

## **Completion Notes**

### **Consultancy Contract with Historic Environment Scotland (SETC3gt)**

Please complete the attached form and issue all pages except this instruction sheet.

- You may enter text SOLELY in the boxed areas
- All requirements should be in the form's boxed areas
- You must not delete any part of the numbered clauses
- You must send two copies with your Purchase Order.
- You do not need to issue a letter
- The Consultant should sign both copies retaining one and returning the other.
- An original ink copy must be returned to Legal and Compliance.

#### **Box One [This Contract is Between]**

- MANDATORY: Enter the Consultant's Name and Full Address [Use the company name if this is not a sole trader]

#### **Box Two [Description of Project]**

- MANDATORY Describe the services to be rendered by the consultant in general
- OPTIONAL List deliverables eg A Report, Data, Video etc. Or if you have a phased delivery eg 50% of Work.
- OPTIONAL If you have a minimum standard for acceptance, list these here. Eg "The report should be provided as one paper and one electronic copy." "A minimum of 100 people should have been interviewed to arrive at the recommendation." Material should be delivered in the following format or to the following standard etc

#### **Box Three [Commencement Date and Term]**

- MANDATORY The date the contract begins and the expected duration (term)

#### **Box Four (Payment Schedule)**

- MANDATORY Clearly define when payment or payments will be made and on what condition(s). Eg "On acceptance of Report by Client" etc

#### **Box 5 (Principal Contacts)**

- MANDATORY Contact details for both the responsible officer in HES and the responsible officer at the consultant.

## Consultancy Contract with Historic Environment Scotland (SETC3gt)

### This Contract is between

HISTORIC ENVIRONMENT SCOTLAND a statutory incorporation established by the Historic Environment Scotland Act 2014, and a registered charity (Scottish Charity number SC045925) and having its principal office at Longmore House, Salisbury Place, Edinburgh, EH9 1SH (the "Client")

CONSULTANT Name, Address, Postcode (the "Consultant")

### Background

The Client wishes to engage the Consultant to carry out and complete the Project (as described below) and the Consultant accepts such engagement, all subject to the terms and conditions of this Contract.

### Description of Project

Scope [description of task set]:

Deliverable Packages to Client ("Deliverables"):

Dates of Delivery:

- 1
- 2
- 3

Acceptance Criteria:

Rights: It is expected that the intellectual property rights in and to the Deliverables [which includes paperwork and any electronic files (including the media on which such files are stored)] will fully vest in the Client upon the creation of such intellectual property rights and the Consultant is deemed to have assigned such rights to the Client by way of a present assignation of future rights. The Consultant must notify the Client (in writing) if the Deliverables (or any part of them) contains material or work which cannot be assigned to the Client in this manner.

### Commencement Date and Term

Commencement Date:

Term:

### Payment Schedule

On delivery of Deliverables Package 1 £XXXX

On delivery of Deliverables Package 2 £XXXX

On delivery of Deliverables Package 3 £XXXX

Agreed Total Fee on completion of all work [VAT exclusive]: £XXXX

## Principal Contacts

Client (HES): {Name, Email, Telephone Number}

Consultant: {Name, Email, Telephone Number}

## Terms and Conditions

The terms and conditions undernoted ("Conditions") form part of the Contract to the exclusion of any other terms and conditions which the Consultant may seek to introduce or rely on.

## CONDITIONS

### 1. DEFINITIONS

In addition to the terms defined above, in these Conditions:

**'Project'** means the project described above in the section entitled Description of Project;

**'Services'** means the services to be provided by the Consultant in respect of the Project;

**'Intellectual Property'** means patents, registered designs, trade marks, trade names, design rights, copyright (including rights in computer software), database rights, rights in or to business names, know-how, domain names, trade secrets, confidential information and other intellectual property rights, in each case whether registered or unregistered and including applications for the grant of any of the foregoing and all rights or forms of protection having similar or analogous effect to any of the foregoing which may subsist anywhere in the world;

### 2. THE PROJECT

- 2.1 The Consultant shall perform the Services and complete the Project with all due skill, care and diligence in accordance with the Contract and applicable law.
- 2.2 The Consultant shall provide the Client with such reports of his work on the Project at such intervals and in such form as the Client may from time to time require.
- 2.3 The Consultant shall comply with such instructions as are issued by the Client from time to time in connection with the Project and/or the Services.

