CONDITIONS OF CONTRACT – SERVICES PURCHASED UNDER A PURCHASE ORDER FORM

This Contract applies where the Council has placed an order under a Purchase Order Form with the Supplier and there is no pre-existing valid contract in relation to the Services. The Purchase Order Form further elaborates on the situations where this Contract shall be incorporated.

**CONTRACT DETAILS**

|  |  |
| --- | --- |
| **Service Provider’s Name:** | Being the party listed in the “Supplier” section in the Purchase Order Form. |
| **Service Provider’s address:** | Being the address listed under the “Supplier” section in the Purchase Order Form. |
| **Contract Period** | Shall be from the Services Start Date until the Services are complete under Condition 2, unless terminated earlier in accordance with this Contract. |
| **Force Majeure:** | The period for the purpose of Force Majeure (Condition 27) shall be three months. |
| **Notices:** | The addresses for notices to be served under this contract are as follows:   * For the Service Provider: the Service Provider’s address; and * For the Council: the contact details listed in the “Order Contact” section of the Purchase Order Form. |
| **Price:** | The Price shall be as set out in the Purchase Order Form. |
| **Purchase Order Form** | Being the purchase order form completed by the Council using the Professional Electronic Commerce Online System or any other system used by the Council. |
| **Required Insurance:** | The Required Insurances shall be as follows   1. Employer’s liability insurance in the sum of not less than £5 million and all in accordance with any legal requirements for the time being in force; 2. Public liability insurance for such sum and range of cover as the Service Provider deems to be appropriate but covering at least all matters which are the subject of indemnities or compensation obligations under the Contract in the sum of not less than £5 million for any one incident and unlimited in total, unless otherwise agreed by the Council in writing; and 3. professional indemnity insurance with a limit of indemnity of not less than £1 million in relation to any one claim or series of claims and shall ensure that all professional consultants or sub-contractors involved in the provision of the Services hold and maintain appropriate cover. |
| **Services:** | The Services set out in the Purchase Order Form. |
| **Services Start Date:** | Being the “Order Date” on the Purchase Order Form. |

1. This Contract is made up of the following:
2. the Contract Details; and
3. the Conditions

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| --- |
| **EAST LOTHIAN COUNCIL**  **CONDITIONS OF CONTRACT FOR THE PROVISION OF SERVICES** |

These Conditions are the Conditions referred to in the Contract Details. They may only be varied with the written agreement of the Council. No terms or conditions put forward at any time by the Service Provider shall form any part of the Contract unless specifically agreed in writing by the Council.

1. DEFINITIONS

* 1. In these Conditions:

2011 Act: means Public Records (Scotland) Act 2011;

Arrangements: the Service Provider’s approach to the management of Public Records agreed with the Council pursuant to Condition 16;

**Business Days:** means the period from 9.00am to 5.00pm on a day, other than a Saturday, Sunday or public holiday in Scotland, when banks in Edinburgh are open for business;

**Contract:**means the contract between the Council and Service Provider consisting of the Contract Details and these conditions;

**Contract Period**: is as set out in the Contract Details;

**Council**: means East Lothian Council;

**Data Protection Laws**: means all applicable data protection and privacy legislation in force from time to time in the UK including: (i) the UK GDPR; (ii) the Data Protection Act 2018 (and regulations made thereunder) to the extent that it relates to processing of personal data and privacy; (iii) the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended; (iv) the EU GDPR (to the extent applicable); and (v) all other legislation and regulatory requirements in force from time to time which apply to the Service Provider or the Council relating to the use of Personal Data (including, without limitation, the privacy of electronic communications) and the guidance and codes of practice issued by the relevant data protection or supervisory authority and applicable to the Service Provider or the Council;

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

**EIRs**: means the Environmental Information (Scotland) Regulations 2004 together with any guidance and/or codes of practice issued by the relevant government department in relation to such legislation;

**FOISA:** means the Freedom of Information (Scotland) Act 2002 together with any guidance and/or codes of practice issued by the Scottish Information Commissioner or relevant government department in relation to such legislation;

**Good Industry Practice:** means standards, practices, methods and procedures conforming to legal and regulatory requirements and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking as the Service Provider under the same or similar circumstances;

