

The National Energy Foundation: Terms & Conditions – Consultancy Projects

1. Introduction

1.1. This document defines the general terms and conditions that shall apply to all consultancy agreements and retainer contracts involving The National Energy Foundation. These clauses are incorporated into and form an integral part of our contract.

1.2. The parties are The National Energy Foundation of the National Energy Centre, Davy Avenue, Knowlhill, Milton Keynes, MK5 8NG (a company registered in England limited by guarantee no. 2218531 and registered as a charity no. 298951 hereinafter known as the 'Foundation') and the client: 'the Client' is the party with whom a contract of supply exists.

2. Statement of Professional Standards

2.1. The Foundation seeks to conduct its business to the highest standards of independence, objectivity and integrity.

3. Performance

3.1. All commitments with respect to the timing and scope of a project given to the Client by the Foundation - whether verbal or written - are made in good faith but are made necessarily in advance of knowing the full scope of the difficulty that may pertain to performance on specific points (for example, un-foreseeable difficulty in obtaining certain information requested by the Client). For this reason, whilst the Foundation agrees to use its best endeavours to fulfil such commitments to Clients on the timing and the scope of consultancy and other projects we cannot guarantee performance in either respect.

3.2. Where the contract specifies that our service will be provided by named individuals, the Foundation agrees to take reasonable steps to ensure that these persons will remain on these assignments for the full length of the contract.

3.3. The Foundation further agrees to obtain the Client's agreement to any significant substitution of personnel that is necessitated by unforeseen circumstances - such as staff sickness.

4. Confidentiality

4.1. The Foundation agrees to hold all information provided by the Client confidential except where such information is known to the Foundation already, or exists already in the public domain unless and until it is authorised to release such information by the Client, or required to do so in a Court of Law, or such information enters the public domain other than by the Foundation's actions.

4.2. The Client agrees to hold confidential all information about the Foundation's proposal(s), fee structures, fees and personnel.

5. Materials Supplied

5.1. The Foundation agrees to handle any materials, such as product samples or documents, supplied by the Client to the Foundation in a responsible fashion and return them to the Client upon request. However, the Foundation will not be responsible for any wear or tear occasioned nor for any loss or theft that might occur. All such material is supplied at the Client's own risk and no liability for any financial restitution for any direct or indirect value is accepted nor any consequential loss.

6. Conflict of Interest

6.1. The Foundation will decline any third party contract that would create a conflict of interest with the Client's previously agreed instructions. Where such a conflict only becomes apparent after our agreement to act for the third party we will invoke Clauses 6.2 and 6.3 in respect of their contract.

6.2. The Foundation warrants to bring to the attention of the Client any conflict of interest that may arise between the Client's instructions and the terms under which the Foundation is acting, or has acted, for another Client at the time that it becomes apparent to the Foundation officers (where such third party instructions were received prior to the Client's instructions). The Client will then be free to vary his contract with the Foundation in the light of this revelation to the extent that it is affected by the potential conflict of interest. Such a declaration by the Foundation will be general in nature, so as not to prejudice the confidentiality with the third party.

6.3. The Foundation will have the right to resign its contract in such circumstances if, in its judgement, it is unable to proceed with the contract and maintain its fiduciary duty. The Foundation shall receive payment in full for hours worked and expenses incurred to the date of disclosure, including all due contract stage payments but not including any entitlement to pro-rata payment for any amounts payable on completion such as performance fees or terminal payments.

7. Rights of Ownership

7.1. The Foundation warrants that all personnel, whether full-time employees or not, will be employed on terms that protect the Client's intellectual property rights.

7.2. Notwithstanding any payments received from the Client, all rights of ownership to all materials prepared by the Foundation, whether written or not, shall remain the property of the Foundation - copyright and distribution rights are

reserved by the Foundation at its sole discretion, except where these rights are explicitly stated in writing to have been waived or where the contract between the Foundation and the Client explicitly so provides or where the material is so endorsed by the Foundation.

7.3. The Foundation however grants the right, without prejudice to its position under the previous paragraph, to the Client to copy freely any material provided by the Foundation as part of work wholly commissioned by the Client provided that distribution of these copies is exclusively within the Client's particular organisation.

7.4. This clause shall apply to all reports, software and presentation materials including text, photographs, diagrams and interactive materials for use on the Client's or a third party website. In addition, it applies to all training materials used to support the Foundation's training courses.

8. Time Basis for Contracts

8.1. Where applicable, time is calculated inclusive of travel from the consultant's home or office.

8.2. The unit of time is normally the Day, except where otherwise agreed in advance.

8.3. Time charged includes all office time spent acting for the Client.

8.4. Where the unit of time is by the hour, all travel, office, administrative, preparatory, production and telephone time in addition to actual Client meetings and external interviews, are chargeable at the agreed hourly rate for the individual concerned.

