

Contractor address

Attn:

By email to:

Date:

Dear xxxx,

**Award of contract – HeadFIT Mental Health Application**

Following your tender for the supply of the above services to the Armed Forces Covenant Fund Trust, we are pleased to award this contract to you.

This letter (referred to as the “**Award Letter**”) and its Annexes set out the terms of the contract between **Armed Forces Covenant Fund Trustee Limited** (a registered company with company number 11185188) acting as trustee of the Armed Forces Covenant Fund (registered charity number 1177627) (“**the Trust**”) and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (xxxxx) (“**the Contractor**”) for the provision of the Services.

Unless the context otherwise requires, capitalised expressions used in this Award Letter have the same meanings as in the terms and conditions of contract set out in Annex 1 to this Award Letter (the “**Conditions**”). In the event of any conflict between this Award Letter and the Conditions, this Award Letter shall prevail. Please do not attach any Contractor terms and conditions to this Award Letter as they will not be accepted by the Trust and may delay the conclusion of the Agreement.

For the purposes of the Agreement, the Trust and the Contractor agree as follows:

1. The charges for the Services are fixed at £XX,XXX ex VAT (“Charges”).
2. The specification of the Services (including the Deliverables) to be supplied is as set out in Annex 3. To the extent that the Empowering Delivery Programme assumptions contained in the Services (either the Specification and/or the Proposal) are no longer correct, the Parties shall discuss a variation to the Agreement to address any appropriate changes to the description of the Services, Charges and/or timescales of the Project (as applicable) to address the altered assumptions. To the extent such changes are mutually agreeable to the Parties a written variation between the Parties shall be concluded. To the extent the Parties cannot reach agreement in respect of necessary changes to the Agreement the Parties shall in good faith discuss appropriate variations to continue the remaining work.
3. The Term shall commence on **\_\_\_\_\_\_\_\_\_\_\_** and the Expiry Date shall be **\_\_\_\_\_\_\_\_\_\_\_\_** unless extended or subject to early termination.
4. The Limit of Liability of the Contractor under this Agreement shall be: 100% of the Charges paid or payable by the Trust to the Contractor under this Agreement.
5. The Contractor shall maintain the following insurances throughout the Term of this Agreement:
	* 1. employer’s liability and any other insurances required by Law with a minimum sum insured of £5 million (five million pounds sterling) in respect of any one occurrence;
		2. professional indemnity insurance with a minimum sum insured of £1 million (one million pounds sterling) in respect of any one occurrence;
		3. public liability insurance for a minimum sum insured of £1 million (one million pounds sterling) in respect of any one occurrence.
6. The address for notices of the Parties are:

|  |  |
| --- | --- |
| **The Trust** | **Contractor** |
| Armed Forces Covenant Fund Trust 95 Horseferry RoadLondon United Kingdom SW1P 2DXAttention: xxxxEmail: xxxx | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Attention:xxxxEmail: xxxx |

1. The following persons are Key Personnel for the purposes of the Agreement:

|  |  |
| --- | --- |
| **Name** | **Title** |
|  |  |
|  |  |

1. The Trust may require the Contractor to ensure that any person employed in the provision of the Services has undertaken a Disclosure and Barring Service check. The Contractor shall ensure that no person who discloses that he/she has a conviction that is relevant to the nature of the Services, relevant to the work of the Trust, or is of a type otherwise advised by the Trust (each such conviction a “**Relevant Conviction**”), or is found by the Contractor to have a Relevant Conviction (whether as a result of a police check, a Disclosure and Barring Service check or otherwise) is employed or engaged in the provision of any part of the Services.
2. Payment

All invoices must be sent, quoting a valid purchase order number (PO Number), to:

Armed Forces Covenant Fund Trust

95 Horseferry Road

London

United Kingdom

SW1P 2DX

Or by email to:­­­­­­­­\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Within 10 working days of receipt of your countersigned copy of this letter, we will send you a unique PO Number. You must be in receipt of a valid PO Number before submitting an invoice.

To avoid delay in payment it is important that the invoice is compliant and that it includes a valid PO Number, PO Number item number (if applicable) and the details (name and telephone number) of your Customer contact (i.e. Contract Manager). Non-compliant invoices will be sent back to you, which may lead to a delay in payment.

1. Liaison

For general liaison your contact will continue to be \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

We thank you for your co-operation to date and look forward to forging a successful working relationship resulting in a smooth and successful delivery of the Services. Please confirm your acceptance of the award of this contract by signing and returning the enclosed copy of this letter to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_at the above address within 14days from the date of this letter. No other form of acknowledgement will be accepted. Please remember to quote the reference number above in any future communications relating to this contract.

Yours faithfully,

|  |
| --- |
| Signed for and on behalf of **Armed Forces Covenant Fund Trustee Limited acting as trustee of the Armed Forces Covenant Fund**  |
| Name:  |  |
| Signature: |  |
| Date: |  |

We accept the terms set out in this letter and its Annexes, including the Conditions.

|  |
| --- |
| Signed for and on behalf of **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**  |
| Name:  |  |
| Signature:  |    |
| Date: |  |

**Annex 1**

**Terms and Conditions of Contract for Services**

1. Interpretation
	1. In these terms and conditions:

|  |  |
| --- | --- |
| “Agreement”  | means the contract between (i) the Trust and (ii) the Contractor constituted by the Contractor’s countersignature of the Award Letter and includes the Award Letter and Annexes; |
| “Award Letter” | means the letter from the Trust to the Contractor printed above these terms and conditions; |
| “Central Government Body” | means a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics:1. Government Department;
2. Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);
3. Non-Ministerial Department; or
4. Executive Agency;
 |
| “Charges” | means the charges for the Services as specified in the Award Letter;  |
| “Confidential Information” | means:* + 1. all confidential information and data which is acquired from or made available (directly or indirectly) by the Disclosing Party or the Disclosing Party's representatives however conveyed or presented, including but not limited to any information or document relating to the Disclosing Party’s business, affairs, operations, budgets, policies, processes, initiatives, plans, product information, pricing information, technical or commercial know-how, trade secrets, specifications, strategies, inventions, designs, software, market opportunities, personnel, customers or suppliers (whether relating to this Agreement or otherwise) either orally, in writing, or in whatever form obtained or maintained;
		2. any information or analysis derived from the Confidential Information;
		3. anything marked as confidential and any other information notified by or on behalf of the Disclosing Party to the Receiving Party as being confidential;
		4. the existence and terms of this Agreement and of any subsequent agreement entered into in relation to this Agreement;
		5. the fact that discussions and negotiations are taking place concerning this Agreement and the status of those discussions and negotiations; and
		6. any copy of any of the information described in (a), (b), (c), (d) or (e) above, which shall be deemed to become Confidential Information when it is made. For the purposes of this definition, a copy shall include, without limitation, any notes or recordings of the information described in (a), (b), (c), (d) or (e) above (howsoever made);