**Information Legislation**: has the meaning in Condition 15.3;

**Intellectual Property Rights**: means all copyright, patent, trademark, design right, database right and any other right in the nature of intellectual property whether or not registered, in any materials or works in whatever form (including but not limited to any materials stored in or made available by means of an information technology system and the computer software relating thereto);

**Personal Data:** has the meaning given in the Data Protection Laws;

**Processing:** has the meaning given in the Data Protection Laws and cognate expressions shall be construed accordingly;

**Premises:** means the location where the Services are to be provided;

**Public Record:** shall have the meaning ascribed to it in section 3 of the Public Records (Scotland) Act 2011;

**Service Provider:**means the person, firmor company with whom the Council has contracted for the provision of the Services*;* and

**UK GDPR**: has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.

* 1. Any items set out in the Contract Details shall have the same meanings if used in these Conditions.

THE SERVICES

* 1. The Service Provider shall provide the Services with all reasonable skill, care and diligence, to the reasonable satisfaction of the Council and conform with any particulars specified in the Contract and/or Purchase Order Form.
  2. Provision of the Services shall conform in all respects with the requirements of any relevant statutes, orders, regulations or bye‑laws currently in force.
  3. The Council relies on the skill and judgement of the Service Provider in the provision of the Services and the execution of the Contract.
  4. The Service Provider shall provide the Services for the Contract Period unless the Contract is terminated earlier in accordance with any of its terms.
  5. The Service Provider shall:
     1. satisfy itself that no product used in the supply of Services to the Council shall:
        1. pose a danger to health; and
        2. cause significant damage to the environment;
     2. take all reasonable steps to seek ensure that they do not consume a disproportionate amount of energy in the provision of the Services;
     3. in respect of any use or disposal of anything used in relation to the provision of the Services do not cause unnecessary waste because of over-packaging and/or because of an unusually short shelf life; and
     4. ensure that they do not use any products that contain materials derived from threatened species and/or threatened environments in the provision of the Services.

THE PRICE

* 1. The Price of the Services shall be as stated in the Contract Details and not increase will be accepted by the Council unless agreed in writing.
  2. Unless otherwise agreed in writing by the Council, payment shall be due 30 days after receipt by the Council of the correct invoice, submitted monthly in arrears, for work completed to the satisfaction of the Council.
  3. Value Added Tax, where applicable, shall be shown separately on all invoices as a strictly net extra charge.

CHANGE TO CONTRACT REQUIREMENTS

* 1. No variation of the Contract shall be effective unless it is in writing and signed by the Parties (or their authorised representatives).

INSPECTION OF PREMISES

* 1. The Service Provider is deemed to have inspected the Premises before providing the Services and satisfied itself in relation to all matters connected with the provision of the Services at the Premises.
  2. The Council shall, at the request of the Service Provider, grant such access as may be reasonable for this purpose.
  3. The Services shall be provided at the place(s) specified in the Contract. Any access to premises and any labour and equipment that may be provided by the Council in connection with provision of the Services shall be provided without acceptance by the Council of any liability whatsoever and the Service Provider shall **indemnify** the Council in respect of any actions, suits, claims, demands, losses, charges, costs and expenses which the Council may suffer or incur as a result of or in connection with any damage or injury (whether fatal or otherwise) occurring in the course of provision of the Services to the extent that any such damage or injury is attributable to any act, omission or negligence of the Service Provider or any of its employees, agents or sub‑contractors.
  4. Unless otherwise specified, the Service Provider shall provide all equipment, material and any other things necessary to provide the Services.

SERVICE PROVIDER’S STATUS

* 1. In carrying out the Contract the Service Provider shall be acting as principal and not as the agent of the Council. Accordingly:
     1. the Service Provider shall not (and shall procure that its agents, employees and sub-contractors do not) say or do anything that might lead any other person to believe that the Service Provider is acting as the agent of the Council; and
     2. nothing in the Contract shall impose any liability on the Council in respect of any liability incurred by the Service Provider to any other person but this shall not be taken to exclude or limit any liability of the Council to the Service Provider that may arise by virtue of either a breach of the Contract or any negligence on the part of the Council, its agents or employees.

