with clause 4 in respect of any period during which the Services are not provided by the Independent Contractor.

- 3.6 For the avoidance of doubt, if the CCG accepts a Substitute, all references in this Agreement to the Independent Contractor shall be deemed also to include a reference to the Substitute.

#### **4. Fees**

- 4.1 The CCG shall pay to the Independent Contractor a fee of **[insert rate]** per **[day/hour]** **[inclusive/exclusive]** of value added tax ("VAT") if applicable. A day shall consist of a minimum of 8 working hours and a half day shall consist of a minimum of 4 working hours. As stated in clause 3.4 above no fee shall be payable in accordance with clause 4 in respect of any period during which the Services are not provided by the Independent Contractor. (INVOICE PAYMENT SCHEDULE as per paragraph 16.2 below)
- 4.2 The Independent Contractor will not charge the CCG for time spent travelling from his home to the CCG.
- 4.1 Any travel expenses incurred by the Individual in the performance of the Services will be charged by the Independent contractor in accordance with the CCG's casual car user rate when undertaken by car. Any rail or other travel expenses reasonably incurred by the Individual in the performance of the Services shall be reimbursed to the Independent contractor by the CCG at cost on the basis of second class travel. Necessary overnight stays for conferences or an out of Medway / Kent County area meeting will be at the normal CCG reimbursement rates and not exceed the value of the subsistence rates or the cost of overnight stays in a Premier Inn or equivalent establishment.
- 4.3 On request the Independent Contractor shall provide the CCG with such vouchers or other evidence of actual payment of such expenses as the CCG may reasonably require.
- 4.4 The Independent Contractor will produce to the CCG evidence that the Independent Contractor has the right to remain and work in the United Kingdom. The Independent Contractor will also ensure that the Independent Contractor undergoes (prior to commencing work) any Occupational Health checks which are necessary in order for the Independent Contractor to work on behalf of the CCG or on CCG premises, and

provide evidence of such checks to the CCG. The Independent Contractor will also be responsible for carrying out any necessary Disclosure and Barring Service ("DBS") checks and making the results of such checks available to the CCG. In the event that the Independent Contractor is not registered to access the disclosure service provided by the DBS, the Independent Contractor will arrange for those checks to be made via an umbrella body authorised to carry out such checks. Any costs associated with complying with the requirements of this clause 4.5 shall be the sole responsibility of the Independent Contractor.

## **5. Payment Terms**

- 5.1 The Independent Contractor shall invoice the CCG on the last day of the calendar month for all the Services delivered by the Independent Contractor to the CCG in that month. Such invoice shall be a VAT invoice if applicable. The invoice shall specify the hours which the Independent Contractor or any Substitute has worked during that month, the Services provided and the fee payable.
- 5.2 Payment shall be due from the CCG within 30 days of receipt of each invoice from the Independent Contractor.
- 5.3 Payment may be made by the CCG by credit transfer or by cheque made payable to the Independent Contractor.
- 5.4 The CCG shall be entitled to deduct from the fees (and any other sums) due to the Independent Contractor any sums that the Independent Contractor may owe to the CCG at any time.
- 5.5 Payment in full or part of any of the fees or expenses under clause 4 shall be without prejudice to any claims or rights of the CCG against the Independent Contractor in respect of the provision of the Services.

## **6. Confidential Information and Property**

- 6.1 It is acknowledged that to enable the Independent Contractor to provide the Services the CCG will provide the Independent Contractor with information of a highly confidential nature which is or may be private, confidential or secret, being information or material which is the property of the CCG or which the CCG is obliged

to hold confidential including, without limitation, all official secrets, information relating to the working of any project carried on or used by the CCG, research projects, strategy documents, tenders, financial information, reports, ideas and know-how, employee confidential information and patient confidential information (any and all of the foregoing being "Confidential Information").

