

# NHS TRUST

## ARTIST'S CONTRACT

THIS AGREEMENT IS MADE THIS    DAY OF

**BETWEEN:**

(1)  
(herein referred to as 'the Artist')

**AND**

(2) NHS TRUST (herein referred to as 'the Client')

**WHEREAS:**

The Client wishes to commission an artwork by the Artist for an agreed location at ('the Site') and the Artist has agreed to create artwork for the Site ('the Artwork') and has submitted designs to the Client ('the Design Proposal') and the Client has approved the Design Proposal which shall be the basis of the creation of the Artwork under the terms and conditions of this Agreement.

The specific location for the Artwork at the Site is detailed in Schedule One attached.

The Artwork is described in Schedule One attached.

During the creation of the Artwork and the installation of the Artwork at the Site [person / job title], will liase between the Artist and the Client.

The Site is under the control of the Client.

**NOW IT IS HEREBY AGREED as follows:-**

### **1.0 Commission of the Artwork**

1.1 The Artist will create the Artwork that will be, in the opinion of the Client, substantially similar to the Design Proposal.

- 1.2 The Client will supply technical consultancy, co-ordination and project management services to the Artist through the Arts Co-ordinator.
- 1.3 Subject to the requirements of Clause 2.3 hereunder, the Client will be responsible for providing such fixing points as are necessary for the proper fixing and installation of the Artwork at the Site.
- 1.4 The Arts Co-ordinator will ensure that the works referred to in Clause 1.3 have been carried out to the satisfaction of the Client and the Artist prior to the installation of the Artwork.
- 1.5 The Client will endeavour to obtain all consents and approvals required by statutes, regulations and bye-laws as may be necessary in connection with the installation of the Artwork at the Site and the Client shall notify the Artist when the same have been obtained or when, even though the same have not been obtained, the Client nevertheless wishes the Artist to proceed according to the terms of this Agreement.
- 1.6 If the Client notifies the Artist under Clause 1.5, the Artist shall fabricate the Artwork in a good and workmanlike manner using materials of good quality. The choice of whatever materials or components to be under the personal supervision of the Artist and to be fit for purpose.

## **2.0 Artist's Undertakings**

- 2.1 The Artist hereby acknowledges his / her duty of care in respect of the design, manufacture and installation of the Artwork.
- 2.2 The Artwork shall be completed in accordance with the terms of this Agreement and all components and / or materials relating to the Artwork will be ready for delivery and / or installation by the dates set out in Schedule 1 attached hereto.
- 2.3 The Artist shall provide to the Client in good time an estimate of the weight of the Artwork and such details as may be required by the Client to enable the fixings or other architectural and design works to be progressed. The Artist shall retain overall responsibility for the fixings of the Artwork and every other aspect of its design, manufacture and installation.
- 2.4 The Artist shall provide proposals and information to the Client for the successful care and maintenance of the Artwork. The costs of the same to be the responsibility of the Client beyond the terms of the warranty set out in Clause 2.9b.
- 2.5 The Artist shall maintain a close liaison with the Client throughout the creation of the Artwork and shall make whatever visits to the Site and attend any meetings to discuss details of the Artwork at the request of the Client as are reasonably necessary. The costs and expenses of

such visits being included within the costs detailed in Schedule Two attached hereto.

