

CALL-OFF TERMS AND CONDITIONS

1 DEFINITIONS

1.1 In the Call-Off Contract, unless context requires otherwise, the following provisions shall have the meanings given to them as set out in clause 1 of the Open Framework Agreement and as set out below:

"Account Manager" means the Provider's representative authorised to act in the administration of the Call-Off Contract in accordance with clause 15.3.

"Authorised Officer" means the Council's representative duly authorised to act in the administration of the Call-Off Contract.

"Award Information" means the specific project requirements applicable and made available in relation each Call-Off Contract as published by the Council under the Open Framework Agreement.

"Call-Off Material Default" means any breach of:

- (a) clauses 5 (*Ordering Procedure*), 7 (*Prevention of Bribery*), 10 (*Records and Audit Access*), 11 (*Confidentiality*), 13 (*FOIA and EIR*), 17 (*Sub-Contracting and Assignment*), 30 (*Modern Slavery*), and 32 (*Non-Discrimination*) of the Open Framework Agreement insofar as such clauses relate to the performance of the Call-Off Contract; and
- (b) clauses 16 (*Provider's Personnel*), 17 (*Warranties and Representations*), 18 (*Safeguarding, Prevent Duty, and Modern Slavery*), 20 (*Retendering and Handover*), 25 and the clauses set out in Part 2 of Annex 3 to the Order Form (*Data Protection*), and Appendix A (*TUPE*) of these Call-Off Terms and Conditions.

"Cybersecurity Requirements" means all laws, regulations, codes, guidance (from regulatory and advisory bodies, whether mandatory or not), international and national standards, and sanctions, applicable to either party, relating to the security of network and information systems and security breach and incident reporting requirements, including the Data Protection Legislation, the Cybersecurity Directive ((EU) 2016/1148), and the Commission Implementing Regulation ((EU) 2018/151) the Network and Information Systems Regulations 2018 (SI 506/2018) as amended or updated from time to time.

"Default" means any breach of the obligations of the relevant Party under the Call-Off Contract or any other default, act, omission, negligence or negligent statement of the relevant Party or the Staff in connection with or in relation to the subject matter of the Call-Off Contract and in respect of which such Party is liable to the other.

"OFSTED" means the Office for Standards in Education, Children's Services and Skills or such other successor body.

"Order Period" means the period of the Call-Off Contract as set out on an Order Form.

"Pre-Existing Data" means any Intellectual Property Rights vested in or licenced to the Council or the Provider prior to or independently of the performance by the Council or the Provider of their obligations under the Call-Off Contract, including but not limited to designs,

databases, patents, patterns, logos, models and plans.

“**Premises**” means the premises where the Services shall be provided as detailed in any Order Form.

“**Regulatory Bodies**” means OFSTED and any other government department and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this Call-Off Contract or any other affairs of the Council and “**Regulatory Body**” shall be construed accordingly.

“**Relevant Transfer**” means a relevant transfer of the Services for the purposes of TUPE, including upon or as a result of expiry or termination of the Call-Off Contract.

“**Replacement Services**” means any services that are fundamentally the same as any of the Services and which the Council receives in substitution for any of the Services following the termination or expiry of the Call-Off Contract, whether those services are provided by the Council internally or by a Replacement Supplier.

“**Replacement Supplier**” means any third party service provider appointed by the Council to supply any services that are substantially the same as or similar to any of the Services and which the Council receives in substitution for any of the Services following the expiry, termination or partial termination of the Call-Off Contract.

“**Services Commencement Date**” means the commencement date for the ordered Services as set out in the Order Form.

“**TUPE**” means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246), as amended.

2 INTERPRETATION

2.1 The interpretation and construction of the Call-Off Contract shall be subject to the following provisions:

2.1.1 words importing the singular meaning include where the context so admits the plural meaning and vice versa;

2.1.2 words importing the masculine include the feminine and the neuter;

2.1.3 reference to a clause is a reference to the whole of that clause unless stated otherwise;

2.1.4 unless expressly provided otherwise in this Call-Off Contract, a reference to legislation or a legislative provision is a reference to it as amended, extended or re-enacted and includes any subordinate legislation made under it, in each case from time to time;

2.1.5 references to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;

- 2.1.6 reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established;
- 2.1.7 the words "include", "includes" and "including" are to be construed as if they were immediately followed by the words "without limitation";
- 2.1.8 headings are included in the Call-Off Contract for ease of reference only and shall not affect the interpretation or construction of the Call-Off Contract;
- 2.1.9 references in the Call-Off Contract to any clause or sub-clause without further designation shall be construed as a reference to the clause or sub-clause to the Call-Off Contract so numbered; and
- 2.1.10 reference to writing or written does not exclude email;
- 2.1.11 any obligation on a party not to do something includes an obligation not to allow that thing to be done.