Information shall not be Confidential Information if a Party of this Agreement can show:* + 1. the information was already known to that Party;
		2. it is in or comes into the public domain without contravention of this Agreement;
		3. it has been lawfully communicated to that Party by a third party who is lawfully in possession of the same and free to disclose it;
		4. it was developed independently by that Party without recourse to the Confidential Information;
		5. the information is required by law to be disclosed to any government or other regulatory authority; or
		6. the Parties agree in writing that it is not confidential.
 |
| “Data Protection Legislation” | means, for the periods in which they are in force, the European Union Data Protection Directive (95/46/EC), all laws giving effect or purporting to give effect to the European Data Protection Directive (94/46/EC), the GDPR or otherwise relating to Data Protection, including the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive (2002/58/EC), the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2426/2003), the GDPR and all applicable laws and regulations relating to the processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner, in each case as amended or substituted from time to time; |
| “Data Subject” | shall have the same meaning as in the Data Protection Legislation; |
| “Declaration of Ineffectiveness” | a declaration made by a Court under regulation 98 which has any of the consequences described in regulation 101 of the Public Contracts Regulations 2015 or which is made under an equivalent provision implementing Directive 2014/23/EU in England, Wales & Northern Ireland and which has consequences which are similar to any of the consequences described in regulation 101 of the Public Contracts Regulations 2015; |
| “Deliverables” | means the items to be supplied by the Contractor to the Trust, under the Agreement as part of the Services as detailed in the Specification; |
| “Disclosing Party” | means a Party that makes a disclosure of Confidential Information to another Party; |
| “Dispute” | means any dispute, conflict or disagreement arising out of or in connection with this Agreement; |
| “Expiry Date” | means the date for expiry of the Agreement as set out in the Award Letter;  |
| “Force Majeure Event” | shall be limited to one or more of the following events: acts of God, flood, drought, earthquake or other natural disaster, epidemic or pandemic, acts of state or public enemy, wars, revolutions, uprisings, civil disturbances, riots, civil war, insurrection and invasion. For the avoidance of doubt, strikes, lockouts and shutdowns of a Party (or of any person engaged by any of them) that are not a result of any of the aforementioned events shall not be a force majeure event for that Party; |
| “GDPR” | means:* + 1. the General Data Protection Regulations (Regulation (EU) 2016/679) which comes into force on 25 May 2018; or
		2. any equivalent legislation amending or replacing the General Data Protection Regulations (Regulation (EU) 2016/679);
 |
| “Good Industry Practice” | means all relevant practices and professional standards that would be expected of a well-managed, expert service provider performing services substantially similar to the Services to customers of a substantially similar size and nature as the Trust; |
| “Intellectual Property Rights” | means any right, title or interest in patents, utility models, rights to inventions, copyright and neighbouring and related rights, trademarks, trade names and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, semiconductor topography rights, database rights, rights to use, and protect the confidentiality of, Confidential Information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world; |
| “Key Personnel”  | means any persons specified as such in the Award Letter or otherwise notified as such by the Trust to the Contractor in writing;  |
| “Limit of Liability” | means the Contractor’s limit of liability as specified in the Award Letter; |
| “Model Clauses” | means the standard clauses for the transfer of personal data to a processor outside of the European Economic Area in the form as adopted by the European Commission from time to time; |
| “Party” | means the Contractor or the Trust (as appropriate) and “Parties” shall mean both of them;  |
| “Personal Data” | has the meaning given to this term by the Data Protection Legislation; |
| “Personal Data Breach” | shall have the same meaning as in the Data Protection Legislation; |
| “Public Procurement Termination Event” | the Trust exercises its right to terminate the Agreement in one or more of the circumstances described in either regulation 73(1) of the Public Contracts Regulations 2015) (as amended from time to time), or equivalent provisions implementing Directive 2014/23/EU in England, Wales & Northern Ireland (as amended from time to time); |
| “Purchase Order Number” | means the Trust’s unique number relating to the supply of the Services;  |
| “Receiving Party” | means a Party to which a disclosure of Confidential Information is made by another Party; |
| “Services” | means the services to be supplied by the Contractor to the Trust under the Agreement including the supply of the Deliverables;  |
| “Specification” | means the specification for the Services as specified in the Award Letter;  |
| “Staff” | means all directors, officers, employees, agents, consultants and contractors of the Contractor and/or of any sub-contractor of the Contractor engaged in the performance of the Contractor’s obligations under the Agreement;  |
| “Staff Vetting Procedures” | means vetting procedures that accord with good industry practice or, where requested by the Trust, the Trust’s procedures for the vetting of personnel as provided to the Contractor from time to time;  |
| “Contractor” | means the person named as Contractor in the Award Letter; |
| “Contractor Dispute” | means any disputes, claims, litigation, mediation or arbitration whether threatened or pending in relation to any incident involving the Contractor's, or another party’s, provision of the Services; |
| “Tender Response” | means the Contractor’s response to the Trust invitation to tender as part of the procurement of the contract for the delivery of the Services, as set out in Annex 5 of this Agreement; |
| “Term” | means the period from the start date of the Agreement set out in the Award Letter to the Expiry Date or terminated in accordance with the terms and conditions of the Agreement;  |
| “the Trust” | means the Armed Forces Covenant Fund Trustee Limited (a registered company with company number 11185188) acting as trustee of the Armed Forces Covenant Fund (registered charity number 1177627); |
| “TUPE” | means the Transfer of Undertakings (Protection of Employment) Regulations 2006; |
| “VAT” | means value added tax in accordance with the provisions of the Value Added Tax Act 1994; and |
| “Working Day” | means a day (other than a Saturday or Sunday) on which banks are open for business in the City of London. |

* 1. In these terms and conditions, unless the context otherwise requires:
		1. references to numbered clauses are references to the relevant clause in these terms and conditions;
		2. any obligation on any Party not to do or omit to do anything shall include an obligation not to allow that thing to be done or omitted to be done;
		3. the headings to the clauses of these terms and conditions are for information only and do not affect the interpretation of the Agreement;
		4. any reference to an enactment includes reference to that enactment as amended or replaced from time to time and to any subordinate legislation or byelaw made under that enactment; and
		5. the word ‘including’ shall be understood as meaning ‘including without limitation’.
1. Basis of Agreement
	1. The Award Letter constitutes an offer by the Trust to purchase the Services subject to and in accordance with the terms and conditions of the Agreement.
	2. The offer comprised in the Award Letter shall be deemed to be accepted by the Contractor on receipt by the Trust of a copy of the Award Letter countersigned by the Contractor within 14 days of the date of the Award Letter.
2. Supply of Services
	1. In consideration of the Trust’s agreement to pay the Charges, the Contractor shall supply the Services to the Trust for the Term subject to and in accordance with the terms and conditions of the Agreement.
	2. In supplying the Services, the Contractor shall:
		1. co-operate with the Trust in all matters relating to the Services and comply with all the Trust’s instructions using reasonable endeavours to promote the Trust’s interests;
		2. perform the Services with all reasonable care, skill and diligence in accordance with good industry practice in the Contractor’s industry, profession or trade;
		3. use Staff who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Contractor’s obligations are fulfilled in accordance with the Agreement;
		4. ensure that the Services shall conform with all descriptions, specifications and timescales set out in the Specification and the Tender Response. For the avoidance of doubt, the Tender Response shall take precedence over the Specification in the event of any conflict;
		5. not do or allow anything to be done that would, or would be likely to, bring the Trust into disrepute or adversely affect its reputation in any way;
		6. comply with all applicable laws; and
		7. provide all equipment, tools and vehicles and other items as are required to provide the Services.
	3. The Trust may by written notice to the Contractor at any time request a variation to the scope of the Services. In the event that the Contractor agrees to any variation to the scope of the Services, the Charges shall be subject to fair and reasonable adjustment to be agreed in writing between the Trust and the Contractor.
3. Term
	1. The Agreement shall take effect on the date specified in Award Letter and shall expire on the Expiry Date, unless it is terminated in accordance with the terms and conditions of the Agreement.
	2. Not used.
4. Charges, Payment and Recovery of Sums Due
	1. The Charges for the Services shall be as set out in the Award Letter and shall be the full and exclusive remuneration of the Contractor in respect of the supply of the Services. Unless otherwise agreed in writing by the Trust, the Charges shall include every cost and expense of the Contractor directly or indirectly incurred in connection with the provision of the performance of the Services.
	2. All amounts stated are exclusive of VAT which shall be charged at the prevailing rate where applicable. The Trust shall, where applicable and following the receipt of a valid VAT invoice, pay to the Contractor a sum equal to the VAT chargeable in respect of the Services.
	3. The Contractor shall invoice the Trust in accordance with Annex 2 (Charges). Each invoice shall include such supporting information required by the Trust to verify the accuracy of the invoice, including the relevant Purchase Order Number and a breakdown of the Services supplied in the invoice period as well as appropriate details in order to allow for payment via BACS transfer (sort code and bank account details).
	4. In consideration of the supply of the Services by the Contractor, the Trust shall pay the Contractor the invoiced amounts via BACS no later than 30 days after verifying that the invoice is valid and undisputed and includes a valid Purchase Order Number and appropriate BACS details. The Trust may, without prejudice to any other rights and remedies under the Agreement, withhold or reduce payments in the event of unsatisfactory performance.
	5. If the Trust fails to consider and verify an invoice in a timely fashion the invoice shall be regarded as valid and undisputed for the purpose of paragraph 5.4 after a reasonable time has passed (which shall be no more than 14 calendar days).
	6. If there is a dispute between the Parties as to the amount invoiced, the Trust shall pay the undisputed amount. The Contractor shall not suspend the supply of the Services unless the Contractor is entitled to terminate the Agreement for a failure to pay undisputed sums in accordance with clause 17.4. Any disputed amounts shall be resolved through the dispute resolution procedure detailed in clause 23.
	7. If a payment of an undisputed amount is not made by the Trust by the due date, then the Trust shall pay the Contractor interest at the interest rate specified in the Late Payment of Commercial Debts (Interest) Act 1998.
	8. Where the Contractor enters into a sub-contract, the Contractor shall include in that sub-contract:
		1. provisions having the same effects as clauses 5.3 to 5.7 of this Agreement; and
		2. a provision requiring the counterparty to that sub-contract to include in any sub-contract which it awards provisions having the same effect as 5.3 to 5.8 of this Agreement.
		3. In this clause 5.8, “sub-contract” means a contract between two or more suppliers, at any stage of remoteness from the Trust in a subcontracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Agreement.
	9. If any sum of money is recoverable from or payable by the Contractor under the Agreement (including any sum which the Contractor is liable to pay to the Trust in respect of any breach of the Agreement), that sum may be deducted unilaterally by the Trust from any sum then due, or which may come due, to the Contractor under the Agreement or under any other agreement or contract with the Trust. The Contractor shall not be entitled to assert any credit, set-off or counterclaim against the Trust in order to justify withholding payment of any such amount in whole or in part.
5. Premises and equipment
	1. If necessary, the Trust shall provide the Contractor with reasonable access at reasonable times to its premises for the purpose of supplying the Services. All equipment, tools and vehicles brought onto the Trusts premises by the Contractor or the Staff shall be at the Contractor’s risk.
	2. If the Contractor supplies all or any of the Services at or from the Trust’s premises, on completion of the Services or termination or expiry of the Agreement (whichever is the earlier) the Contractor shall vacate the Trust’s premises, remove the Contractor’s plant, equipment and unused materials and all rubbish arising out of the provision of the Services and leave the Trust’s premises in a clean, safe and tidy condition. The Contractor shall be solely responsible for making good any damage to the Trust’s premises or any objects contained on the Trust’s premises which is caused by the Contractor or any Staff, other than fair wear and tear.
	3. If the Contractor supplies all or any of the Services at or from its premises or the premises of a third party, the Trust may, during normal business hours and on reasonable notice, inspect and examine the manner in which the relevant Services are supplied at or from the relevant premises.
	4. The Trust shall be responsible for maintaining the security of its premises in accordance with its standard security requirements. While on the Trust’s premises the Contractor shall, and shall procure that all Staff shall, comply with all the Trust’s security requirements.
	5. Where all or any of the Services are supplied from the Contractor’s premises, the Contractor shall, at its own cost, comply with all security requirements specified by the Trust in writing.
	6. Without prejudice to clause 3.2(g), any equipment provided by the Trust for the purposes of the Agreement shall remain the property of the Trust and shall be used by the Contractor and the Staff only for the purpose of carrying out the Agreement. Such equipment shall be returned promptly to the Trust on expiry or termination of the Agreement.
	7. The Contractor shall reimburse the Trust for any loss or damage to the equipment (other than deterioration resulting from normal and proper use) caused by the Contractor or any Staff. Equipment supplied by the Trust shall be deemed to be in a good condition when received by the Contractor or relevant Staff unless the Trust is notified otherwise in writing within 5 Working Days.
6. Staff and Key Personnel
	1. If the Trust reasonably believes that any of the Staff are unsuitable to undertake work in respect of the Agreement, it may, by giving written notice to the Contractor:
		1. refuse admission to the relevant person(s) to the Trust’s premises;
		2. direct the Contractor to end the involvement in the provision of the Services of the relevant person(s); and/or
		3. require that the Contractor replace any person removed under this clause with another suitably qualified person and procure that any security pass issued by the Trust to the person removed is surrendered,

