

**Corporate Procurement Service**

**Standard Terms and Conditions of**

**Contract for**

**Consultancy Services**

**(other than Works Consultancies)**

Document Reference Number

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## CONDITIONS OF CONTRACT FOR THE PURCHASE OF CONSULTANCY SERVICES

These Conditions may only be varied with the written agreement of the Client. 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 Client.

### 1 DEFINITIONS

In these Conditions the following terms have the following meanings:

"Contract"	means the contract between the Purchaser and the Supplier consisting of the Purchase Order, these conditions and other documents (or parts thereof) specified in the Purchase Order;
"Data Controller", "Data Processor", "Data Subject" and "Data Subject Access Request"	have the meanings given in the Data Protection Laws;
"Data Protection Laws"	means any law, statute, subordinate legislation, regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body which relates to the protection of individuals with regard to the Processing of Personal Data to which a party is subject including the Data Protection Act 2018 and any statutory modification or re-enactment thereof and the GDPR;
"GDPR"	means General Data Protection Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the Processing of Personal Data and on the free movement of such data, and repealing Directive 95/46/EC;
"Goods"	means any such goods as are to be supplied to the Purchaser by the Supplier (or by any of the Supplier's sub-contractors) pursuant to or in connection with this Contract;
'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 Supplier under the same or similar circumstances.
"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) which are created, produced or developed in connection with this Contract by or on behalf of the Supplier;
"Personal Data"	has the meaning given in the Data Protection Laws;
"Premises"	means the location where the service (delivery or installation) is performed, as specified in the Purchase Order;
"Processing"	has the meaning given in the Data Protection Laws and cognate expressions shall be construed accordingly;

"Purchaser/Client"	means on behalf of The Scottish Borders Council, constituted under the Local Government etc. (Scotland) Act 1994 and having their Headquarters at Newtown Saint Boswells, Melrose, TD6 0SA;
"Purchase Order"	means the document setting out the Purchaser's requirements for the Contract;
"Schedule"	means a schedule annexed to and forming part of these Conditions; and
"Supervisory Authority"	has the meaning given in the Data Protection Laws.
"Supplier/Consultant"	means the person, firm, or company to whom the Contract is issued;
"Supplier Representative"	means all persons engaged by the Supplier in the performance of its obligations under the Contract including: its employees and workers (including persons employed by a third party but working for and under the control of the Supplier); its agents, suppliers, and carriers; and any sub-contractors of the Supplier (whether approved under Condition 9 (Assignment and sub-contracting) or otherwise).

<b>2</b>	<b>THE PROJECT</b>
2.1	The Consultant shall complete the Project with reasonable skill, care, and diligence in accordance with the Contract.
2.2	The Consultant shall provide the Client with such reports of his work on the Project at such intervals in such form as the Client may from time to time require.
2.3	The Client reserves the right by notice to the Consultant to modify the Client's requirements in relation to the Project 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 28 (Dispute Resolution).

<b>3</b>	<b>CHANGE TO CONTRACT REQUIREMENTS</b>
3.1	The Client may order any variation to any part of the Project that for any other reason shall in the Client's opinion be desirable. Any such variation may include (but shall not be restricted to) additions, omissions, alterations, substitutions to the Project and changes in quality, form, character, kind, timing, method, or sequence of the Project.
3.2	Save as otherwise provided herein, no variation of the Project as provided for in Condition 3.1 shall be valid unless given or confirmed in the form of an order given by the Client. All such orders shall be given in writing provided that if for any reason the Client shall find it necessary to give any such order orally in the first instance the Consultant shall comply with such oral order which must be confirmed in writing by the Client within 2 (two) working days of the giving of such oral order by the Client, failing which the variation made by such oral order shall cease to have effect on the expiry of the said 2 working day period.

