

Kirklees Council
CONTRACT CONDITIONS FOR PROVISION OF SERVICES

1. DEFINITIONS AND INTERPRETATION

1.1 “Authorized Officer”: means the person described as such in the Service Order (who may be changed at any time upon giving notice); or in the absence of which the Council’s Service Director responsible for the relevant budget (or his authorized representative(s)).

1.2 “Best Endeavours” means taking all steps that a prudent, determined and reasonable person, acting in its own interests and enthusiastic to achieve a given result, would take. A party that has assumed a **“Best Endeavours”** obligation must exhaust all of a number of reasonable courses which could be taken to achieve that aim.

1.3 “Confidential Information” means information which is held by the Council and:

- 1.3.1** the Council has specified as confidential in the Service Order; or
- 1.3.2** the Council has marked as confidential; or
- 1.3.3** is personal data; or
- 1.3.4** is marked as subject to legal privilege (even if the Contractor did not create the privilege); or
- 1.3.5** relates to a report taken or to be taken to a meeting of the Council’s Cabinet or the full Council or any Cabinet or Council committee in private; or
- 1.3.6** is of a type which could prejudice the Council’s business interests if disclosed publically; or
- 1.3.7** is of a type which could prejudice law enforcement if disclosed publically; or
- 1.3.8** is of a type which could endanger a person’s physical or mental health if disclosed publically; or
- 1.3.9** is of a type which could prejudice the effective conduct of public affairs if disclosed publically; or
- 1.3.10** the relationship between the parties specifically or typically implies confidentiality; or
- 1.3.11** is of a type the Contractor ought reasonably to suppose is confidential; or
- 1.3.12** is politically sensitive or potentially prejudicial to the Council’s reputation;

but has not entered the public domain and for the time being is not **manifestly** disclosable under the FOIL.

1.4 “Contract”: this agreement between the Council and the Contractor for the provision of the Services required by the Council incorporating these Contract Conditions and the Service Order which constitutes the entire agreement between the Council and the Contractor.

1.5 “Contractor”: the company, firm or person who is contracted to provide the Services to the Council through the Service Order.

1.6 “Council”: the Council of the Borough of Kirklees.

1.7 “DPL” means all laws applying to privacy in England, including the Data Protection Act 2018 as supplemented by the General Data Protection Regulation (the **“GDPR”**) and other legislation, and any related guidance and codes of practice issued by the Information Commissioner.

1.8 “Employee Liability Information” means the information required to be given to the transferee under Regulation 11 of the Transfer of Undertakings (Protection of Employment) Regulations 2006.

1.9 “FOIL” means the Freedom of Information Act 2000, the Environmental Information Regulations 2004, the Local Audit and Accountability Act 2014, the Local Government Transparency Code and/or other governmental transparency legislation and any associated Codes of Practice.

1.10 “Generated IPR” means IPR generated, developed, created or produced arising from or in pursuance of the Services other than the Works.

1.11 “Good Industry Practice” means that degree of skill, care, prudence, foresight, diligence and operating practice which would commonly be expected from a skilled and highly experienced contractor engaged in the

same type of undertaking as that of the Contractor seeking in good faith to comply with its contractual obligations hereunder.

1.12 “IPR”: all copyright, patents or patent rights, registered and unregistered design rights, trademarks, service marks, database rights, inventions, know-how and all other intellectual property rights whatsoever in the world enforceable in connection with the Services.

1.13 “Key Person”, “Key Personnel”: means any persons specified as such in the Service Order, being material to the Council’s decision to engage the Contractor.

1.14 “Material Breach” means a breach of contract which is more than trivial but need not be repudiatory. It need not remove the benefit which the Council derives from the Contract, but had the Council known at the Start Date that the breach would occur it would not have entered into the Contract (when assessing this, the Council will act rationally and ignore knowledge of other breaches but may take into account all of the Council’s objectives and current knowledge of the effect and duration of the breach in question).

1.15 “Reasonable Endeavors” means taking steps that a prudent, determined and reasonable person, acting in its own interests and enthusiastic to achieve a given result, would take. A party that has assumed a **“Reasonable Endeavours”** obligation that has a number of reasonable courses which could be taken to achieve that aim, need only pursue one course (when only following one of a number of possible courses, the Contractor shall invite the Council to select which one it prefers and the Contractor shall follow the Council’s choice).

1.16 “Service Order”: means the instrument instructing the Contractor to provide the Services and is sometimes called a **‘purchase order’**; which may include a description of the requirements (sometimes called the **‘specification’**), any special terms and a note of the agreed price(s) and any other relevant details, for example relating to the Term, Key Personnel, DPL status, IPR, milestones, special reporting requirements and the addresses of the parties. This may be made in any form including by a **‘letter of acceptance’** of tender signed by the Authorized Officer or by (or on behalf of) the Council’s Service Director Legal Governance & Monitoring.

1.17 “Services” means the services described in the Service Order as regulated by the other parts of this Contract.

1.18 “Social Value” means the requirement under the Public Services (Social Value) Act 2012 for the Council, when procuring certain services, to consider how the services they propose to procure “might improve the economic, social and environmental well-being” of the area in which the services are to be provided pursuant to section 1(3), Public Services (Social Value) Act 2012) and a Social Value project is any project agreed to be undertaken by the Contractor that meets such requirement.

1.19 “Start Date” means the date the Contract commences in accordance with Condition 2.1.

1.20 “Term”: the period of the provision of the Services set out in the Service Order (or if not stated the time between the commencement and completion of the services).

1.21 “Works” means any report, design, photograph, painting, sculpture, book or other item which the Services are intended to achieve, which is specified or implied in the Service Order.