and the Contractor shall comply with any such notice.

* 1. The Contractor shall:
		1. ensure that all Staff are vetted in accordance with the Staff Vetting Procedures;
		2. if requested, provide the Trust with a list of the names and addresses (and any other relevant information) of all persons who may require admission to the Trust’s premises in connection with the Agreement; and
		3. procure that all Staff comply with any rules, regulations and requirements reasonably specified by the Trust.
	2. Any Key Personnel shall not be released from supplying the Services without the agreement of the Trust, except by reason of long-term sickness, maternity leave, paternity leave, termination of employment or other extenuating circumstances.
	3. Any replacements to the Key Personnel shall be subject to the prior written agreement of the Trust (not to be unreasonably withheld). Such replacements shall be of at least equal status or of equivalent experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Services.
	4. For the purposes of this Agreement, the Contractor shall be considered an independent contractor of the Trust and the Contractor and (if applicable) its Staff shall not be considered employees. Accordingly the Trust is not obliged to pay any wages, salary, sickness or holiday pay. The Contractor shall be responsible for all income tax liabilities and national insurance or similar contributions in respect of its Staff. The Contractor shall ensure that equivalent provisions to this clause are contained in its terms with its Staff.
	5. The Trust may, at any time during the Term, request that the Contractor provide the information which demonstrates how the Contractor or its Staff comply with clause 7.5 or why clause 7.5 does not apply to the Contractor or its Staff. The Trust has a right to terminate this Agreement if:
		1. the Contractor fails to provide the information in response to the request within a reasonable time or the information provided is inadequate to demonstrate compliance with clause 7.5;
		2. the specified information requested was not provided within the specified period; or
		3. the information provided demonstrates that the Contractor or its Staff are not complying with terms of this clause 7.5.

Clauses 7.5 and 7.6 are required to enable the Trust to comply with the requirements of Procurement Policy Note 07/12 (issued by the Cabinet Office).

* 1. The Parties do not consider that the commencement, termination or expiry of this Agreement (or any part of it) or of the provision of any Services or any part of any Services pursuant to, or contemplated by, this Agreement will operate to transfer the employment of any employee or other person whether under TUPE, or otherwise.
	2. The Contractor shall indemnify the Trust against all costs, expenses, damages and losses arising at any time in connection with the operation of TUPE or any right, assertion or claim by an employee of the Contractor or its sub-contractors or any employee representative that the Trust has obligations, duties to or is otherwise liable to him or her under TUPE (including in relation to the dismissal of an employee of any sub-contractor).
1. Assignment and sub-contracting
	1. The Contractor shall not without the written consent of the Trust assign, sub-contract, novate or in any way dispose of the benefit and/ or the burden of the Agreement or any part of the Agreement. The Trust may, in the granting of such consent, provide for additional terms and conditions relating to such assignment, sub-contract, novation or disposal. The Contractor shall be responsible for the acts and omissions of its sub-contractors as though those acts and omissions were its own.
	2. Where the Trust has consented to the placing of sub-contracts, the Contractor shall, at the request of the Trust, send copies of each sub-contract, to the Trust as soon as is reasonably practicable.
	3. The Trust may assign, novate, or otherwise dispose of its rights and obligations under the Agreement without the consent of the Contractor provided that such assignment, novation or disposal shall not increase the burden of the Contractor’s obligations under the Agreement.
2. Intellectual Property Rights
	1. All Intellectual Property Rights in any materials provided by the Trust to the Contractor for the purposes of this Agreement shall remain the property of the Trust but the Trust hereby grants the Contractor a royalty-free, non-exclusive and non-transferable licence to use such materials as required until termination or expiry of this Agreement for the sole purpose of enabling the Contractor to perform its obligations under this Agreement.
	2. The ownership of all Intellectual Property Rights in any materials created or developed by the Contractor pursuant to the Agreement or arising as a result of the provision of the Services (including the Deliverables) shall vest in the Trust. Nothing in this clause shall act to transfer ownership in Intellectual Property Rights created or developed prior to or unrelated to this Agreement. If, and to the extent, that the ownership of any Intellectual Property Rights in such materials vest in the Contractor by operation of law, the Contractor hereby assigns ownership of such Intellectual Property Rights to the Trust by way of a present assignment of future rights that shall take place immediately on the coming into existence of any such Intellectual Property Rights all its Intellectual Property Rights in such materials (with full title guarantee and free from all third party rights). The Trust hereby grants the Contractor a non-exclusive, royalty-free, world-wide, perpetual licence to use the know-how, methods and techniques arising, created or developed pursuant to this Agreement for research purposes.
	3. The Trust hereby grants the Contractor a royalty-free, non-exclusive and non-transferable licence to use any Intellectual Property Rights in the materials created or developed by the Contractor pursuant to the Agreement and any Intellectual Property Rights arising as a result of the provision of the Services as required until termination or expiry of this Agreement for the sole purpose of enabling the Contractor to perform its obligations under the Agreement
	4. Without prejudice to clause 9.2, the Contractor hereby grants the Trust a perpetual, royalty-free, irrevocable and non-exclusive licence (with a right to sub-license) to use:
		* 1. any Intellectual Property Rights vested in or licensed to the Contractor on the date of the Agreement to the extent not falling within clause 9.2; and
			2. any Intellectual Property Rights created during the Term to the extent not falling within clause 9.2, i.e. which are neither created or developed pursuant to the Agreement nor arise as a result of the provision of the Services,

including any modifications to or derivative versions of any such Intellectual Property Rights, which the Trust reasonably requires in order to exercise its rights and take the benefit of the Agreement including the Services provided.

