CONDITIONS OF CONTRACT – CONSULTANCY SERVICES PURCHASED 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 Consultancy Services. The Purchase Order Form further elaborates on the situations where this Contract shall be incorporated.

CONTRACT DETAILS

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| --- | --- |
| Consultant’s Name: | Being the party listed in the “Supplier” section in the Purchase Order Form. |
| Consultant’s address: | Being the address listed under the “Supplier” section in the Purchase Order Form. |
| Consultancy Services: | The Consultancy Services set out in the Purchase Order Form. |
| Consultancy Services Start Date: | Being the “Order Date” on the Purchase Order Form. |
| Contract Period: | Shall be from the Services Start Date until the Consultancy Services are complete, unless terminated earlier in accordance with this Contract. |
| Fees: | The fees payable by the Council shall be as set out in the Purchase Order Form. |
| Force Majeure: | The period for the purpose of Force Majeure 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. |
| 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 Consultant 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 Consultancy Services hold and maintain appropriate cover. |

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

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| **EAST LOTHIAN COUNCIL**  **CONDITIONS OF CONTRACT FOR THE PROVISION OF CONSULTANCY 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 Consultant shall form any part of the Contract unless specifically agreed in writing by the Council.

DEFINITIONS

* 1. In these Conditions:

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

**Arrangements:** means the consultant’s approach to the management of Public Records agreed with the Council pursuant to Condition 14;

**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;

**Consultant:** means the person, firm or company with whom the Council has contracted for the provision of the Consultancy Services;

**Consultancy Services:** means the services to be provided as specified in the Contract Details;

**Contract:** means the contract between the Council and the Consultant consisting of the Contract Details these Conditions;

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

Council: East Lothian Council incorporated under the Local Government etc. (Scotland) Act 1994 and have its principal office at John Muir House, Brewery Park, Haddington, East Lothian EH41 3HA;

**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 Consultant 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 Consultant or the Council;

**Deemed Employment:** means an engagement to which Chapter 10 of Part 2 of the Income Tax (Earnings and Pensions) Act 2003 as may be amended or any replacement provision thereto applies;

**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 Consultant under the same or similar circumstances;

**Information Legislation:** has the meaning in Condition 13.3;

**Intellectual Property Rights:** means all copyright, patent, trademark, design right, database right and any other right in the nature of the 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);

**Premises**: means the location where the Consultancy Services are to be performed, as specified in the Contract;

**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;

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

**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 CONSULTANCY SERVICES

* 1. The Consultant shall provide the Consultancy Services with all reasonable skill, care and diligence, to the reasonable satisfaction of the Council and in accordance to any particulars specified in the Contract and/or Purchaser Order.
  2. The Consultant shall provide the Council with such reports of the Consultant’s work at such intervals in such form as the Council may from time to time require.
  3. The Council reserves the right by notice to the Consultant to modify the Council’s requirements in relation to the Consultancy Services and any alteration to the Contract fee or the completion date arising by reason of such modification shall be agreed between the parties. Failing agreement, the matter shall be determined by arbitration in accordance with the provisions of Condition 20 (Dispute Resolution).
  4. The Consultant shall provide the Consultancy Services for the Contract period unless the Contract is terminated earlier in accordance with any of its terms. In the event that the Council elects to extend the Contract Period as provided for in the Contract Details, it may do so by serving written notice to that effect upon the Consultant no less than one month prior to the expiry of the initial Contract Period.

FEES AND EXPENSES

* 1. The Council shall pay to the Consultant the Fees at the rate specified in the Contract Details and no 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.
  4. The Consultant shall be entitled to be reimbursed by the Council only for expenses reasonably and properly incurred by the Consultant in the performance of its duties hereunder, subject to production of such evidence thereof as the Council may reasonably require.
  5. If the engagement of the Consultant under the Contract is determined as being Deemed Employment notwithstanding anything else in the Contract, the Council shall be entitled to deduct from the fees and expenses any sums which the Council is required to pay as a result of the Deemed Employment including without prejudice to the foregoing generality, expenses, pension contributions, national insurance contributions (employee and employer) and income tax.
  6. Notwithstanding Condition 18 (Assignation and sub-contracting) of these Conditions, the Consultant may assign to another person (an “assignee”) the right to receive payment of the fees or expenses or any part thereof due to the Consultant under the Contract subject to (i) deduction of sums in respect of which the Council exercises its right of recovery under Condition 17 (Recovery of sums due) of these Conditions and (ii) all the related rights of the Council under the Contract in relation to the recovery of sums due but unpaid. The Consultant shall notify or procure that any assignee notifies the Council of any variations to the arrangements for payment of the fees and expenses or for handling invoices, in each case in good time to enable the Council to redirect payments or invoices accordingly. In the absence of such notification the Council shall be under no obligation to vary the Council’s arrangements for payment of the fees or expenses or for handling invoices.