1.22 Words or phrases such as **“including”, “such as”, “for instance”, and “for example”** shall be understood as implying ‘without limitation’

1.23 Condition headings are for information and ease of reference only and shall not affect the construction of the Contract.

1.24 In these Conditions and the Contract, unless the context or relevant Condition otherwise requires:

1.24.1 the expressions **“Council”** and **“Contractor”** shall include their respective successors, personal representatives, employees and permitted sub-contractors and assigns;

1.24.2 reference to any Order, Regulation or Statute whether detailed expressly or incorporated by general reference, shall be deemed to include a reference to any amendment, re-enactment or replacement of it; and

1.24.3 words importing any gender shall include all genders (including neuter) and the singular includes the plural and vice versa.

- 1.25** In the event of inconsistency between the provisions of these Conditions and any other Contract document(s), then the Authorized Officer shall determine which document(s) will prevail and may issue appropriate instructions in writing resolving any ambiguity or discrepancy.
- 1.26** If the Data Protection Schedule applies, it shall take precedence over the main body of Conditions.
- 1.27** If any provision of the Contract shall be declared by any court of competent jurisdiction to be invalid, ineffective or unenforceable in any way under any applicable law, the remainder of the provisions of the Contract shall stand in full force and effect.

2. CONTRACT

- 2.1** The Contract shall commence and the Contractor shall be bound contractually to supply the Services upon receipt of a Service Order (which shall be deemed received in accordance with Condition 24) (the “**Start Date**”). The Start Date for commencement of delivery of the Services may be specified as a different date in the Service Order.
- 2.2** The Contractor agrees that only these Contract Conditions shall apply to the Contract to the exclusion of all other terms and conditions, including any terms and conditions which the Contractor may purport to apply under any invoice, confirmation of order or similar document or in correspondence. By acting on the Service Order, the Contractor waives any contractual rights which it might otherwise obtain from such documents.
- 2.3** Failure by the Council at any time to require performance by the Contractor of any provision of the Contract, or failure by the Council at any time to exercise any right or remedy, shall not constitute a waiver of performance of that right or remedy nor shall in any way affect the validity of the Contract or any part of the Contract or the right of the Council to subsequently enforce each and every provision.

3. SERVICES

- 3.1** The Contractor shall provide the Services in accordance with all the provisions of the Contract and discharge all its obligations under the Contract with Good Industry Practice from the Start Date.
- 3.2** A senior member of the Contractor’s staff must be nominated promptly by the Contractor to act as the Contractor’s representative. That person shall liaise with the Authorized Officer in connection with the Services and arrange for appropriate staff to attend any officer and other meetings to be convened within the Council’s administrative area in respect of which the Contractor has received prior notification on the Contractor’s behalf.
- 3.3** Except as otherwise expressly specified in the Service Order, the Contractor shall provide all labour, transport, equipment, goods, materials, vehicles, plant, equipment and all such other items as are necessary for the proper performance of the Contractor’s obligations under the Contract. The sums to be paid to the Contractor as set out in the Contract shall cover all costs, expenses and disbursements in connection with the provision of the Services including the preceding and all general risks, liabilities and obligations connected with the Contract.
- 3.4** The Contractor shall promptly comply with the reasonable instructions of the Authorized Officer relating to the Contractor’s performance of the Contract. In the event that the Services or any part of the Services have not been carried out, or do not meet the requirements of the Contract, the Contractor shall, if instructed to do so by the Authorized Officer, re-schedule and perform the Services at the Contractor’s expense in accordance with the requirements of the Contract within such reasonable period specified by the Authorized Officer and the Contractor shall reimburse the Council for all reasonable costs incurred by the Council as a consequence of the Contractor’s failure to properly perform the Services as required under the Contract. The Council’s rights under this Condition 3.4 shall be without prejudice to any other rights or remedies that the Council may possess.
- 3.5** Access to the Council’s premises shall not be exclusive to the Contractor but access given to the Contractor shall be limited to such persons as are necessary for the performance of the Contractor’s obligations under the Contract and the Contractor shall co-operate with any other persons operating at such premises as the Authorized Officer may reasonably require.
- 3.6** The Council reserves the right to refuse to admit to, or to withdraw permission to remain on, any premises occupied by or on behalf of the Council any person engaged to perform any of the Contractor’s obligations under the Contract whose admission or continued presence would be, in the reasonable opinion of the Authorized Officer, undesirable.
- 3.7** While at the Council’s premises, the Contractor shall comply (and ensure compliance by its personal representatives and subcontractors) with the

rules applicable to (and any day to day instructions regarding) the Council’s premises, such as the health and safety and security requirements. If this Condition is not complied with any license to be on the Council premises may be removed and the Contractor shall not be entitled to any allowances for time or other compensation.