* 1. If the Contractor is carrying out research on the Trust’s behalf, the Trust will consider requests to use the research data in the Contractor’s (or its Staff's) own academic work provided that the Contractor:
		1. informs the Trust of the overall objective of the academic work, the timetable and proposed date and place of publication;
		2. acknowledges that the Contractor conducted the research on the Trust’s behalf and that it was funded by the Trust in any publications or accompanying publicity;
		3. anonymise all data to protect the identity of any individual or organisation;
		4. provide a copy of the work to the Trust before publication and make any reasonable amendments requested by the Trust to ensure accuracy; and
		5. state that any views expressed are those of the Contractor and not necessarily those of the Trust,

provided that, at all times the Trust retains absolute discretion to refuse any request under this clause to use the Trust’s research data.

* 1. The Contractor shall indemnify, and keep indemnified, the Trust in full against all costs, expenses, damages and losses (whether direct or indirect), including any interest, penalties, and reasonable legal and other professional fees awarded against or incurred or paid by the Trust as a result of or in connection with any claim made against the Trust for actual or alleged infringement of a third party’s Intellectual Property Rights arising out of, or in connection with, the supply or use of the Services (including the Deliverables) (“Claim”), to the extent that the claim is attributable to the acts or omission of the Contractor or any Staff. If the Trust receives any such Claim from a third party, it shall (a) promptly give written notice of the claim to the Contractor, specifying the nature of the Claim in reasonable detail; (b) not make any admission of liability, agreement or compromise in relation to the Claim without prior consent of the Contractor; (c) act reasonably to cooperate with the Contractor and its professional advisers in the investigation and defence of the Claim; and (d) take such action as the Contractor may reasonably request to avoid, disputes compromise or defend the claim. Nothing in this clause shall limit the Trusts’ general obligation at law to mitigate any loss it may incur or suffer as a result of an event that may give rise to claim under this indemnity.
1. Governance and Records
	1. The Contractor shall:
		1. attend progress meetings with the Trust at the frequency and times specified by the Trust and shall ensure that its representatives are suitably qualified to attend such meetings; and
		2. submit progress reports to the Trust at the times and in the format specified by the Trust.
	2. The Contractor shall keep and maintain until 6 years after the expiry or termination of the Agreement, or as long a period as may be agreed between the Parties in the Award Letter or otherwise, full and accurate records of the Agreement including the Services supplied under it and all payments made by the Trust. The Contractor shall on request afford the Trust or the Trust’s representatives such access to those records as may be reasonably requested by the Trust in connection with the Agreement.
2. Confidentiality, Transparency and Publicity
	1. Subject to clause 11.2, each Party shall:
		1. treat all Confidential Information it receives as confidential, safeguard it accordingly and not disclose it to any other person without the prior written permission of the Disclosing Party; and
		2. not use or exploit the Disclosing Party’s Confidential Information in any way except for the purposes anticipated under the Agreement.
	2. Notwithstanding clause 11.1, a Receiving Party may disclose Confidential Information:
		1. where disclosure is required by applicable law or by a court of competent jurisdiction;
		2. to its auditors or for the purposes of regulatory requirements;
		3. on a confidential basis, to its professional advisers;
		4. to the Serious Fraud Office where the Receiving Party has reasonable grounds to believe that the Disclosing Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010;
		5. where the Receiving Party is the Contractor, to the Staff on a need to know basis to enable performance of the Contractor’s obligations under the Agreement provided that the Contractor shall procure that any Staff to whom it discloses Confidential Information pursuant to this clause (e) shall observe the Contractor’s confidentiality obligations under the Agreement; and
		6. where the Receiving Party is the Trust:
			1. on a confidential basis to the employees, agents, consultants and contractors of the Trust;
			2. on a confidential basis to any other Central Government Body, any successor body to a Central Government Body or any company to which the Trust transfers or proposes to transfer all or any part of its business; or
			3. to the extent that the Trust (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Trust under this clause 11.

* 1. The Contractor shall not, and shall take reasonable steps to ensure that the Staff shall not, make any press announcement or publicise the Agreement or any part of the Agreement in any way, except with the prior written consent of the Trust. The Contractor may request that a summary or the materials produced by the Contractor may be published subject to the prior consent and review or the Trust, such consent and review not to be unreasonably withheld or delayed.
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2. Protection of Personal Data and Security of Data
	1. In this clause 13, the terms “processed”, "data controller” and “data processor” shall have the same meanings given to them under Data Protection Legislation.
	2. The Trust and the Contractor acknowledge that for the purposes of Data Protection Legislation, the Trust is the data controller and the Contractor is the data processor of any Personal Data.
	3. The Contractor shall and shall procure that its sub-contractors shall comply with all Data Protection Legislation in relation to any Personal Data processed relating to or originating from the Trust, its employees or supported organisations or clients. Neither party shall, and the Contractor shall procure that no sub-contractors shall, by act or omission put the other party in breach of the Data Protection Legislation.
	4. Without prejudice to clause 13.6(c), the Contractor shall, and shall procure that each of its sub-contractors shall, process Personal Data only:
		1. in such manner as is necessary for the Services;
		2. in accordance with documented instructions received from the Trust; and
		3. for the Term.
	5. Upon request by the Trust, the Contractor shall promptly provide to the Trust such copies of any Personal Data provided by or on behalf of the Trust to the Contractor under this Agreement and do such other acts in relation to the Personal Data or any part thereof as the Trust shall request which are required in order for the Trust to comply with any of its obligations under the Data Protection Legislation.
	6. Without limiting clause 13.3, the Contractor represents, warrants and undertakes to the Trust that the Contractor:
		1. shall not by any act or omission put the Trust in breach of the Data Protection Legislation;
		2. shall at all times comply with, and ensure that at all times its Staff and sub-contractors:
			1. are informed of the confidential nature of the Personal Data;
			2. have undertaken training in the laws relating to handling Personal Data;
			3. comply with, any guidelines, codes of practice, policies or other requirements notified to it by the Trust in connection with processing Personal Data; and
			4. are aware both of the Contractor’s duties and their personal duties and obligations under Data Protection Legislation;
		3. shall not allow any sub-contractors to have access to, receive or process Personal Data and the Contractor shall not transfer any Personal Data to any other person (including, without limitation, any data processor or other contractor) without the Trust’s prior written consent (such consent to be at the sole discretion of the Trust) and unless permitted under Data Protection Legislation and, where consent is given by the Trust, the Contractor shall only undertake such processing in accordance with the Trust’s instructions;
		4. shall keep all Personal Data confidential and has in place now and shall on a continuing basis take all reasonable appropriate technical and organisational measures to keep all Personal Data confidential and secure and to protect against unauthorised or unlawful processing, accidental loss, destruction damage, alteration, disclosure or access;
		5. shall take all reasonable steps to ensure the reliability of any of its Staff who have access to Personal Data processed in connection with this Agreement and to ensure that such Staff understand the Contractors obligations under this clause 13 in respect of the Personal Data;
		6. shall provide such information and, on reasonable prior notice, allow for and contribute to audits, including inspections, conducted by the Trust or an auditor mandated by the Trust as is reasonably necessary to enable the Trust to satisfy itself of the Contractor's compliance with this Agreement and the Data Protection Legislation;
		7. shall not contact the Trust’s supported organisations or clients directly or collect Personal Data in relation to the Trust’s supported organisations or clients without the Trust’s prior written consent;
		8. without prejudice to clause 13.6(c), shall, and shall procure that its sub-contractors shall, not process or direct the processing of any Personal Data outside of the European Economic Area unless and until:
			1. the Contractor and each sub-contractor proposing to process Personal Data have entered into Model Clauses with the Trust; or
			2. in accordance with the prior written consent of the Trust (such consent to be at the sole discretion of the Trust);
		9. without prejudice to clause 13.6(c), where any sub-contractors process Personal Data the Contractor shall ensure that sub-contracts entered into with approved sub-contractors shall include provisions equivalent to those in this clause 13; and
		10. shall on termination of this Agreement, and at any time on the request of the Trust, either return the Personal Data in the format requested by the Trust or destroy the Personal Data (including all copies of it), in either case immediately and confirm in writing that it has complied with this obligation.
	7. Without prejudice to clause 13.6(c), the Contractor shall not and shall procure that each of its sub-contractors shall not without the prior written consent of the Trust:
		1. use or permit any third party to use any Personal Data otherwise than for the sole benefit of the Trust and in accordance with the terms of this Agreement;
		2. disclose any Personal Data except on a need to know basis to Staff directly concerned with the provision of the Services; or
		3. disclose any Personal data to any persons to whom the Contractor is able to disclose such Personal Data in accordance with the terms of this Agreement unless such persons are made aware, prior to disclosure, of the confidential nature thereof and that they owe a duty of confidence to the Trust in respect of such information and to use all reasonable endeavours to ensure that such persons comply with such duty.
	8. The Contractor shall notify the Trust promptly and in any event within five (5) Business Days if it receives:
		1. a request from a Data Subject to have access to that person’s Personal Data; or
		2. a complaint or request relating to the Trust’s obligations and/or the rights of a Data Subject under the Data Protection Legislation; and
		3. any other communication relating directly or indirectly to the processing of any Personal Data in connection with this Agreement; and

in each case, the Contractor shall promptly provide the Trust with its full cooperation and assistance as is reasonably required by the Trust in order to respond to and resolve the request, complaint or other communication within any time frames imposed by applicable Data Protection Legislation.