- 2.6 The Arts Co-ordinator shall arrange for the transportation, delivery and unloading of the Artwork at the Site. If appropriate the Artist will store the Artwork, or any part thereof, until such time as it can be delivered to the Site. The cost of packaging, delivery to the Site, unloading and any storage as might be necessary outside the agreed programme set out in Schedule One attached hereto, to be the responsibility of the Client unless stated otherwise within the terms of Schedule Two attached hereto.
- 2.7 At the request of the Client, the Artist shall attend the Site for the installation of the Artwork or any part thereof within the costs detailed in Schedule Two attached hereto. The cost of the installation to be the responsibility of the Client. The Client will be responsible for any repairs or replacement that arise from faulty installation .
- 2.8 The installation of the Artwork at the Site shall be to the satisfaction of the Client and time for the installation shall be of the essence. Following such installation the Client shall confirm that it is satisfied with the Artwork by issuing an acceptance certificate. The date upon which the acceptance certificate is issued shall hereinafter be referred to as "the Acceptance Date".
- 2.9a The Artist shall be subject to the overall regime of access and health and safety operated at the site by the Client.
- 2.9b The Artist agrees to undertake any repairs whatsoever, or replacement in part or in whole, arising from defects in either the materials or the workmanship of the Artwork for a period of two years from the installation date. This is to be at no additional cost to the Client.
- 2.9c The Artist shall keep all documents relating to the Artwork, the Client and the site strictly confidential.
- 2.9d The Artist shall keep adequate records at all times during the manufacture of the Artwork to ensure that a proper assessment of time and expenses can be made under the terms of Clause 6.2, Clause 6.3 and Clause 6.4. The Artist shall keep receipts for materials and other expenses relating to the manufacture of the Artwork and shall certify the materials purchased for the manufacture of the Artwork and label such materials as the property of the Client.
- 2.9e The Artist shall not unlawfully discriminate within the meaning and scope of the provision of the Race Relations Act 1976 or any statutory modification or re-enactment thereof relating to discrimination in Employment. The Artist shall take all reasonable steps to ensure observance of the provisions of the preceding clause by all servants, agents or sub-contractors of the Artists.

### **3.0 Ownership and Copyright**

#### **3.1 Warranties and Indemnity**

The Artist warrant to the Client that:-

3.1.1 The Artist is the sole owner of the copyright and / or rights in the nature of copyright in the Artwork and have full power to enter into this Agreement and to give the warranties and indemnity contained in this Agreement.

3.1.2 The Artist will at all times during the creation of the Artwork be a “qualifying person” within the meaning of the Copyright, Designs and Patents Act 1988 Section 154 and are the sole authors of the Artwork which will be original to them and has not previously been published in any form anywhere in the world.

3.1.3 The Artwork will contain nothing obscene, blasphemous, libellous or otherwise unlawful.

3.1.4 The Artist will keep the Client fully indemnified against all damages, losses, charges and expenses in respect of all or any actions brought against the Client arising out of any breach of the above warranties.

3.2 Copyright in all designs for the Artwork and in the Artwork shall remain with the Artist and ownership in any maquettes or drawings submitted for approval to the Client shall remain with the Artist. The Artist shall not make any copies of the Artwork or reproduce or permit it to be reproduced in any form whatsoever without first obtaining written approval from the Client.

3.3 Upon acceptance of the Artwork by the Client, the Artist shall grant to the Client a royalty-free license to use the Artwork and to issue the same by reproduction of photographs or film of the Artwork.

3.4 The Client will at all times acknowledge the Artist as the creator of the Artwork, and further agree that, in so far as it is within their power to arrange, all publicity relating to the Artwork will acknowledge the Artist in a full and proper manner.

#### **4.0 Title and Risk**

4.1 Title in the Artwork shall pass to the Client upon completion of the final payment under the payment terms detailed in Schedule Two attached hereto. Risk of loss or damage to the Artwork until the Acceptance Date will be the responsibility of the Artist through arrangements made by the Artist with the manufacturers.

4.2 With effect from the Acceptance Date, the Client will be solely

responsible for the future maintenance, cleaning and insurance of the Artwork.

- 4.3 If the Artwork is stolen or destroyed either wholly or in part, the Client does not undertake to provide for or to commission a replacement, or to compensate the Artist for any consequential loss.
- 4.4 If, after consultation with the Artist, the Client decides that restoration or repair or replacement is feasible at an acceptable cost, the Client will give the Artist the option to conduct or supervise this work on reasonable commercial terms and to a schedule to be agreed.
- 4.5 The Client undertakes not to intentionally alter, modify or destroy the Artwork or do anything that can be shown to compromise the integrity of the Artwork.
- 4.6 Upon written notice to the Artist, the Client may for good reason move or remove the Artwork. In the event of removal under the terms of this Clause, no further fee shall be due to the Artist.
- 4.7 The Client undertakes in connection with any such relocation to take all reasonable steps to consult the Artist and to seek his/her views.
- 4.8 If the Client decided to sell, lend or otherwise part with possession of the Artwork they shall take reasonable steps to notify the Artist and such notice will include the name and address of the person / institution which it is intended should acquire the Artwork.