- 3.8** All Services ordered within the Term shall be supplied by the Contractor, even though this may require the Services to be supplied after the expiry of the Term.
- 3.9** Where the Supplier has agreed to deliver a Social Value project in addition to the Services, the details and conditions that apply to delivery of the Social Value project shall be as set out in the Service Order.
- ## **4. STAFF & SAFEGUARDING CHILDREN AND VULNERABLE ADULTS**
- 4.1** The Contractor shall always verify the trustworthiness of its staff involved in providing the Services in accordance with Good Industry Practice (including as appropriate obtaining basic Disclosure & Barring Service checks).
- 4.2** The Contractor acknowledges that the Council has the right to refuse a substitute for a Key Person if in the reasonable view of the Council, the substitute has insufficient qualifications, experience and/or expertise to carry out the Services to the standard the Council reasonably expects and bearing in mind the degree to which the Key Person was material to the Council’s decision to contract with the Contractor. If a Key Person’s involvement was so material as to be a decisive factor in the Council’s choice to engage the Contractor, the Contractor agrees that it is entirely reasonable for the Council to refuse a substitute altogether. Failure to agree on a substitute within 2 weeks from a Key Person becoming disassociated with the Services shall entitle the Council to terminate the contract forthwith by notice without liability.
- 4.3** Without limiting the general requirement in Condition 4.1, where the Services involve the provision of a “**Regulated Activity**” described in Schedule 4 of the Safeguarding Vulnerable Groups Act 2006, or any work defined as “**work with children**” in Regulation 5C of the Police Act 1997 (Criminal Records) Regulations 2002, or work in a further education institution or 16 to 19 Academy where the normal duties of that work involve regular contact with children, the Contractor shall:
- 4.3.1** ensure that all individuals engaged in such elements of the Services are subject to a valid enhanced disclosure check undertaken through the Disclosure and Barring Service; and
- 4.3.2** monitor the level and validity of the checks referred to in Condition 4.3.1 for each member of staff; and
- 4.3.3** not employ or use the services of any person who is barred from, or whose previous conduct or records indicate that he or she would not be suitable to carry out the Services or who may otherwise present a risk to end users of the Services.
- 4.4** The Contractor warrants that at all times for the purposes of this Contract it has no reason to believe that any person who is or will be employed or otherwise engaged by the Contractor in the provision of the Services is barred from the activity in accordance with the Safeguarding Vulnerable Groups Act 2006 and any regulations made thereunder.
- 4.5** Where the Contractor has cause to believe that a person engaged by it in delivering the Services has become a serious risk of harm to children or vulnerable adults, it shall refer appropriate information about that person to the Disclosure & Barring Service in accordance with Good Industry Practice and remove that person from the provision of the Services.
- 4.6** The Contractor shall use its Best Endeavours to ensure that the Council is notified if any person engaged by the Contractor in connection with the Services receives a relevant conviction (or whose previous relevant convictions become known to the Contractor), or, who in its opinion has harmed or now poses a risk of harm to the Service users.
- 4.7** If the Council reasonably believes that any person engaged by the Contractor to provide the Services is unsuitable by reason of being continuously or recurrently, or on a single occasion significantly, below the standard required by the Contract, the Council may, by giving written notice to the Contractor:
- 4.7.1** refuse admission to the relevant person(s) to the Council’s premises;
- 4.7.2** direct the Contractor to end the involvement of the relevant person(s) in the provision of the Services; and/or
- 4.7.3** require that the Contractor replace any person removed under this Condition with a suitably qualified person and procure that any security pass issued by the Council to the person removed is surrendered,

and the Contractor shall comply with any such notice forthwith.

4.8 The Council shall in no circumstances be liable either to the Contractor or any person in respect of any removal of any person from the provision of the Services pursuant to Condition 4.7 or whose admission to any premises is refused or withdrawn by the Council and the Contractor shall fully indemnify the Council in respect of any claim made by such person.

4.9 The Contractor shall promptly provide the Authorized Officer with any information that the Authorized Officer reasonably requests to enable the Council to be satisfied that the obligations of this Condition 4 have been met.

4.10 For the avoidance of doubt, this Condition does not require any person to be dismissed from the Contractor's employment or the employment of its agent or subcontractor.

5. WARRANTY AND STANDARDS

5.1 The Contractor warrants and represents that it will discharge its obligations under the Contract (including the provision of all workmanship) in accordance with Good Industry Practice.

5.2 The Contractor warrants and represents that all persons that it assigns to the performance of the Services shall possess such qualifications, skill and experience as are necessary for the proper performance of the Contract. The Contractor shall employ sufficient numbers of such persons to provide the Services in accordance with the requirements of the Contract.

5.3 The Contractor shall ensure that all Services together with all materials and all workmanship used in the provision of the Services provided under the Contract shall be in accordance with relevant British Standards or European Union equivalent, without prejudice to any higher standard specified in the Contract. The Contractor shall, upon request, furnish the Authorized Officer with evidence to prove that such materials and workmanship comply with this requirement.

5.4 The Contractor warrants that it owns, has obtained or shall obtain all necessary consents and permissions including valid licenses for all IPR that are necessary for the performance of the Contract and for the use by the Council.

6. INDEPENDENCE AND CONFLICTS OF INTEREST

6.1 The management of the Services shall be the entire responsibility of the Contractor.

6.2 The Contractor has no employee status with the Council and shall be responsible for paying its taxes and for making or procuring appropriate PAYE deductions for tax and national insurance or similar contributions in respect of the Contractor's fees and from the remuneration which it pays to its personnel.

6.3 The Contractor confirms that it has undertaken the HMRC's online assessment check for any relevant intermediary type of arrangement applying to the provision of the Services and warrants that the IR35 regulations do not apply to these particular circumstances.

6.4 The Contractor shall take appropriate steps to ensure that neither the Contractor nor any Staff are placed in a position where, in the reasonable opinion of the Council, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Contractor and the duties owed to the Council under the provisions of this Contract. The Contractor will disclose to the Council full particulars of any potential conflict of interest that exists or may arise.

6.5 The Contractor is not obliged to provide the Services personally or through particular people and may provide a substitute for anyone who has been named in the Service Order to perform the Services. However, the Service Order may specify Key Personnel. In respect of replacement of Key Personnel see Condition 4.2.

6.6 The Contractor shall not novate or in any other way dispose of the whole or any part of this Contract without the prior consent in writing of the Council. Consent shall be dependent upon the Council being satisfied that any transferee is of at least the same competence and financial standing as the Contractor and fulfils all criteria for qualitative selection which the Contractor did when selected.