* 1. The Contractor shall:
		1. notify the Trust immediately on becoming aware of any Personal Data Breach; and
		2. promptly following notification, provide such information and assistance as is reasonably required by the Trust in order for the Trust to notify the Personal Data Breach to the Information Commissioner and/or any Data Subjects, in accordance with Data Protection Legislation.
	2. If any Personal Data is lost or corrupted as a result of any act or omission of the Contractor or any of its sub-contractors, the Contractor shall restore Personal Data at its own expense.
	3. If the Contractor fails to comply with the provisions of this clause 13 then it shall notify the Trust in writing of any failure to comply within 24 hours of the Contractor becoming aware of such failure to comply. Following notification, the Trust shall be entitled in its absolute discretion, to terminate this Agreement on written notice. The Trust may, in addition to or instead of terminating this Agreement, require the Contractor to undertake one or more of the following:
		1. immediately take such remedial action as is required to ensure compliance with this Agreement and/or the Data Protection Legislation and prevent and/or remedy any breach;
		2. provide such information as is reasonably required by the Trust in respect of the incident leading to such notification; and/or
		3. cease to process Personal Data, return all materials containing Personal Data and delete all copies.
	4. The Contractor shall on demand fully and effectively indemnify, keep indemnified, defend and hold harmless the Trust and its respective directors, officers, agents, employees, successors and assigns from any and all losses, including all claims, expenses, damages, proceedings, costs, and other liabilities resulting from or in connection with any failure to comply with the provisions of this clause 13 by the Contractor, its Staff, sub-contractors, third party agents, contractors and associated persons.
1. Liability
	1. The Contractor shall not be responsible for any injury, loss, damage, cost or expense suffered by the Trust if and to the extent that it is caused by the negligence or wilful misconduct of the Trust or by breach by the Trust of its obligations under the Agreement.
	2. Subject always to clauses 14.4 and 14.5:
		1. the aggregate liability of the Contractor in respect of all defaults, claims, losses or damages howsoever caused, whether arising from breach of the Agreement, the supply or failure to supply of the Services, misrepresentation (whether tortuous or statutory), tort (including negligence), breach of statutory duty or otherwise shall in no event exceed a sum equal to the Limit of Liability; and
		2. except in the case of claims arising under clauses 9.6, 13.11 and 22.3, in no event shall the Contractor be liable to the Trust for any:
			1. indirect loss or damage;
			2. special loss or damage; and/or
			3. consequential loss or damage.
	3. Subject to clause 14.4, the aggregate liability of the Trust in respect of all defaults, claims, losses or damages howsoever caused, whether arising from breach of the Agreement, misrepresentation (whether tortuous or statutory), tort (including negligence), breach of statutory duty or otherwise shall in no event exceed a sum equal to the Charges.
	4. Nothing in the Agreement shall be construed to limit or exclude either Party's liability for:
		1. death or personal injury caused by its negligence or that of its Staff;
		2. fraud or fraudulent misrepresentation by it or that of its Staff; or
		3. any other matter which, by law, may not be excluded or limited.
	5. The Contractor’s liability under the indemnity in clause 9.6, 13.11 and 22.3 shall be unlimited.
2. Insurance
	1. Without prejudice to the Trust’s other rights under this Agreement, the Contractor shall, during the Term, take out and maintain with reputable insurers such policies of insurance as may be necessary in accordance with Good Industry Practice to insure the Contractor against all manner of risks that might arise out of the acts or omissions of the Contractor or otherwise in connection with the Contractor's performance of its obligations under this Agreement, including, without limitation, in respect of the following risks:
		1. employer’s liability and any other insurances required by Law with a minimum sum insured as stated in the Award Letter, or if none is stated, with a minimum sum insured of £5 million (five million pounds sterling) in respect of any one occurrence;
		2. professional indemnity insurance with a minimum sum insured as stated in the Award Letter, or if none is stated, with a minimum sum insured of £5 million (five million pounds sterling) in respect of any one occurrence;
		3. public liability insurance for a minimum sum insured as stated in the Award Letter, or if none is stated, with a minimum sum insured of £10 million (ten million pounds sterling) in respect of any one occurrence.
	2. On request, the Contractor shall submit to the Trust accurate details of its insurance cover, together with documentary evidence that such insurance remains properly maintained.
	3. The Contractor shall:
		1. not by its acts or omissions cause any insurance cover or policy to become void or voidable; and
		2. immediately notify the Trust in writing of any cancellation notice received from any insurer or of any material change in cover type or amount.
	4. From the date of this Agreement, the Contractor shall notify the Trust in writing of any employer's liability or public liability incident arising out of or in connection with this Agreement which:
		1. has the a potential to exceed £25,000 (twenty-five thousand pounds sterling) (excluding costs); and/or
		2. irrespective of the claim’s value, which may reasonably be considered to have the potential to adversely affect the reputation of the Trust,

within five (5) days of such incident occurring.

* 1. The Contractor shall keep the Trust informed and up-to-date on the progress of any incident referred to in Clause 15.4 and related claims, decisions taken in respect of liability and any movement of reserves with respect thereto.
	2. The Contractor shall take all reasonable steps to deal with any Contractor Dispute so as to mitigate the extent of the losses of and/or damage to the Trust’s reputation and any disruption to its activities.
	3. To the extent permitted by law, the Trust shall have the right, at its sole option, to contribute opinion and have such opinion taken into account in the Contractor's handling of any Contractor Dispute.
	4. Nothing in this clause 15 shall oblige the Contractor to breach any condition imposed by its insurers from time to time, provided that the Contractor shall take all commercially reasonable steps to seek such third party consents as may be required to allow the Trust to become involved in a Contractor Dispute.
1. Force Majeure
	1. Provided it has complied with clause 16.3, if a Party is prevented, hindered or delayed in or from performing its obligations under this Agreement by a Force Majeure Event (the “**Affected Party**”), the Affected Party shall not be in breach of this Agreement or otherwise be liable for any such failure or delay in the performance of its obligations as long as and to the extent that the performance of those obligations is directly affected by the Force Majeure Event. Subject to Clause 16.3, the time for performance of any affected obligations of each Party will be suspended for a period equal to the delay caused by the Force Majeure Event.
	2. The corresponding obligations of the other Party will be suspended, and its time for performance of such obligations extended, to the same extent as those of the Affected Party.
	3. The Affected Party shall:
		1. as soon as reasonably practical after the start of the Force Majeure Event but not later than seven (7) days from its start, give notice in writing of such delay or prevention to the other Party specifying the nature and extent of the Force Majeure Event and the effect of the Force Majeure Event on its ability to perform any of its obligations under the Agreement;
		2. use all reasonable endeavours to mitigate the effects of the Force Majeure Event on the performance of its obligations; and
		3. take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.
	4. If the Contractor is the Affected Party, it shall not be entitled to claim relief under this clause 16 to the extent that consequences of the relevant Force Majeure Event:
		1. are capable of being mitigated by the Contractor but the Contractor has failed to do so; and/or
		2. should have been foreseen and prevented or avoided by a prudent provider of services similar to the Services, operating to the standards required by this Agreement.
	5. If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for:
		1. a continuous period of more than fourteen (14) days, the Parties shall discuss and may agree in writing an amendment to the Services and/or Deliverables to seek to alter and/or remove any aspect of the Services and/or Deliverables that are preventing, hindering or delaying the Affected Party’s performance to the greatest extent possible, whilst seeking to retain the intended commercial result of the original provision; or
		2. a continuous period of more than thirty (30) days, the Party not affected by the Force Majeure Event may terminate this Agreement by giving not less than 10 (ten) days’ prior written notice to the Affected Party.
	6. The Affected Party shall notify the other Party as soon as practicable after the Force Majeure Event no longer causes the Affected Party to be unable to comply with its obligations under this Agreement.
	7. Relief from liability for the Affected Party under this clause 16 shall end as soon as the Force Majeure Event no longer causes the Affected Party to be unable to comply with its obligations under this Agreement and shall not be dependent on the serving of notice under clause 16.6.
	8. The Trust shall not be liable to pay the Charges in relation to any Services that are not provided by the Contractor due to a Force Majeure Event.
2. Termination
	1. The Trust may terminate the Agreement at any time by notice in writing to the Contractor to take effect on any date falling at least 1 month later than the date of service of the relevant notice.
	2. Without prejudice to any other right or remedy it might have, the Trust may terminate the Agreement by written notice to the Contractor with immediate effect if the Contractor:
		1. (without prejudice to clause 17.2(e)), is in material breach of any obligation under the Agreement which is not capable of remedy;
		2. repeatedly breaches any of the terms and conditions of the Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms and conditions of the Agreement;
		3. is in material breach of any obligation which is capable of remedy, and that breach is not remedied within 30 days of the Contractor receiving notice specifying the breach and requiring it to be remedied;
		4. undergoes a change of control within the meaning of section 416 of the Income and Corporation Taxes Act 1988;
		5. breaches any of the provisions of clauses 7.2, 11, 13, 18 and 21;
		6. becomes insolvent, or if an order is made or a resolution is passed for the winding up of the Contractor (other than voluntarily for the purpose of solvent amalgamation or reconstruction), or if an administrator or administrative receiver is appointed in respect of the whole or any part of the Contractor’s assets or business, or if the Contractor makes any composition with its creditors or takes or suffers any similar or analogous action (to any of the actions detailed in this clause 17.2(f)) in consequence of debt in any jurisdiction; or
		7. fails to comply with legal obligations in the fields of environmental, social or labour law; or