- 6.2 The Independent Contractor agrees to adopt all such procedures as the CCG may reasonably require and to keep confidential all Confidential Information and the Independent Contractor shall not (save as required by law) disclose the Confidential Information in whole or in part to anyone and agrees not to disclose the Confidential Information other than in connection with the provision of the Services.
- 6.1 The obligations under this Agreement apply to all and any Confidential Information whether the Confidential Information that was in or comes into the possession of the Independent contractor or the Individual prior to or following this Agreement and such obligations shall continue for the Term and at all times following the termination of the Agreement but shall cease to apply to information which may come into the public domain otherwise than through unauthorised disclosure by the Independent contractor or the Individual.
- 6.3 The Independent Contractor shall not copy, retain or otherwise utilise, unless engaged upon the CCG's business, any documentation, computer disks, tapes or correspondence which relates to the CCG's business, unless specifically authorised by the CCG to do so. The CCG has strict policies and controls in relation to the movement of information and data and the Independent Contractor is required to comply with the CCG's Information Governance Policy.
- 6.2 The Independent Contractor shall not, and shall procure that the Individual shall not, without the express permission of the CCG, remove any property, documents, computer disks, tapes, portable or removable media, USB or files belonging to the CCG from the CCG's premises for any purpose. Or use such items that have not been encrypted to an appropriate NHS Digital Standard. Information Governance standards for the CCG will be observed and complied with by the Independent contractor at all times.

- 6.4 The Independent Contractor shall not disclose or permit to be disclosed any information relating to the CCG's business to a third party unless requested or authorised to do so by the CCG.

## **7. Data Protection**

- 7.1 The CCG may from time to time in the course of administering its activities need to process both personal data and sensitive personal data. The Independent Contractor agrees and acknowledges that this information will be used and processed fairly for the operation of the CCG's activities.
- 7.2 The CCG is registered in accordance with the requirements of the data protection legislation. The Independent Contractor shall not at any time use personal data held by the CCG for any purpose not described in its register entry or disclose such data to a third party or act otherwise in contravention of the data protection legislation.

## **8. Intellectual Property**

- 8.1 All Intellectual Property (meaning any invention, idea, improvement, discovery, development, innovation, patent, writing, concept design made, process information discovered, copyright work, trademark, trade name and/or domain name) made, written, designed, discovered or originated by the Independent Contractor in the course of providing the Services shall be the property of the CCG to the fullest extent permitted by law.
- 8.2 The Independent Contractor shall immediately disclose to the CCG full particulars of any Intellectual Property made, written, designed, discovered or originated in the course of providing the Services irrespective of whether it was so made or discovered during normal working hours or using the facilities of the CCG.
- 8.3 Any document, including without limitation, notes, memoranda, diaries, correspondence, computer disks, faxes, reports or other documents or data of whatever nature or copies thereof created by the Independent Contractor in the course of the Services will be and remain the property of the CCG and the CCG shall be the absolute beneficial owner of the copyright in any such document.



- 8.4 The Independent Contractor waives all present and future moral rights in any copyright works in favour of the CCG and agrees not to support or maintain nor permit any claim for infringement of moral rights in such copyright works.
- 8.5 To the extent that legal title in any Intellectual Property does not automatically vest in the CCG the Independent Contractor will, at the request and expense of the CCG do all such things as the CCG may require to enable the CCG or its nominee to obtain the full benefit in such manner as the CCG may require to best exploit or utilise the Intellectual Property.
- 8.6 The Independent Contractor hereby irrevocably appoints the CCG to be his attorney to execute and do any such instrument and generally to use his name for the purpose of giving the CCG or its nominee the benefit of this clause.
- 8.7 The Independent Contractor acknowledges that no further remuneration or compensation other than the fee under clause 4 is or may become due to the Independent Contractor in respect of the performance of his obligations under clause 8.

## **9 Status**

Nothing in this Agreement shall be construed or have effect as constituting any relationship of employer and employee or partners between the CCG and the Independent Contractor. The Independent Contractor shall not hold himself/herself out as an employee of the CCG.

## **10 Taxation**

- 10.1 The Independent Contractor shall at all times comply with the Income Tax (Earnings and Pensions) Act 2003, the Social Security Contributions and Benefits Act 1992, and all other statutes and regulations relating to income tax and National Insurance contributions in respect of any consideration received under this Agreement.
- 10.2 The CCG may, at any time during the Term, request the Independent Contractor to provide evidence of compliance with clause 10.1 above or, alternatively, of why clause 10.1 does not apply to him/her. Such request may specify the information

which the Independent Contractor must provide and the period within which the information must be provided.

10.3 Without prejudice to the termination provisions in clause 13, the CCG may terminate this Agreement with immediate effect if:

- (a) The Independent Contractor fails to provide the information requested within the specified timeframe or provides information which is inadequate, in the reasonable opinion of the CCG; or
- (b) The Independent Contractor fails to demonstrate that the Independent Contractor is complying with his/her obligations as set out in clause 10.1.