SERVICE PROVIDER’S PERSONNEL

* 1. The Service Provider shall take the steps reasonably required by the Council to prevent unauthorised persons being admitted to the Premises. If the Council gives the Service Provider 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 performance of the Contract, the Service Provider shall take all necessary steps to comply with such notice and, if required by the Council, the Service Provider shall replace any person removed under this Condition with another suitably qualified person and procure that any security pass issued to the person removed is surrendered. The giving of such notice by the Council to the Service Provider as aforesaid shall not entitle the Service Provider to delay, suspend, terminate or withhold the performance of any of its obligation in terms of the Contract and it shall remain bound to timeously implement its obligations in full, whether or not it complies with the terms of the said notice or otherwise.
  2. If and when instructed by the Council, the Service Provider shall give to the Council a list of names and addresses of all persons who are or may be at any time concerned with the Contract specifying the capacities in which they are so concerned, and giving such other particulars and evidence of identity and other supporting evidence as the Council may reasonably require.
  3. The decision of the Council 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 performance of the Contract and as to whether the Service Provider has furnished the information or taken the steps required of it by this Condition shall be final and conclusive.
  4. The Service Provider shall bear the cost of implementing any notice, instruction or decision of the Council under this Condition 7.

ACCESS

* 1. Where any access to the Premises is necessary in connection with provision of the Services, the Service Provider shall at all times comply with the reasonable requirements of the Council.
  2. Access to the Premises shall not be exclusive to the Service Provider but only such as shall enable it to carry out the Contract. The Service Provider shall co‑operate with such other parties as the Council may reasonably require.

AUDIT

* 1. The Service Provider shall keep and maintain records to the satisfaction of the Council of all Public Records and expenditures which are reimbursable by the Council and of the hours worked and costs incurred in connection with any employees of the Service Provider paid for by the Council on a time charge basis. Such records shall be maintained for the longer of (i) the time period set out in the Council’s records management plan or (ii) six years after the Contract has been completed. The Service Provider shall on request afford the Council or its representatives such access to those records as may reasonably be required by the Council. The provisions of this Condition 9 shall apply during the continuance of the Contract and after its termination howsoever arising.

CORRUPT GIFTS OR PAYMENTS

* 1. The Service Provider shall not offer or give, or agree to give, to any employee or representative of the Council 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 Council or for showing or refraining from showing favour or disfavour to any person in relation to this or any such Contract including an offence under the Bribery Act 2010.

INTELLECTUAL PROPERTY RIGHTS

* 1. All Intellectual Property Rights in any material including but not limited to reports, guidance, specification, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs which are created or developed by the Service Provider on behalf of the Council for use, or intended use, in relation to the performance by the Service Provider of its obligations under the Contract are hereby assigned to and shall vest in the Council absolutely.
  2. Except as may expressly be provided for in the Contract, neither party acquires any interest in or licence to use the other party’s Intellectual Property Rights owned or developed prior to or independently of the Contract.
  3. The Service Provider must not infringe any Intellectual Property Rights of any third party in providing the Services or otherwise performing its obligations under the Contract. The Service Provider shall indemnify the Council against all actions, claims, demands, losses, charges, costs and expenses which the Council may suffer or incur as a result of or in connection with any breach of this Condition 11.3.
  4. Without prejudice to Condition 19.2, the Service Provider shall not and shall procure that its servants and agents shall not (except to the extent necessary for the implementation of the Contract) without the prior written consent of the Council 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 the Contract) which the Service Provider may obtain pursuant to or by reason of the 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 Service Provider shall not refer to the Council or the contract in any advertisement without the Council’s prior written consent.
  5. The provisions of this Condition 11 shall apply during the continuance of the Contract and after its termination howsoever arising.

HEALTH AND SAFETY

* 1. The Service Provider represents and warrants to the Council that the Service Provider has satisfied itself that all necessary tests and examinations have been made or will be made prior to provision of the Services to ensure that the Services are performed so as to be safe and without risk to the health or safety of persons accessing the same.
  2. Without prejudice to the generality of Condition 12.2 hereof, the Service Provider shall indemnify the Council against all actions, suits, claims, demands, losses, charges, costs and expenses which the Council may suffer or incur as a result of or in connection with any breach of Condition 12.1.