### 3. CONSULTANT'S PERSONNEL

- 3.1 The Consultant shall make available for the purposes of the Project any individuals named in the Contract as key personnel. The Consultant shall provide the Client with a list of the names and addresses of all other personnel 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 or involved in the Project (or any part of it), specifying in each case the capacities in which they are so concerned or involved 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 3.1.

- 3.2 The Consultant shall take all 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.
- 3.3 The decision of the Client 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 it by this Condition shall be final and conclusive.
- 3.4 The Consultant shall bear the cost of any notice, instruction or decision of the Client under this Condition 3.

#### **4. CHANGE TO CONTRACT REQUIREMENTS**

- 4.1 The Client may order any variation to the Project and/or any part of the Services which, in the Client's opinion, is necessary or desirable. Any such variation may include (but shall not be restricted to) additions, omissions, alterations, substitutions to the Project and/or the Services and changes in quality, form, character, kind, timing, method or sequence of the Project and/or Services.
- 4.2 Save as otherwise provided herein, no variation of the Project and/or Services as provided for in Condition 4.1 hereof shall be valid unless given or confirmed by the Client in writing. If for any reason the Client shall find it necessary instruct such a variation orally in the first instance, the Consultant shall comply with such instruction and such instruction will be confirmed in writing by the Client within 2 working days. If not so confirmed, the variation shall cease to have effect on the expiry of this 2 working day period.
- 4.3 Where a variation of the Project and/or the Services pursuant to Condition 4.1 or 4.2 will affect the costs incurred by the Consultant in providing the Services, the Consultant will notify the Client of this writing and shall provide such information on the affected costs as the Client may require. The Client will consider such notification and supporting information and the Client may (at its discretion but acting reasonably) authorise such alteration to the sums to be paid to the Consultant as is, in the Client's opinion, appropriate and reasonable in the circumstances.

#### **5. FEES AND EXPENSES**

- 5.1 The charges for the Services shall be set out in the Contract, and shall be the full and exclusive remuneration of the Consultant in respect of the performance of the Services.
- 5.2 The Consultant shall be entitled to be reimbursed by the Client only for expenses reasonably and properly incurred by him in the performance of his duties hereunder, subject to production of such evidence thereof as the Client may reasonably require.
- 5.3 The Consultant shall invoice the Client at the end of each calendar month in respect of the Services provided by the Consultant (to the satisfaction of the Client) during that month. Each invoice so issued by the Consultant must contain the Purchase Order number and such other information as is required under the Contract. The Client shall pay each invoice received by it (provided it has been correctly rendered and is undisputed) with 30 days of such receipt, with payment being made to the Consultant's nominated bank account.

5.4 Value Added Tax, where applicable, shall be shown separately on all invoices as a strictly net extra charge.

5.5 Notwithstanding Condition 15 of this Contract 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 14 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

## **6. AUDIT**

The Consultant shall (for the duration of the Contract and the period of 5 years thereafter) keep and maintain proper and complete records 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 his representatives such access to those records as may be required by the Client in connection with the Contract.

## **7. CORRUPT GIFTS OR PAYMENTS**

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 and the Consultant warrants that it shall comply (and procure that its personnel, representatives and any associated persons comply) with the Bribery Act 2010.

## **8. PATENTS, INFORMATION AND COPYRIGHT**

8.1 Save to the extent that the Services incorporate or utilise designs or other works furnished by the Client, the Consultant warrants that that nothing done by the Consultant in the performance of the Services shall infringe any patent, trade mark, registered design, copyright or other intellectual property right of any third party. The Consultant shall indemnify the Client against all actions, claims, demands, costs, liabilities and expenses which the Client may suffer or incur as a result of or in connection with any breach of this Condition 8.1.

8.2 The intellectual property rights (including, without limitation, copyright) in any reports, documents, specifications, instructions, plans, drawings, patents, models or designs ("Materials") whether in writing or on magnetic or other media:

(a) furnished to or made available to the Consultant by the Client shall remain vested in the Client absolutely.