10.4 The Independent Contractor agrees that the CCG may supply any information which it receives under this clause 10 to HM Revenue & Customs for the purposes of the collection and management of revenue for which it is responsible.

## **11 Liability and Indemnity**

11.1 This Agreement constitutes a contract for the provision of services and not a contract of employment. Accordingly, the Independent Contractor shall be solely responsible for any income tax, National Insurance contributions or other tax liabilities in respect of any fees or expenses payable under this Agreement. The Independent Contractor shall indemnify the CCG and keep the CCG indemnified against any and all claims, liabilities, actions, proceedings, costs (including legal fees), losses, damages, demands, penalties, fines or expenses suffered or incurred by the CCG arising out of or in connection with the failure of the Independent Contractor to meet its obligations in respect of income tax liability and national insurance or similar contributions except where such claims arise out of any act or omission of the CCG or its employees.

11.2 The Independent Contractor shall have sole liability for any loss, damage, liability or injury suffered or incurred by the CCG or any third party arising out of or in connection with the Independent Contractor's acts or omissions in the provision of the Services including any negligent or reckless act or omission. The Independent Contractor shall indemnify the CCG and keep the CCG indemnified against any and all claims, liabilities, actions, proceedings, costs (including legal fees), losses, damages, demands, penalties, fines or expenses suffered or incurred by the CCG or

by any third party arising out of or in connection with the Independent Contractor's acts or omissions of whatever kind.

11.3 The CCG may at its option satisfy the indemnities at clause 11.1 and 11.2 by way of a deduction from any payments due to the Independent Contractor.

11.4 The Independent Contractor shall obtain adequate professional indemnity insurance and other suitable policies of insurance in respect of the provision of the Services with reputable insurers acceptable to the CCG and at a level of cover and on terms acceptable to the CCG. The Independent Contractor shall notify the insurers of the CCG's interest and shall cause such interest to be noted on the insurance policy. The Independent Contractor shall provide evidence of such insurance coverage (and insurance premium being paid) to the CCG upon request. If such insurances lapse for any reason during the Term, or if the terms and conditions of the insurances change, the Independent Contractor is required to notify the CCG immediately and the CCG may (if at any point the Independent Contractor is not covered by appropriate insurance) at its discretion take out such insurance and deduct the relevant premium from the fees payable to the Independent Contractor pursuant to this Agreement.

11.5 The Independent Contractor shall comply with all terms and conditions of the insurance policies at all times.

## **12 Other Business Interests of the Independent Contractor**

12.1 The Independent Contractor shall devote sufficient time and attention to permit the proper performance of the Services for the Term.

12.2 Nothing in this Agreement shall prevent the Independent Contractor from being engaged, concerned or having a financial interest in any other business, trade or profession or occupation provided that the Independent Contractor shall not undertake any activity or be involved with any other business, trade, profession or occupation which in any way would or might constitute a conflict of interest with the CCG and/or the Services.

## **13 Termination**

13.1 Either the CCG or the Independent Contractor may terminate this Agreement at any time by giving to the other the following amount of notice in writing as follows:

- a. If the Term is for six months or less, one week's notice;
- b. If the Term is for more than three months but not exceeding six months, two weeks' notice; or
- c. If the Term is in excess of six months, one month's notice.

13.2 The CCG may by written notice terminate this Agreement or suspend the performance of all or any of its obligations under it immediately and without liability for compensation or damages if:

- a. the Independent Contractor is in breach of any of the terms of this Agreement which, in the case of a breach capable of remedy, shall not have been remedied by the Independent Contractor within 14 days of receipt by the Independent Contractor of a notice from the CCG specifying the breach and requiring its remedy;
- b. the Independent Contractor is, in the reasonable opinion of the CCG, incompetent, guilty of gross misconduct and/or any serious or persistent negligence in the provision of the Services hereunder;
- c. the Independent Contractor fails after written instruction to provide the Services reasonably and properly required of the Independent Contractor hereunder;
- d. the Independent Contractor is guilty of fraud or dishonesty or conducts himself in any manner which, in the reasonable opinion of the CCG, brings or is likely to bring the CCG into disrepute by association;
- e. the Independent Contractor is unable to carry out the Services whether through incapacity or any other cause for any consecutive period exceeding two weeks or aggregate period exceeding three weeks in any period of 12 calendar months;
- f. the Independent Contractor is convicted of a criminal offence (other than a road traffic offence for which he is not sentenced to imprisonment);
- g. the Independent Contractor becomes bankrupt;

- h. the Independent Contractor becomes prohibited for regulatory or other reasons from carrying out any or all of the Services.