INDEMNITY AND INSURANCE

* 1. Without prejudice to any rights or remedies of the Council, the Service Provider shall **indemnify** the Council against all actions, suits, claims, demands, losses, charges, costs and expenses which the Council may suffer or incur as a result of or in connection with any damage to property or in respect of any injury (whether fatal or otherwise) to any person which may result directly or indirectly from any failure in the provision of the Services or the negligent or wrongful act or omission of the Service Provider, its employees, agents or sub-contractors.
  2. The Council shall indemnify the Service Provider in respect of all claims, proceedings, actions, damages, fines, costs, expenses or other liabilities which may arise out of, or in consequence of, a breach of the Data Protection Laws where the breach is the direct result of the Service Provider acting in accordance with the Council’s specific written instructions. This indemnity provision shall not apply if the Service Provider (a) acts on the Council’s specific written instructions but fails to notify the Council in accordance with its obligations under Condition 29 (Data Protection); or (b) fails to comply with any other obligation under the Contract.
  3. Except in the case of loss, damage or personal injury (including death) suffered by an employee of the Service Provider (in respect of which the indemnity in Condition 13.1 shall apply whether or not the loss, damage or personal injury was caused by the negligent or wilful act or omission of the Council, or any of its servants or agents) the indemnity contained in Condition 13.1 shall not apply to the extent that the loss, damage or injury is caused by the negligent or wilful act or omission of the Council, or any servant or agent of the Council.
  4. The Service Provider shall have in force and shall require any sub-contractor to have in force the Required Insurances. The cover shall be in respect of all risks which may be incurred by the Service Provider, arising out of the Service Provider’s performance of the agreement, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Service Provider.
  5. The policy or policies of the Required Insurances shall be shown to the Council on request, together with satisfactory evidence of payment of premiums and annual renewals.
  6. If, for whatever reason, the Service Provider fails to give effect to and maintain the Required Insurances, the Council may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Service Provider.
  7. The terms of any insurance or the amount of cover shall not relieve the Service Provider of any liabilities under the Contract.

DISCRIMINATION

* 1. The Service Provider 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 Service Provider shall take all reasonable steps to secure the observance of these provisions by all servants, employees or agents of the Service Provider and all sub‑contractors employed in the execution of the Contract.

CONFIDENTIALITY AND FREEDOM OF INFORMATION

* 1. The Service Provider shall keep secret and not disclose and shall procure that its employees, agents and sub-contractors keep secret and do not disclose any information of a confidential nature obtained by the Service Provider by reason of the Contract except information which is in the public domain otherwise than by reason of a breach of this provision.
  2. All information related to the Contract will be treated as commercial in confidence by the parties except that:
     1. either Party may disclose such confidential information to its employees, officers, representatives, contractors, sub-contractors or advisers who need to know such information for the purposes of exercising the Party's rights or carrying out its obligations under or in connection with the Contract; and each Party shall ensure that its employees, officers, representatives, contractors, sub-contractors or advisers to whom it discloses the confidential information comply with this Condition 15;
     2. the Service Provider may disclose any information as required by law or judicial order to be disclosed; and
     3. the Council may disclose any information as required by law, a court of competent jurisdiction or any governmental or regulatory authority.
  3. The Service Provider acknowledges that all information submitted to the Council may need to be disclosed and/or published by the Council. Without prejudice to the foregoing generality, the Council may disclose information in compliance with FOISA and/or the EIRs (together the “**Information Legislation**”), any other law, or, as a consequence of judicial order, or order by any court, tribunal or body with the authority to order disclosure (including the Scottish Information Commissioner). The Council’s decision as to what should be disclosed or the interpretation of FOISA or the EIRs shall be final and conclusive in any dispute, difference or question arising in respect of disclosure.
  4. The Service Provider shall assist and cooperate as reasonably requested by the Council to enable the Council to comply with its obligations under the Information Legislation.
  5. Where the Service Provider has indicated in its response that it considers certain information should be treated as commercially confidential, the Council shall not release such information other than where a valid request is received in terms of the Information Legislation for such information and the Council shall have regard to the Service Provider’s view when considering any request to release the information in terms of the Information Legislation.
  6. Notwithstanding Condition 15.5, the Service Provider acknowledges that the Council may be required under the Information Legislation to disclose information without consulting or obtaining consent from the Service Provider. The Council shall take reasonable steps to notify the Service Provider of a request for information to the extent that it is permissible and reasonably practicable for it to do so but the Council shall be responsible for determining in its absolute discretion whether any information is exempt from disclosure in accordance with the Information Legislation.
  7. The parties agree that, notwithstanding the terms of Condition 15.2, disclosure may be made by the Council of such information relating to the outcome of the procurement process as may be required to be published by domestic policy on the disclosure of information regarding local government contracts. This disclosure may include the number of tenders received, the identity of the successful Service Provider, the winning contract price, the specification of services to be provided, terms and conditions of contract, quality and performance standards, and subsequent performance against those quality and performance standards.
  8. The provisions of this Condition 15 shall apply during the continuance of the Contract and after its termination howsoever arising.