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).

CONSULTANT’S PERSONNEL

* 1. The Consultant shall take the steps reasonably required by the Council to prevent unauthorised persons being admitted to the Premises. If the Council gives the Consultant 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 Consultant shall take all necessary steps to comply with such notice and, if required by the Council, the Consultant 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 Consultant as aforesaid shall not entitle the Consultant 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 Consultant 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 provision of the Consultancy Services or as to the designation or approval of key personnel and as to whether the Consultant has furnished the information or taken the steps required of the Consultant by this Condition shall be final and conclusive.
  4. The Consultant shall bear the cost of any notice, instruction or decision of the Council under this Condition 5.

ACCESS

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

AUDIT

The Consultant 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 Consultant 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 Consultant 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 7 shall apply during the continuance of the Contract and after its termination howsoever arising.

CORRUPT GIFTS OR PAYMENTS

The Consultant 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 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 Consultant on behalf of the Council for use, or intended use, in relation to the performance by the Consultant of its obligations under the Contract are hereby assigned to and shall vest in the Council absolutely.
  2. Except as may be expressly 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 Consultant must not infringe any Intellectual Property Rights of any third party in carrying out the Consultancy Services or otherwise performing its obligations under the Contract. The Consultant 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 9.3.
  4. Without prejudice to Condition 18.1, the Consultant 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 Consultant 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 Consultant 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 9 shall apply during the period of the Contract and after its termination howsoever arising.

HEALTH AND SAFETY

* 1. The Consultant represents and warrants to the Council that the Consultant has satisfied itself that all necessary tests and examinations have been made or will be made prior to the provision of the Consultancy Services to ensure that the Consultancy 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 10.1 hereof, the Consultant 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 10.1.

INDEMNITY AND INSURANCE

* 1. The Consultant shall indemnify and keep indemnified the Council, its servants and agents against all losses, actions, claims, demands, costs and expenses incurred by or made against the Council, its servants or agents in respect of any loss or damage or personal injury (including death) which arises from any advice given or anything done or omitted to be done under the Contract to the extent that such loss, damage or injury is caused by the negligent act or omission or other wrongful act of the Consultant, its servants or agents.
  2. The Council shall indemnify the Consultant 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 a direct result of the Consultant acting in accordance with the Council’s specific written instructions. The indemnity provision shall not apply if the Consultant (a) acts on the Council’s specific written instructions but fails to notify the Council in accordance with its obligations under Condition 28 (Data Protection); or (b) fails to comply with any of its obligation under the Contract.
  3. The Consultant 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 Consultant, arising out of the Consultant’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 Consultant.
  4. The policy or policies of the Required Insurance shall be shown to the Council on request, together with satisfactory evidence of payment of premiums and annual renewals.
  5. The terms of any insurance of the amount of cover shall not relieve the Consultant of any liabilities under the agreement.
  6. The Consultant shall be liable for and shall indemnify the Council against any additional cost, expense, liability, loss, claim or proceedings, howsoever arising, in respect of any breach of the warranties set out in Condition 29.
  7. Without prejudice to the remaining terms of the Contract, the Contract does not constitute a contract of employment and accordingly the Consultant shall be fully responsible for and shall indemnify the Council for and in respect of:
     1. any income tax, National Insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with the performance of the Consultancy Services, where the recovery is not prohibited by law. The Consultant shall further indemnify the Council against all reasonable costs, expenses and any penalty, fine or interest incurred or payable by the Council in connection with or in consequence of any such liability, deduction, contribution, assessment or claim; and
     2. any liability arising from any employment-related claim or any claim based on worker status (including reasonable costs and expenses) brought by the Consultant against the Council arising out of or in connection with the provision of the Consultancy Services, except where such claim is as a result of any act or omission of the Council.
  8. The Council may at its option satisfy such indemnity (in whole or in part) by way of deduction from any payments due to the Consultant under Condition 3.1.