13.3 The Independent Contractor may by written notice terminate this Agreement or suspend the Independent Contractor's performance of all or any of the Independent Contractor's obligations under it immediately and without liability for compensation or damages if the CCG commits a material breach of the terms of this Agreement. The CCG may, in its absolute discretion, suspend services under this Agreement temporarily if it considers it in the interests of the CCG to do so.

13.4 Upon termination of this Agreement the Independent Contractor shall immediately deliver to the CCG all documents, papers, drawings, computer disks, tapes, correspondence and copies relating to the CCG's activities as well as keys, passes, equipment and other property of the CCG which may be in the Independent Contractor's possession or control.

13.5 Upon termination of this Agreement, the Independent Contractor shall irretrievably delete any information relating to the CCG stored on any magnetic or optical disk or memory device and all matter derived from such store which is in the Independent Contractor's possession or control outside the CCG's premises.

#### **14 Variation of the Agreement**

The Agreement may only be varied with the express written agreement of the parties.

#### **15 Accrued Rights**

15.1 The expiration or termination of this Agreement howsoever arising shall not prejudice any claim which any party may have against the other in respect of any pre-existing breach of, or contravention of, or non-compliance with any provision of this Agreement, nor shall it prejudice the coming into force or the continuance in force of any provision of this Agreement which is expressly or by implication intended to or has the effect of coming into, or continuing in force on or after such expiration or termination.

- 15.2 No waiver by any party, other than one made in writing, of any breach by any other party of any provision of this Agreement and no failure, delay or forbearance by any party in exercising any of its rights, shall be taken to be a waiver of such breach or right which will prevent the party from later taking any action or making any claim in respect of such breach or right.

## **16 Notice**

- 16.1 Any notice to be served on any of the parties by the other shall be sent by recorded delivery or registered post or by fax or email and shall be deemed to have been received by the addressee within 48 hours of posting or 24 hours if sent by fax or email to the correct fax number or email address of the addressee. The invoice shall state the purchase order number and the name of the recruiting manager.
- 16.2 The Independent contractor shall invoice 30% of the agreed fee on the DATE TBA and then a proportion of the remaining 60% monthly and invoice 10% at the end upon satisfactory completion of the assignment. The 10% is a retention upon satisfactory completion. Payment of invoices will be strictly 30 days from the date of receipt. Such invoice shall be a VAT invoice if applicable. The invoice shall specify the hours which the Individual or any Substitute has worked during that month, the Services provided and appropriate travel expenses claimed. The invoice shall state the purchase order number and the name of the recruiting manager. Failure to quote a valid purchase order number can result in delayed payment. Such invoice shall be a VAT invoice if applicable. The invoice shall specify the hours which the Individual or any Substitute / Team Member has worked during that month, the Services provided and where agreed the travel expenses claimed. The invoice shall state the purchase order number and the name of the recruiting / responsible manager. Failure to quote a valid purchase order number can result in delayed payment. All invoices should show Service Cost, Travel Expenses and Disbursements clearly. VAT should be treated appropriately for the assignment. Do not charge VAT on a disbursement as part of a consolidated invoice as a query can lead to delayed payment.
- 16.3 The Independent contractor shall send the invoice by post to:

NHS Medway Clinical Commissioning Group  
Fifty Pembroke Court  
Chatham Maritime  
Kent ME4 4EL

16.4 Notices to the Independent Contractor shall be sent to the address at the head of this Agreement.

16.5 Notices to the CCG shall be sent to the address of the HR Director.

## **17 Governing Law**

17.1 This Agreement and any dispute or claim arising out of or in connection with it shall be governed by and construed in accordance with the law of England and Wales.

17.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute that arises out of or in connection with this Agreement.

Signed on behalf of the NHS Medway CCG by **[NAME]**

..... Date: .....

Executed as a deed by **[NAME OF INDEPENDENT CONTRACTOR]**

.....