8.5. Extracts from electronic time records will be provided to the Client upon request.

9. Expenses

9.1. The Foundation's contracts with Clients stipulate whether they are 'fixed price' (ie all expenses will be included within the pre-negotiated fee and not charged supplementary to the Client) or 'fee plus expenses' - in which case expenses are levied in addition to our agreed fee. This section provides clarification of our standard policy on what expenses will be claimed and how.

9.2. In the case of 'net of expenses' contracts, the Foundation is hereby authorised to incur, without prior notice to the Client, 'reasonable' travel expenses (as outlined below in Clause 9.7) in performing the Client's instructions. The Client agrees to reimburse these in addition to the contract fee.

9.3. All expenses are payable for the total activity time (as defined in Clause 8 above): ie including travel to and from the Client or travel to and from third parties on behalf of the Client.

9.4. Invoices for expenses will normally be presented monthly. The Foundation may, at its sole discretion, choose exceptionally to present invoices more or less frequently, to reflect the level of expense incurred.

9.5. Expenses incurred in foreign currency will be billed at the actual exchange rate obtained (gross rates, including commission, handling charges etc, will be used) except where this rate is not immediately available, such as for some credit card charges, when either the last rate obtained or an estimated rate will be used at the Foundation's discretion.

9.6. Expenses are reimbursable immediately and the Client accepts that they are not subject to any credit terms or delayed payment clauses that may relate to some or all of our professional fee.

9.7. 'Reasonable' travel expenses will normally include Economy Class air travel, accommodation and incidental costs within a modest hotel (generally not rated higher than *** in the UK or Europe), all meals whilst acting on behalf of the Client within the hotel or an equivalent grade of restaurant, second class rail travel and UK business mileage payable at the Inland Revenue approved rates for business travel expenses. Where appropriate to the circumstances, we reserve the right to vary the class of travel to meet the business need.

9.8. Allowable expenses are charged to the Client at the gross invoice value. Expenses will be charged inclusive of any sales taxes (or similar fiscal levies) where these are payable by us, except insofar as we subsequently expect to reclaim any part of these. VAT (and any other relevant tax) will be added to the invoice amount in line with current government legislation at the rate ruling at the time of invoice.

9.9. Any additional charge for incidental expenses such as telephone, fax, copies of Client commissioned reports, and presentation materials would normally be waived, except where such costs represent a significant proportion of the project value; such basis to be agreed by the Client in advance.

9.10. The Client should note that travel fares are sometimes charged on the basis of travel to and from the Foundation's premises, which may not be the actual journey made, as our consultants may be travelling from a location required for another Client's business.

9.11. Foundation employees are required to obtain receipts for expenses wherever practical. These are retained by the Foundation and are

available for inspection by the Client upon his request.

10. Fees

10.1. The remuneration structure agreed between the Client and the Foundation may be based on a number of methods. These include a 'retainer' against which time-based consultancy services may be drawn down to an agreed limit, a 'fixed fee' and a 'time based rate' (e.g. a day or an hourly rate).

10.2. The Client agrees to pay the Foundation according to the fee structure outlined in the Foundation's project proposal, as amended by subsequent written correspondence.

10.3. 'Retainer fee' shall be defined as a payment made to secure the Foundation's services for a fixed period of time. The retainer shall be available for renewal by mutual Agreement. If the Client continues to draw down services after the Client has been notified that the retainer has been fully accounted for, they will become liable to pay additional fees at the same daily or hourly rate, subject to a possible allowance for inflation.

10.4. Fixed fee contracts cover the performance of an agreed service as outlined in our Project Proposal for an agreed remuneration. Extra time incurred by the Foundation in the performance of the 'fixed fee' component of a contract shall be borne by the Foundation, unless the extent or scope of the work has changed at the Client's request.

10.5. The 'daily rate' and 'hourly rate' shall be charged in accordance with the criteria defined in Clause 8.

11. Cancellation Rights

11.1. The contract shall be regarded as a whole unless there are break points within it agreed in advance or it is divided into stages or where it is subject to periodic renewal. Where no such division is agreed in advance and stipulated in the contract, the Client shall be liable for the totality of the value of the contract - including all expenses incurred to the date of cancellation - whether or not the Client wishes the work to be completed.