DISCRIMINATION

The Consultant 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 Consultant shall take all reasonable steps to ensure the observance of these provisions by all servants, employees or agents of the Consultant and all sub‑contractors employed in the execution of the Contract.

1. **CONFIDENTIALITY AND FREEDOM OF INFORMATION**
   1. The Consultant 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 Consultant 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. each 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 13;
      2. the Consultant 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 Consultant 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 Consultant 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 Consultant 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 Consultant’s view when considering any request to release the information in terms of the Information Legislation.
   6. Notwithstanding Condition 13.5, the Consultant acknowledges that the Council may be required under the Information Legislation to disclose information without consulting or obtaining consent from the Consultant. The Council shall take reasonable steps to notify the Consultant 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 13.2, 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 Consultant, 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 13 shall apply during the continuance of the Contract and after its termination howsoever arising.

RECORDS MANGEMENT, MONITORING AND RECORDS AUDIT

* 1. The Consultant 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 where such compliance is in respect of records created or to be created by the Consultant on behalf of the Council in terms of the Contract.
  2. The Consultant 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 Consultancy 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 Consultant 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 Consultancy 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 Consultant, 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 Consultant shall comply with this Condition 14, where applicable, and any additional instructions of the Council.
  5. Provided that if the Consultant, 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 Consultant and due to be transferred to the Council pursuant to this Condition 14.5 shall be deemed to be held in trust for the Council and the Consultant 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 Consultant to the Council during the period of the Contract where such Public Records are no longer required for the provision of the Consultancy 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 Consultant 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 Consultant is required to dispose of the Public Records, the Consultant 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 Consultant 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 Consultant 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 Consultant shall(and shall procure that any sub-contractor(s) and/or agent(s) shall) allow the Council, its employees, auditors, authorised agents or advises reasonable access to any relevant premises, during normal business hours, to inspect the procedures, measures and records referred to in this Condition 14 and contribute as is reasonable to those audits and inspections.
  9. Any assistance or requirements under this Condition 14 shall be at no cost to the Council. The Provisions of this Condition 14 shall apply during the Contract Period and after its termination howsoever arising.
  10. Where the Consultant enters a sub-contract with a supplier for the purpose of performing the Contract, the Consultant shall cause a term to be included in such sub-contract which is in the same terms as that set out in this Condition 14 subject only to modification to refer to the correct designation of the Consultant and supplier as the case may be.
  11. The Consultant 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 Consultant if:
     1. the Consultant commits a material breach of any terms 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 Consultant being notified in writing to do so;
     2. the Consultant 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 Consultant 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 Consultant’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 shall also have the right to 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 Consultant 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 Consultant 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 15.1 to 15.3, the Council shall be entitled to terminate this Contract immediately by giving to the Consultant notice to that effect. In the event of such termination, the Consultant shall, if required to do so by the Council, prepare and submit to the Council a report on the work done prior to the termination and making such recommendations as may be based on the work done prior to termination.
  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.

RETURN OF DOCUMENTS

* 1. The Consultant will return to the Council promptly upon the termination of the Contract any document, paper, material or information supplied by or obtained from the Council in connection with the Contract, or extracted from such documents, papers, materials or information.
  2. Where the Contract has been terminated pursuant to Condition 15.4, the Consultant may retain any documents papers, materials or information which shall be required by the Consultant to prepare any report required under that Condition. Promptly upon submission of the report to the Council, the Consultant will return any documents, papers, materials or information that the Consultant may have retained in terms of this Condition.