or if this Agreement is subject to:

* + 1. a Declaration of Ineffectiveness in accordance with the provisions of clause 18; or
		2. a Public Procurement Termination Event.
	1. The Contractor shall notify the Trust as soon as practicable of any change of control as referred to in clause 17.2(d) or any potential such change of control.
	2. The Contractor may terminate the Agreement by written notice to the Trust if the Trust has not paid any undisputed amounts within 90 days of them falling due.
	3. Termination or expiry of the Agreement shall be without prejudice to the rights of either Party accrued prior to termination or expiry and shall not affect the continuing rights of the Parties under this clause and clauses 2, 3.2, 6.1, 6.2, 6.6, 6.7, 7, 9, 10.2, 11, 13, 14, 17.6, 22.3, 23 and 24.9 or any other provision of the Agreement that either expressly or by implication has effect after termination.
	4. Upon termination or expiry of the Agreement, the Contractor shall:
		1. give all reasonable assistance to the Trust and any incoming supplier of the Services; and
		2. return all requested documents, information and data to the Trust as soon as reasonably practicable.
1. Declaration of INeffectiveness and PUblic Procurement Termination EVent
	1. In the event that a Court makes a Declaration of Ineffectiveness, the Trust will promptly notify the Contractor. The Parties agree that the provisions of clause 17.6 and this clause 18 will continue to apply as from the time when the Declaration of Ineffectiveness is made.
	2. The Declaration of Ineffectiveness will not prejudice or affect any right, liability or remedy which has accrued or will accrue to either Party prior to or after such Declaration of Ineffectiveness in respect of the period prior to the Declaration of Ineffectiveness.
	3. Consistent with the Trust’s rights of termination implied into the Agreement by Public Contracts Regulations 2015, in the event of a Public Procurement Termination Event, the Trust shall promptly notify the Contractor and the provisions of clause 17.6 and this clause 18 shall apply as from the date of receipt by the Contractor of the notification of the Public Procurement Termination Event.
	4. The Public Procurement Termination Event shall not prejudice or affect any right, liability or remedy which has accrued or shall accrue to either Party prior to or after such Public Procurement Termination Event in respect of the period prior to the Public Procurement Termination Event.
	5. During any Court proceedings seeking a Declaration of Ineffectiveness or following notification of a Public Procurement Termination Event, the Trust may require the Contractor to prepare a contingency plan with the effect of achieving:
		1. an orderly and efficient cessation of the Agreement or a transition of any Services to the Trust or such other entity as the Trust may specify; and
		2. minimal disruption or inconvenience to the Trust or to the Trust’s supported organisations or clients,

and the Parties agree that this shall have effect in the event a Declaration of Ineffectiveness is made or a Public Procurement Termination Event occurs.