3 PROVIDER'S OBLIGATIONS

- 3.1 The Provider shall in all respects supply the Services in accordance with the terms of the Open Framework Agreement, these Call-Off Contract Terms and Conditions and the terms of the relevant Order Form (together with any schedules and annexes attached thereto).
- 3.2 The Provider shall provide to the entire satisfaction of the Council's Authorised Officer, the efficient and safe provision of the Services specified in the Call-Off Contract, in accordance with the specifications, supplying all necessary Staff together with approved equipment and materials so as to satisfy the Call-Off Contract in its entirety.
- 3.3 For the avoidance of doubt any terms that the Provider may seek to impose and which in any way contradict these Call-Off Contract Terms and Conditions shall be excluded and shall not apply in respect of the Call-Off Contract.
- 3.4 The Provider shall ensure that the Services provided pursuant to the Call-Off Contract exceed or meet the requirements of the Call-Off Specification and where the purpose for which the Services are required is indicated in the Call-Off Contract, either expressly or by implication, shall be fit for that particular purpose.
- 3.5 The Provider warrants that the Services to be supplied under any Call-Off Contract shall comply in all respects with all relevant requirements of any statute, statutory rule or order, or other instrument having the force of law which may be in force at the time when the Services are supplied.
- 3.6 The Provider shall be deemed to have satisfied itself as to the sufficiency and correctness of the Price and the Price shall cover all the Provider's obligations and everything necessary for the provision of the Services under the Call-Off Contract.
- 3.7 The Provider shall be responsible for the accuracy of all drawings, documents and information supplied to the Council by the Provider in connection with the supply of the Services and shall pay the Council any extra costs occasioned by any

discrepancies, errors or omissions therein.

- 3.8 Unless otherwise expressly provided for in the Open Framework Agreement or the Call-Off Contract Terms and Conditions no claim by the Provider will be allowed for any addition to the Price on the grounds of any matter relating to any document forming part of the Open Framework Agreement or the Call-Off Contract Terms and Conditions or any ambiguity or discrepancy therein on which an experienced Provider could have satisfied himself by reference to the Council or any other appropriate means.
- 3.9 The Provider shall maintain registration with the applicable Regulatory Body for the duration of any Call-Off Contract for the provision of the Services.
- 3.10 If at any time the Provider's registration with the applicable Regulatory Body ceases for any reason the Provider shall within twenty-four (24) hours notify the Council with reasons for the same.
- 3.11 Throughout the Order Period the Provider shall hold and maintain an "Outstanding" or "Good" Regulatory Body rating (or equivalent/replacement rating as may apply from time to time as determined by the Regulatory Body). The Provider shall notify the Council within five (5) Working Days in the event that its own rating falls below this requirement. In such event, the Council shall be entitled to suspend the provision of the Services until such time as the Regulatory Body rating returns to a minimum of "Good" or for such other period as the Council considers appropriate in the circumstances.
- 3.12 In the event that the Provider's registration with the applicable Regulatory Body is suspended or terminated, or the Provider otherwise ceases to be registered with the applicable Regulatory Body, the Council shall be entitled to:
- 3.12.1 suspend the Provider's provision of the Services (in whole or in part) until such time as the Regulatory Body registration is restored; or
- 3.12.2 to terminate this Call-Off Contract in accordance with clause 23.1.
- 3.13 In the event that the applicable Regulatory Body imposes any regulatory requirements on the Provider (including but not limited to where the Provider has achieved a rating from the Regulatory Body of 'Requires Improvement' or 'Inadequate') which requires an improvement action plan or rectification plan to be developed and implemented by the Provider (the "**Rectification Plan**"), a copy of the Rectification Plan shall be supplied to the Council at the point of submitting the document to the Regulatory Body (i.e. at the same time). The Provider shall inform the Council about progress towards compliance with the Rectification Plan at no less than monthly intervals, and within seven (7) calendar days of any change. The Rectification Plan may also be further monitored by the Council to ensure that sufficient progress is being made by the Provider and, where relevant, that an improved Regulatory Body rating is achieved by the Provider at the subsequent regulatory review.