**[SIGNATURE OF INDEPENDENT CONTRACTOR]**

in the presence of:

.....

**[SIGNATURE OF WITNESS]**

Date:.....

**[NAME AND ADDRESS OF WITNESS]**

## **SCHEDULE**

**Services to be provided by the Independent Contractor INCLUSIVE OF original submission.**

EXAMPLE



## **GUIDANCE TO ACCOMPANY TEMPLATE ASSIGNMENT SERVICE LEVEL AGREEMENT**

### **Introduction**

This note sets out explanatory notes and guidance on the use of the template assignment service level agreement. This contract should be used when contracting with a limited service company for the provision of services by an individual. The limited service company is a separate legal entity and legally, it is the company, rather than the individual, who is the party to the agreement with the CCG. In practice, the individual may control or run the company.

Where a consultant is offering their services to the CCG directly, a consultancy agreement will be used.

### **Guidance on Terms**

#### **Parties Details and Date**

The company details should be added. The agreement should also be dated at the top of the agreement on signing.

#### **Recital**

The Recital sets out a brief background to the contract. In most cases, it is sufficient to state that the CCG wishes to engage the company to provide services as set out in the agreement and that the company will supply the named individual or another appropriate person for this purpose.

#### **1. Consultancy Services**

This clause confirms that the CCG is engaging the company for particular services and brief details of the relevant services should be added. You can consider including a description of what the company is agreeing to provide or, if there is a detailed service specification that has been discussed and agreed, you can indicate that the service specification is attached to the agreement as a Schedule.

#### **2. Duration**

The length of the term of the contract should be specified here. Clause 2 also states that the agreement will terminate at the end of the term and the CCG is not required to give the company a separate notice or letter confirming the expiry of the term. While this means that there is no need to provide the company with another letter at or near the end of the contract, in practice, you should ensure that, before the expiry of the contract, arrangements are made for handover of work and return of property, unless the CCG and company have agreed to extend the term and that extension has been confirmed in writing.

***Board members and senior officials with financial responsibility should not be independent contractors unless there are exceptional circumstances and such exceptions should not be more than 6 months.***

### **3. Provision of the Company's Services**

Clause 3 sets out general obligations of the company, many of which are self-explanatory, but some of which are discussed in further detail below. Generally, the company is required to ensure that the individual complies with the obligations under the contract. When using this contract, you should ensure that a detailed description of the tasks and responsibilities of the individual should be set out in the Schedule attached to the Agreement.

Clause 3.2 (b) requires the company to ensure that the individual to perform the services listed in the Schedule with reasonable care and skill. This is considered to be a standard of performance that it is reasonable to expect of an individual when carrying out the tasks that are asked of them.

Under clause 3.2(g), individuals are not generally entitled to incur expenditure or have authority to bind the CCG but this clause can be removed for those in senior positions who will need to exercise those functions. This means that except in those rare circumstances, the individual cannot make agreements or commitments on behalf of the CCG that would require the CCG to do something, such as make payment for something that is purchased or another service that is provided. This is because the individual is not an employee of the CCG – and it is typically only employees who can bind the CCG in this way.

Under clause 3.2(h) individuals must comply with statutory obligations and rules, including the CCG's Diversity, Dignity at Work, Whistleblowing and Safeguarding policies. This means that even though the individual is not an employee of the CCG, there are certain

policies (usually policies relating to conduct and how the individual behaves with CCG employees or on CCG property) must still be followed by the Individual. If the CCG considers that there are other specific policies or a particular policy that should be added to a contract for an individual doing a particular task, such policy or policies can be added to clause 3.2(h)(iii). Such other policies might include specific IT policies for an IT consultant, or additional confidentiality policies (other than the general confidentiality obligations found at clause 6) for an individual who is being given access to patient records or confidential information about the CCG and its business. This means you may have to give additional thought to what the individual's task will be and what other CCG policies may need to be followed by the individual.

You should specify the individual's place of work at clause 3.2(k). This may be a specific office or area or department of the CCG site, or the CCG itself. This will also give the individual the right to be in that specific area.

Under clause 3.3, the individual is required to maintain all relevant professional registrations. This may be an important point where an individual is performing a specific task or project because they are part of a registered profession, such as an engineer, accountant or certain clinical professionals. In some circumstances, proof of such registration may be requested.