RECORDS MANAGEMENT, MONITORING AND RECORDS AUDIT

* 1. The Service Provider shall (and shall procure that any sub-contractor(s) and/or agent(s) shall) provide the Council with all assistance (including in respect of monitoring and audit) reasonably requested by the Council to assist the Council in complying with its obligations under the 2011 Act and with the Council’s records management plan in terms of the 2011 Act.
  2. The Service Provider shall (and shall procure that any sub-contractor(s) and/or agent(s) shall) (i) manage all Public Records in respect of the delivery of the Services in accordance with the 2011 Act and the Council’s records management plan; (ii) provide the Council on request any copies of the Arrangements in force from time to time; and (iii) make such alterations to the Arrangements as the Council may from time to time require.
  3. The Service Provider shall (and shall procure that any sub-contractor(s) and/or agent(s) shall) ensure that none of its actions in the provision of the Services to the Council cause the Council to (i) be in breach of its obligations under the 2011 Act; or (ii) receive an action notice in terms of section 7 of the 2011 Act.
  4. On termination of the Contract for whatever reason, the Public Records held by the Service Provider, any sub-contractor(s) and/or agents, which are to be delivered to the Council in terms of the Council’s record management plan in terms of the 2011 Act and the Arrangements shall be delivered to the Council in a form agreed with the Council and in a widely accessible format, forthwith at no cost to the Council including full ownership of the records with all intellectual property in relation thereto and all information reasonably required to locate individual items within the records, and shall be included with the data and other material belonging to the Council. Where the Public Records are not delivered to the Council on termination of the Contract, the Service Provider shall comply with this Condition 16, where applicable, and any additional instructions of the Council.
  5. Provided that if the Service Provider, any sub-contractor(s) and/or agents suffers an insolvency event then immediately upon the occurrence of an Insolvency Event, the Public Records held by the Service Provider and due to be transferred to the Council pursuant to this Condition 16.5 shall be deemed to be held in trust for the Council and the Service Provider shall thereafter transfer such Public Records to the Council on the same terms as contained herein.
  6. The Council may require the proper disposal or transfer of Public Records from the Service Provider to the Council during the Contract Period where such Public Records are no longer required for the provision of the Services under the Contract (whether such Public Records are so required shall be determined by the Council at its sole discretion, acting reasonably), and the Service Provider shall (and shall procure that any sub-contractor(s) and/or agent(s) shall) securely destroy or provide such Public Records as agreed in writing with the Council forthwith. Where the Service Provider is required to dispose of the Public Records, the Service Provider shall (and shall procure that any sub-contractor(s) and/or agent(s) shall) certify in writing to the Council that it has deleted or destroyed the Public Records and that the Public Records cannot be reconstituted or restored, within 3 Business Days after it completes the deletion or destruction.
  7. Upon request of the Council, the Service Provider shall (and shall procure that any sub-contractor(s) and/or agent(s) shall) rectify, provide access and/or produce to the Council or another organisation (as authorised by the Council) the Public Records during the Contract Period and after termination of the Contract (if applicable). Where providing access and/or producing the Public Records, the Service Provider shall (and shall procure that any sub-contractor(s) and/or agent(s) shall) do so in a widely accessible format and in a form capable of being read and interpreted by the Council.
  8. The Service Provider shall (and shall procure that any sub-contractor(s) and/or agent(s) shall) allow the Council, its employees, auditors, authorised agents or advisers reasonable access to any relevant premises, during normal business hours, to inspect the procedures, measures and records referred to in this Condition 16 and contribute as is reasonable to those audits and inspections.
  9. Any assistance or requirements under this Condition 16 shall be at no cost to the Council. The provisions of this Condition 17 shall apply during the Contract Period and after its termination howsoever arising.
  10. Where the Service Provider enters a sub-contract with a supplier for the purpose of performing the Contract, the Service Provider shall cause a term to be included in such sub-contract which is in the same terms as that set out in this Condition 16 subject only to modification to refer to the correct designation of the Service Provider and supplier as the case may be.