* 1. Where there is any conflict between the provisions of clause 17.6 and this clause 18 and the contingency plan then the clauses of this Agreement shall take precedence.
	2. The parties will comply with their respective obligations under any contingency plan (as agreed by the parties, or where agreement cannot be reached, as reasonably determined by the Trust) in the event that a Declaration of Ineffectiveness is made or a Public Procurement Termination Event occurs.
	3. The Trust will pay the Contractor’s reasonable costs in assisting the Trust in preparing agreeing and complying with the contingency plan. Such costs will be based on comparable costs or as otherwise reasonably determined by the Trust. The Trust will not be liable to the Contractor for any loss of profit, revenue, goodwill or loss of opportunity as a result of the early termination of this Agreement pursuant to any Declaration of Ineffectiveness or Public Procurement Termination Event.
1. Compliance
	1. The Contractor shall promptly notify the Trust of any health and safety hazards which may arise in connection with the performance of its obligations under the Agreement. The Trust shall promptly notify the Contractor of any health and safety hazards which may exist or arise at the Trust’s premises and which may affect the Contractor in the performance of its obligations under the Agreement.
	2. The Contractor shall:
		1. comply with all the Trust’s health and safety measures while on the Trust’s premises; and
		2. notify the Trust immediately in the event of any incident occurring in the performance of its obligations under the Agreement on the Trust’s premises where that incident causes any personal injury or damage to property which could give rise to personal injury.
	3. The Contractor shall:
		1. perform its obligations under the Agreement in accordance with all applicable equality law and the Trust’s equality and diversity policy as provided to the Contractor from time to time; and
		2. take all reasonable steps to secure the observance of clause 19.3(a) by all Staff.
2. Anti-discrimination
	1. The Contractor shall comply with all anti-discrimination legislation from time to time in force including, but not limited to, the Equalities Act 2010 and any subordinate or associated legislation.
	2. The Contractor shall not treat one group of people less favourably than others because of their colour, race, nationality or ethnic origin, gender, sexual orientation or disability including when deciding about recruiting, training or promoting staff.
	3. The Contractor shall, as far as possible, comply with all statutory codes of practice issued from time to time by the Equality and Human Rights Commission or any of its predecessor bodies such as the Commission for Racial Equality. The Contractor shall provide any information the Trust requires to determine whether the Contractor is complying with these codes of practice.
	4. When working on the Trust’s premises, the Contractor shall comply with the Trust’s employment policies and codes of practice relating to diversity and equal employment opportunities.
	5. The Contractor shall ensure that it maintains effective whistle-blowing policies whereby its employees may raise in confidence concerns about possible malpractice without fear of victimisation, discrimination or disadvantage.
3. Protection of Children and Vulnerable Adults
	1. This clause 21 will only apply if in providing Services the Contractor or its sub-contractors or Staff will supervise, care or have significant direct contact with a Vulnerable Person.
	2. In this clause, "Vulnerable Person" means:
		1. persons under the age of 18; and
		2. people who need or may need community care services because of mental or learning disability, other disability, age or illness, and who are, or may be, unable to take care of themselves or unable to protect themselves against significant harm or exploitation.
	3. The Contractor shall consider all the risks associated with providing the Services and take all reasonable steps to ensure the safety of all Vulnerable Persons, and seek the written consent of the legally authorised carer or guardian of the Vulnerable Person before having of any significant direct contact with the Vulnerable Person.
	4. Without limiting sub-clauses 21.2 and 21.3 the Contractor shall adopt and carry out a written policy and set of procedures to protect Vulnerable Persons if:
		1. it is a company or partnership, or they are an individual who employs other persons; and
		2. in the course of providing the Services, the Contractor’s Staff or sub-contractors supervise, care for or have significant direct contact with Vulnerable Persons.
	5. As part of the procedures mentioned in sub-clause 21.4 the Contractor shall check the backgrounds of and view disclosures from the Disclosure and Barring Service for its potential employees, contractors or volunteers who will, in the course providing the Services, supervise, care or otherwise have significant direct contact with Vulnerable Persons.
	6. If the Contractor is the person having significant direct contact with Vulnerable Persons, it shall, prior to any significant direct contact with the Vulnerable Person, offer to his or her legally authorised carer or guardian its consent to having the Contractor’s (or its Staff or sub-contractors, as appropriate) background checked and disclosures from the Disclosure and Barring Service viewed, should the carer or guardian wish to do so.
	7. The Contractor shall comply with sub-clauses 21.3 to 21.6 inclusive even if it is not required to do so under any child protection or care standards legislation and even if the work is formal, informal, voluntary or salaried.
	8. The Trust cannot advise the Contractor, its Staff or any sub-contractors of their legal obligations in relation to dealings with Vulnerable Persons, and this clause should not be seen as such.
4. Prevention of Fraud and Corruption
	1. The Contractor shall not offer, give, or agree to give anything, to any person an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of the Agreement or for showing or refraining from showing favour or disfavour to any person in relation to the Agreement.
	2. The Contractor shall take all reasonable steps, in accordance with good industry practice, to prevent fraud by the Staff and the Contractor (including its shareholders, members and directors) in connection with the Agreement and shall notify the Trust immediately if it has reason to suspect that any fraud has occurred or is occurring or is likely to occur.
	3. If the Contractor or the Staff engages in conduct prohibited by clause 22.1 or commits fraud in relation to the Agreement or any other contract with the Crown (including the Trust) the Trust may:
		1. terminate the Agreement and recover from the Contractor the amount of any loss suffered by the Trust resulting from the termination, including the cost reasonably incurred by the Trust of making other arrangements for the supply of the Services and any additional expenditure incurred by the Trust throughout the remainder of the Agreement; or
		2. recover in full from the Contractor any other loss sustained by the Trust in consequence of any breach of this clause.
5. Dispute Resolution
	1. The Parties agree to co-operate with each other in an amicable manner with a view to achieving the successful implementation of this Agreement.
	2. If a Dispute arises between the Trust and the Contractor during the Term in relation to any matter which cannot be resolved by local operational management either Party may refer the matter for determination in accordance with the procedure set out in clause 23.3.
	3. A Dispute referred for determination under clause 23.2 shall be resolved as follows:
		1. by referral in the first instance to the decision of the Parties’ respective contract managers; and
		2. if a Dispute is not resolved within 14 days of its referral pursuant to clause 23.3(a), such Dispute shall be referred to Anna Wright for the Trust and XXXX for the Contractor; and
		3. if a Dispute is not resolved within 21 days of its referral pursuant to clause 23.3(b) such Dispute shall be referred to the Chair of the Trust and XXXX for the Contractor.
	4. If the dispute cannot be resolved by the Parties within one month of being escalated as referred to in clause 23.3(b), the dispute may by agreement between the Parties be referred to a neutral adviser or mediator (the “**Mediator**”) chosen by agreement between the Parties. All negotiations connected with the dispute shall be conducted in confidence and without prejudice to the rights of the Parties in any further proceedings.
	5. If the Parties fail to appoint a Mediator within one month, or fail to enter into a written agreement resolving the dispute within one month of the Mediator being appointed, either Party may exercise any remedy it has under applicable law.
	6. Neither Party shall be prevented from, or delayed in, seeking orders for specific performance or interlocutory or final injunctive relief on an ex parte basis or otherwise as a result of the terms of this clause 23, such clause not applying in respect of any circumstances where such remedies are sought.
6. General
	1. Each of the Parties represents and warrants to the other that it has full capacity and authority, and all necessary consents, licences and permissions to enter into and perform its obligations under the Agreement, and that the Agreement is executed by its duly authorised representative.
	2. The Contractor warrants and represents that during the Term it shall not accept work from other sources that will in any way impair or affect its ability to provide the Services and comply with the terms of this Agreement.
	3. The Contractor must make sure that neither it nor any of its Staff or sub-contractors are placed in a position where there is or may be an actual conflict, or a potential conflict, between their interests or the interests of its Staff or sub-contractors and the Contractor’s obligations under this Agreement. You must disclose to us the particulars of any conflict of interest that arises.
	4. A person who is not a party to the Agreement shall have no right to enforce any of its provisions which, expressly or by implication, confer a benefit on him or her, without the prior written agreement of the Parties.
	5. The Agreement cannot be varied except in writing signed by a duly authorised representative of both the Parties.
	6. The Agreement contains the whole agreement between the Parties and supersedes and replaces any prior written or oral agreements, representations or understandings between them. The Parties confirm that they have not entered into the Agreement on the basis of any representation that is not expressly incorporated into the Agreement. Nothing in this clause shall exclude liability for fraud or fraudulent misrepresentation.
	7. Any waiver or relaxation either partly, or wholly of any of the terms and conditions of the Agreement shall be valid only if it is communicated to the other Party in writing and expressly stated to be a waiver. A waiver of any right or remedy arising from a breach of contract shall not constitute a waiver of any right or remedy arising from any other breach of the Agreement.
	8. The Agreement shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the Parties other than the contractual relationship expressly provided for in the Agreement. Neither Party shall have, nor represent that it has, any authority to make any commitments on the other Party’s behalf.
	9. Except as otherwise expressly provided by the Agreement, all remedies available to either Party for breach of the Agreement (whether under the Agreement, statute or common law) are cumulative and may be exercised concurrently or separately, and the exercise of one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.
	10. If any provision of the Agreement is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from the Agreement and rendered ineffective as far as possible without modifying the remaining provisions of the Agreement, and shall not in any way affect any other circumstances of or the validity or enforcement of the Agreement.
	11. This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all counterparts shall together constitute the one agreement. Delivery by electronic means is specifically permitted under this Agreement, be it by pdf, attachment to an email or by the delivery of an accessible web link to an executed counterpart.
7. Notices
	1. Any notice to be given under the Agreement shall be in writing and may be served by personal delivery, first class recorded or, subject to clause 25.3, email to the address of the relevant Party set out in the Award Letter, or such other address as that Party may from time to time notify to the other Party in accordance with this clause:
	2. Notices served as above shall be deemed served on the Working Day of delivery provided delivery is before 5.00pm on a Working Day. Otherwise delivery shall be deemed to occur on the next Working Day. An email shall be deemed delivered when sent unless an error message is received.
	3. Notices under clauses 16 (Force Majeure) and 16.1 (Termination) may be served by email only if the original notice is then sent to the recipient by personal delivery or recorded delivery in the manner set out in clause 25.1.
8. Change Control Procedures
	1. In the event that either party desires to change the terms of this Contract, the following procedures will apply:
		1. The Party requesting the change will deliver a “Change Request” (in the form contained in Annex 4 to this Agreement) which describes:
			1. the nature of the change
			2. the reason for the change
			3. the effect that the requested change will have on the scope or specification of the Services
			4. any changes to the Charges and the Term.
		2. Upon receipt of a Change Request, the receiving Party’s authorised representative will contact his/ her counterpart within 5 working days to discuss and agree the Change Request. The parties will negotiate the proposed changes to the Agreement in good faith and agree a timeline in which to finalise the Change Notice.
		3. Neither party is obliged to agree to a Change Request, but if the parties do agree to implement such a Change Request, the appropriate authorised representatives of both parties will sign the Change Request which will be effective from the date set out in the Change Request.
		4. If there is any conflict between the terms and conditions set out in the Agreement and the Change Request, then the terms and conditions set out in the most recent fully executed Change Request will apply.
9. Governing Law and Jurisdiction
	1. The validity, construction and performance of the Agreement, and all contractual and non-contractual matters arising out of it, shall be governed by English law and shall be subject to the exclusive jurisdiction of the English courts to which the Parties submit.

**Annex 2**

**Charges**

The Charges are set out in the Contractor’s Tender Response (see Annex 5).

Payment Profile

|  |  |
| --- | --- |
| Amount | Milestone for submission of invoice |
| Up to 90% of total Charges | On a monthly basis in arrears.  |
| Up to 10% of total Charges | Following re-launch of the website and appropriate reporting/documentation to support. |

Annex 3

Services Specification

1. **RESEARCH BACKGROUND, AIMS AND OBJECTIVES**

* 1. HeadFIT defines mental fitness as “*good management of good mental health*”.
	2. Mental fitness, as with physical fitness, is an essential component of military fighting power. The MOD recognises the importance of ensuring military personnel can maintain a good state of mental health and wellbeing. The Defence People Mental Health and Wellbeing Strategy (2022-2027) aims to promote positive mental health and wellbeing in the defence community. Following release of the Strategy, the MOD and the Royal Foundation collaborated to create a preventative mental fitness initiative called [HeadFIT](https://headfit.org/home/) which aims to provide Defence personnel, including civil servants, veterans and their families, with effective resources and tools to help foster their mental fitness and promote positive mental health.