3.14 The Provider:

3.14.1 acknowledges that ratings from the applicable Regulatory Body of 'Requires Improvement' or 'Inadequate' may also result in more regular performance monitoring from the Council; and

3.14.2 agrees that in addition to increased monitoring resulting from the Regulatory Body, the Council also reserves the right to respond to any other information or feedback which identifies potential concerns or risks and to monitor the Services more frequently as considered appropriate by the Council.

4 COUNCIL'S OBLIGATIONS

4.1 The Council shall order the Services from the Provider in accordance with the Ordering Procedure set out in clause 5 of the Open Framework Agreement and in accordance with the Regulations.

4.2 The Council shall respond to any reasonable request for information in relation to the Services from the Provider.

4.3 The Council shall comply with the provisions of clause 14 in relation to payment of the Price for Services delivered.

5 TERM

5.1 The Call-Off Contract shall come into effect on the Services Commencement Date and shall continue for the Order Period unless it is otherwise terminated in accordance with these Call-Off Terms and Conditions.

5.2 The Council will have the right to extend the Call-Off Contract for any such period or periods as set out on an Order Form by giving written notice to the Provider not less than one month before the last day of the Order Period.

5.3 The provisions of these Call-Off Contract Terms and Conditions will apply (as may be amended) throughout any such extended period.

6 CALL-OFF SPECIFICATION

6.1 The Provider shall satisfy itself:

6.1.1 that the Council has delivered or made available to the Provider all of the information and documents that the Provider considers necessary or relevant for the performance of its obligations under a Call-Off Contract;

6.1.2 as to the accuracy and sufficiency of any information provided by the Council before submitting its Tender and entering into a Call-Off Contract;

6.1.3 as to the nature and extent of the Services and the risks assumed by it under a Call-Off Contract, including the accuracy of the Price and other financial information stated by the Provider in the Tender which shall cover the Provider's obligations under the Call-Off Contract.

6.2 If the Provider finds any discrepancy, error, omission or misstatement in the Call-Off Contract documents it shall immediately refer the same in writing to the Council's

Authorised Officer.

- 6.3 Any such discrepancy, error, omission, or misstatement shall not vitiate the Call-Off Contract nor shall it release the Provider from the completion of the whole or any part of the Services to be provided.
- 6.4 The Authorised Officer shall, in all such instances, issue instructions as to such discrepancies, errors, omissions and misstatements.
- 6.5 The Call-Off Specification described is as far as practicable the whole of the Services to be provided, but the Provider is responsible for ensuring that all these and incidental services are completed in the proper manner as generally accepted though not specified in detail.

7 SUPPLY OF SERVICES

- 7.1 The Provider shall during the Order Period supply the Services in accordance with the Call-Off Specification and these Call-Off Terms and Conditions (and any modifications thereof authorised under these Call-Off Terms and Conditions) and to the entire satisfaction of the Authorised Officer.
- 7.2 For the avoidance of doubt, the Council shall not be responsible for any Services provided by the Provider that are not the subject of a Call-Off Contract.
- 7.3 The Services to be supplied under a Call-Off Contract shall be delivered to the place specified in the Order Form and the Call-Off Specification in such quantities or numbers and at such times as the Council shall specify in the Order Form and the Call-Off Specification.
- 7.4 Save as otherwise expressly stated in this Call-Off Contract, the Provider shall provide all Staff, materials, and other things whatsoever required for the provision of the Services in accordance with the Call-Off Specification and any addition, deletion or variation thereof authorised under these Call-Off Terms and Conditions.
- 7.5 The Provider shall ensure that all Staff supplying the Services shall do so with all due skill, care and diligence and shall possess such qualifications, skills and experience as are necessary for the proper supply of the Services.
- 7.6 All purchases shall be in the Provider's name and payment shall be made directly by the Provider. The Provider will permit no liens whatsoever to be placed against the property of the Council as a result of failure of the Provider, its agents, Providers and or sub-Providers to make payments required of them in this connection.
- 7.7 Time is of the essence for the delivery of the Services required under a Call-Off Contract.

8 PRICE

- 8.1 The Price offered by the Provider for the Call-Off Contract shall be calculated in accordance with the Provider's Tender. The Price set out in the Tender shall remain fixed for the duration of the Call-Off Contract.

