**Standard terms and conditions for the provision of Services**

1. **Definitions and Interpretation**
	1. Unless the context otherwise requires, the following words shall have the following meanings:

|  |  |
| --- | --- |
| **“Agreement”** | the document signed by both Parties agreeing to the terms of the Contract |
| **"Associated Company"** | in relation to a company any holding company, subsidiary or fellow holding company of any such subsidiary |
| **“Brief”** | the Council’s documentation, including an invitation to tender, setting out the Services required and offering to purchase the Services in accordance with the Conditions and any other documentation that will make up the Contract as set out in Schedule 1 |
| **“Change”** | any change to this Contract including to any of the Services |
| **“Change Control Note”** | A written record of a Change agreed or to be agreed by the parties pursuant to the Change Control Procedure |
| **“Change Control Procedure”** | the procedure for changing this Contract as set out in Schedule 6 |
| **"Charges"** | the charges set out in the Tender or Fee Proposal payable by the Council in consideration of the Services as set out in Schedule 5 and Annex 1 thereto |
| **“Conditions”** | the terms and conditions of supply of the Services as set out in this document together with any special terms and conditions agreed in writing by the Council as part of any tender or direct award |
| **“Confidential Information”** | all information which has been designated as confidential by either party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including but not limited to information which relates to the business, affairs, properties, assets, trading practices, services, developments, trade secrets, Intellectual Property Rights, know-how, personnel and suppliers of either party and commercially sensitive information which may be regarded as the confidential information of the disclosing party. |
| **“Services”** | all of the activities to be undertaken by or to be performed by the Provider as described in the Brief as may be amended from time to time |
| **“Contract”** | the contract between the Council and the Provider for the supply of the Services comprising the signed Agreement, and all Schedules thereto including these Conditions, the Brief, the Tender or any direct award decision, any special conditions and any documentation referred to therein |
| **“Contract Manager”** | the person named in Schedule 7 or such other person as the Council may notify to the Provider in writing from time to time |
| **“Contract Period”** | The period of time for provision of the Services as set out in Clause 2.1 (as extended in accordance with Clause 2.2 (if applicable)) |
| **“Contract Representative”** | The person named in Schedule 7 as nominated by the Provider from time to time to act in the name of the Provider for the purposes of the Contract |
| **“Council”** | Norfolk County Council |
| **"Council's Intellectual Property Rights"** | all Intellectual Property Rights comprised in or necessary for or arising from the performance of the Services which shall include all reports and Deliverables |
|  |  |
|  |  |
| **“Data Protection Legislation”** | (i) the UK GDPR as defined in the DPA 2018 (“GDPR”) and any replacement for this that may be implemented in the UK from time to time, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 to the extent that it relates to processing of personal data and privacy;(iii) any and all applicable Law about the processing of personal data and privacy in force from time to time in the UK |
|  |  |
| **“Default”** | Any breach of the obligations of the Provider or any other default, act omission, negligence or negligent statement of the Provider or the Provider Personnel in connection with or in relation to the Contract and in respect of which the Provider is liable to the Council |
| **“Deliverables”** | any outputs of the Services and any other documents or materials provided by the Provider as specified in the Brief or in relation to the Services |
| **“DPA 2018”** | Data Protection Act 2018 |
| **"Environmental Information Regulations"** | the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issues by the Information Commissioner or relevant Government Authority in relation to such regulations |
|  |  |
| **"FOIA"** | the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government Authority in relation to such legislation |
| **"Information"** | has the meaning given under section 84 of the Freedom of Information Act 2000 |
| **"Intellectual Property Rights"** | the Deliverables and any copyright, rights in designs, database rights, domain names, trademarks, service marks, patents or any applications for any of the foregoing, know-how or similar rights or obligations (whether registerable or not) including Moral Rights as defined in Chapter IV of the Copyright, Designs and Patents Act 1988 |
|  |  |
| **“Mandatory Policies”** | the Council’s policies listed in Schedule 9 and available on the Council’s website as updated from time to time |
| **“Prohibited Act”** | a) to directly or indirectly offer, promise or give any person working for or engaged by the Council a financial or other advantage as an inducement or reward for any improper performance of a relevant function or activity;b) to directly or indirectly request, agree to received or accept any financial or other advantage as an inducement or reward for improper performance of a relevant function or activity in connection with this Contract;c) an offence: (i) under the Bribery Act 2010; (ii) under legislation or common law concerning fraudulent acts; (iii) of defrauding, attempting to defraud or conspiring to defraud the Council (including offences by the Provider under Part 3 of the Criminal Finances Act 2017);d) any activity, practice or conduct which would constitute one of the offences listed under (c) above if such activity, practice or conduct had been carried out in the UK. |
| **"Provider Personnel"** | all employees, agents, Providers and Providers of the Provider and/or of any Sub-Provider; |
| **“Relevant Requirements”** | all applicable law relating to bribery corruption and fraud including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010; |
| **"Request for Information"** | a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the Environmental Information Regulations |
| **"Sub-Provider"** | the third party with whom the Provider enters into a sub-contract or its servants or agents and any third party with whom that third party enters into a sub-contract or its servants or agents |
| **“Tender”**“TUPE”  | the tender submitted by the Provider for the supply of the Services in response to the Council’s invitation to tender and Briefmeans the Transfer of Undertakings (Protection of Employment) Regulations 2006 |
| **"Working Day"** | any day other than a Saturday, Sunday or public holiday in England and Wales. |