(b) prepared by or on behalf of the Consultant in relation to or in connection with this Contract are hereby assigned (by way of a present assignation of future rights) to the Client, such that they shall vest in the Client absolutely. Save to the extent necessary for the purposes of the Contract, the Consultant shall not (and shall procure that the Consultant's personnel and representatives shall not) use or disclose any such Materials without the Client's prior written consent.

8.3 The provisions of this Condition 8 shall apply during the continuance of this Contract and after its termination howsoever arising.

## **9. INDEMNITIES AND INSURANCE**

9.1 Without prejudice to any other rights and remedies of the Client under the Contract, the Consultant shall indemnify and keep indemnified the Client, its personnel and representatives against all actions, claims, demands, costs and expenses incurred by or made against the Client, its personnel or representatives 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, his servants or agents.

9.2 The Consultant (if an individual) represents that he is regarded by both the HM Revenue & Customs and the Department for Work and Pensions as self-employed and accordingly shall indemnify the Client against any tax, national insurance or similar contributions for which the Client may be liable or incur in respect of the Consultant by reason of this Contract.

9.3 The Consultant shall effect with a reputable insurance company or companies acceptable to the Client a policy or policies of insurance covering all the matters which are the subject of indemnities and undertakings on the part of the Consultant contained in this Contract, together with such insurances as may be required by applicable law.

9.4 If requested, a certificate evidencing the existence of such policies shall be provided by the Consultant to the Client.

## **10. COMPLIANCE**

10.1 The Consultant shall (and shall take all reasonable steps to ensure that all of the Consultant's employees and representatives):

(a) perform its obligations under the Contract in accordance with:

- (i) all applicable equality law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy, maternity or otherwise);
- (ii) the Client's equality and diversity policy as provided to the Consultant from time to time; and
- (iii) any other requirements and instructions which the Client reasonably imposes in connection with any equality obligations imposed on the Client at any time under applicable equality law; and

(b) at all times comply with the provisions of the Human Rights Act 1998 in the performance of the Contract. The Consultant shall also undertake, or refrain from undertaking, such acts as the Client requests so as to enable the Client to comply with its obligations under the Human Rights Act 1998.

## **11. OFFICIAL SECRETS ACTS, CONFIDENTIALITY AND ACCESS TO GOVERNMENT INFORMATION**

11.1 The Consultant shall (where applicable) comply with and procure that the Consultant's employees comply with the provisions of the Official Secrets Acts 1911-1989.

11.2 All information related to the Contract will be treated by the Consultant as commercial in confidence. The Consultant shall keep secret and not disclose and shall procure that the Consultant's employees keep secret and do not disclose any such information, except

information which is in the public domain (otherwise than by reason of a breach of this provision) or where disclosure is required by law or judicial order.

11.3 Where the Consultant provides any confidential information to the Client, the Consultant acknowledges and accepts that:-

- (a) the Client may disclose any information as required by law or judicial order, and may disclose all information obtained by the Client by virtue of the Contract to the Scottish or United Kingdom Parliament or any other department, office or agency of Her Majesty's Government in Scotland or the United Kingdom;
- (b) that when disclosing such information to either the Scottish Parliament or the United Kingdom Parliament, the Client is unable to impose any restrictions upon the information that the Client provides to Members of the Scottish Parliament, (MSP's) or Members of the United Kingdom Parliament (MP's); and
- (c) such disclosure shall not constitute a breach of the Contract.

11.4 The provisions of this Condition 11 shall apply during the continuance of this Contract and after its termination howsoever arising.

## **12. TERMINATION**

12.1 The Consultant shall notify the Client in writing immediately upon the occurrence of any of the following events:

- (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 an order is made against the Consultant, or he 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 a trustee is appointed to manage his affairs; or
- (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 (a) or (c) of this Condition occurs in respect of 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
- (c) where the Consultant is a company, if the company passes a resolution for winding-up 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, or possession is taken of any of its property under the terms of a floating charge.