3.3	Where any such variation of the Services made in accordance with Conditions 3.1 and 3.2 has affected or may affect the costs incurred by the Consultant in providing the Project, the Consultant will notify the Client in writing of the effect which it has had or may have on the said costs and such notification shall be considered by the Client, who shall take all of the facts into account (including such information as may be provided by the Consultant in respect of the effect which such variation has had or may have on the costs incurred by the Consultant in providing the Project) and may authorise such alteration to the sums to be paid to the Consultant in accordance with the provisions of the Contract as are, in the Client's opinion, appropriate and reasonable in the circumstances.
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<b>4</b>	<b>PAYMENT</b>
4.1	The Client shall pay to the Consultant fees and expenses at the rate specified in the Purchase Order. Invoices from Consultants without a valid Purchase Order (PO) number, other than the categories recognised by the Client as an exception (utilities, business rates, passenger transport and any other exceptions approved by the Client's Chief Financial Officer), will not be processed or paid until a valid PO number is quoted by the Consultant.
4.2	The Consultant shall be entitled to be reimbursed by the Client only for expenses reasonably and properly incurred by the Consultant in the performance of the duties hereunder, subject to production of such evidence thereof as the Client may reasonably require.
4.3	Unless otherwise stated in the Contract, an electronic payment via BACS will be made within 30 days of receipt and agreement of invoices, submitted monthly in arrears, for work completed to the satisfaction of the Client.
4.4	Value Added Tax, where applicable, shall be shown separately on all invoices as a strictly net extra charge.
4.5	Notwithstanding Condition 9 (Assignment and Sub-contracting) 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 this Contract subject to (i) deduction of sums in respect of which the Client exercises its right of recovery under Condition 25 (Recovery of Sums Due) of this Contract and (ii) all the related rights of the Client under this Contract in relation to the recovery of sums due but unpaid. The Consultant shall notify or procure that any assignee notifies the Client 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 Client to redirect payments or invoices accordingly. In the absence of such notification the Client shall be under no obligation to vary the Client's arrangements for payment of the fees or expenses or for handling invoices.

<b>5</b>	<b>CONSULTANTS PERSONNEL</b>
5.1	The Consultant shall make available for the purposes of the Project any individuals named on the Purchase Order as key personnel. The Consultant shall provide the Client with a list of the names and addresses of all others regarded by the Consultant as key personnel and, if and when instructed by the Client, all other persons who may at any time be concerned with the Project or any part of it, specifying in each case the capacities in which they are so concerned and giving such other particulars and evidence of identity and other supporting evidence as the Client may reasonably require. The Client may at any time by notice to the Consultant designate any person concerned with the Project or any part of it as a key person. The Consultant shall not without the prior written approval of the Client make any changes in the key personnel referred to in this Condition 5.

5.2	The Consultant shall take the steps reasonably required by the Client, to prevent unauthorised persons being admitted to the Premises. If the Client 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 Project, the Consultant shall take all reasonable steps to comply with such notice.
5.3	The decision of the Client shall be final and conclusive 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 Project 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 5.
5.4	The Consultant shall bear the cost of any notice, instruction, or decision of the Client under this Condition 5.
5.5	Subject to Condition 5.8 the Consultant shall not engage for the purposes of the Contract any employee, agent, or subcontractor who has previously been in the employment of the Client, and who left that said employment under an Early Retirement or Voluntary Severance scheme.
5.6	Subject to Condition 5.8 the Consultant confirms that none of its directors have left the employment of the Client under an Early Retirement or Voluntary Severance scheme.
5.7	Subject to Condition 5.8 where the Consultant is an individual or sole trader he confirms that he has not left the employment of the Client under an Early Retirement or Voluntary Severance scheme.
5.8	Where the Consultant or a sub-contractor whom the Consultant proposes to engage was previously in the employment of the Client, and that employment was in a professional area unrelated to the Contract or comprised a role substantially different to that required by the Contract, the Client may at its sole discretion waive Conditions 5.5, 5.6, and 5.7.

<b>6</b>	<b>SECURITY AND ACCESS TO COUNCIL PREMISES</b>
6.1	Where any access to Client premises is necessary in connection with delivery or installation the Consultant and the Consultant's sub-contractors shall at all times comply with any reasonable requirements of any relevant security policy or requirement of the Client.
6.2	Access to any of the Client's Premises shall not be exclusive to the Supplier but only such as shall enable the Consultant to carry out the delivery of Project concurrently with the execution of work by others. The Consultant shall co-operate with such others as the Client may reasonably require.
6.3	Any access to, or occupation of, the Client's Premises which the Client may grant the Consultant from time to time is on a non-exclusive licence basis free of charge. The Consultant must use the Client's Premises solely for the purpose of performing its obligations under the Contract and must limit access to the Client's Premises to such individuals as are necessary for that purpose.
6.4	At the Client's written request, the Consultant must provide a list of the names and addresses of all persons who may require admission to the Client's Premises in connection with the Contract, specifying the capacities in which they are concerned with the Contract and giving such other particulars as the Client may reasonably request.
6.5	The Client may, by notice to the Consultant, refuse to admit onto, or withdraw permission to remain on, the Client's Premises any Consultant Representative whose admission or continued presence would, in the opinion of the Client acting reasonably, be undesirable.