* 1. **Controller** and **Personal Data** shalltake the meaning given in the GDPR].
	2. References to “**Contract**” mean this contract (and include the Schedules). References to “**Clauses**” and “**Schedules**” mean clauses of and schedules to this Contract. The provisions of the Schedules shall be binding on the parties as if set out in full in this Contract.
	3. References in this Contract to statutory provisions include all prior and subsequent enactments, amendments and substitutions relating to that provision and to any regulations made under it.
	4. Reference to the singular include the plural and vice versa and references to any gender include both genders. References to a person include any individual, firm, unincorporated association or body corporate.
1. Commencement and Continuation
	1. The Provider shall commence the Services on [Insert at award] and, subject to the rights of earlier termination set out in this Contract shall complete the Services on [Insert at award] unless the Contract is extended in accordance with Clause 2.2
	2. The Council shall have the right to extend the Contract by a period or periods of up to 60 months by giving not less than 1 months’ notice in writing to the Provider. The terms and conditions of the Contract shall apply throughout any such extended period.
2. Provision OF SERVICES
	1. The Provider is appointed to undertake the Services. This Contract shall not prevent the Provider from undertaking other services provided that the undertaking of such services does not cause a breach of any provision of this Contract.
	2. The Provider shall promptly and efficiently perform the Services as and when required with all due care and skill as may be expected of a person or an organisation with the experience of the Provider and in accordance with this Contract and in particular but not limited to the provisions of the Brief.
	3. The Provider shall ensure that the Deliverables conform in all respects with and are achieved by the deadlines specified in the Brief and that the Deliverables shall be fit for purpose expressly or implicitly made known to the Provider by the Council.
	4. The Provider shall attend such meetings of the Council and its officers as the Council may reasonably require.
	5. The Provider shall keep detailed and accurate records of all activities undertaken in relation to the provision of the Services and shall provide the Council with reports at such intervals and in such form as the Contract Manager may from time to time require.
	6. The Provider acknowledges the importance attached by the Council to equal opportunities. The Provider shall ensure that in fulfilling its obligations under this Contract it and its officers, employees and agents will act fairly, avoid discrimination and promote equal opportunities.
	7. The Provider warrants that in performing its duties under this Contract it will not, and its officers and/or employees will not, infringe the rights of, nor breach any of its or their obligations to any third party.
	8. Not Used
	9. Not Used
	10. Not Used.
	11. Not Used.
	12. The Provider shall use reasonable endeavours to ensure availability at all times on reasonable notice to provide such assistance or information as the Council may require.
	13. Unless specifically authorised to do so by the Council, the Provider shall not:
3. have any authority to incur any expenditure in the name of the Council; or
4. hold itself out as having authority to bind the Council.
	1. The Provider shall comply with all applicable laws and the Mandatory Policies.
	2. The Provider may use a third party to perform any administrative, clerical or secretarial functions which are reasonably incidental to the provision of the Services provided that (i) the Council shall not be liable to bear the cost of such functions and (ii) at the Council’s request the third party shall be required to enter into direct undertakings with the Council including with regard to confidentiality.
	3. The Provider must comply with Clauses 21.2 to 21.8 (Prevention of Corruption). Failure to do so may result in the immediate termination of the Contract.
	4. The Provider must not engage in any activity, practice or conduct which would constitute either a UK tax evasion facilitation offence or a foreign tax evasion offence under the Criminal Finances Act 2017. Failure to do so may result in the immediate termination of the Contract.
5. Charges and Terms of Payment
	1. In consideration of and subject to the satisfactory performance by the Provider of the Services, the Council shall pay the Provider the Charges set out in Schedule 5 Annex 1, in accordance with the payment provisions of Schedule 5 provided that the Council has received full and accurate information and documentation as required by Schedule 5 to be submitted by the Provider for work completed to the satisfaction of the Council.
	2. Any increase in the Charges is dependent on Council budgets, including government funding levels of the Local Reform and Community Voices Grant (awarded annually in arrears). Any changes to the Charges are to be agreed in writing.
	3. If the Council disputes any invoice:
6. the Council will notify the Provider in writing specifying the reasons for disputing the invoice;
7. provision of the Services may be suspended at the Council’s discretion and payment of subsequent invoices will be suspended whilst the disputed invoice is investigated by the Council;
8. the Provider will provide all evidence as may be necessary to verify the disputed invoice;
9. the Council will pay the Provider all amounts not disputed as required by Clause 4.1 above.
10. the Parties shall negotiate in good faith to attempt to resolve the dispute promptly; and
11. if the Parties have not resolved the dispute within [30] days of the Council giving the Provider notice, the dispute shall be resolved in accordance with Clause 26 (Dispute Resolution)
	1. The Council shall be entitled to set off against the Charges (including any applicable VAT) amounts due from the Provider, under this or any other contract.
	2. Any expenses incurred by the Provider in the course of the Contract shall be dealt with as set out in the Brief.
12. Changes to the Council's Requirements
	1. The Council shall notify the Provider of any material change to the Council's requirements under this Contract. Any change in the scope of the Services specified in the Brief which the parties agree will increase the Charges payable by the Council, shall be dealt with in accordance with the Change Control procedure.
	2. The Provider shall use all reasonable endeavours to accommodate any changes to the needs and requirements of the Council provided that it shall be entitled to payment for any additional costs incurred as a result of any such changes. Any additional costs shall be agreed in accordance with the Change Control Procedure.