17.11 The Service Provider shall act on the Council’s instructions without unreasonable delay in respect of any changes as regards to the Public Records including without prejudice to the foregoing generality, securely destroying any Public Records, rectifying any Public Records, securely producing and transferring the Public Records to the Council or to another organisation as per the Council’s instructions in a widely accessible format.

TERMINATION

* 1. Without limiting its other rights or remedies, the Council may terminate the Contract with immediate effect by giving written notice to the Service Provider if:
     1. the Service Provider commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 days (or such longer date as may be agreed between the parties in writing) of the Service Provider being notified in writing to do so;
     2. the Service Provider takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), obtaining a moratorium, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
     3. the Service Provider suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
     4. the Service Provider’s financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy.
  2. The Council may terminate the Contract in the event that:
     1. the Contract has been subject to substantial modification which would have required a new procurement procedure in accordance with regulation 72(9) (modification of contracts during their term) of the Public Contracts (Scotland) Regulations 2015; or
     2. the Service Provider has, at the time of contract award, been in one of the situations referred to in regulation 58(1) (exclusion grounds) of the Public Contracts (Scotland) Regulations 2015, including as a result of the application of regulation 58(2) of those regulations, and should therefore have been excluded from the procurement procedure.
  3. The Council may also terminate the Contract in the event of a failure by the Service Provider to comply in the performance of the Contract with legal obligations in the fields of environmental, social and employment law.
  4. In addition to the Council’s rights of termination under Conditions 17.1 to 17.3, the Council shall be entitled to immediately terminate this Contract by giving to the Service Provider notice to that effect.
  5. Termination of the Contract shall not affect either of the Parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of this Contract which existed at or before the date of termination.
  6. Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.

RECOVERY OF SUMS DUE

* 1. Wherever under the Contract any sum of money is recoverable from or payable by the Service Provider, that sum may be deducted from any sum then due, or which at any later time may become due, to the Service Provider under the Contract or under any other agreement or contract with the Council.

ASSIGNATION AND SUB‑CONTRACTING

* 1. The Service Provider shall not, without the written consent of the Council, assign the benefit or burden of the Contract or any part thereof.
  2. No sub‑contracting by the Service Provider shall in any way relieve the Service Provider of any of its responsibilities under the Contract.
  3. Where the Service Provider enters a sub-contract with a supplier for the purpose of performing the Contract, the Service Provider shall cause a term to be included in such sub-contract which:
     1. requires payment to be made of all sums due by the Service Provider to the supplier within a specified period not exceeding 30 days from receipt of a valid invoice as defined by the sub-contract requirements and provides that, where the Council has made payment to the Service Provider in respect of the Contract and the supplier’s invoice relates to the Contract then, to that extent, the invoice must be treated as valid and, provided the Service Provider is not exercising a right of retention or set-off in respect of a breach of contract by the supplier or in respect of a sum otherwise due by the supplier to the Service Provider, payment must be made to the supplier without deduction;
     2. notifies the supplier that the sub-contract forms part of a larger contract for the benefit of the Council and that should the supplier have any difficulty in securing a timely payment of an invoice, that matter may be referred by the supplier to the Council; and
     3. in the same terms as that set out in this Condition 19.3.3 (including for the avoidance of doubt this Condition 19.3.3.) subject only to modification to refer to the correct designation of the Service Provider and supplier as the case may be.
  4. The Service Provider shall also include in every sub-contract:
     1. a right for the Service Provider to terminate that sub-contract if the relevant sub-contractor fails to comply in the performance of its contract with legal obligations in the fields of environmental, social or employment law or if any of the termination events specified in Condition 17.2 occur; and
     2. a requirement that the sub-contractor includes a provision having the same effect as 20.4.1 in any sub-contract which it awards.