- 8.2 In consideration for the provision of the Services in accordance with the Open Framework Agreement, these Call-Off Terms and Conditions and the Order Form, the Council shall pay the Price in accordance with the invoicing procedure and payment procedure specified in clause 14 and subject to any provisions as may be set out in the Call-Off Specification.
- 8.3 The Council shall in addition to the Price and following evidence of a valid VAT invoice pay the Provider a sum equal to the VAT chargeable on the value of the Services supplied in accordance with these Call-Off Contract Terms and Conditions.
- 8.4 If any sum payable under a Call-Off Contract is not paid within thirty (30) days of the due date, the Party to whom the same is due reserves the right to charge interest from the due date for payment to the actual date of payment in accordance with the Late Payment of Commercial Debts (Interest) Act 1998. No interest shall be payable on any amount that is the subject of a bona fide dispute between the Parties.

9 PRICE VARIATIONS

- 9.1 Any variation in Price will be agreed between the Council and Provider in accordance with the Variation Procedure.
- 9.2 No additional variation in the Price will be accepted for any reason whatsoever unless the Council shall have already accepted a Price variation in writing at its discretion.
- 9.3 General trade circulars will not be accepted as a notice of intended variations.
- 9.4 Details of special promotions should be notified in writing immediately to the Council and shall be passed on in full to the Authorised Officer.

10 RECOVERY OF SUMS DUE

- 10.1 Wherever under the Call-Off Contract or Special Terms and Conditions (if applicable) any sum of money is recoverable from or payable by the Provider (including any sum which the Provider is liable to pay to the Council in respect of any breach of the Call-Off Contract), the Council may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Provider under the Call-Off Contract.
- 10.2 Any overpayment by either Party, whether of the Price or of VAT or otherwise, shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.
- 10.3 The Provider shall make any payments due to the Council without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Provider has a valid court order requiring an amount equal to such deduction to be paid by the Council to the Provider.
- 10.4 All payments due shall be made within a reasonable time unless otherwise specified in the Call-Off Contract, in cleared funds, to such bank or building society account as the recipient Party may from time to time direct.

11 REMEDIES FOR INADEQUATE PERFORMANCE

- 11.1 Where a complaint is received about the standard of Services or about the manner in which any Services have been supplied or work has been performed or about the materials or procedures used or about any other matter connected with the performance of the Provider's obligations under the Call-Off Contract, then the Council shall take reasonable steps to investigate the complaint. The Council may, in its sole, reasonable discretion, uphold the complaint, and may, acting reasonably:
- 11.1.1 Subject to clause 11.4, withhold a sum; or
 - 11.1.2 Deduct a sum;
- in each case equal to a maximum of 50% of the Price payable in respect of the Call-Off Contract for which the complaint arose.
- 11.2 The parties agree that a deduction made pursuant to clause 11.1.2 represents a genuine, reasonable and proportionate pre-estimate of the loss likely to be suffered by the Council.
- 11.3 Where the Council withholds a sum pursuant to clause 11.1.1 then that sum shall be paid to the Provider when, in the reasonable opinion of the Council, the matters complained of have been rectified and there has been no repeat of those matters for three month(s).
- 11.4 If the Council is of the reasonable opinion that there has been a Default in respect of the Call-Off Contract by the Provider, then the Council may, without prejudice to its rights under clause 23.3, do any of the following:
- 11.4.1 without terminating the Call-Off Contract, itself supply or procure the supply of all or part of the Services until such time as the Provider shall have demonstrated to the reasonable satisfaction of the Council that the Provider will once more be able to supply all or such part of the Services in accordance with the Call-Off Contract;
 - 11.4.2 without terminating the whole of the Call-Off Contract, terminate the Call-Off Contract in respect of part of the Services only (whereupon a corresponding reduction in the Price shall be made) and thereafter itself supply or procure a third party to supply such part of the Services; and/or
 - 11.4.3 charge the Provider for and the Provider shall pay any costs reasonably incurred by the Council (including any reasonable administration costs) in respect of the supply of any part of the Services by the Council or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Provider for such part of the Services and provided that the Council uses its reasonable endeavours to mitigate any additional expenditure in obtaining Replacement Services.
- 11.5 If the Provider fails to supply any of the Services in accordance with the provisions of the Call-Off Contract and such failure is capable of remedy, then the Council shall

instruct the Provider to remedy the failure and the Provider shall at its own cost and expense remedy such failure (and any damage resulting from such failure) within ten Working Days of the Council's instructions or such other period of time as the Council may direct.