	3. If the parties are unable to agree such additional costs, the provisions of Clause 26 shall apply
13. Contract Management
	1. The Provider shall and shall ensure that its officers, employees and agents shall comply with any reasonable guidance or guidelines issued by the Contract Manager from time to time in connection with the Services.
	2. The Provider shall address any enquiries about procedural, contractual or other matters in connection with the provision of the Services in writing to the Contract Manager.
	3. From time to time the Contract Manager may appoint one or more representatives to act for the Contract Manager generally or for a specified purpose or period and will provide the Provider with written notice of any such appointment.
	4. The Provider is required to allow the Council’s Section 151 Officer, or their nominated representative, access to such records as may be reasonably required for audit purposes.
	5. The Contract Manager, the Provider or Contract Representative and key personnel shall meet in accordance with the details set out in Schedule 7 to assess the Provider’s progress, performance and the standard of the Services.
	6. At each meeting, the Provider or Contract Representative shall present any contract monitoring information as reasonably requested by the Council and which demonstrates progress, performance and the standard of the Services including any achieved Deliverables against target Deliverables.
	7. Where the Contract Manager, acting reasonably, considers that the Provider is unable to demonstrate satisfactory progress and/or performance and/or the Services do not meet the standard required by the Council as set out in this Contract, the parties shall discuss and agree measures to be taken to remedy such deficiency within a reasonable time period and this agreement shall be confirmed in writing by the Contract Manager to the Provider. All agreed measures to be taken by the Provider in accordance with this Clause 6.7 shall be undertaken at the Provider’s sole cost.
	8. Where the Contract Manager, acting reasonably, considers that the Provider has failed to remedy any deficiency within the agreed time period, the Council may terminate the Contract in accordance with clause 10.2.
	9. The Provider will provide the Council with reports of the nature and frequency set out in the Brief.
14. Premises and Equipment
	1. Unless otherwise agreed, any land or premises made available to the Provider by the Council in connection with the provision of the Services shall be made available to the Provider free of charge and without exclusive possession and shall be used by the Provider solely for the purpose of providing the Services. The Provider shall have the use of such land or premises as licensee and shall immediately vacate the same on the expiry or other termination of this Contract.
	2. The Provider shall ensure that in providing the Services it will and its officers, employees, agents and sub-Providers will co-operate as far as may be reasonably necessary with the Council's employees. The Provider shall further ensure that it and its sub-Providers carry out their duties in such a way as to cause no unreasonable or unnecessary disruption to the routine and procedures of the Council, its employees, visitors or other Providers.
	3. The Provider shall ensure that it and its officers, employees, agents and sub-Providers will comply with all rules and regulations from time to time issued by the Council relating to the use and/or security of the Council's premises.
	4. The Council shall be under no obligation to provide any premises or equipment to the Provider other than those expressly referred to in this Contract.
	5. The Provider shall provide its own equipment where necessary for the delivery of the Services but for reasons of security and interoperability, only IT equipment owned by the Council may be used to access the Council's network.
	6. Not used
	7. Not used
	8. Not used
15. Intellectual Property Rights
	1. The Provider grants to the Council a royalty-free, perpetual, non-exclusive, irrevocable licence to use the Intellectual Property Rights created in relation to the provision of the Services during and after the termination of this Contract. The Council shall be entitled to sub-licence such Intellectual Property Rights during and after the termination of this Contract.
	2. Any Intellectual Property Rights of the Provider which are in existence at the date of this Contract and which are comprised in or necessary for or arising from the performance of the Services owned by the Provider ("**Background Intellectual Property**") shall remain in the ownership of the Provider but in consideration of the fees payable pursuant to this Contract, the Provider hereby grants to the Council in respect of such Background Intellectual Property an irrevocable, non-exclusive, royalty-free, perpetual licence with rights to grant sub-licences.
	3. The Provider agrees that at the request of the Council it will and procure that its officers, employees and agents will at all times do all such reasonable acts and execute all such documents as may be reasonably necessary or desirable to ensure that the Council receives the full benefit of all of its rights under this Contract in respect of the Council's Intellectual Property Rights or to assist in the resolution of any question concerning the Intellectual Property Rights.
	4. The Provider hereby waives any Moral Rights as defined at Chapter IV of the Copyright, Designs and Patents Act 1988.
	5. The Provider warrants:
		1. that the Council's Intellectual Property Rights comprise the original work of and were created by or on behalf of the Provider;
		2. that the Council's Intellectual Property Rights have not and will not be copied wholly or in part from any other work or material;
		3. that the use of or exercise by the Council of the Council's Intellectual Property Rights and the Background Intellectual Property will not infringe the rights of any third party;
		4. that the Provider has not granted or assigned any rights of any nature in the Council's Intellectual Property Rights to any third party.
	6. The Provider will indemnify the Council and keep the Council indemnified in full against all costs, expenses, damages and direct losses (including any interest, penalties, and reasonable legal and other professional fees) awarded against or incurred or paid by the Council as a result of or in connection with any claim made against the Council for actual or alleged infringement of a third party’s intellectual property arising out of, or in connection with, the supply or use of the Deliverables, to the extent that the claim is attributable to the Provider’s acts or omissions.