Clause 3.4 confirms that the individual has all relevant qualifications. If it is discovered that the individual has held himself or herself out as possessing qualifications which they do not in fact possess, this would amount to a breach of the agreement and would allow the CCG to end the contract without notice, and may be relevant if there is any dispute about the work that the individual has done.

Under clause 3.5 and 3.6, if the individual is unable to provide the services, the company must make reasonable efforts to supply a substitute if requested to do so by the CCG. This may seem like an unusual term as you are likely to be hiring the specific company because you want a particular individual to carry out the work. However, this clause shows an important difference between consultants and employees. In past cases, the Courts have said that the right to provide a substitute is evidence that a relationship is one of genuine self-employment. In practice, the CCG may not wish to use a substitute but it is advisable to retain this clause for that reason.

#### **4. Fees**

The relevant day rates should be specified here. This is usually stated as an hourly or daily rate. The fee should also be stated as either inclusive or exclusive of VAT. This will mean that you have to speak with the individual about whether they charge VAT and if so, confirm that the company has a VAT number.

The individual is also required to provide evidence of their right to work in the UK and carry out their own DBS check. These are two of the checks that are required by the NHS Employment Check Standards, which also apply to individuals. Usually evidence of these facts is requested and it may be appropriate to take a copy of the passport (or other document that is provided) and the DBS check that is done. In circumstances where the company cannot carry out the DBS check the CCG may wish to assist with this.

## **5. Payment Terms**

The contract is written so that the company will invoice the CCG for services on a monthly basis and that payment shall be due within 30 days of each invoice. This should be amended if different arrangements are agreed.

***It is important to note that invoicing or payment arrangements are in accordance with the CCG's governance requirements and are practically possible. For example, immediate payment may not be possible, or payment by a certain method.***

The contract gives the CCG the right to deduct any sums owed to the CCG from any fees payable under this agreement. This could include, for example, charges that the individual has incurred (e.g. parking)

## **6. Confidential Information and Property**

In the course of carrying out the services, individuals may have access to confidential or sensitive information and this fact is confirmed in clause 6.1. Under clause 6.2, the company and individual agree to adopt any procedures in relation to confidential information that may be required by the CCG. Under clause 6.3, the obligation of confidentiality continues throughout the contract and after termination.

## **7. Data Protection**

In the course of entering into the contract and paying the individual via the company, the CCG will need to retain personal information in relation to the individual. This includes their name, address and bank details. As such, the agreement includes the agreement of the company and individual for the CCG to keep and use this information for these specific purposes. This is referred to as “processing the individual’s personal data.” The individual needs to understand that this clause is necessary in order for, amongst other things, the CCG to pay them.

## **8. Intellectual Property**

Intellectual property is the phrase used to refer to copyrights and other ownership rights that can exist in the work or product that the individual produces as a result of the services. Generally, an individual will retain or continue to own the intellectual property rights in their work. However, because the CCG is paying for the individual to do the work, the CCG would usually want to own the result of the individual’s efforts. As such, this clause says that the CCG will continue to own all copyright, trademarks and other intellectual property rights in work done for the CCG under the agreement. The company is required to ensure that the individual discloses details of all the work that they produce, when that work is created. This is a very standard clause and should not raise concerns with the individual.

## **9. Status**

In this clause, status refers to the individual’s legal status. This clause states that the agreement should not be considered to be a contract of employment.

***It is important to note, however, that while this statement is helpful, it does not alone mean that the individual is not an employee. If the issue of whether the individual was employed or self-employed is ever considered by a Tribunal or HMRC, all aspects of the working relationship will be considered, not just the agreement. We strongly suggest that all steps are taken to ensure that the reality of the working relationship is consistent with the terms of the agreement.***

## **10. Taxation**

This is an important clause as it is required in line with the guidance and recommendations which apply to the CCG. As a result, the contractor is required to confirm that they will comply with relevant tax legislation. The CCG is entitled to request evidence of compliance with this obligation if there are any concerns that this is not being done by the individual.

## **11. Liability**

The issue of “liability” or any loss which the CCG might incur as a result of the individual’s actions (or from their failure to do something they were supposed to do) is an important issue to consider. Such losses can arise if the individual doesn’t pay their taxes as clause 10 requires them to do. If that happens, the CCG may be required to pay certain amounts and even fines. As a result, the agreement includes indemnities in favour of the CCG in relation to such losses which might arise as a result of the individual’s failure to meet their obligations in relation to income tax or national insurance contributions, save for where the loss is due to the CCG’s actions or failure to act. An indemnity means that the CCG can go to the company and ask them to make payment of those loss amounts, or (if necessary) bring a legal action against the individual.