11.2. If a consultancy contract is expected to be for an extended period or to have phases contingent upon the results of earlier work, it will normally be divided into stages or subject to periodic renewal. Where such divisions apply, either party may choose not to continue the contract into the next phase without penalty (unless otherwise provided in the specific contract). Where such cancellation is by the Foundation the Client shall be entitled to a refund of that proportion of any advance of fees that relate to the remaining part of the contract.

11.3. Annually renewed service contracts and retainers shall be renewed automatically for a further 12 months unless either party gives the other the minimum notice of termination set out in the individual contract or in the absence of such a provision 30 days notice.

11.4. Where the Client cancels, the Client shall pay for all stages of the contract that have been commenced. Should he choose not to have work completed on the stage underway prior to cancellation he remains liable for payment in full of this stage. The Client also agrees to pay all expenses incurred, whether or not these relate to the stages cancelled or to any prior stages.

11.5. Where performance under the contract of the Foundation's service is contingent upon the availability of a specific Foundation employee, the Client shall have the right to cancel the contract if the person or persons essential to the timely completion of the project is unable to carry out the agreed function within a period of 30 days of the agreed deadlines due to ill health or other reason. In such circumstances the Client shall not be liable for any further payment of fees but the Foundation shall be entitled to retain payments already made in lieu of work carried out to date and to recover all reasonable expenses incurred up to the date of cancellation.

11.6. Specific terms apply to cancellation in the event of a conflict of interest (see Clause 6), Client insolvency (see Clause 17), illegal activities (Clause 18) or force majeure (Clause 20).

11.7. In the event of cancellation, expenses incurred referred to in this Clause shall be interpreted as including all monies spent on behalf of the Client plus all spending irrevocably committed to on the Client's behalf by the Foundation up to the date of cancellation plus any cancellation charges that may be levied by third party suppliers as a result of the contract cancellation (for example in relation to airfares booked but not refundable in full).

12. Payment Terms

12.1. The Client agrees to be bound by the payment terms stipulated in the contract; in the absence of any terms to the contrary they will be deemed to be 30 days net payment from the date of issue of any invoice.

12.2. If the Client fails to make any payment without giving notification of due cause, then the Foundation may withhold delivery of any reports or other contractual services or materials and will not be responsible for any inconvenience, loss or damage so caused.

12.3. In respect of any delays in interim payments attention is drawn to Clause 13.2 below.

12.4. The currency of payment will be £ Sterling, unless otherwise stipulated in the contract.

12.5. Unless otherwise explicitly provided by an individual contract, no account will be taken of any exchange rate fluctuations during the life of the contract. Each party accepts as their own responsibility the variation, whether favourable or unfavourable, that they may see in local currency terms in respect of the contract.

12.6. The Client's responsibility is for payment to the Foundation of the full amount agreed. The Client agrees to adjust all payments to take into account any charges levied (such as may be made by the transferring bank), such that the full amount is received by the Foundation. The Client accepts that the Foundation shall be entitled to recover all deducted amounts.

12.7. The Client agrees to make payment by the method stipulated in the contract to the location stipulated in the contract. The Foundation shall be entitled to recover any costs caused by any Client variations in this respect not agreed in advance.

12.8. The Client agrees to pay all government taxes and duties, regardless of origin, that may apply to all payments to the Foundation. The Client further agrees that, should there be a change in type or value during the life of the contract, whether favourable or unfavourable to the Client, he will be responsible for them in totality. Each party will be responsible for recovering his own entitlements in respect of pre-payments (for example in respect of VAT).

12.9. The Foundation shall be entitled to charge interest at the rate of 2% per month on all amounts that remain unpaid 30 days after the agreed payment date.

12.10. In the absence of any other agreed payment terms, all invoices shall be payable in full within 30 days of the date of the invoice.

13. Stage Payments

13.1. Most contracts that extend across several months provide for stage payments. These are negotiated in advance as part of the normal discussions prior to agreement of the contract.

13.2. The Foundation shall have the right to suspend all work on behalf of the Client should these payments not be made on time to the agreed schedule. Any adverse impact that this suspension has upon the completion schedule or the quality of the product for the Client shall be at the Client's sole responsibility. This right applies not just to the contract in arrears but also any other contracts with the Client, whether or not payments against these contracts are in arrears.

13.3. In particular, where it has been agreed that payment of all or part of a contract is to be

made in advance, work will not commence on the Client's behalf until payment is actually received.

13.4. Small contracts, with a value of under £2,000 plus VAT will, unless indicated otherwise in the contract, normally attract a single initial payment of 30% of the contract sum, excluding expenses, and the Foundation will not generally commence work until this payment has been received.