6.6	<p>The Client shall have the power at any time during the progress of the Project to order in writing:</p> <ul style="list-style-type: none"> <li>a) the removal from the Premises of any materials which in the opinion of the Client are either hazardous, noxious, or not in accordance with the Contract;</li> <li>b) the substitution of proper and suitable materials;</li> <li>c) the removal and proper re-execution notwithstanding any previous test thereof or interim payment therefor of any work which, in respect of material or workmanship, is not in the opinion of the Client in accordance with the Contract.</li> </ul> <p>The Consultant shall comply forthwith with the terms of any such order.</p>
6.7	On completion of the Contract the Consultant shall remove the Consultant's plant, equipment and unused materials and shall clear away from the Premises all rubbish arising out of the Project and leave the Premises in a neat and tidy condition.
6.8	Breach of this Condition 6 by the Consultant is a material breach for the purposes of the Condition 23 (Termination).
6.9	If cyber security requirements apply to this Contract:
6.9.1	Then these are set out in a Schedule Part 2 (Cyber Security Requirements) to this Contract; and
6.9.2	in that case the Supplier shall comply with the provisions of Schedule Part 2 (Cyber Security Requirements) and this condition shall not apply where the Contract does not include a Schedule Part 2 (Cyber Security Requirements).

<b>7</b>	<b>STATUS OF CONTRACT</b>
7.1	Nothing in the Contract shall have the effect of making the Consultant the servant of the Client.

<b>8</b>	<b>EQUALITY</b>
8.1	The Consultant shall not unlawfully discriminate within the meaning and scope of the provisions of the Equality Act 2010 and of any statutory instrument or Code of Practice made thereunder.
8.2	The Consultant shall take all reasonable steps to secure that all servants, employees, or agents of the Consultant and all sub-contractors employed in the performance of the Contract do not unlawfully discriminate as set out in Condition 8.1.

<b>9</b>	<b>ASSIGNATION AND SUB-CONTRACTING</b>
9.1	The Consultant shall not without the written consent of the Client assign the benefit or delegate the burden of the Contract or any part thereof.
9.2	No sub-contracting by the Consultant shall in any way relieve the Consultant of any of the Consultant's responsibilities under the Client.
9.3	<p>Where the Consultant enters into a sub-contract must ensure that a provision is included which:</p> <ul style="list-style-type: none"> <li>a) requires payment to be made of all sums due by the Consultant to the sub-contractor within a specified period not exceeding 30 days from the receipt of a valid invoice as defined by the sub-contract requirements and provides that, where the Client has made payment to the Consultant in respect of the Project and the sub-contractor's invoice relates to said Project then, to that extent, the invoice must be treated as valid and, provided the Consultant is</li> </ul>



	<p>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;</p> <p>b) notifies the sub-contractor that the sub-contract forms part of a larger contract for the benefit of the Client and that should the sub-contractor have any difficulty in securing the timely payment of an invoice, that matter may be referred by the sub-contractor to the Client; and</p> <p>c) in the same terms as that set out in this Condition 9.3 (including for the avoidance of doubt this Condition 9.3(c)) 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.</p>
9.4	<p>The Consultant shall also include in every sub-contract:</p> <p>a) 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 (involving substantial modification of the Contract, contract award despite the existence of exclusion grounds or a serious infringement of EU legal obligations) specified in Condition 22.3 (Termination) occur; and</p> <p>b) a requirement that the sub-contractor includes a provision having the same effect as Condition 9.4(a) in any sub-contract which it awards.</p> <p>In this Condition 9.4, 'sub-contract' means a contract between two or more suppliers, at any stage of remoteness from the Client 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 this Contract.</p>

<b>10</b>	<b>AUDIT</b>
10.1	<p>The Consultant shall keep and maintain until 5 years (five) after the Contract has been completed records to the satisfaction of the Client of all expenditures which are reimbursable by the Client and of the hours worked and costs incurred by the Consultant or in connection with any employees of the Consultant paid for by the Client on a time charge basis. The Consultant shall on request afford the Client or the Client's representatives such access to those records as may be required by the Client in connection with the Contract.</p>

<b>11</b>	<b>PROTECTING THE ENVIRONMENT</b>
11.1	<p>Consultants to the Client are requested to satisfy themselves that no product will be supplied or used in the supply of the Project to the Client which: will endanger the health of the consumers or others; will cause significant damage to the environment during manufacture, use, or disposal; consumes a disproportionate amount of energy during manufacture, use, or disposal; causes unnecessary waste because of over-packaging or because of an unusually short shelf life; or contains materials derived from threatened species or threatened environments.</p>

<b>12</b>	<b>COMMUNITY BENEFITS AND LIVING WAGE</b>
12.1	<p>The Client is committed to maximising community benefits from its procurement activities. To this end the Client may place a requirement on the Consultant (or service provider) to deliver appropriate social, economic, and environmental benefits relating to the subject matter of the contract.</p>