In this Condition 19.4, ‘sub-contract’ means a contract between two or more contractors, at any stage of remoteness from the Council in a sub-contracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of the Contract.

NOTICES

* 1. Any notice given under or pursuant to the Contract shall be in writing and shall be:
     1. delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
     2. sent by email to the addresses specified in the Contract Details.
  2. Any notice shall be deemed to have been received:
     1. if delivered by hand, at the time the notice is left at the proper address; or
     2. if sent by pre-paid first-class post or other next working day delivery service, at 9.00am on the second Business Day after posting; or
     3. if sent by email, at the time of transmission.
  3. If deemed receipt under Condition 20.2 would occur outside business hours in the place of receipt, it shall be deferred until business hours resume. In this Condition 20.3, business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.
  4. This Condition does not apply to the services of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

DISPUTE RESOLUTION

* 1. All disputes, differences or questions between the Council and the Service Provider with respect to any matter or thing arising out of or relating to the Contract or the Services may be referred for decision to a single arbiter to be mutually agreed and chosen by the Council and the Service Provider for that purpose, or, if they are unable to agree as to the appointment of an arbiter, chosen by the President of the Law Society of Scotland for the time being on the application of either party. The decision of the arbiter shall be binding on the parties as to the matter in dispute.

HEADINGS

* 1. The headings to Conditions shall not affect their interpretation.

ANTI-SLAVERY AND HUMAN TRAFFICKING

* 1. In performing its obligations under the Contract, the Service Provider shall comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including the Modern Slavery Act. The Service Provider represents and warrants that it has not been convicted of any offence involving slavery and human trafficking or been the subject of any investigation, inquiry or enforcement proceedings regarding any offence or alleged offence of or in connection with slavery and human trafficking.

HUMAN RIGHTS

* 1. The Service Provider shall (and shall procure that its personnel and any sub-contractor(s) shall) at all times comply with the provisions of the Human Rights Act 1998 in the performance of the Contract. The Service Provider shall (and shall procure that its personnel and any sub-contractor(s) shall) undertake, or refrain from undertaking, such acts as the Council requires to enable the Council to comply with its obligations under the Human Rights Act 1998.

ENTIRE AGREEMENT

* 1. The Contract constitutes the entire agreement between the Service Provider and the Council and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
  2. Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for any innocent or negligent misrepresentation based on any statement in this Contract.

THIRD PARTY RIGHTS

* 1. This agreement does not give rise to any rights under the Contract (Third Part Rights) (Scotland) Act 2017 for any third party to enforce or otherwise invoke any term of this agreement.

FORCE MAJEURE

* 1. “**Force Majeure Event**” means any circumstance not within a party’s reasonable control including, without limitation:
     1. acts of Gods, flood, drought, earthquake or other natural disaster;
     2. epidemic or pandemic;
     3. terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
     4. nuclear, chemical or biological contamination or sonic boom;
     5. any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition[, or failing to grant a necessary licence or consent;
     6. collapse of buildings, fire, explosion or accident;
     7. interruption of utility service; and
     8. non-performance by suppliers or subcontractors.
  2. Neither Party shall be in breach of this Contract nor liable for delay in performing, or failure to perform, any of its obligations under this Contract if such delay or failure result from a Force Majeure Event.
  3. If there is any If there is any dispute arising as to whether a situation or circumstances constitutes a Force Majeure Event, it shall be determined by the Council acting reasonably.
  4. If the Force Majeure Event continues for the period set out in the Contract Details, the Party not affected may terminate this Contract by giving 30 days’ written notice to the affected party.
  5. If both Parties are affected by the Force Majeure Event, then either Party may terminate the Contract in accordance with Condition 27.4.