14. Limitation of liability

14.1. The Foundation provides information, advice and services in good faith based upon information available at the time. We do not warrant the accuracy of information provided. It is for the Client to decide whether or not to accept our advice in making his own management decision. We advise that any data critical to a decision should be independently verified prior to being acted upon. Therefore the Foundation accepts no liability for the consequences of its information opinions and advice whether direct or indirect.

14.2. Without prejudice to other more restrictive limitations elsewhere, financial liability on the part of the Foundation is limited to the value of the contract with the Client or the value of the loss whichever is the smaller. The Foundation accepts no liability for the consequences of its information, opinions and advice, whether direct or indirect.

15. Publicity

15.1. The Foundation shall have the right, without further reference to the Client, to publicise the fact that the Client is, or was, a Client and to utilise the Client's name in publicity materials in this respect. The Foundation may also describe in general terms the type of work conducted for the Client, but shall not be permitted to link the two without the prior permission of the Client.

15.2. Wherever the results of any commissioned work are cited by the Client, the Client agrees to make due reference to the Foundation so as to make it clear who carried out the work, except where the Foundation explicitly waives this right. This provision is notwithstanding the over-riding position over ownership of any report (see Clause 7, Rights of Ownership).

15.3. If, in the opinion of the Foundation, the Client distributes an edited version of materials produced for it by the Foundation or quotes from them in a way that the Foundation believes may be detrimental to its reputation, the Foundation may require the Client without delay to cease doing so and to use its best endeavours to remove any such offending material from the public domain.

16. Recruitment of Personnel

16.1. Each Party undertakes not to attempt to solicit or procure the services of staff employed by the other party who are involved in the performance of the contract during the course of the contract and for a period of three months thereafter without the written permission of the other party.

17. Insolvency

17.1. The Foundation shall have the right to discontinue immediately all work for the Client should he or another person petition for his bankruptcy, or he be declared insolvent, or he be placed into administrative receivership or be generally unable to pay his bills as they become due.

18. Illegal activities

18.1. The Foundation will not carry out any illegal activities on behalf of the Client. Any requirement in this respect will nullify the contract in respect of performance and the Foundation will be entitled to recover in full its fee and expenses.

18.2. The Client agrees not to make any illegal use of any information provided by the Foundation or to do anything that might damage its status or reputation as a charity.

18.3 In particular, the Foundation has the right to cancel the contract if the Client is convicted in a court of law of an environmental crime.

19. Assignment of Contract

19.1 The Foundation reserves to the right to assign all rights and benefits of the contract to a subsidiary company of the Foundation upon the giving of written notice to the Client.

19.2 In particular, the Foundation may choose to exercise its right of assignment at any time if, in its opinion, the continuation of the provision of services under the contract might cause it to be in breach of its charitable status.

20. Force Majeure

20.1. Whilst the Foundation agrees to use its best endeavours to perform the contract for the Client as specified, the Foundation will not be responsible for any delays or failure to complete the contract which are beyond the Foundation's control and which could not have been reasonably predicted.

20.2. Where the delay caused by third party events outside either party's control or influence causes such delay that the purpose of the contract is wholly or significantly destroyed, either party shall be entitled in these circumstances to cancel the remaining portion of the contract. In such circumstances the Client will not make any further payments of fees but

there will be no refund of payments already made (including any payments for that part of the contract that remains unfulfilled) and the Foundation will be entitled to recover any costs already incurred.

21. Jurisdiction

21.1. Any disputes or claims shall be governed by and construed in accordance with English law and the jurisdiction of the English courts.

22. Arbitration

22.1. All unresolved disputes between the Parties shall be referred to arbitration in London before a single arbitrator to be appointed, in default of agreement otherwise, by the President for the time being of the Chartered Institute of Arbitrators in London.

22.2. Both parties also agree that all disputes arising with respect to the contract will be arbitrated upon within the English legal system.

23. Waiver

23.1. The failure by either party to enforce at any time or for any period any one or more of the terms and conditions of this agreement shall not be a waiver of them or of the right at any time subsequently to enforce all terms and conditions of this agreement.

24. Notices

24.1 Notices under the contract shall be given in writing and shall be deemed to have been served on the second working day following their postage using the first-class Royal Mail. Notices given by other methods, including e-mail, will only be deemed to have been served following the receipt by the issuing party of an acknowledgement of their receipt by the other party.

25. Integral part of contract

25.1. The Client, in signing the contract, accepts that all of these terms have been read, understood and agreed.

25.2. The Client agrees that all of the above terms form part of the contract between the Foundation and the Client, except where explicitly excluded or modified by the contract and shall take precedence over and shall not be varied by any other means including any terms or conditions that the Client may from time to time apply to suppliers.