6.7 If the Contractor subcontracts any of its obligations under this Contract, every act or omission of the subcontractor shall for the purposes of this Contract be deemed to be the act or omission of the Contractor and the Contractor shall be liable to the Council as if such act or omission had been committed or omitted by the Contractor itself. Paragraph 4 of the Data Processor Schedule (*) takes precedence when the Contractor is a data processor.

7. RECORDS & TRANSPARENCY

7.1 The Contractor shall provide to the Council all information, evidence (such as the records required to be kept under Condition 7.2) and explanations necessary to demonstrate compliance with the obligations laid down in this Contract. This shall include facilitating and contributing to audits and inspections conducted by the Council (or an auditor mandated by the Council) at any reasonable time wherever they occur.

7.2 The Contractor shall maintain full and accurate records relating to the Services which shall at least clearly demonstrate compliance with the law (including Article 30 of the GDPR) and the terms of this Contract.

7.3 If a relevant transfer under the Transfer of Undertakings (Protection of Employment) Regulations 2006 may apply (and the Contractor shall give the Council a reasonable prognosis about that within seven (7) days of request) at the end of the Contract, the Contractor shall provide accurate Employee Liability Information within three (3) days of request to the Council at any and all times commencing six (6) months prior to the end of the Contract until the transfer date occurs or it is proven that no relevant transfer will occur.

8. FINANCIAL ARRANGEMENTS

Invoicing and Payment Arrangements

8.1 The Contractor shall be paid the relevant rates and prices set out in the Service Order.

8.2 Unless otherwise agreed in writing between the Council and the Contractor, the Council shall be under no obligation to accept or pay for any of the Services except in accordance with this Condition 8.

8.3 Unless the Council has confirmed to the Contractor in writing that invoices are unnecessary for the Contract, the Contractor shall submit an appropriately itemized invoice¹ together with supporting information as reasonably required by the Authorized Officer, on (or before if appropriate):

8.3.1 the day the Services have been completed; or

8.3.2 if payment milestones are specified in the Council's Service Order or letter of acceptance, the day each payment milestone has been achieved.

For the avoidance of any doubt, the Services are not to be regarded as complete (nor is any milestone to be regarded as achieved) until a valid and undisputed invoice has actually been received by the Council.

8.4 Subject to Condition 8.6 below, the agreed date for payment shall be thirty (30) days after the day that all the Services have been completed (or, if applicable, relevant payment milestone has been achieved) (the "Remittance Day")

8.5 For the avoidance of any doubt, and subject to Condition 8.6 below, the Remittance Day shall be ascertained by counting from the day after the day specified in Condition 8.4 above to the thirtieth (30th) calendar day thereafter, which day shall be the Remittance Day.

8.6 Where the Council disputes any sum to be paid by it to the Contractor, then:

8.6.1 a payment equal to such sum as is not in dispute shall be paid by the relevant Remittance Day; and

8.6.2 the dispute as to the sum that remains unpaid shall be determined and resolved between the parties.

8.7 The Contractor acknowledges that it is its responsibility to provide clear, valid and accurate invoices including such discounts or performance related deductions as are appropriate. Provided that a sum has been disputed in good faith, interest due under Condition 8.8 on any sums in dispute shall not accrue until thirty (30) days after the resolution of the dispute between the parties.

8.8 All such amounts due from the Council to the Contractor which are not paid by or on the Remittance Day as determined under Conditions 8.4 and 8.5 above or thirty (30) days after the resolution of the dispute between the parties in accordance with Condition 8.6 above (as appropriate), shall, where claimed, bear simple interest from day to day from the due date until the actual date of payment at the statutory rate of interest provided for from time to time pursuant to the Late Payment of Commercial Debts (Rate of Interest) Act 1998 .

¹ Invoices are recognized as important in paragraph 18 of Directive 2011/17/EU on combating late payment in commercial transactions and form part of transparent record keeping and are needed to trigger electronic payment through the SAP system

- 8.9** The Council may agree to pay sums due before thirty (30) days upon confirmation from the Contractor of the discount offered in consideration of early payment.
- 8.10** All sums payable under the Contract unless otherwise stated are exclusive of Value Added Tax which shall be payable by the Council in the manner and at the rate prescribed by law, provided the Contractor has submitted a valid VAT invoice.
- 8.11** Where the Contractor enters into a Sub-Contract, the Contractor shall include in that Sub-Contract provisions having the same effect as this Condition 8.

Adjustment of rates and prices

- 8.12** The Contractor's rates and prices for the Services shall remain fixed save as follows.
- 8.13** Subject to Condition 8.14, the prices may be increased on each anniversary of the Start Date by an amount equivalent to the average percentage increase, if any, in the Retail Price Index All Items for the closest period of twelve (12) months to the relevant anniversary for which RPI indices have been published by the ONS, viewed at the date of the notice referred to in Condition 8.14.
- 8.14** The Contractor must give notice of any increase under Condition 8.13 to the Council within fourteen (14) days (before or after) of the relevant anniversary setting out the new prices and the basis on which they were calculated. Failure to do so will mean that prices shall not increase for the relevant year.
- 8.14** As stated in Condition 22, the Council is a best value authority and may run benchmarking exercises. If Condition 8.13 has at any time been exercised and in the reasonable opinion of the Authorized Officer a benchmarking exercise indicates that the Council could make significant savings by procuring the Services from an alternative provider (or that the Contractor is providing better value services to other customers), the Council may, without incurring any liability, terminate the Contract in whole or in part by giving twenty-eight (28) days' notice in writing.