## **5.0 Fees and Payment**

- 5.1 In consideration of the commission and installation of the Artwork the Artist shall be paid in accordance with the payment terms detailed in Schedule Two attached hereto.
- 5.2 All taxes and any other sums for which the Artist may be liable are deemed to be included within the fees and payment terms detailed in Schedule Two attached hereto.

## **6.0 Termination**

- 6.1 If the Artist shall be in material breach of any of his obligations under this Agreement and shall fail to remedy the same (if capable of remedy) within 14 days of the date of any notice from the Client to the Artist specifying the breach and requiring its remedy, then the Client may, by notice in writing to the Artist, forthwith terminate this Agreement and be entitled to recover from the Artist all loss and / or damage thereby arising.
- 6.2 In addition to the provisions of Clause 6.1, in the event that the Client terminates this Agreement prior to the Acceptance Date, the Client will

pay to the Artist any instalments of the agreed price which are due and payable together with a reasonable proportion of the next following instalment which is commensurate with any work completed at the time of the issue of the notice of termination.

- 6.3 The Artist may suspend or terminate this Agreement on the expiry of reasonable notice given in writing to the Client. In such notice, the Artist shall specify the duties effected and the reason or reasons for suspension or termination.
- 6.4 If the Artist shall be incapacitated before completion of the terms of this Agreement then either party may, by notice in writing to the other, forthwith terminate this Agreement and the Client shall be entitled to recover from the Artist any amounts, not having been fully and properly expended, paid on account of the price prior to the date of termination, but neither party shall otherwise have any liability to the other in connection with this Agreement.
- 6.5 If the Artist should die before completing the Artwork, the Artist's Estate will be entitled to retain payment for all work completed up to the date of the Artist's death in satisfaction of the work completed under the Agreement, together with such further sums as may be considered reasonable in the circumstances and be agreed between the parties. In consideration thereof the Client will receive title to any complete or partially complete Artwork and any materials that there are in existence.

## **7.0 General**

- 7.1 This Agreement shall be governed by and construed in accordance with English law and the parties submit to the non-exclusive jurisdiction of the English Courts.
- 7.2 Any notice of approval or disapproval under this Agreement shall be given in writing. Payment by the Client to the Artist under Clause 5.1 shall be a complete discharge of the Client's obligation to the Artist under this Agreement.
- 7.3 Subject to the terms of this Agreement the Artist shall be at liberty to undertake any other project in any other capacity whatsoever, provided that the Artist shall give priority to their obligations under this Agreement.
- 7.4 All previous agreements made between the Client and the Artist relating to the Artwork are hereby superseded save as may be incorporated or referred to in this Agreement.
- 7.5 All headings in this Agreement are for reference only.
- 7.5 This Agreement does not constitute a partnership Agreement between

any of the parties.

- 7.7 This Agreement is personal to the parties and (except as set out in Clause 1.3) shall not be assigned or sub-contracted in whole or in part without the express written consent of the other parties, providing that the foregoing shall not prevent the Client from selling the Artwork to any third party or from assigning this Agreement to such third party.

**AS WITNESS HEREOF the hands of the parties of the day and year before written:-**

Signed by the Artist

Witnessed by

Signed by the Client

(FOR AND ON BEHALF OF NHS TRUST)

Witnessed by

## **SCHEDULE ONE**

**1. The Artwork**

**2. The Site**

**3. The Programme**

The design proposal to be approved by

The manufacture to be completed by

The delivery to the site by

## **SCHEDULE TWO**

### **Payment terms -**

1. Upon signing of the contract
2. Upon completion of the manufacture
3. Upon acceptance of the Artwork

### **THESE TERMS EMBODIED IN THE CLIENT'S ORDER NO.**

#### **NB: Inclusions / Exclusions**

1. The cost of the inscription on the base of the artwork is excluded.  
The cost of this will be agreed separately by the Artist and the Client
2. Transport is included.
3. Installation will be by the Artist with help provided by the Client

VAT is included

Payment to:

Invoices to be made out to:

Payment to be within 30 days of submission of an approved invoice.