16. Warranty, LIMITS OF LIABILITY, Indemnity AND INSURANCE
	1. The Provider warrants and represents to the Council that the obligations of the Provider under this Contract will be performed by appropriately qualified and trained personnel to the standard or care and skill as set out in Clause 3.2. The Council will be relying upon the Provider's skill, expertise and experience in the performance of the Services and also upon the accuracy of all representations or statements made and the advice given by the Provider in connection with the performance of the Services and the accuracy of any documents conceived, originated, made or developed by the Provider as part of this Contract. The Provider warrants and represents that any goods supplied by the Provider forming a part of the Services will be of satisfactory quality and fit for their purpose and will be free from defects in design, material and workmanship.
	2. Without prejudice to any other remedy, if any part of the Services are not performed in accordance with this Contract then the Council shall be entitled where appropriate to:
		1. require the Provider promptly to re-perform or replace the relevant part of the Services without additional charge to the Council; or
		2. assess the cost of remedying the failure (the "**Assessed Cost**”) and to deduct from any sums due to the Provider the Assessed Cost for the period that such failure continues;
	3. The Providers aggregate liability (subject to Clause 9.4 below) in respect of all defaults, claims, losses or damages under this contract whether arising from breach of this contract, the supply or failure to supply the Services, misrepresentation, tort (including negligence), breach of statutory duty or otherwise shall in no event exceed 125% of the fees payable by the Council to the Provider and in respect of damage to property shall in no event exceed £1,000,000.00.
	4. Neither party limits its liability for claims arising out of death, personal injury, fraudulent misrepresentation, breach of third-party intellectual property rights or breach of clause 18 (data protection). The indemnity under Clause 8, 16.9, 18 and 31 is unlimited.
	5. Neither party will be liable to the other for indirect or consequential loss or damage
	6. All property of the Provider or its officers, employees or agents whilst on the Council's premises shall be at the risk of the Provider and the Council shall accept no liability for any loss or damage howsoever occurring to it.
	7. The Provider shall ensure that it has adequate insurance cover with an insurer of good repute to cover claims under this Contract or any other claims or demands which may be brought or made against it by any person suffering any injury damage or loss in connection with this Contract. As a minimum requirement, the Provider shall have a policy or policies of insurance providing the following minimum levels of cover:
17. Public Liability – £5,000,000 (five million pounds) for each and every claim and in the aggregate in any insurance year in respect of all risks which may be incurred
18. Employers Liability – £5,000,000 (five million pounds) for each and every claim and in the aggregate in any insurance year and as required by law from time to time
	1. The Provider shall upon request produce to the Council, policy or policies of insurance, together with the receipt for the payment of the last premium in respect of each policy or produce documentary evidence that the policy or policies are properly maintained.
19. Termination
	1. This Contract may be terminated by either party giving to the other party notice in writing. The Council may terminate the Contract by giving the Provider 12 months’ notice. The Provider may terminate by giving the Council 12 months’ notice.
	2. Either party may terminate this Contract by serving a notice in writing on the other party where the other is in material breach of its obligations under this Contract and where such breach is capable of remedy requiring the breach to be remedied within 28 days of the notice. If the breach has not been remedied within 28 days, the party not in breach may terminate this Contract with immediate effect by service of a further notice in writing.
	3. In the event of a material breach of this Contract, which is not capable of remedy by either party, the other party may terminate this Contract with immediate effect by notice in writing.
	4. A breach shall be deemed to be capable of remedy when it is capable of performance in all respects other than time for performance (save where time is of the essence).
	5. This Contract may be terminated by the Council with immediate effect by notice in writing if at any time:
		1. the Provider passes a resolution that it be wound-up or that an application be made for an administration order or the Provider applies to enter into a voluntary arrangement with its creditors; or
		2. a receiver, liquidator, administrator, supervisor or administrative receiver be appointed in respect of the Provider's property, assets or any part thereof; or
		3. the court orders that the Provider be wound-up or a receiver of all or any part of the Provider's assets be appointed; or
		4. the Provider is unable to pay its debts in accordance with section 123 of the Insolvency Act 1986; or
		5. the Provider is convicted (or being a company, any officers or representatives of the Provider are convicted) of a criminal offence related to the business or professional conduct; or
		6. the Provider commits (or being a company, any officers or representatives of the Provider commit) an act of grave misconduct in the course of the business; or
		7. the Provider fails (or being a company, any officers or representatives of the Provider fail) to fulfil its obligations relating to the payment of Social Security contributions; or
		8. the Provider fails (or being a company, any officers or representatives of the Provider fail) to fulfil its obligations relating to payment of taxes; or
		9. the Provider fails (or being a company, any officers or representatives of the Provider fail) to disclose any serious misrepresentation in supplying information required by the Council in or pursuant to this Contract; or
		10. the Council reasonably believes that the circumstances set out in regulation 73(1) of the Public Contracts Regulations 2015 apply or
	6. Nothing in this Clause 10 shall affect the coming into, or continuance in force of any provision of this Contract which is expressly or by implication intended to come into force or continue in force upon termination of this Contract.
	7. The provisions of Clauses 8.2, 8.6, 9, 14.2, 17, 18, 20 and 31 shall survive the termination or expiry of any part of this Contract.
20. Amendment and Variation