11.6 If the Provider:

11.6.1 fails to comply with clause 11.5 and the failure is materially adverse to the interests of the Council or prevents the Council from discharging a statutory function; or

11.6.2 persistently fails to comply with clause 11.5;

the Council may terminate the Call-Off Contract with immediate effect by giving the Provider notice in writing.

12 QUALITY AND INSPECTION

12.1 The Services shall conform in every respect to any specification (including but not limited to the Call-Off Specification) provided or given by either party and shall be capable of meeting any standard or performance specified in Framework Specification and the Call-Off Specification and any further requirements set out in the Order Form.

12.2 The Provider shall permit any applicable Regulatory Body access to its Premises for the purpose of the Regulatory Body undertaking any required inspection to ensure the Provider's compliance with the relevant regulatory requirements.

12.3 The Provider warrants that the Services to be supplied under any Call-Off Contract shall comply in all respects with all relevant requirements of any statute, statutory rule or order, or other instrument having the force of law which may be in force at the time when the Services are supplied.

12.4 The Council's Authorised Officer will be the sole judge as to the sufficiency of the Services provided.

12.5 The Provider shall keep the Council fully informed of the progress of any Call-Off Contract and shall work with the Council so that the Council has the opportunity to provide its comments and discuss its requirements. The Provider agrees to fully co-operate with the Council in this process.

13 PREMISES AND EQUIPMENT

13.1 Unless otherwise stated in the Call-Off Contract, the Provider shall supply the Services from its own premises or the premises of a third party and the Council 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.

13.2 The Provider shall at its own cost comply with all security requirements specified by the Council in writing and afford the Council as may be required from time to time an opportunity to inspect its physical security arrangements.

13.3 Unless otherwise stated in the Call-Off Contract, the Provider shall provide all equipment necessary for the supply of the Services and shall maintain all equipment in a safe, serviceable and clean condition.

14 PAYMENT

14.1 Subject to the provisions as may be set out in the Call-Off Specification, the Provider shall ensure each invoice is submitted and contains all appropriate references and a detailed breakdown of the Services supplied and that it is supported by any other documents reasonably required by the Council to substantiate the invoice.

14.2 Where the Provider submits an invoice to the Council in accordance with clause 14.1 the Council will consider and verify that invoice within seven (7) days.

14.3 The Council will pay the Provider any sums due under such an invoice no later than 30 days from the date on which the Council has determined that the invoice is valid and undisputed.

14.4 Where Council fails to comply with clause 14.2, the invoice shall be regarded as valid and undisputed seven (7) days after the date on which it is received by the Council.

14.5 The Provider shall indemnify the Council on a continuing basis against any liability, including any interest, penalties or costs incurred, which is levied, demanded or assessed on the Council at any time in respect of the Provider's failure to account for or to pay any VAT relating to payments made to the Provider under the Order. Any amounts due under this clause shall be paid by the Provider to the Council not less than five Working Days before the date on which the tax or other liability is payable by the Council.

14.6 The Provider shall not suspend the supply of the Services unless the Provider is entitled to terminate the Call-Off Contract under clause 23.6.

14.7 Where the Provider enters into a Sub-Contract for the purpose of performing a Call-Off Contract, it shall cause a term to be included in such Sub-Contract that requires payment to be made of undisputed sums by the Provider to the sub-contractor within a specified period not exceeding thirty (30) days from the receipt of a valid invoice, as defined by the Sub-Contract requirements.

15 MONITORING AND REPORTING

15.1 The Provider shall:

15.1.1 appropriately manage the Services that it provides under the Call-Off Contract in accordance with the Call-Off Specification;

15.1.2 be required to provide to the Council as may be reasonably requested accurate and up to date Management Information in relation to the Call-Off Contract throughout the Order Period. Such information shall include but not be limited to the volume and value of Call-Off Contracts and the Services provided;

- 15.1.3 on reasonable notice grant to the Council and/or the Council's Auditors access to any relevant data or documentation relating to the Call-Off Contract and the supply of the Services for the purpose of carrying out an Audit; and
- 15.1.4 grant to any Regulatory Body access to any relevant data or documentation relating to the Provider's registration with the Regulatory Body.
- 15.2 The Provider will be required to provide a quarterly report to the Council as required listing the Services delivered that quarter.
- 15.3 The Provider shall nominate an Account Manager who will act as a single point of contact for queries regarding the Call-Off Contract. The Council will require the Provider's Account Manager to attend regular meetings as agreed between the Council and the Provider.
- 15.4 In addition to appointing an Account Manager, the Provider will also be required to appoint a Designated Contract Manager to deal with day-to-day customer service issues and complaints.