Clause 11 also contains a general indemnity in favour of the CCG in respect of any claims or losses arising as a result of the individual’s actions or omissions. This indemnity can be limited to losses as a result of actions or omissions in bad faith for those in senior positions. If a limited indemnity is being used, the following wording should replace clause 11.2:

*“The Company shall have liability for any loss, damage, liability or injury suffered or incurred by the CCG or any third party arising out of or in connection with the Individual’s acts or omissions in the provision of the Services including any negligent or reckless act or omission, but only in so far as those acts or omissions are in bad faith. The Company shall indemnify the CCG and keep the CCG indemnified against any and all claims, liabilities, actions, proceedings, costs (including legal fees), losses, damages, demands, penalties, fines or expenses suffered or incurred by the CCG or by any third party arising out of or in connection with any or omissions of the Individual in bad faith”*

Clause 11.4 includes an obligation to obtain professional indemnity insurance to ensure that individuals have the means to compensate the CCG for any liabilities under this clause. This kind of clause is sometimes resisted by contractors who may say that such insurance is too expensive, or even not available. Depending upon the services that the individual is

carrying out, this clause may be deleted, but it is preferable to include it. If you are not certain about whether or not this clause should be deleted in individual cases, you should seek further advice on this point from your line manager.

## **12. Other Business Interests of the Company**

Clause 12.1 provides that the company (though the actions of its individual) must devote sufficient time to the provision of these services. This means that the individual must spend enough time on the project to complete within the time frame required. Sometimes this clause is useful if you have concerns that the individual may not get the project or task done on time, or if you are concerned that the individual is spending too much time on other clients' work.

Clause 12.2 allows the company and the individual to take on other contracts or financial interests provided that this does not conflict with the obligations to the CCG. The right to take on other clients and contracts is another factor that will be considered by Tribunals and lend weight to the argument that an individual is actually self-employed rather than employed.

## **13. Termination**

The draft agreement provides for a range of notice periods depending upon how long the contract will last. Where the term of the contract is longer than six months, the contract provides for a one month notice period but you may wish to increase this.. The contract should always include a termination period, as if it doesn't the CCG may be required to pay the individual for the full period of the contract, even if the individual is not providing services which are considered acceptable.

The contract provides that the CCG will be entitled to terminate the agreement without notice or suspend performance if the individual commits a serious breach of the agreement. Examples of breaches that would let the CCG terminate the contract immediately are set out at clauses 13.2(b) to (h). If the CCG is concerned about a particular risk in an individual case, clause 13.2 can be amended to include additional situations when termination without notice or suspension of the contract might happen. This will ensure that the individual knows that a particular obligation is essential and that failure to comply will amount to a serious breach of the agreement, and may result in the contract being ended early by the CCG.

## **14. Variation of the Agreement**

Clause 14 provides that any variation of these terms must be specifically agreed in writing. This will ensure that any agreed variations are precise and written down. This will be an important point for both you and the individual to remember, particularly if the contract needs to be extended or the project changed in any way after the agreement has been signed. This can be done very formally by signing a “variation” or quite informally by an exchange of emails, but it is important that any changes that are agreed are very specific.

## **15. Accrued Rights**

Clause 15.1 is a standard provision under which both parties retain the right to take action in respect of breaches of the agreement after the contract has expired or been terminated. Any claim for breach of contract must be issued within six years of the breach.

Clause 15.2 provides that a party will not be taken to have waived their right to claim for breach of contract unless such a waiver is given in writing.

## **16. Notice**

Clause 16.1 is one of the more “legal” clauses and is a standard clause that provides that both parties retain the right to take action in respect of breaches of the agreement after the contract has expired or been terminated. Any claim for breach of contract must be issued within six years of the breach.

Clause 16.2 provides a party will not be taken to have waived their right to claim for breach of contract unless such a waiver is given in writing.

These are very technical clauses, but they should not be controversial or cause much discussion with the individual.

## **17. Governing Law**

Clause 17 is another standard “legal” clause confirming that the agreement is governed by the law of England and Wales.



EXAMPLE