BLACKLISTING

* 1. The Service Provider must not commit any breach of the Employment Relations Act 1999 (Blacklists) Regulations 2010 or section 137 of the Trade Union and Labour Relations (Consolidation) Act 1992, or commit any breach of the Data Protection Laws by unlawfully processing personal data in connection with any blacklisting activities. Breach of this Condition is a material default which shall entitle the Council to terminate the Contract.

DATA PROTECTION

* 1. Where delivery of the Services:
     1. does not involve the processing of any Personal Data by the Service Provider on behalf of the Council; or
     2. the processing is limited to the sharing of names and contact details **only** of employees of the Parties for the purposes of co-ordinating and managing the Contract and provision of the Services,

then each Party will observe its respective obligations under the Data Protection Laws.

1. **COMPLIANCE WITH RELEVANT LAWS AND POLICIES**
   1. In performing its obligations under the Contract, the Service Provider shall:
      1. comply with all applicable laws, statutes, regulations and codes from time to time in force;
      2. comply with Good Industry Practice; and
      3. comply with the Mandatory Policies.
   2. The Council may immediately terminate the Contract for any breach of Condition 30.1 by the Service Provider.
2. **WAIVER**
   1. No failure or delay by a Party to exercise any right or remedy provided under the Contract or by law shall constitute a waver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.
   2. No single or partial exercise of such right or remedy, as is referred to in Condition 32.1, shall prevent or restrict the further exercise of that or any other right or remedy.
3. **SEVERANCE**
   1. If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable; and if such modification is not possible, the relevant provision or part-provision shall be deemed deleted.
   2. Any modification to or deletion of a provision or part-provision under this Condition 32 shall not affect the validity and enforceability of the rest of the Contract.
4. **GOVERNING LAW**
   1. The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by, and construed in accordance with the law of Scotland.
5. **JURISDICTION**
   1. Each Party irrevocably agrees that the courts of Scotland shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.

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| **SUPPLEMENTARY NOTICE** | | | | | | |
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|  | **1. PROTECTING THE ENVIRONMENT**  Service Providers to the East Lothian Council are requested to satisfy themselves that no product will be supplied or used in the provision of Services to the Council which will endanger the health of the consumers or others, will cause significant damage to the environment during manufacture, use, or disposal, which consumes a disproportionate amount of energy during manufacture, use, or disposal, which causes unnecessary waste because of over-packaging or because of an unusually short shelf life, or which contains materials derived from threatened species or threatened environments.  **3. FAIR WORK FIRST**  Service Providers to East Lothian Council are expected to be aware of and committed to promoting through its own employment policies and practices the Scottish Government’s Fair Work First policy and the [Fair Work Framework 2016](https://www.fairworkconvention.scot/wp-content/uploads/2018/12/Fair-Work-Convention-Framework-PDF-Full-Version.pdf). The Service Provider is expected to adopt, as far as it is reasonable and commercially viable in the circumstances to do so, the seven Fair Work First criteria. This includes providing workers with payment of the real Living Wage. |  | |  | | **2. LATE PAYMENT OF INVOICE**  Service Providers to the East Lothian Council are requested to address complaints regarding late payment of invoices to, in the first instance, the addressee of the invoice and, in the second instance to the Director of Scottish Procurement Directorate, 3rd Floor Meridian Court, Glasgow, G2 6AT. Telephone 0131-244-3878. This procedure is suggested as the best practical way of ensuring problems of late payment are resolved, and is not intended to interfere with Service Providers’ legal rights.  **4. SCOTLAND INNOVATES**  Service Providers to East Lothian Council are encouraged and invited to submit any innovative proposals. East Lothian Council are committed to supporting the provision of new ideas and will provide feedback and a response on any innovative proposals. |
| THIS NOTICE DOES NOT FORM PART OF THE CONDITIONS OF CONTRACT | | | | | | | |