16 PROVIDER'S PERSONNEL

- 16.1 The Provider must ensure that all Staff and other personnel for whom there is a statutory requirement to do so are subject to the relevant Disclosure and Barring Service (DBS) check set out in the Call-Off Specification before providing any Services pursuant to a Call-Off Contract. For the avoidance of any doubt the cost in meeting the obligations under this clause shall be met by the Provider.
- 16.2 The Provider shall select, employ, train, furnish and deploy in and about the performance of the Call-Off Contract and in the management thereof only such persons as are of good character, careful, skilled and experienced in their several trades and callings and who are proficient, productive and courteous.
- 16.3 The Provider, its Staff, agents, Sub-Contractors and suppliers shall employ sufficient Staff to ensure that the Services are provided at all times and in accordance with the Call-Off Specification. Without prejudice to the generality of this obligation, it shall be the duty of the Provider to ensure that a sufficient reserve of Staff is available to perform the Call-Off Contract in accordance with the Specification during staff holidays or absence through sickness or any other cause.
- 16.4 The Provider shall ensure that all personnel engaged in and about the performance of any Call-Off Contract are at all times properly and sufficiently trained and instructed with regard to:
 - 16.4.1 The task or tasks that person has to perform;
 - 16.4.2 All relevant provisions of the Call-Off Contract;
 - 16.4.3 All relevant policies, rules, procedures and standards of the Council;
 - 16.4.4 All relevant rules and procedures concerning Health and Safety at work legislation and Control of Substances Hazardous to Health;

- 16.4.5 Fire risks and fire precautions;
 - 16.4.6 The need to observe the highest standard of personal hygiene, courtesy and consideration;
 - 16.4.7 The need to recognise situations which involve an actual or potential danger or personal injury to any person upon the Premises and;
 - 16.4.8 where possible, without personal risk to make safe such situations or forthwith to report such situations to the appropriate member of the Council's staff;
- 16.5 The Provider shall maintain records of all training given to Staff engaged in the performance of the Call-Off Contract and shall provide copies of such records to the Council throughout the Order Period.
- 16.6 The Provider, its Staff, agents, Sub-Contractors and suppliers will be expected to follow normal procedures in engaging staff, including obtaining appropriate references.
- 16.7 Where the Provider performs the Services on the Council's Premises:
- 16.7.1 All monies or other items of value found at any Premises by the Provider's Staff must be handed to a senior employee of the Council at the relevant Premises as soon as possible and a receipt or acknowledgement obtained.
 - 16.7.2 The Provider shall have regard to the Council's safety policy at each Premises, a copy of which shall be made available at each Premises. The Provider shall nominate a person to be responsible for health and safety matters as required by the Health and Safety at Work Etc. Act 1974. Whilst on the Premises the Provider shall require its employees to comply with the Council's safety policy and also to comply with the lawful requirements of the Council's health and safety adviser. The Council shall at its entire discretion be empowered to suspend the performance of the Call-Off Contract in the event of non-compliance by the Provider with health and safety matters. The Provider will not be able to resume performance of the Call-Off Contract until the Council is satisfied that the non-compliance has been rectified. In respect of any such period of suspension, the default provisions as set out in these Call-Off Terms and Conditions shall apply.
 - 16.7.3 The Council shall have the right to refuse access to its Premises at any time to any employee of the Provider, its Staff, agents, Sub-Contractors or suppliers. The exercise of this right shall not diminish the Provider's obligation of performance arising under the Call-Off Contract, provided that the Provider shall have access to the Premises at times sufficient to fulfil the said obligation.
 - 16.7.4 The Provider shall ensure that all personnel engaged in or about the performance of the Call-Off Contract carry out their duties while on the Premises in a quiet and orderly manner causing the minimum possible

disruption to the routine and procedures of the Council's staff. Only those personnel engaged in the performance of the Call-Off Contract will be allowed to enter the Premises and in no circumstances must those staff be accompanied by other persons, children or pets.