No amendment or variation to this Contract shall be effective unless it is in writing and signed by or on behalf of each of the parties hereto. The parties shall comply with the Change Control Procedure set out in Schedule 6 in respect of all Changes.

1. Effect of Expiry or Termination
	1. On expiry or termination of this Contract however arising, the Provider shall deliver to the Council (or as the Council directs) any documents and data (whether hard copy or electronic) incorporating the Council's Intellectual Property Rights or necessary for the Council to receive the full benefit of the licence or the Background Intellectual Property pursuant to Clause 8.2 and any property belonging to the Council which may be in the Provider's possession or under its control including any laptops supplied by the Council under Clause 7.5.
	2. On expiry or termination of this Contract however arising, the Provider shall and shall procure that its officers, employees and agents shall, at no cost to the Council, promptly provide such assistance and comply with such timetable as the Council may reasonably require for the purpose of ensuring an orderly transfer of responsibility for provision of the Services (or their equivalent). The Council shall be entitled to require the provision of such assistance both prior to and, for a reasonable period of time after the expiry or other termination of this Contract.
	3. The assistance required by the Council under the provisions of Clause 12.2 may include (without limitation) the delivery of documents and data in the possession or control of the Provider which relate to this Contract, including the documents and data, if any, referred to in the Schedules.
	4. The Provider shall and shall procure that its officers, employees and agents shall do such other reasonable acts or things as may be necessary or desirable to enable the Council to accomplish an orderly and prompt transfer of responsibility for the provision of the Services (or their equivalent).
	5. The Provider undertakes that it shall not knowingly do or omit to do anything which may adversely affect the ability of the Council to ensure an orderly transfer of responsibility for the provision of the Services (or their equivalent) and undertakes to procure that its officers, employees and agents shall not knowingly do or omit to do anything which may adversely affect the ability of the Council to ensure an orderly transfer of responsibility for the provision of the Services (or their equivalent).
	6. The Provider shall not at any time after the expiry or other termination of this Contract represent itself as being a Provider of the Council or as being in any way connected with the Council.
2. Access and Information