9. VARIATIONS

- 9.1** The Council may at any time during the Term require the Contractor to revise any dates and/or milestones specified in the Service Order, and/or to undertake any alterations and/or additions to and/or omissions from the Services or any part thereof (in this Condition called a "**Variation**"). In the event of a Variation being required:-
- 9.1.1** the Council shall send its proposed variation to the Contractor in writing (the "**Variation Request**");
- 9.1.2** the Contractor shall consider the Variation Request in good faith and explain in writing what adjustment (if any) would be required to the price(s) payable under this Contract and to any dates and/or milestones specified in the Service Order to put the Variation Request into effect along with full and open substantiation of the Contractor's reasoning;
- 9.1.3** the Contractor shall furnish the Council with the details required under Condition 9.1.2 within fourteen (14) days of receipt of the Variation Request, or within such period as may be mutually agreed between the parties;
- 9.1.4** if the Contractor fails to comply with Condition 9.1.3, the Council may re-issue the Variation Request and the Council may also charge the Contractor an administration fee of one hundred and fifty Pounds Sterling (£150) for doing so. The Contractor shall provide the details required under Condition 9.1.2 to the Council within seven (7) days of receipt of the re-issued Variation Request. This process may be repeated until the Contractor has complied with Condition 9.1.3; and
- 9.1.5** The Variation shall take effect when the Contractor's proposals set out pursuant to Condition 9.1.2 have been accepted by the Council's Authorized Officer in writing (and not otherwise).

10. LIMITED INDEMNITY, INSURANCE

- 10.1** Subject to what follows, compensation for breach of the terms of this Contract shall be assessed through the ordinary common law principles of damages for breach of contract.
- 10.2** The Contractor hereby indemnifies the Council in respect of all claims, costs, loss, penalties, damages or expenses in the event that the provision of the Services in respect of any:-
- 10.2.1** infringement of any IPR;

- 10.2.2** damages, compensation or fines through operation of statutory law (for example regulatory or civil action under the DPL) which applies to the Council and for which the Contractor is substantially responsible
- 10.2.3** claims or demands which may be made in respect of income tax or national insurance or similar contributions in connection with the provision of the Services.

This indemnity is subject to the Council using Reasonable Endeavours to mitigate its losses and following in good faith the reasonable instructions of the indemnifying party in defending the relevant claim.

- 10.3** The Contractor shall maintain the following comprehensive insurance(s):
- 10.3.1** Public Liability Insurance with a level of cover of not less than ten million Pounds Sterling (£10,000,000) in respect of any one claim or series of claims arising out of any one incident and unlimited in any one (1) year; and
- 10.3.2** Employer's Liability Insurance to comply with statutory requirements.
- 10.3.3** Professional Indemnity Insurance with a minimum level of cover of five hundred thousand Pounds Sterling (£500,000) per claim such insurance to be maintained for a period of at least six (6) years from completion of the Services.
- 10.4** The Contractor shall promptly produce to the Council satisfactory evidence of such insurance, when reasonably required.

11. INTELLECTUAL PROPERTY RIGHTS

- 11.1** Unless otherwise stated in the Service Order and subject to Condition 12 on confidentiality and the IPR Schedule (**):
- 11.1.1** The Council:
- 11.1.1.1** agrees that all IPR owned at the date of the Contract by the Contractor ("**Contractor's IPR**") shall remain so owned;
- 11.1.1.2** agrees that the Contractor shall be legally and beneficially entitled to the Generated IPR;
- 11.1.1.3** hereby grants to the Contractor a non-exclusive non-transferable, royalty-free licence to use the Council's IPR only to the extent that and for so long as such use is necessary for the provision of the Services.
- 11.1.2** The Contractor:
- 11.1.2.1** agrees that all IPR owned at the start of the Contract by the Council ("**Council's IPR**") shall remain so owned;
- 11.1.2.2** hereby grants to the Council a non-exclusive, transferable, sub-licensable, royalty-free licence to use the Generated IPR (and such of the Contractor's IPR as is intrinsically linked with Generated IPR) in any way it sees fit;
- 11.1.2.3** hereby agrees that the IPR Schedule (**) shall apply to any Works and shall use its Best Endeavours to complete the transfer of IPR in the Works.
- 11.2** The Contractor hereby waives any and all rights (including moral rights), and shall procure the waiver of any and all rights owned by third parties, which may undermine the utility to the Council of the Generated IPR or the Services or any Works.

12. CONFIDENTIALITY

- 12.1** The Contractor shall not accept or access any Confidential Information without the Council's express permission.
- 12.2** The Contractor undertakes not to use the Confidential Information for any purpose except the Services, without first obtaining the written agreement of the Council.
- 12.3** The Contractor undertakes to keep the Confidential Information secure and not to disclose it to any third party except:
- 12.3.1** to its employees who need to know the same for the performance of the Services, who know they owe a duty of confidence to the Council and who are bound by obligations equivalent to those in Condition 12.2 above and this Condition 12.3; or

12.3.2 with the permission of the Council (which may be contained in the Service Order) always providing the third party is under a duty of confidence to the Council at least equivalent to the obligations in this Condition 12 (for instance through a satisfactory third party rights Condition or a collateral warranty); or

12.3.2 strictly as required by law.

12.4 The Contractor will take appropriate action under its disciplinary procedures against any employee who does not comply with these confidentiality provisions.

13. SUB-LETTING AND ASSIGNMENT

13.1 The Contractor shall not sub-let the Contract or any part thereof without the prior written consent of the Council (such consent not to be unreasonably withheld) and no sub-letting on the part of the Contractor shall operate to relieve the Contractor in any respect from its liability to the Council for the due performance of the Contract.

13.2 The Contractor shall be responsible to the Council for the due performance and observance by all sub-contractors of all the Contractor's obligations under the Contract. Failure or neglect on the part of a sub-contractor shall be deemed to be failure or neglect on the part of the Contractor.