12.2	The Client supports the principles and policy requirements of Scottish Borders Council Sustainable Procurement Charter which includes a commitment to encourage all suppliers and service providers to pay employees, engaged in delivering services on behalf of the Client, the current Scottish Living Wage.
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<b>13</b>	<b>INTELLECTUAL PROPERTY RIGHTS</b>
13.1	All Intellectual Property Rights in any material including but not limited to reports, guidance, specification, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, and designs which are created or developed by the Consultant on behalf of the Client 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 Client absolutely.
13.2	Except as may expressly be provided for in the Contract, neither party acquires any interest in or license to use the other party's Intellectual Property Rights owned or developed prior to or independently of the Contract.
13.3	The Consultant must not infringe any Intellectual Property Rights of any third party in carrying out the Project or otherwise performing its obligations under the Contract. The Consultant shall indemnify the Client against all actions, claims, demands, losses, charges, costs, and expenses which the Client may suffer or incur as a result of or in connection with any breach of this Condition 13.3.
13.4	The provisions of this Condition 13 shall apply during the continuance of this Contract and after its termination howsoever arising.

<b>14</b>	<b>ACCESS TO COUNCIL INFORMATION (FREEDOM OF INFORMATION ACT 2002)</b>
14.1	Subject always to the terms of the Freedom of Information (Scotland) Act 2002 and to other statutory requirements or court order, the Consultant shall not and shall ensure that its employees do not without the written consent of the Client during the period of this Contract or at any time thereafter divulge to any third party any information which comes into its or their possession in the course of providing the Contract.
14.2	The Consultant shall treat as private and confidential all and any information marked as private and confidential received from the Client.
14.3	The Client shall treat as private and confidential all and any information marked as private and confidential received from the Consultant (subject always to Condition 14.4).
14.4	The Client is committed to meeting its responsibilities under the Freedom of Information (Scotland) Act 2002 ("FOISA") and the Environmental Information (Scotland) Regulations 2004 ("EIRs"). Accordingly, all information submitted to the Client may require to be disclosed or published by the Client. If the Consultant considers that specific information provided to the Client is potentially exempt from disclosure under FOISA or the EIRs, the Consultant shall identify the information it considers to be exempt and the exemption or exception which applies. If the Consultant considers that disclosure of such information would substantially prejudice its commercial interests the Consultant must provide justification for its assertions and identify the period during which it wishes the information to be withheld from public disclosure. The Client shall take into account the Consultant's views but is not bound by them and may in its absolute discretion disclose and/or publish any such information in order to comply with FOISA or the EIRs.

14.5	The Consultant shall assist and cooperate with the Client to enable the Client to comply with FOISA and the EIRs and shall in respect of any information it, or any sub-contractor, holds on behalf of the Client provide the Client with the information, if the Client so requests, as soon as practicable and in any event within 5 working days of receiving the Client's request.
14.6	The Parties acknowledge that, except for any Information which is exempt from disclosure in accordance with the provisions of the FOISA, the content of the Contract is not confidential information and the Supplier hereby gives its consent for the Purchaser to publish the Contract in its entirety to the general public (but with any Information that is exempt from disclosure in accordance with the FOISA redacted) including any changes to the Contract agreed from time to time.

<b>15</b>	<b>MEDIA DISCLOSURE</b>
15.1	In the event that any aspect of this Contract, including the termination of this Contract and any subsequent de-commissioning of a Project, becomes a matter of media speculation the Client and the Consultant shall issue an agreed media release. The Consultant shall not make any statement to the media without first consulting with the Client. This Condition 15 shall survive the termination of this Contract.

<b>16</b>	<b>SOCIAL MEDIA USE</b>
16.1	The Consultant shall not make any statements about any aspect of this contract without first consulting with the Client. This Condition shall survive the termination of this Contract.
16.2	Consultants including their staff and agents using social media <b>must not:</b> <ol style="list-style-type: none"> <li>Post comments electronically or distribute by e-mail, anything which could cause offence or that may be considered discriminatory or anything that may be considered as bullying and harassment.</li> <li>Post statements which are bigoted, hateful or discriminatory.</li> <li>Post or distribute images, video or messages that may bring the Client into disrepute. For example anything that might be considered indecent, pornographic, obscene or illegal.</li> <li>Post or send confidential client or service user information which may breach the Data Protection Act 2018 or the General Data Protection Regulation.</li> </ol>

<b>17</b>	<b>HEALTH AND SAFETY</b>
17.1	The Consultant shall perform the Project in such a manner as to be safe and without risk to the health or safety of persons in the vicinity of the place where the Project is being performed (whether such persons are in the vicinity of the said place at the time when the Project is being performed or otherwise) and in such a manner as to comply with any relevant health and safety or other legislation (including any Statutory Instruments, Orders, or Regulations made under the said legislation) and any requirements imposed by a local or other regulatory authority in connection with the performance of services or supplies of the type supplied to the Client, whether specifically or generally. The Consultant shall indemnify the Client against all actions, suits, claims, demands, losses, charges, costs, and expenses which the Client may suffer or incur as a result of or in connection with any breach of this Condition 17.