* 1. The initiative, now branded HeadFIT for Life, was designed to develop and maintain a person’s mental wellbeing by providing the training, resources, and skills to foster psychological resilience throughout their Defence career and beyond. It seeks to separate ‘*mental fitness*’ from ‘*mental ill-health*’ which is often associated with stigmatic views within the Armed Forces. Recognising that physical fitness is important in the Armed Forces, HeadFIT aims to attach the same level of importance to mental fitness. Consequentially, improved mental resilience should also lead to better longer-term mental health.
	2. Further work is needed to overcome linking mental fitness directly with mental illness and associated stigma. There must be the clear distinction between mental illness and mental fitness and the HeadFIT initiative is consistent with an increasing emphasis on military mental fitness, contributing to changing attitudes around mental health and separating mental fitness from mental ill health. Defence personnel using HeadFIT should be actively encouraged to do so through good communications and an increased emphasis from Commanders and MH Champions. HeadFIT is the ideal tool to overcome the misunderstanding between mental fitness, mental illness and mental resilience. It must be used to overcome any associated stigma.
	3. The HeadFIT initiative seeks to separate ‘mental fitness’ from ‘mental ill health’ which is often associated with stigmatic views within Defence. Recognising that physical fitness is highly emphasised and seen as important in the Armed Forces, HeadFIT was designed to attach the same level of importance to being mentally fit and to help personnel to develop their own mental fitness.
	4. HeadFIT has been designed for use across the Defence community, including serving and ex-serving military personnel and Civil Service personnel. It unifies one approach to improving individual mental fitness, however, any website left for long periods without development will go stale and its use will reduce. It is therefore imperative that the HeadFIT website is refreshed throughout its life cycle and that there is support for its use from within the Defence Community. It is essential that the functionality of this website is championed by Defence Leaders and is advertised widely at Unit level. A strong communications plan is key to delivering these tasks.

2 **SERVICE REQUIREMENTS**

2.1. As detailed in this Specification and supplemented by its Tender Response, the Contractor will develop and implement a plan of improvement for the HeadFIT website, working with appropriate stakeholders. Bidders should provide indicative timescales for delivery of each phase.

**Digital Production**

The provider will produce engaging new digital content for the HeadFIT website. The Trust currently hosts the HeadFIT website on its own server for system security and compliance, and this is expected to continue. Proposals would need to follow a four-phase project plan, over a contracted three-year period:

**Phase 1 –** **Discovery**

The provider will undertake technical analysis to identify where the site requires improvements and to identify initial ideas for change. This will include data analysis and consideration of user journeys; and provide recommendations for areas of development which are achievable within the overall budget. Consideration should be given to how to best engage a returning audience; and to build and sustain regular engagement from Armed Forces communities.

The development of the HeadFIT resource aims to separate ‘*mental fitness*’ from ‘*mental ill-health*’. HeadFIT aims to attach the same level of importance to mental fitness, leading to improved mental resilience and better longer-term mental health. The site has already had positive feedback in its ability to build mental resilience and overcome the misunderstanding between mental fitness and mental ill-health.

The website is currently designed for personnel working within Defence. Proposals that would extend the products on the website for veterans or make the language around the current tools more welcoming for veterans would be welcomed.

*Bidders should note that HeadFIT is not a medical intervention, counselling, therapy nor a substitute for professional assistance that may be required for any health issues that one might experience.*

**Phase 2 – Planning**

The successful contractor will be able to identify specific interventions to improve user engagement, based around website design and functionality and could include the provision of additional tools and content. The successful bidder will identify a series of carefully assessed interventions to the HeadFIT experience, establishing key priorities. The findings and conclusions of the Discovery phase will be presented to stakeholders.

**Phase 3 – Production**

Re-design areas of the website and develop new assets and modules. There is a requirement toposition HeadFIT more clearly as a positive and self-improving mental fitness tool and update its content. The next phase should create a user experience that promotes high engagement from the outset and leads people through the site; and be clearly developed on evidence from the discovery phase.

The content mix should be relevant, appealing to the Defence community and in line with current digital content good practice. Proposals should include an indication of the types of content that could be developed, and an indicative timetable for production. Proposals which would enable some parts of the website to be updated more quickly would be of interest.

**Phase 4 – Postproduction**

The successful bidder should provide information on how they would work with the Trust’s Comms team and the MOD comms team to announce any changes to HeadFIT and develop a rolling programme of communication content that maintains involvement and prompts new site visits. Delivery of the HeadFIT resource will be briefed to MOD for Defence awareness and endorsement. Any launch will be complemented with a full communications campaign.

***[Note to Bidders: The Trust does not wish to constrain Bidders in terms of the design and methods for this ITT and is open to proposals that meet the aims of the Contract and that will address all the issues set out above.]***

**Reporting**

2.3. The Contractor shall work with the Trust in order to present evaluation and reporting that will follow a schedule to be agreed following successful award of the contract. The precise content and format of the reporting will be agreed with the Trust but, as a minimum, shall include detailed responses to the considerations above.

**Progress meetings**

2.4. The Contractor shall attend regular project meetings with the appointed Trust contract manager at least once a month with the Trust (via Teams or Zoom). The following topics are likely to be discussed:

(a) The progress of the project (the Service);

(b) Key issues and challenges that have arisen; and

(c) Key findings. NB key findings are important as the Trust wishes to implement any learning on an ongoing basis throughout the project (where possible).

2.5 The Contractor shall circulate an agenda for the Trust to review and add to 5 working days prior to each progress meeting and circulate action focussed minutes to the Trust by email within 2 working days following each meeting.

**Timeline**

2.6 The Contractor shall deliver the Service in accordance with the timescales set out below:

|  |  |
| --- | --- |
| Task | Date |
| Inception meeting  | July 2023 |
| Implementation of Phase 1Phase 2Phase 3Phase 4 | **From July 2023****TBC****TBC****TBC** |
| Progress meetings | Every month on dates to be agreed  |
| Other deliverables and tasks as may be agreed by the Trust and the Contractor | TBC |

***[Note to Bidders: The Trust may add deliverables to this timetable based on the proposals set out in the successful Bidder’s Tender Response.]***

3 Contractor’s TEAM

3.1 The Contractor shall ensure the team it appoints to deliver the Services has the appropriate skills and experience to undertake the Services and meet the Contractor’s obligations under the Contract.

* 1. The Contractor and its delivery team shall, as a minimum, have experience in delivering high quality digital services and have an evidenced portfolio. Specific experience in delivering digital content to Armed Forces communities is desirable.
	2. The Contractor shall maintain excellent communication with the Trust at all times ensuring that it is well informed, aware of issues and central to decision making in relation to progress. The Contractor shall identify a named contact acting as Contract Manager. The designated person will carry prime responsibility for the Contract. The Contract Manager will liaise with and take instruction from the Trust’s Contract Manager.

**Annex 4 - Change Control Notice**

|  |  |
| --- | --- |
| **Agreement Reference:** |   |
|   |
| 1. **Change Request Number:**
 |  |
|   |
| 1. **Requested Amendments to Agreement (including reasons):**

  |
| **2.1      Effective date:** |
| This change is effective from:    \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  |
| **2.2      The Contract Term is amended as follows:** |
|  This contract will commence on: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_And will conclude on :                 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  |
| 1. **Cost impact**
 |
| **3.1      The Charges are amended as follows:** |
|  | **Quantity** | **Unit cost (£)** | **Net cost (£)** | **VAT** **(£)** | **Gross cost (£)** |
| Original Contract Value |   |   |   |   |   |
| New contract Value |   |   |   |   |   |
| **3.2      New Agreement terms:** |
|    |

Both the Trust and the Contractor agree that they are bound by the terms and conditions set out in this Change Request and, except as set out in this Change Request, all terms and conditions of the Agreement remain in full force and effect

|  |  |
| --- | --- |
| Signed on behalf of | Signed [on behalf of]/ [by] |
| **Armed Forces Covenant Fund Trustee Limited acting as trustee of the Armed Forces Covenant Fund** |  |
| by: | by: |
|   |   |
| Signature of authorised officer | Signature [of authorised person] |
|   |   |
| Name of authorised officer (please print) | [Name of authorised person (please print)] |
|   |   |
| Date | Date |

**Annex 5 – Tender Response**