13.3 The Contractor shall not transfer or assign directly or indirectly to any person or persons whatsoever the Contract or part thereof, without the prior written consent of the Council.

14. STATUTORY REQUIREMENTS

In the performance of the Contract, the Contractor shall comply with all statutory requirements, regulations and other provisions to be observed and performed in connection with the provision of the Services, including but not limited to, the Health and Safety at Work etc. Act 1974, and the FOIL and the DPL (to the maximum extent they apply).

15. HUMAN RIGHTS

The Contractor shall not do anything to cause any infringement by the Council of its obligations under the Human Rights Act 1998 or any other human rights law.

16. FREEDOM OF INFORMATION

16.1 The Contractor and the Council agree that:

16.1.1 except to the extent that information is personal data protected under the DPL, or the Human Rights Act 1998, or unquestionably protected by the law of confidence and subject to Condition 16.1.3; the Council has the sole discretion to disclose or publish information relating to the Contract or Contractor in order to comply with the Council's obligations under the FOIL and otherwise publish information which the Council or relevant Government department regard to be in the public interest.

16.1.2 For the avoidance of doubt, the following information is not regarded as confidential:-

16.1.2.1 the name of the Contractor, the nature of the supply, the overall contract price and details of payments, invoices and credit notes; and

16.1.2.2 any other information relating to the Contract or the Contractor not clearly stated to be supplied in confidence.

16.1.3 the Council is at liberty to disclose or publish information which is stated to be supplied in confidence but is not genuinely confidential, provided that unless the proposed disclosure or publication involves any information referred to in Condition 16.1.2.1 (which may be disclosed or published regardless), the Council must consult the Contractor and take its views into account.

16.2 The Contractor shall not do anything to cause any infringement by the Council of its obligations under the FOIL and shall facilitate the Council's compliance and comply with any reasonable request from the Council for that purpose.

17. DATA PROTECTION

17.1 If the Contractor processes any personal data in furtherance of the Services, without prejudice to Conditions 12.1, 14 & 15, the Contractor shall (and shall procure that any of its Staff or subcontractors involved in the provision of the Services shall) comply with the DPL, the Service Order and Good Industry Practice. Attention is drawn to Condition 7.1.

To use Good Industry Practice in relation to personal data is to include following all relevant guidance issued by the UK Information Commissioner's Office (or any successor body) and, without limitation, to secure digital data with at least two hundred and fifty-six (256) bit AES encryption or unattended hard copy data in a strong secure storage facility, to use out of bands password exchange, to use anti-malware products that have a good reputation within the information security industry and to take measures against brute force password attacks (such as locking accounts/target applications for fifteen (15) minutes after twenty (20) consecutive invalid password entries).

17.2 Transportation of Personal Data shall:-

17.2.1 in electronic format only be made in one of the following ways:-

17.2.1.1 through an encrypted VPN connection, or

17.2.1.2 through a secure file transfer facility provided by the Council (at the date of this Contract such a facility is the Council server hosted AVCO AnyComms), or

17.2.1.3 through such other method as may be expressly approved by the Council in writing; or

17.2.2 in a physical form only be delivered by hand by the Contractor or a courier approved by the Council.

17.3 Unless otherwise stated in the Service Order, the parties confirm that they are each independent data controllers in relation to any shared personal data and that no party is to be a data processor on behalf of any other party. Consequently:

17.3.1 each party disclosing data shall be entirely responsible for ensuring that it is permitted to share the data;

17.3.2 each party disclosing data shall be responsible for the data while it is in transit to the receiving party;

17.3.3 each party receiving data shall be entirely responsible for ensuring that it processes the data it receives in accordance with the DPL.

17.4 Notwithstanding the general obligation in Condition 14, where the Contractor is processing Personal Data as a Data Processor on behalf of the Council, the Contractor shall comply with the Data Processor Schedule (*).

The Contractor shall not act as a Data Processor for the Council unless or until paragraph 1.3 of the Data Processor Schedule (*) has been complied with.

17.5 The provisions of Condition 17 above shall apply during the continuance of the Contract and after its expiry or termination until the personal data which the Council has responsibility for has been returned and / or verified as securely destroyed in accordance with paragraph 1.5 of the Data Processor Schedule.

18. BLACKLISTING

Without prejudice to Condition 14, the Contractor shall not breach the Employment Relations 1999 Act (Blacklists) Regulations 2010, section 137 of the Trade Union and Labour Relations (Consolidation) Act 1992, or commit any breach of the DPL by unlawfully processing personal data in connection with any blacklisting activities.

19. TERMINATION

19.1 The Council may terminate this Contract upon twenty-eight (28) days' written notice given to the Contractor at any time.

19.2 The Council may terminate the Contract in whole or in part by written notice to the Contractor (effective upon receipt) if the Contractor:

19.2.1 made any material misrepresentation prior commencement of the Contract; or

19.2.2 fails to proceed regularly and diligently with the Services;

19.2.3 fails to remedy a breach of its obligations under the Contract within a reasonable period (which in any event need not exceed twenty-eight (28) days) stated in any notice issued by the Authorized Officer; or

19.2.3 commits a Material Breach of the Contract; or

19.2.4 commits the same or similar immaterial breach more than four (4) times in any rolling twelve (12) month period; or

19.2.5 does anything improper to influence the Council to give the Contractor any contract or commits an offence under the Prevention of Corruption Acts 1889 to 1916, or under Section 117(2) of the Local Government Act 1972, or under the Bribery Act 2010; or

19.2.6 commits any act of bankruptcy, or if (the Contractor being a Company) proceedings are commenced for the liquidation of the Contractor or if steps are taken to dissolve the Contractor, or if the Contractor makes any arrangements or composition with its creditors, or if a Receiver or Administrative Receiver or an Administrator or Manager on behalf of a creditor is appointed, (or if notice of intention to appoint an Administrator is given to the Contractor) or if the Contractor suffers any execution to be levied on its goods; or

19.2.7 has received notice under any other provision of the Contract that entitles the Council to terminate the Contract in whole or in part; or

19.2.8 is guilty of any misconduct which the Council reasonably considers to be prejudicial to the Council's interests.