<b>18</b>	<b>INDEMNITY AND INSURANCE</b>
18.1	The Consultant shall indemnify and keep indemnified the Client, and its servants and agents, against all actions, claims, demands, costs, and expenses incurred by or made against the Client, and 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 this Contract to the extent that such loss, damage or injury is caused by the negligence or other wrongful act of the Consultant, or the Consultant's servants or agents.
18.2	<p>The Client 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 the direct result of the Consultant acting in accordance with the Client's specific written instructions. This indemnity provision shall not apply if the Consultant:</p> <p>a) acts on the Client's specific written instructions but fails to notify the Client in accordance with Condition 31 (Data Protection) of this Contract; or</p> <p>b) fails to comply with any other obligation under the Contract.</p>
18.3	Subject to Clause 18.2 the Consultant shall indemnify the Client in respect of all claims, proceedings, actions, damages, fines, costs, expenses, or other liabilities which the Purchaser may incur arising out of, or in consequence of, a breach of the Data Protection Laws by the Consultant, its employees or sub-contractors.
18.4	The Consultant (if an individual) represents that the Consultant is regarded by both Her Majesty's Revenue and Customs and the Department for Work and Pensions as self-employed and accordingly shall indemnify the Client against any tax, national insurance contributions, or similar impost for which the Client may be liable in respect of the Consultant by reason of this Contract.
18.5	The Consultant shall effect with an insurance company or companies acceptable to the Client a policy or policies of insurance covering all the matters which are the subject of the indemnities and undertakings on the part of the Consultant contained in this Contract.
18.6	If requested by the Client the Consultant shall produce to the Client the relevant policy or policies together with receipts or other evidence of payment of premiums, including the latest premium due thereunder.

<b>19</b>	<b>BLACKLISTING</b>
19.1	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 Client to terminate the Contract.

<b>20</b>	<b>CORRUPT GIFTS OR PAYMENTS</b>
20.1	The Consultant shall not offer or give or agree to give, to any member, employee or representative of the Client 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 Client or for showing or refraining from showing favour or disfavour to any person in relation to this or any such Contract. The attention of the Consultant is drawn to the criminal offences created by the Bribery Act 2010.

<b>21</b>	<b>FORCE MAJEURE</b>
21.1	Neither the Client nor Consultant shall be liable to the other party by reason of any failure or delay in performing its obligations under the Contract which is due to Force Majeure, where there is no practicable means available to the party concerned to avoid such failure or delay.
21.2	If either party becomes aware of any circumstances of Force Majeure which give rise to any such failure or delay, or which appear likely to do so, that party shall promptly give notice of those circumstances as soon as practicable after becoming aware of them and shall inform the other party of the period for which it estimates that the failure or delay will continue.
21.3	For the purposes of this Condition 21, "Force Majeure" means any event or occurrence which is outside the control of the party and which is not attributable to any act or failure to take preventive action by the party concerned, but shall not include any industrial action occurring within the Consultant's organisation or within any sub-contractor's organisation.
21.4	Any failure or delay by the Consultant in performing its obligations under the Contract which results from any failure or delay by an agent, sub-contractor, or supplier shall be regarded as due to Force Majeure only if that agent, sub-contractor, or supplier is itself impeded in complying with an obligation to the Consultant by Force Majeure.

<b>22</b>	<b>NOVATION ETC.</b>
22.1	The Client shall be entitled to assign, novate, delegate, or otherwise dispose of its rights and obligations under this Contract or any part thereof to any contracting authority, private sector body, charitable or third sector body, or any other body established under statute (the "Transferee") provided that any such assignment, novation, delegation, or other disposal shall not unreasonably increase the burden of the Consultant's obligations under this Contract.
22.2	Each party shall at its own cost and expense carry out, or use all reasonable endeavours to ensure the carrying out of, whatever further actions (including the execution of further documents) the other party reasonably requires from time to time for the purpose of giving that other party the full benefit of the provisions of this Contract.
22.3	The Client shall be entitled to disclose to any Transferee any confidential information of the Consultant which relates to the performance of the Contract by the Consultant. In such circumstances the Client shall authorise the Transferee to use such confidential information only for purposes relating to the performance of the Contract and for no other purposes and shall take all reasonable steps to ensure that the Transferee accepts an obligation of confidence.

<b>23</b>	<b>ACCOUNTING INFORMATION</b>
23.1	The Supplier shall provide to the council (when requested) and no later than the 31st of March in each fiscal year, such information in relation to the contract that is required for statutory accounting purposes (but not limited to just that purpose). Any data required for accounting for arrangements within the scope of International Financial Reporting Standard 16 (IFRS 16) shall be made available at the request of the council.