The Provider shall provide access at all reasonable times to the Council's internal auditors or the National Audit Office, and their employees, agents or representatives as they may reasonably request to inspect to such documents and accounts as the Council considers necessary in connection with this Contract. Such persons shall be entitled to take copies of or extracts from such documents and accounts.

1. Conflict of Interest
	1. The Provider acknowledges and agrees that (except as provided below) it will not act in any capacity for any person or organisation that is or is reasonably likely to become a Provider of the Council in relation to the project for which the Services are provided. For the avoidance of doubt, this Clause 14 shall not prevent the Provider from providing services to an existing client of the Provider to whom the Provider is currently providing services provided that, where the Provider is providing such services to such a person who is an existing client:
		1. it shall not act for any such client in respect of any transactions between the Council and such client or its Associated Companies; and;
		2. the Provider will ensure that any personnel acting for any such client that are not already acting for the Council do not have access to information held by the Provider relating to the Council.
	2. This Clause shall survive the termination of the Provider's appointment howsoever arising for a period of one year and shall continue in full force and effect.
2. Status of THE Provider
	1. In carrying out its obligations under this Contract the Provider agrees that it will be acting as principal and not as the agent of the Council.
	2. The Provider warrants that it is a limited company and a social enterprise duly registered in accordance with the law of England and Wales and that it shall provide services to the Council under the terms of this Contract as an independent Provider. The Provider further warrants that it is the employer of any individuals who carry out the Services on its behalf and that nothing in this Contract shall be construed or have the effect of giving rise to a relationship of employer and employee between the Council on the one hand and the Provider or any of its officers or employees on the other, whether for the duration of the Contract, for the duration of each period for which the Provider or an officer or employee of the Provider is providing services to the Council pursuant to this Contract or otherwise.
3. Tax Indemnity
	1. Where the Provider is liable to be taxed in the UK in respect of consideration received under this contract, it shall at all times comply with the Income Tax (Earnings and Pensions) Act 2003 (ITEPA) and all other statutes and regulations relating to income tax in respect of that consideration.
	2. Where the Provider is liable to National Insurance Contributions (NICs) in respect of consideration received under this contract, it shall at all times comply with the Social Security Contributions and Benefits Act 1992 (SSCBA) and all other statutes and regulations relating to NICs in respect of that consideration.
	3. The Council may, at any time during the term of this contract, ask the Provider to provide information which demonstrates how the Provider complies with Clauses 16.1 and 16.2 above or why those Clauses do not apply to it.
	4. A request under Clause 16.3 above may specify the information which the Provider must provide and the period within which that information must be provided.
	5. The Council may terminate this contract if
		1. in the case of a request mentioned in Clause 16.3 above if the Provider:
			1. fails to provide information in response to the request within a reasonable time, or
			2. provides information which is inadequate to demonstrate either how the Provider complies with Clauses 16.1 and 16.2 above or why those Clauses do not apply to it;
		2. in the case of a request mentioned in Clause 16.4 above, the Provider fails to provide the specified information within the specified period, or
		3. it receives information which demonstrates that, at any time when Clauses 16.1 and 16.2 apply, the Provider is not complying with those Clauses.
	6. The Council may supply any information which it receives under Clause 16.3 to the Commissioners of Her Majesty’s Revenue and Customs for the purpose of the collection and management of revenue for which they are responsible.
	7. Not Used.
	8. The Provider will account to the appropriate authorities for any income tax, national insurance, VAT and all other taxes, liabilities, charges and duties relating to any payments made to the Provider under this Contract or in relation to any payments made by the Provider to its officers or employees in connection with this Contract.
	9. The Provider shall indemnify Council against any liability, assessment or claim made by the HM Revenue and Customs or any other relevant authority arising out of the performance by the parties of their obligations under this Contract (other than in respect of employer's secondary national insurance contributions) and any costs, expenses, penalty fine or interest incurred or payable by Council in connection with any such assessment or claim.
4. Confidentiality
	1. The Provider acknowledges that any Confidential Information obtained from or relating to the Council, its servants or agents is the property of the Council.
	2. Each party hereby warrants that:
		1. any person employed or engaged by it (in connection with this Contract in the course of such employment or engagement) shall treat all Confidential Information belonging to the other party as confidential, safeguard it accordingly and only use such Confidential Information for the purposes of this Contract; and
		2. any person employed or engaged by it (in connection with this Contract in the course of such employment or engagement) shall not disclose any Confidential Information to any third party without prior written consent of the other party, except where disclosure is otherwise expressly permitted by the provisions of this Contract.
	3. The Provider shall take all necessary precautions to ensure that all Confidential Information obtained from the Council is treated as confidential and not disclosed (without prior approval) or used other than for the purposes of this Contract by any of its employees, servants, agents or sub-Providers.
	4. Without prejudice to the generality of the foregoing neither the Provider or any person engaged by it whether as a servant or Provider or otherwise, shall use the Confidential Information for the solicitation of business from the Council whether directly or by its servants or Providers or any third party.
	5. The Provider shall ensure that their employees, servants or such professional advisors or Providers are aware of the Provider’s obligations under this Contract.
	6. The provisions of Clauses 17.1 to 17.5 inclusive shall not apply to any information received by one party from the other:
		1. which is or becomes public knowledge (other than by breach of this Clause 17);
		2. which was in the possession of the receiving party, without restriction as to its disclosure, before the date of receipt from the disclosing party;
		3. which is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;
		4. which is independently developed without access to the Confidential Information;
		5. which must be disclosed pursuant to a statutory, legal or parliamentary obligation placed upon the party making the disclosure, including any requirements for disclosure under the Freedom of Information Act or the Environmental Information Regulations.
	7. Nothing in this Contract shall prevent the Council from disclosing the Provider's Confidential Information:
		1. to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
		2. to the extent that the Council (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
		3. on a confidential basis to a professional adviser, Provider, supplier or other person engaged by any of the entities described in Clause 17.7.1 (including any benchmarking organisation) for any purpose relating to or connected with this Contract;
		4. on a confidential basis for the purpose of the exercise of its rights under this Contract, including audit rights, step-in rights and exit management rights; or
		5. on a confidential basis to a proposed successor body in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this Contract.
	8. The Council shall use all reasonable endeavours to ensure that any third party or Sub-Provider to whom the Provider's Confidential Information is disclosed pursuant to Clause 17 is made aware of the Council's obligations of confidentiality.
	9. Nothing in this Clause 17 shall prevent either party from using any techniques, ideas or know-how gained during the performance of this Contract in the course of its normal business, to the extent that it does not result in a disclosure of Confidential Information or an infringement by either party of any Intellectual Property Rights.
	10. Nothing in this Clause 17 shall prevent the Council from exercising licenses granted to it under this Contract or enjoying Intellectual Property Rights vesting in or transferring to it under this Contract.
	11. The Provider undertakes to make no reference in any advertising or other promotional material to this Contract without the prior written consent of the Council.
	12. Any findings and/or contents of reports produced under this Contract shall not be disclosed without the permission of the Council which shall not be unreasonably withheld.
	13. In the event that the Provider fails to comply with this Clause 17, the Council reserves the right to terminate the Contract by notice in writing with immediate effect.
	14. In order to ensure that no unauthorised person gains access to any Confidential Information or any data obtained in the supply of the Services, the Provider undertakes to maintain adequate security arrangements that meet the requirements of professional standards and best practice.
	15. The Provider will immediately notify the Council of any breach of security in relation to Confidential Information and all data obtained in the supply of the Services and will keep a record of such breaches. The Provider will use its best endeavours to recover such Confidential Information or data however it may be recorded. This obligation is in addition to the Provider’s obligations under Clauses 17.1, 17.2 and 17.3. The Provider will co-operate with the Council in any investigation that the Council considers necessary to undertake as a result of any breach of security in relation to Confidential Information or data.
	16. The Provider shall, at its own expense, alter any security systems at any time during the Contract Period at the Council’s request if the Council reasonably believes the Provider has failed to comply with Clause 17.14.
	17. The parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Contract is not Confidential Information. The Council shall be responsible for determining in its absolute discretion whether any of the content of the Contract is exempt from disclosure in accordance with the provisions of the FOIA.
	18. Subject to Clause 17.17, the Provider hereby gives consent for the Council to publish the Contract in its entirety, including from time-to-time agreed changes to the Contract, to the general public.
	19. The Council may consult with the Provider to inform its decision regarding any redactions, but the Council shall have the final decision in its absolute discretion.
	20. The Provider shall assist and cooperate with the Council to enable the Council to publish this Contract.
5. Data Protection
	1. Both parties will comply with all applicable requirements of the Data Protection Legislation. This Clause 18.1 is in addition to, and does not relieve, remove or replace a party’s obligations or rights under the Data Protection Legislation.
	2. The Parties acknowledge that for the purposes of the Data Protection Legislation, the Provider is the Controller.
	3. The Provider undertakes to:
		1. treat as confidential all Personal Data which may be derived from or be obtained in the course of the Services, or which may come into the possession of the Provider or a staff member, servant or agent or Sub-Provider of the Provider as a result or in connection with the Services;
		2. provide all necessary precautions to ensure that all such information is treated as confidential by the Provider, its staff members, servants, agents or Sub-Providers
		3. ensure that it, its staff members, servants, agents and Sub-Providers are aware of the provisions of the Data Protection Legislation and that any personal information obtained in the course of the performance of this contract shall not be disclosed or used in any unlawful manner;
		4. have in place adequate mechanisms to ensure that Sub-Providers, agents and subsidiaries to whom personal information is disclosed comply with their obligations under this Contract to keep Personal Data and information secure and confidential in accordance with the Data Protection Legislation.