19.3 Termination shall be without prejudice to any other powers exercisable by the Council and to the rights and liabilities of both parties accrued under the Contract. Conditions 1, 2, 6, 7, 8, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 21, 24, 25, 26, and 27 and the Data Processor Schedule (*) and IPR Schedule (**) shall survive termination and shall remain in full force and effect.

20. EQUALITY

The Contractor shall ensure that no recipient of the Services or other person involved in the provision of the Services receives less favorable treatment on the grounds of gender, colour, race, nationality, ethnic or cultural origin, religious persuasion, sexual orientation, disability or age contrary to statutory requirements or is disadvantaged by conditions or requirements which cannot be justified to the satisfaction of the Council. The Contractor shall provide any information reasonably requested by the Council relating to the Contract to ensure that the Council meets its statutory obligations under the Equality Act 2010.

21. SET OFF

Wherever under the Contract any sum of money shall be recoverable from or payable by the Contractor, such sum may be deducted from or reduced by the amount of any sum or sums then due or which at any time thereafter may become due to the Contractor under the Contract or any other contract between the Council and the Contractor or any holding, subsidiary or associated company of the Contractor.

22. BEST VALUE

The Council is subject to requirements imposed on local authorities to achieve Best Value. In addition, the concept of Best Value includes a requirement for services to continuously improve. The Contractor shall co-operate with the Council with the introduction and implementation of any requirements imposed on the Council in connection with Best Value (including any benchmarking) and shall comply with the reasonable instructions of the Authorized Officer.

23. BONDS, COLLATERAL WARRANTIES, GUARANTEES

Where it is stated in the Service Order that collateral warranty agreements, performance bonds, parent company guarantees or other similar agreements are required, the Consultant shall provide them within fourteen (14) days of receipt of the Council's written request.

24. NOTICES

24.1 Subject to Condition 24.2, any communication shall be sent or transmitted by such means as is stated in the Service Order; in the absence of which, by a recognized effective method (whether electronic or otherwise) which (viewed objectively) is appropriate for the gravity of, and urgency surrounding, the information being sent. When being sent to the Council (unless otherwise stated in the Service Order) such communication shall always include issuance to the Authorized Officer even if it is also sent to another appropriate officer.

24.2 All notices relating to the commencement of any action through the Courts (including letters before action, statutory demands, etc.) or other documents in any other legal or regulatory action including any arbitration or other method of dispute resolution shall be delivered by hand or sent by Recorded Signed for or Special delivery post to any address of the parties stated in the Service Order.

24.3 A communication delivered by hand or sent electronically to an email address which has at any time been notified to the other party (but not notified as disused) shall be deemed received immediately. Where a

communication is sent by post, receipt shall be deemed to have occurred on the second day (not counting Saturdays, Sundays or Bank Holidays) after the date of posting. Fax shall not be used.

25. NO PARTNERSHIP, JOINT VENTURE OR AGENCY

Nothing in the Contract shall create any partnership, joint venture, or relationship of principal and agent between the Council and the Contractor.

26. EXCLUSION OF THIRD PARTY RIGHTS

The Contract does not create any right enforceable by any person not a party to it and the provisions of the Contracts (Rights of Third Parties) Act 1999 are excluded except that a person who is a permitted successor or assignee of the rights of a party to the Contract is deemed to be a party to the Contract. The Contract may be modified in accordance with its terms, without the consent of a third party.

27. LAW

The Contract shall be considered as a contract made in England and subject to English Law.

*** DATA PROCESSOR SCHEDULE**

1.1. The parties acknowledge that the Contractor is processing Personal Data as a Data Processor on behalf of the Council. The Personal Data shall only be processed on documented instructions from the Council, unless processing is otherwise strictly required by law to which the Contractor is subject (in which case the Contractor must notify and explain the relevant law to the Council). These instructions shall form part of the Service Order (see paragraph 1.3 below) and also from time to time additional written instructions consistent with the requirements of paragraphs 1.3.3 and 1.3.4 and such additional instructions may only affect the price in accordance with paragraph 1.3.6.

1.2. The Contractor shall provide copies of the personal data it processes to the Council on request at any time during the life of the Contract free of charge.

1.3. The Service Order shall set out:

1.3.1. what data can be processed, the nature, duration and purpose of the processing, the type of data and the categories of data subjects and any relevant privacy impact assessments;

1.3.2. the offer the Contractor made to provide the Services, in particular the guarantees of security made in a tender or quotation or as part of the competency vetting / evaluation of selection criteria;

1.3.3. any specific security measures to be taken or objective standards to be met not referred to elsewhere;

1.3.4. non-trivial requirements relating to the rights and obligations of the Council as a data controller which are not covered elsewhere; and

1.3.5. where the Contractor has a Data Protection Officer, the name and contact details of the Data Protection Officer.

1.3.6. If the Service Order does not comply with the above paragraphs 1.3.1-1.3.5:

- **Re. paragraphs 1.3.1 and 1.3.2:** the Contractor shall not process any data on behalf of the Council and the Contract shall be suspended without liability, obligation to pay, or extension until the Parties incorporate these details into the Contract.