<b>24</b>	<b>TERMINATION</b>
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24.1	<p>Without prejudice to any other rights or remedies of the Client under the Contract the Client shall have the right forthwith to terminate the Contract by written notice to the Contractor or the appropriate trustee in bankruptcy or sequestration, receiver, liquidator, or administrator:</p> <ul style="list-style-type: none"> <li>a) where the Consultant is an individual and if a petition is presented for the Consultant's bankruptcy or the sequestration of his estate or a criminal bankruptcy order is made against the Consultant, or the Consultant is apparently insolvent, or makes any composition or arrangement with or for the benefit of creditors, or makes any conveyance or assignment for the benefit of creditors, or if an administrator or trustee is appointed to manage the Consultant's affairs;</li> <li>b) where the Consultant is not an individual but is a firm or a number of persons acting together in any capacity, if any event in Conditions 23.1(a) or 23.1(c) occurs in respect of the firm or any partner in the firm or any of those persons or a petition is presented for the Consultant to be wound up as an unregistered company; or</li> <li>c) where the Consultant is a company, if the company passes a resolution for winding up or dissolution (otherwise than for the purposes of and followed by an amalgamation or reconstruction) or the court makes an administration order or a winding up order, or the company makes a composition or arrangement with its creditors, or an administrator, administrative receiver, receiver, or manager is appointed by a creditor or by the court, or possession is taken of any of its property under the terms of a floating charge.</li> </ul>
24.2	<p>On the occurrence of any of the events described in Condition 23.1 or, if the Consultant shall have committed a material breach of this Contract and (if such breach is capable of remedy) shall have failed to remedy such breach within 30 days of being required by the Client in writing to do so or, where the Contractor is an individual if the Consultant shall die or be adjudged incapable of managing his affairs within the meaning of the Adults with Incapacity (Scotland) Act 2000 or the Mental Health (Care and Treatment)(Scotland) Act 2003, the Client shall be entitled to terminate this Contract by notice to the Consultant with immediate effect.</p>
24.3	<p>The Client may terminate the Contract in the event that:</p> <ul style="list-style-type: none"> <li>a) 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;</li> <li>b) 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; or</li> <li>c) the Contract should not have been awarded to the Consultant in view of a serious infringement of the obligations under the Treaties and the Directive 2014/24/EU that has been declared by the Court of Justice of the European Union in a procedure under Article 258 of the Treaty on the Functioning of the European Union.</li> </ul> <p>In this Condition, 'the Treaties' has the meaning given in the European Communities Act 1972.</p>
24.4	<p>The Client 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.</p>

24.5	In addition to the Client's rights of termination under Conditions 23.2, 23.3, or 23.4 the Client shall be entitled to terminate this Contract by giving to the Consultant not less than Thirty (30) days' notice to that effect. The Consultant shall be paid pro rata for the relevant notice period, based on the number of days worked in the previous 30 days from the date of termination.
24.6	Termination under Condition 23.2, 23.3, 23.4, or 23.5 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereupon accrue to the Client and shall not affect the continued operation of Conditions 13 (Intellectual Property Rights), 14 (Access to Council Information (Freedom of Information Act 2002), 31 (Data Protection), 15 (Media Disclosure) or 10 (Audit).

<b>25</b>	<b>RETURN OF DOCUMENTS</b>
25.1	The Consultant will return to the Client promptly upon the termination of the Contract any document, papers, material, or information supplied by or obtained from the Client or any Government Department in connection with the Contract, or extracted from such documents, papers, materials, or information.
25.2	Where the Contract has been terminated pursuant to Condition 23.3 (Termination), 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 Client, the Consultant will return any documents, papers, materials, or information which the Consultant may have retained in terms of this Condition.

<b>26</b>	<b>RECOVERY OF SUMS DUE</b>
26.1	Wherever under this 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 this Contract or under any other agreement or contract with the Client or with any department, agency, or authority of the Client.

<b>27</b>	<b>NOTICES</b>
27.1	Any notice given under or pursuant to the Contract may be sent by hand or by post or by registered post or by the recorded delivery service or transmitted electronically resulting in the receipt of a written communication in permanent form and if so sent or transmitted to the address of the party shown on the Purchase Order, or to such other address as the party may by notice to the other have substituted therefor, shall be deemed effectively given on the day when in the ordinary course of the means of transmission it would first be received by the addressee in normal business hours.