12.2 On the occurrence of any of the events described in Condition 12.1, or if the Consultant shall have committed a material breach of this Contract (and if such breach is capable of remedy and the Consultant has failed to remedy such breach within seven (7) days of being required by the Client in writing to do so), or, where the Consultant is an individual, if he shall die or be adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Health Act 1983 or of Part V of the Mental Health (Scotland) Act 1984, the Client shall be entitled to terminate this Contract by notice to the Consultant with immediate effect.

12.3 In addition to his rights of termination under Condition 12.2, the Client shall be entitled to terminate this Contract by giving to the Consultant not less than 7 days' notice to that effect. In the event of

such termination, the Consultant shall, if required to do so by the Client, prepare and submit to the Client 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.

12.4 Termination under Conditions 12.2 or 12.3 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 8 and 11.

### **13. RETURN OF DOCUMENTS**

13.1 The Consultant will return to the Client promptly upon the termination of the Contract any document, paper, 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.

13.2 Where the Contract has been terminated pursuant to Condition 12.3, the Consultant may retain any documents, papers, materials or information which shall be required by him 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 he may have retained in terms of this Condition.

### **14. RECOVERY OF SUMS DUE**

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.

### **15. ASSIGNATION AND SUB-CONTRACTING**

15.1 The Client may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

15.2 The Consultant shall not assign or sub-contract any portion of the Contract without the prior written consent of the Client. Sub-contracting any part of the Contract shall not relieve the Consultant of any obligation or duty attributable to him under the Contract and the Consultant shall remain liable for the acts and omissions of its subcontractor(s) as if they were its own.

### **16. NOTICES**

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 by fax or other means of telecommunication resulting in the receipt of a written communication in permanent form. It shall be deemed to have been received on the day and time when such means of communication would ordinarily be received (having regard to the typical transmission time for that means of communication).

### **17. STATUS OF CONTRACT**

Nothing in the Contract shall have the effect of making the Consultant an agent of the Client and the Consultant shall not (and shall procure that the Consultant's personnel and representatives do not) say or do anything which might lead any other person to believe that the Consultant is so acting.

### **18. ARBITRATION**

The parties must attempt in good faith to resolve any dispute between them arising out of or in connection with the Contract. Any dispute or difference arising out of or in connection with the Contract, including any question regarding its existence, validity or termination which cannot be resolved in good faith, shall be determined by the appointment of a single arbitrator to be agreed between the parties, and failing agreement within fourteen (14) days after either party has given to



the other a written request to concur in the appointment of an arbitrator, by an arbitrator nominated by the President of the Law Society of Scotland for the time being on the application of either party. The arbitration shall be seated in Scotland and the Arbitration (Scotland) Act 2010 (as amended) shall apply.

**19. HEADINGS**

The headings to Conditions shall not affect their interpretation.

**20. FREEDOM OF INFORMATION**

The Client is a Scottish public authority pursuant to and for the purposes of Freedom of Information (Scotland) Act 2002 ("FOI Act") and is therefore subject to the provisions and obligations in the FOI Act. This means that any person who makes a valid request for recorded information held by or on behalf of the Client will (subject to certain exceptions) be entitled to receive it. For the avoidance of any doubt, nothing in the Contract shall prevent, restrict or prohibit the Client from complying with its obligations under the FOI Act and the Client may disclose any information whatsoever relating or otherwise pertaining to the Contract where it considers that it is required to so under the FOI Act.

**21. BLACKLISTING**

The Consultant must not commit any breach of the Employment Relations 1999 Act (Blacklists) Regulations 2010 or section 137 of the Trade Union and Labour Relations (Consolidation) Act 1992, or commit any breach of the Data Protection Act 1998 by unlawfully processing personal data in connection with any blacklisting Activities. For the avoidance of any doubt (but without limitation) breach of this clause is a material breach which shall entitle the Client to terminate the Contract.

**22. GOVERNING LAW**

These Conditions shall be governed by and construed in accordance with Scots law 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.

**IN WITNESS WHEREOF** these presents typewritten on this and the [ ] preceding pages are executed as follows:

	HISTORIC ENVIRONMENT SCOTLAND	Consultant XXXXXX
Signature		
Signatory [Print Name]		
Position / Signing As		
Date		
Place of Signing		
Witness Signature		
Witness [Print Name]		
Date		