- **Re. paragraphs 1.3.3 and 1.3.4:** such matters may be added to the Contract by written instruction from the Council to the Contractor. If such changes should be made anyway pursuant to paragraph 1.4, this shall be done free of charge; otherwise the Contract price may be adjusted by the least amount to be determined:

- on an open book basis, and
- on a without profit basis, and
- mitigating costs to the Council as far as possible, and
- spreading the cost among such of the Contractor's custom base which will also benefit.

- **Paragraph 1.3.5** may be satisfied by notice from the Contractor.

1.4. The Contractor shall ensure (taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of processing) ongoing implementation of technical and organizational measures to ensure a level of security appropriate to the risk, including (without limitation) as appropriate:

- 1.4.1. The pseudonymization and encryption of personal data;
- 1.4.2. the ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services;
- 1.4.3. the ability to restore the availability and access to personal data in a timely manner in the event of a physical or technical incident;
- 1.4.4. a process for regularly testing, assessing and evaluating the effectiveness of technical and organizational measures for ensuring the security of the processing;

In assessing the appropriate level of security account shall be taken of the risks that are presented by processing (especially from accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to personal data) and account shall be taken of the findings or recommendations of any relevant privacy impact assessment undertaken by the Council or any audit or other assessment undertaken by the Information Commissioner's Office.

1.5. The Contractor shall:-

- 1.5.1. in good faith use its Best Endeavours (including by implementing appropriate technical and organizational measures) assist the Council to fulfil its transparency obligations (e.g. data subject access requests, privacy notices and breach notifications);
- 1.5.2. follow all reasonable requests from the Council for the personal data to be updated or rectified (e.g. pursuant to Regulations 5.1(d) or 16 of the GDPR or erased (e.g. pursuant to Regulation 17 of the GDPR) or the processing to be restricted (e.g. pursuant to Regulations 18 or 21 of the GDPR) without delay, and at any time;
- 1.5.3. ensure that any person acting under the authority of the Contractor who has access to personal data does not process them except in accordance with the instructions from the Council (unless he or she is strictly required to do so by law) and receives appropriate training about data security;
- 1.5.4. in good faith meaningfully assist the Council with consultation with the Information Commissioner's Office, for example in relation to high risk processing, and completing data protection impact assessments;
- 1.5.5. use its Best Endeavours to assist the Council with recovery from data security breaches, associated required notifications, regulatory investigation by the Information Commissioner's Office and / or corrective action (including defending the imposition of fines);
- 1.5.6. comply with (and shall ensure it does not knowingly or negligently do or omit to do anything which places the Council in breach of the Council's obligations under) any applicable data protection law (including Article 8 of the European Convention on Human Rights and the DPL);
- 1.5.7. ensure that persons authorized to process the personal data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality; and
- 1.5.8. take (without prejudice to any other provisions within this Contract) reasonable steps to verify the identity, reliability and honesty of staff who will handle personal data, and to ensure that those Staff are informed of the confidential nature of the personal data and will not publish, disclose or divulge any of the personal data to any third party unless directed in writing to do so by the Council or as otherwise permitted by this Contract.

1.6. Save where authorized in writing by the Council (such authorization being subject to such requirements as the Council may in its absolute discretion impose), the Contractor will not transfer any personal data:-

- 1.6.1. to any third party; or
- 1.6.2. outside of the European Economic Area.

1.7. Shortly after the Services have concluded the Contractor shall offer to return to the Council the personal data it holds on the Council's behalf. The Contractor shall as soon as reasonably practicable comply with the Council's choice and then securely delete all copies still in its possession (unless and only for as long as it is strictly obliged to retain the data by law) and provide verification that the data has been securely destroyed

on request at any time within twelve (12) months after the Council has been notified of its destruction.

1.8. Without prejudice to Condition 7.1 of the main Contract Conditions, the Contractor shall co-operate with all day to day Contract monitoring by the Council and maintain records of the processing activity and provide copies to the Council when requested. In particular it will:

- 1.8.1. provide the Council with such information as the Council may reasonably require to satisfy itself that the Contractor is complying with its obligations under this Contract; and
- 1.8.2. promptly notify the Council of any breach of the security measures required to be put in place pursuant to this Contract and of any loss of personal data regardless of whether there has been any breach.

**** IPR SCHEDULE**

The Contractor shall print off and sign, or copy and paste the following into an email and attach an electronic signature, and send it to the Authorized Officer:-

To the Council of the Borough of Kirklees,

Service Order Number: _____

Pursuant to and for the consideration set out in the Service Order and in accordance with the related Contract, the Contractor hereby assigns to the Council absolutely with full title guarantee the following rights throughout the world:

- a) the entire copyright and all other rights in the nature of copyright subsisting in the Works;
- b) any database right subsisting in the Works; and
- c) all other rights in the Works of whatever nature, whether now known or created in the future, to which the Contractor is now, or at any time after the date of this agreement may be, entitled by virtue of the laws in force in the United Kingdom and in any other part of the world,

in each case for the whole Term including any renewals, reversions, revivals and extensions and together with all related rights and powers arising or accrued, including the right to bring, make, oppose, defend, appeal proceedings, claims or actions and obtain relief (and to retain any damages recovered) in respect of any infringement, or any other cause of action arising from ownership, of any of these assigned rights, whether occurring before, on, or after the date of this agreement.

Name:

Signature:

Date:

G:\CCC\CCE1 - CORPORATE MANAGEMENT\CCE1-11-7-01 Standard Conditions for Supply of Services\Normal - 2015 Revisions Onwards
Standard Contract Conditions for Supply of Services (Normal Complexity) (Version 2.5 [22082018])