<b>28</b>	<b>COMPLIANCE WITH THE LAW ETC.</b>
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28.1	<p>In supplying the Project and otherwise when performing the Contract, the Consultant must comply in all respects with:</p> <ul style="list-style-type: none"> <li>a) all applicable law;</li> <li>b) any applicable requirements of regulatory bodies; and</li> <li>c) Good Industry Practice.</li> </ul> <p>In this condition, '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.</p>
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<b>29</b>	<b>DISPUTE RESOLUTION</b>
29.1	<p>In the event of any dispute between the Parties relating to the terms and conditions of this Contract or the provision of the Project either party may serve notice on the other outlining the terms of the dispute. Such notice shall propose a time and place for a meeting between the Client and the Consultant's representatives where the representatives shall attempt to resolve the dispute. The other party shall respond to such a notice within five (5) working days of receipt.</p>
29.2	<p>If the matter is not resolved within ten (10) working days of the service of a notice, the matter may be referred by either party to the appropriate senior officer in the Client and the appropriate senior officer in the Consultant's organisation for resolution. If the dispute is not resolved within a further ten (10) working days, the matter may be referred by either party to a mutually acceptable third party whom failing a third party appointed by the President of the Law Society of Scotland on the application of either party. The decision of any such third party shall be final and binding on the Client and the Consultant. The expenses of the arbitration shall be a matter for determination by the arbiter whose decision on the matter shall be final.</p>

<b>30</b>	<b>HEADINGS</b>
30.1	<p>The headings to Conditions shall not affect their interpretation.</p>

<b>31</b>	<b>GOVERNING LAW</b>
31.1	<p>These Conditions shall be governed by and construed in accordance with the law of Scotland and the Consultant hereby irrevocably submits to the jurisdiction of the Scottish courts. The submission to such jurisdiction shall not (and shall not be construed so as to) limit the right of the Client to take proceedings against the Consultant in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdiction, whether concurrently or not.</p>

<b>32</b>	<b>DATA PROTECTION</b>
32.1	<p>The Consultant acknowledges that any Personal Data described in the scope of the Schedule (Data Protection) may be Processed in connection with the Contract. For the purposes of any such processing, the parties agree that usually the Consultant acts as the Data Processor and the Client acts as the Data Controller.</p>



32.2	Both parties agree to negotiate in good faith any such amendments to this Contract that may be required to ensure that both parties meet all their obligations under Data Protection Laws. The provisions of this Condition 31 are without prejudice to any obligations and duties imposed directly on the Supplier under the Data Protection Laws and the Consultant hereby agrees to comply with those obligations and duties.
32.3	The Consultant will, in conjunction with the Client and in its own right and in respect of the Contract, make all necessary preparations to ensure it will be compliant with the Data Protection Laws.
32.4	The Consultant will provide the Client with the contact details of its data protection officer or other designated individual with responsibility for data protection and privacy to act as the point of contact for the purpose of observing its obligations under the Data Protection Laws.
32.5	<p>The Consultant must:</p> <ul style="list-style-type: none"> <li>a) Process Personal Data only as necessary in accordance with its obligations under the Contract and any written instructions given by the Client (which may be specific or of a general nature), including with regard to transfers of Personal Data outside the European Economic Area unless required to do so by European Union or Member state law or Regulatory Body to which the Consultant is subject; in which case the Consultant must, unless prohibited by that law, inform the Client of that legal requirement before Processing the Personal Data only to the extent, and in such manner as is necessary for the performance of the Consultant's obligations under this Contract or as is required by the Law;</li> <li>b) subject to Condition 31.5(a) only Process or otherwise transfer any Personal Data in or to any country outside the European Economic Area with the Client's prior written consent;</li> <li>c) take all reasonable steps to ensure the reliability and integrity of any Consultant Representatives who have access to the Personal Data and ensure that the Consultant Representatives: <ul style="list-style-type: none"> <li>i. are aware of and comply with the Consultant's duties under this Condition;</li> <li>ii. are subject to appropriate confidentiality undertakings with the Consultant or the relevant sub-contractor;</li> <li>iii. are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Client or as otherwise permitted by this Contract; and</li> <li>iv. have undergone adequate training in the use, care, protection, and handling of Personal Data.</li> </ul> </li> <li>d) implement appropriate technical and organisational measures including those in accordance with Article 32 of the GDPR to protect Personal Data against unauthorised or unlawful Processing and against accidental loss, destruction, damage, alteration, or disclosure, such measures being appropriate to the harm which might result from any unauthorised or unlawful Processing accidental loss, destruction, or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected.</li> </ul>
32.6	The Consultant shall not engage a sub-contractor to carry out Processing in connection with the Project without prior specific or general written authorisation from the Client. In the case of general written authorisation, the Consultant must inform the Client of any intended changes concerning the addition or replacement of any other sub-contractor and give the Client an opportunity to object to such changes.