.

* 1. The Provider will indemnify the Council and keep the Council indemnified in full against all costs, expenses, damages and direct losses (including any interest, penalties, and reasonable legal and other professional fees) awarded against or incurred or paid by the Council as a result of or in connection with any claim made against the Council for actual or alleged breach of this Clause 18 arising out of, or in connection with, the supply or use of the Services, to the extent that the claim is attributable to the Provider’s acts or omissions.
1. Freedom of Information
	1. The Provider acknowledges that the Council is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Council to enable the Council to comply with its Information disclosure obligations.
	2. The Provider shall and shall procure that its Sub-Providers shall:
		1. transfer to the Council all Requests for Information that it receives as soon as practicable and in any event within two Working Days of receiving a Request for Information;
		2. provide the Council with a copy of all Information in its possession, or power in the form that the Council requires within five Working Days (or such other period as the Council may specify) of the Council's request; and
		3. provide all necessary assistance as reasonably requested by the Council to enable the Council to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.
	3. The Council shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Contract or any other Contract whether any Information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations.
	4. In no event shall the Provider respond directly to a Request for Information unless expressly authorised to do so by the Council.
	5. The Provider acknowledges that (notwithstanding the provisions of Clause 19) the Council may, acting in accordance with the Ministry of Justice’s Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 (**“the Code”**), be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Provider or the Services:
		1. in certain circumstances without consulting the Provider; or
		2. following consultation with the Provider and having taken their views into account;
		3. provided always that where Clause 19.5.1 applies the Council shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Provider advanced notice, or failing that, to draw the disclosure to the Provider’s attention after any such disclosure.
	6. The Provider shall ensure that all Information is retained for disclosure and shall permit the Council to inspect such records as requested from time to time.
2. Assignment and Sub-contracting
	1. Neither the benefit nor the burden of this Contract may be assigned or sub-contracted in whole or in part by the Provider without the prior written consent of the Council. Such consent may be given subject to any conditions which the Council considers necessary. The Council may withdraw its consent to any sub-Provider where it no longer has reasonable grounds to approve of the sub-Provider or the sub-contracting arrangement and where these grounds have been presented in writing to the Provider.
	2. Where the Provider enters into a contract with a Sub-Provider for the purpose of performing its obligations under the Contract it shall ensure prompt payment in accordance with this Clause 20.2. Unless otherwise agreed by the Council in writing, the Provider shall ensure that any contract requiring payment to a Sub-Provider shall provide for undisputed sums due to the Sub-Provider to be made within a specified period from the receipt of a valid invoice not exceeding 30 days.
	3. The Provider shall comply with such terms and shall provide, at the Council’s request, sufficient evidence to demonstrate compliance.
	4. The Council shall be entitled to withhold payment due under Clause 20.2 for so long as the Provider, in the Council’s reasonable opinion, has failed to comply with its obligations to pay any Sub-Providers promptly in accordance with Clause 20.2. For the avoidance of doubt the Council shall not be liable to pay any interest or penalty in withholding such payment.
	5. The Provider shall take all reasonable steps to satisfy itself that the Sub-Providers (or their employees) are suitable in all respects to perform the Services required by the Provider.
	6. The Provider shall immediately notify the Council if it has any concerns regarding the propriety of any of the Sub-Providers in respect of Services rendered in connection with this Contract.
	7. The Provider or, where applicable its lawful assignees, shall at all times remain responsible for the proper performance of its obligations and for all the acts and omissions of its Sub-Providers in connection with this Contract.
3. Corrupt Gifts, Payment of Commission AND PREVENTION OF CORRUPTION
	1. The Provider shall not, and shall ensure that its officers, employees, agents and sub-Providers shall not, pay any commission, fees or grant any rebates to any employee, officer or agent of the Council nor favour any employee, officer or agent of the Council with gifts or entertainment of significant cost or value nor enter into any business arrangement with employees, officers or agents of the Council other than as a representative of the Council, without the Council's written approval. The Council shall have the right to audit any and all such records necessary to confirm compliance with this Clause 21 at any time during performance of this Contract and during the three-year period following completion of performance. Breach of this Clause 21 shall entitle the Council to terminate this Contract and any other contracts between the Provider and the Council forthwith.
	2. The Provider represents and warrants that neither it, nor any Provider Staff, have at any time prior to the Contract Period:
		1. committed a Prohibited Act;
		2. been subject of any investigation, inquiry or enforcement proceedings by a governmental, administrative or regulatory body regarding any Prohibited Act or alleged Prohibited Act; or
		3. been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or other government contracts on the grounds of a Prohibited Act.
	3. The Provider shall promptly notify the Council if, at any time during the Contract Period, its circumstances, knowledge or awareness changes such that it would not be able to repeat the warranties set out in Clause 21.2 at the relevant time.
	4. The Provider shall (and shall procure that the Provider Personnel shall) during the Contract Period:
		1. not commit a Prohibited Act;
		2. not do, suffer or omit to do anything that would cause the Council or any of the Council's employees, Providers, contractors, sub-contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements;
		3. comply with the Council's Mandatory Policy on Anti-Fraud, Bribery and Corruption as updated from time to time;
		4. notify the Council (in writing) if it becomes aware of any breach of Clause 21.4 (a) or Clause 21.4 (b) or has reason to believe that it or any person associated with it has received a request or demand for any undue financial or other advantage.
	5. The Provider shall maintain appropriate and up to date records showing all payments made by the Provider in connection with this Contract and the steps taken to comply with its obligations under Clause 21.4.
	6. The Provider shall allow the Council and its third-party representatives to audit any of the Provider's records and any other relevant documentation in accordance with Clause 13 (Access and Information).
	7. If the Provider is in Default under this clause, the Council may by notice:
		1. require the Provider to remove from performance of this Contract any Provider Personnel whose acts or omissions have caused the Default; or
		2. immediately terminate this Contract and recover in full from the Provider any loss sustained by the Council in consequence of any breach of this Clause 21.
	8. Any notice served by the Council under Clause 21.7 shall specify the nature of the Prohibited Act, the identity of the party who the Council believes has committed the Prohibited Act and the action that the Council has elected to take (including, where relevant, the date on which this Contract shall terminate).
4. Waiver

No delay by or omission by either party in exercising any right, power, privilege or remedy under this Contract shall operate to impair such right, power, privilege or remedy or be construed as a waiver thereof. Any single or partial exercise of any such right, power, privilege or remedy shall not preclude any other or further exercise thereof or the exercise of any other right, power, privilege or remedy.

1. Severability

If any provision or part of a provision of this Contract shall be or shall become unenforceable, void or invalid (as the case may be) such provision or part thereof shall not affect and shall be deemed to be severed from the remainder of this Contract to the intent that the remainder of the affected provision and this Contract shall be or shall continue to be fully enforceable and valid.