17 WARRANTIES AND REPRESENTATIONS

17.1 The Provider warrants and represents:

- 17.1.1 the Services shall conform in every respect to the Call-Off Specification provided or given by either party and shall be capable of meeting any standard or performance specified in the Call-Off Specification thereto and where the purpose for which the Services are required is indicated in the Call-Off Contract or otherwise, either expressly or by implication, be fit for that purpose;
- 17.1.2 the Provider shall discharge its obligations hereunder with all due skill, care and diligence including but not limited to good industry practice and (without limiting the generality of this Clause) in accordance with its own established internal procedures;
- 17.1.3 the Provider has full capacity and authority and all necessary consents (including but not limited to where its procedures require consent of its Parent Company) to enter into and perform the Services requested under a Call-Off Contract and that the Order Form is executed by the duly authorised representatives of the Provider;
- 17.1.4 it will comply with all applicable laws and regulations with respect to its obligations under this Open Framework Agreement and any Call-Off Contract including the Cybersecurity Requirements;
- 17.1.5 the Services are accredited as required in the Call-Off Specification, and shall maintain such accreditations and certifications for the duration of the Open Framework Agreement and any Call-Off Contract;
- 17.1.6 the provision of the Services or any part thereof shall not infringe the Intellectual Property Rights of any third party.

18 SAFEGUARDING, PREVENT DUTY AND MODERN SLAVERY

18.1 The Parties acknowledge that:

- 18.1.1 the Provider has ultimate responsibility for the management and control of the Services provided under the Call-Off Contract for the purposes of safeguarding vulnerable adults and children.
- 18.1.2 The Provider has a duty of care to ensure that there are adequate safeguarding processes and checks in place for all Call-Off Contracts and to carry out with all due care and diligence the responsibilities under all relevant safeguarding legislation, regulations and guidance for the protection of children and vulnerable adults; and

- 18.1.3 performance of the Services may require the Provider's Staff to work on duties involving contact with vulnerable member of the public, in a position which may require satisfactory Disclosure and Barring Service (DBS) clearance.
- 18.2 The Provider shall:
- 18.2.1 Where the delivery of the Services include activity that is defined as a "regulated activity" under the Safeguarding Vulnerable Groups Act 2006 complete such standard or enhanced DBS checks (including checks against the adults or children's barred list) (as appropriate and identified in the Call-Off Specification) as required by the Safeguarding Vulnerable Groups Act 2006; and
- 18.2.2 Carry out all appropriate standard and/or enhanced DBS checks for all Provider Staff based on the Provider's own assessment of job requirements and having regard to clause 18.2.1.
- 18.3 The Provider must have policies and procedures which acknowledge and provide for on-going monitoring of personnel, including undertaking further DBS disclosures and shall not employ or use the services of any person who whose previous conduct or records indicate that he or she would not be suitable or who may otherwise present a risk to any person receiving the Services.
- 18.4 The Provider shall immediately supply the Council with any information that it reasonably requests to enable the Council to be satisfied that the obligations of this clause have been met.
- 18.5 The Provider shall refer information about any person to the DBS where the Provider removes permission for such person to have contact with any person receiving the Services (or would have, if such person had not otherwise ceased to have such contact) because, in its opinion, such person has harmed or poses a risk of harm to any person receiving the Services.
- 18.6 The Provider shall have in force and shall maintain a safeguarding of adults at risk and children policy which shall comply with the principles and procedures laid down in the policies cited in the following clause 18.7.
- 18.7 The Provider shall comply with the multi-agency "Hampshire and IOW 4LSAB Multi-Agency Safeguarding Adults Policy and Guidance" (updated 2016 in line with changes to Care Act 2014) and with the 'Local Safeguarding Children Board's online procedures' recognising the duty that all providers have to safeguard adults and children as laid out in the Government guidance 'No Secrets 2000' and 'Working Together to Safeguard Children 2015'. These policies can be viewed at:
http://www.hampshiresab.org.uk/professionals-area/hampshire_4lsab_multiagency_safeguarding_adults_policy_guidance/
<http://4lscb.proceduresonline.com/hampshire/index.html>
<http://www.hampshiresafeguardingchildrenboard.org.uk/>
<http://www.workingtogetheronline.co.uk/>

and collectively known as “**Multi-Agency Safeguarding Policy**” for the purposes of this clause.

18.8 The Provider shall have in place a robust safeguarding training programme for all Provider personnel (including volunteers) appropriate to their level of responsibility, and, as a minimum standard, they will reflect the outcomes identified for the relevant safeguarding courses in the Council’s training programmes. The Provider shall maintain appropriate records of training for the Council’s audit purposes and shall ensure all Provider personnel receives refresher training in respect of safeguarding at least every two years.

18.9 The Provider shall:

18.9.1 At all times co-operate with the Council’s process for inspection, monitoring, evaluations, quality audit and safeguarding in whatever way is reasonably requested by the Council and where necessary under the Multi-Agency Safeguarding Policy.