32.7	If the Consultant engages a sub-contractor for carrying out Processing activities on behalf of the Client, the Consultant must ensure that the same data protection obligations as set out in this Contract are imposed on the sub-contractor by way of a written and legally binding contract, in particular providing sufficient guarantees to implement appropriate technical and organisational measures to protect the Personal Data. The Consultant shall remain fully liable to the Client for the performance of the sub-contractor's performance of the obligations.
32.8	<p>The Consultant must provide to the Client reasonable assistance including such technical and organisational measures as may be appropriate in complying with Articles 12-23 of the GDPR. The Consultant must notify the Client if it:</p> <ul style="list-style-type: none"> <li>a) receives a Data Subject Access Request (or purported Data Subject Access Request);</li> <li>b) receives a request to rectify, block, or erase any Personal Data;</li> <li>c) receives any other request, complaint, or communication relating to either party's obligations under the Data Protection Laws;</li> <li>d) receives any communication from the Supervisory Authority or any other regulatory authority in connection with Personal Data Processed under this Contract; or</li> <li>e) receives a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by law or regulatory order;</li> </ul> <p>and such notification must take place as soon as is possible but in any event within 3 business days of receipt of the request or any other period as agreed in writing with the Client from time to time.</p>
32.9	<p>Taking into account the nature of the Processing and the information available, the Consultant must assist the Client in complying with the Client's obligations concerning the security of Personal Data, reporting requirements for data breaches, data protection impact assessments, and prior consultations in accordance with Articles 32 to 36 of the GDPR. These obligations include:</p> <ul style="list-style-type: none"> <li>a) ensuring an appropriate level of protection through technical and organisational measures that take into account the circumstances and purposes of the Processing as well as the projected probability and severity of a possible infringement of the law as a result of security vulnerabilities and that enable an immediate detection of relevant infringement events;</li> <li>b) notifying a Personal Data breach to the Client and to the Client's information management team (at <a href="mailto:dataprotection@scotborders.gov.uk">dataprotection@scotborders.gov.uk</a>) without undue delay and in any event no later than 24 hours after becoming aware of a Personal Data breach;</li> <li>c) assisting the Client with communication of a Personal Data breach to a Data Subject;</li> <li>d) supporting the Client with preparation of a data protection impact assessment; and</li> <li>e) supporting the Client with regard to consulting the Supervisory Authority on various data protection matters including any Personal Data breaches.</li> </ul>
32.10	At the expiry or termination of the Contract the Consultant must, on written instruction of the Client, delete or return to the Client all Personal Data and delete existing copies unless EU or Member State law requires storage of the Personal Data and provide the Client with confirmation of deletion within two working days of the deletion.

32.11	<p>The Consultant must:</p> <ul style="list-style-type: none"> <li>a) provide such information as is necessary to enable the Client to satisfy itself of the Supplier's compliance with this Condition 31;</li> <li>b) allow the Client, 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 31 and contribute as is reasonable to those audits and inspections; and</li> <li>c) inform the Client if, in its opinion, an instruction from the Client infringes any obligation under the Data Protection Laws.</li> </ul>
32.12	The Consultant must maintain written records including in electronic form, of all processing activities carried out in performance of the Contract or otherwise on behalf of the Client containing the information set out in Article 30(2) of the GDPR.
32.13	If requested, the Consultant must make such records referred to Condition 31.12 available to the Supervisory Authority on request and co-operate with the Supervisory Authority in the performance of its tasks.
32.14	Parties acknowledge that the inspecting party will use reasonable endeavours to carry out any audit or inspection under Condition 31.13 with minimum disruption to the Consultant's day to day business.

<b>33</b>	<b>CONTRACT MANAGEMENT</b>
33.1	The Consultant shall be obligated to co-operate with the Council in its management of the contract. This may, at the sole discretion of the Council, include the requirement to communicate, submit documents, respond to questionnaires, and any other reasonable request via the SBC Supplier Network, which is the Council's online contract management platform provided by Proactis.

**SUPPLEMENTARY NOTICES - DO NOT FORM PART OF THE CONDITIONS OF CONTRACT**

<b>34</b>	<b>CONSULTATIONS, COMPLAINTS &amp; COMPLIMENTS</b>
34.1	We like praise and understand the need to complain. We know that communicating is important and enables us to listen to your suggestions and make improvements.
<a href="#">Scottish Borders Council - Consultations, Complaints and Compliments - Have your say</a>	

<b>35</b>	<b>LATE PAYMENT OF INVOICES</b>
35.1	Suppliers to Scottish Borders Council are requested to address complaints regarding late payment of invoices to <a href="mailto:apqueries@scotborders.gov.uk">apqueries@scotborders.gov.uk</a> . This procedure is suggested as the best practical way of ensuring problems of late payment are resolved and is not intended to interfere with Suppliers' legal rights.