1. DISCRIMINATION
	1. The Provider shall not unlawfully discriminate within the meaning and scope of any law, enactment, order, or regulation relating to discrimination (whether in age, race, gender reassignment, marriage and civil partnership, pregnancy and maternity religion or belief, disability, sex and sexual orientation or otherwise) in employment.
	2. The Provider shall take all reasonable steps to secure the observance of Clause 24.1 by all servants, employees or agents of the Provider and all suppliers and sub-Providers employed in the execution of the Contract.
2. The Contract (Rights of Third Parties) Act 1999

A person who is not a party to this Contract shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Contract. This clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

1. Dispute Resolution
	1. The parties shall use all reasonable endeavours to negotiate in good faith and settle amicably any dispute that arises during the continuance of this Contract.
	2. Any dispute not capable of resolution by the parties in accordance with the terms of Clause 26.1 shall be settled as far as possible by mediation in accordance with the Centre for Dispute Resolution (CEDR) model Mediation Procedure.
	3. No party may commence any court proceedings in relation to any dispute arising out of this Contract until they have attempted to settle it by mediation in accordance with the provisions of Clause 26.2.
2. Notices

Any notices to be given under this Contract shall be delivered personally or sent by pre-paid first-class post to the Contract Manager (in the case of the Council) or to the address set out in this Contract (in the case of the Provider). Any such notice shall be deemed to be served, if delivered personally, at the time of delivery, or if sent by post, 48 hours after posting.

1. FORCE MAJEURE
	1. Neither party will be liable in respect of any breach of Contract due to any cause beyond its reasonable control (a “Force Majeure Event”) including, but not limited to, Act of God, flood, lightning or fire, industrial action or lockouts (other than a strike or lockout induced by the party so affected); government instruction issued in a pandemic; the act or omission of Government, highway authorities or other competent authority; war, military operations or riot.
	2. A party affected by a Force Majeure Event will inform the other party as soon as practicably possible of the circumstances involved and likely timeframe for resolution. Should the Force Majeure Event not be resolved within thirty (30) days of notification, the other party will be entitled to terminate the Contract immediately by notice in writing.
2. WHOLE CONTRACT

Subject to any specific clause in this Contract incorporating or referencing any other document, the Contract constitutes the whole agreement and understanding of the parties as to the subject matter and there are no prior or contemporaneous agreements between the parties with respect thereto.

1. Law and Jurisdiction

This Contract shall be governed by and interpreted in accordance with English law and the parties submit to the jurisdiction of the English courts.

1. TUPE

31.1 If the Council has notified the Provider that it intends to tender or retender any Services, the Provider must within 20 Working Days following written request (unless otherwise agreed in writing) provide the Council with anonymised details of Staff engaged in the provision of the relevant Services who may be subject to TUPE. The Provider must indemnify and keep indemnified the Council and any new provider who provides any services equivalent to the Services or any of them after expiry or termination of this Contract or termination of a Service, against any Losses in respect any inaccuracy in or omission from the information provided under this clause.

31.2 During the 3 months immediately preceding the expiry of this Contract or at any time following a notice of termination of this Contract or of any Service being given, the Provider must not and must procure that its Sub-Providers do not, without the prior written consent of the Council, in relation to any persons engaged in the provision of the Services or the relevant Service:

* + 1. terminate or give notice to terminate the employment of any person engaged in the provision of the Services or the relevant Service (other than for gross misconduct);
		2. increase or reduce the total number of people employed or engaged in the provision of the Services or the relevant Service by the Provider and any sub-contractor by more than 5% (except in the ordinary course of business);
		3. propose, make or promise to make any material change to the remuneration or other terms and conditions of employment of the individuals engaged in the provision of the Services or the relevant Service;
		4. replace or relocate any persons engaged in the provision of the Services or the relevant Service or reassign any of them to duties unconnected with the Services or the relevant Service; and/or
		5. assign or redeploy to the Services or the relevant Service any person who was not previously a member of Staff engaged in the provision of the Services or the relevant Service.
	1. The Provider must indemnify and keep indemnified the Council and, at the Council’s request, any new provider who provides any services equivalent to the Services or any of them after expiry or termination of this Contract or any Service, against any losses in respect of:
		1. the employment or termination of employment of any person employed or engaged in the delivery of the relevant Services by the Provider and/or any sub-contractor before the expiry or termination of this Contract or of any Service which arise from the acts or omissions of the Provider and/or any Sub-Provider;
		2. claims brought by any other person employed or engaged by the Provider and/or any Sub-Provider who is found to or is alleged to transfer to the Council or new provider under TUPE; and/or
		3. any failure by the Provider and/or any Sub-Provider to comply with its obligations under TUPE in connection with any transfer to the Council or new provider.

* 1. The Council must use all reasonable endeavours to procure that any new provider who provides any services equivalent to the Services or the relevant Service after expiry or termination of this Contract or of any Service will indemnify and keep indemnified the Provider and/or any Sub-Provider against any losses in respect of:
		1. any failure by the new provider to comply with its obligations under TUPE in connection with any relevant transfer under TUPE to the new provider;

* + 1. any claim by any person that any proposed or actual substantial change by the new provider to the persons' working conditions or any proposed measures of the new provider are to that person's detriment, whether that claim arises before or after the date of any relevant transfer under TUPE to the new provider on expiry or termination of this Contract or of any Service; and/or
		2. any claim by any person in relation to any breach of contract arising from any proposed measures of the new provider, whether that claim arises before or after the date of any relevant transfer under TUPE to the new provider on expiry or termination of this Contract or of any Service.