RECOVERY OF SUMS DUE

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

ASSIGNATION AND SUB‑CONTRACTING

* 1. The Consultant shall not assign or sub‑contract any portion of the Contract without the prior written consent of the Council. Sub‑contracting any part of the Contract shall not relieve the Consultant of any obligation or duty attributable to the Consultant under the Contract or these conditions.
  2. Where the Council has consented to the placing of sub‑contracts, copies of each sub‑contract shall be sent by the Consultant to the Council immediately it is issued.
  3. Where the Consultant enters a sub-contract with a sub- contractor for the purpose of performing the Contract, the Consultant shall cause a term to be included in such sub-contract which:
     1. requires payment to be made to the sub- contractor 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 Consultant in respect of the Contract and the sub-contractor’s invoice relates to the Contract then, to that extent, the invoice must be treated as valid and, provided the Consultant is not exercising a right of retention or set-off in respect of a breach of contract by the sub-contractor or in respect of a sum otherwise due by the sub-contractor to the Consultant, payment must be made to the sub-contractor without deduction;
     2. notifies the sub-contractor that the sub-contract forms part of a larger contract for the benefit of the Council and that should the sub-contractor have any difficult in securing the timely payment of an invoice, that matter may be referred by the sub-contractor to the Council; and
     3. in the same terms as that set out in this Condition 18.3 subject only to modification to refer to the correct designation of the equivalent party as the Consultant and sub-contractor as the case may be.
  4. The Consultant shall also include in every sub-contract:
     1. a right for the Consultant 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 15.2 occur; and
     2. a requirement that the sub-contractor includes a provision having the same effect as 18.4.1 in any sub-contract which it awards.

In this Condition 18.4, ‘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.
  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.[[1]](#endnote-1)
  3. If deemed receipt under Condition 19.2 would occur outside business hours in the place of receipt, it shall be deferred until business hours resume. In this Condition 19.4, 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 19 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

DISPUTE RESOLUTION

* 1. The parties must attempt in good faith to resolve any dispute between them arising out of or in connection with the Contract.
  2. All disputes, differences or questions between the parties to the Contract with respect to any matter or thing arising out of or relating to the Contract, other than a matter or thing as to which the decisions of the Council is under the Contract to be final and conclusive, and except to the extent to which special provision for arbitration is made elsewhere in the Contract, which cannot be resolved in good faith shall be referred to a single arbiter to be mutually chosen by the parties or, failing agreement within 14 days after either party has given to the other a written request to concur in the appointment of an arbitrator, by an arbitrator to be appointed by the Scottish Arbitration Centre on the written application of either party. The seat of the arbitration shall be in Scotland. The language used in the arbitral proceedings shall be English. Any such reference to arbitration shall be deemed to be an agreement to refer to arbitration within the meaning of the Arbitration (Scotland) Act 2010.

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 Consultant 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 2015. The Consultant 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 Consultant 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 Consultant 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 Consultant 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 agreement.

THIRD PARTY RIGHTS

* 1. This agreement does not give rise to any rights under the Contract (Third Party 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 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 26.5.

1. **BLACKLISTING**
   1. The Consultant 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 Consultancy Services:
     1. does not involve the processing of any Personal Data by the Consultant 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 Consultancy Services,

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

WARRANTIES AND REPRESENTATIONS

* 1. In performing the Consultancy Services under the Contract, no Deemed Employment shall apply and the Consultant shall:
     1. inform the Council in the event that it becomes aware of any circumstances which may affect the Deemed Employment status; and
     2. co-operate and provide such information as may be required in order for the Council to confirm the position that Deemed Employment does not apply in respect of the Contract.

STATUS OF CONTRACT

* 1. Nothing in the Contract shall have the effect of making the Consultant the servant of the Council.

1. **COMPLIANCE WITH RELEVANT LAWS AND POLICIES**
   1. In performing its obligations under the Contract, the Consultant 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 31.1 by the Consultant.
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 33 shall not affect the validity and enforceability of the rest of the Contract.

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.

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** |  | | **2.** | | **LATE PAYMENT OF INVOICES** |
|  | Consultants to the East Lothian Council are requested to satisfy themselves that no product will be supplied or used in the delivery of Consultancy 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**  Consultants 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 Consultant 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. |  | |  | | Consultants 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 Consultants’ legal rights.  **4. SCOTLAND INNOVATES**  Consultants 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** | | | | | | | |

1. [↑](#endnote-ref-1)