18.9.2 Ensure that its Staff do not abuse, harm, or exploit any person receiving the Services or their representatives; and

18.9.3 Establish clear policies to deal with dangerous, exploitative or unsafe behaviour and practice and provide training to all the Provider Staff to develop appropriate skills or knowledge; and

18.9.4 shall have in place and shall have implemented robust up-to-date procedures (including whistleblowing policy and recruitment checks) for avoiding and responding to:

- a) actual or suspected physical, sexual,
- b) psychological, financial or material abuse,
- c) discriminatory abuse,
- d) domestic abuse,
- e) organisational abuse,
- f) modern slavery,
- g) self neglect and acts of neglect or omission.

And such procedures shall be reviewed at last once every year.

18.10 The Provider shall ensure that its disciplinary procedures are compatible with the responsibility to protect adults at risk or children. This will include making provision to suspend a member of Staff, for example, pending the outcome of a safeguarding investigation. It should be noted that suspension may be in the best interests of the individual and/or the alleged victim of abuse. Decisions on suspension from duty will be the outcome of a risk assessment, which process will incorporate consideration of the potential harms/dangers to the individual/individuals concerned. The Provider must take account of applicable employment law. Decisions on whether or not to

suspend an individual will be the responsibility of the Provider and must be fully documented by them and communicated to the Council in writing within 24 hours.

18.11 The Council may require the Provider's Staff to be withdrawn and an acceptable person substituted in the event of:

18.11.1 The Provider failing to comply with the provisions set out in this clause in relation to the protection of vulnerable adults and children; or

18.11.2 The Provider's Staff refuses to complete a disclosure statement or application; or

18.11.3 The disclosure at any stage of information that in the reasonable opinion of the Council renders the Provider's Staff unsuitable for the work involved; and

18.11.4 Any such decision by the Council will be taken in compliance with the Rehabilitation of Offenders Act 1974 (Exception) Order 1975.

18.12 In the event that a safeguarding enquiry is initiated by the Council it will be conducted in accordance with the Multi-Agency Safeguarding Policy. For the avoidance of doubt the Council shall be under no obligation to provide prior written or other notification of a safeguarding enquiry by the Council to the Provider.

18.13 The Provider undertakes a duty to complete any safeguarding enquiry required by the Council and to co-operate with any safeguarding enquiry which the Council or other applicable professional or regulatory body may carry out in relation to a complaint referred to them.

Prevent Duty

18.14 The Provider is to have regard to its obligations under the Prevent Duty contained within the Counter-Terrorism and Security Act 2015 and Prevent Duty Guidance for England and Wales and or Prevent Duty Guidance for Further Education Institutions in England and Wales together with associated guidance and advisory documents (the "**Prevent Duty**") and must not be engaged in any extremist activity or espouse extremist views. In addition the Provider must:

18.14.1 protect children and vulnerable people from being drawn into terrorism by having robust safeguarding policies in place to identify children at risk, and intervening as appropriate;

18.14.2 assess the risk of children and vulnerable people being drawn into terrorism, including support for extremist ideas that are part of terrorist ideology. This should be based on an understanding, shared with partners, of the potential risk in the local area;

18.14.3 ensure staff have a good understanding of the Prevent Duty and are trained to recognise vulnerability to being drawn into terrorism and are aware of available programmes to deal with this issue (like Channel);

18.14.4 ensure staff are aware of and know how to contribute to Prevent-related

activity in their area where appropriate;

18.14.5 ensure the Prevent Duty is considered in other relevant policies like IT policies, use of premises.

18.15 A breach of clause 18.14 may be considered a material breach and the Council reserves the right to terminate the Call-off Contract should the Provider fail to comply with its obligations under clause 18.14.

Modern Slavery

18.16 The Provider undertakes, warrants and represents that:

18.16.1 Neither the Provider nor its officers, employees, agents or Sub-Contractors:

- a) Has committed an offence under the Modern Slavery Act 2015; or
- b) Has been notified that it is subject to an investigation relating to an alleged offence or prosecution under the Modern Slavery Act 2015; or
- c) Is aware of any circumstances within its supply chain that could give rise to an investigation relating to an alleged offence or prosecution under the Modern Slavery Act 2015;

18.16.2 it shall comply with the Modern Slavery Act 2015 and the Council's Modern Slavery Statement which can be found at: <https://documents.hants.gov.uk/aboutthecouncil/Modern-Slavery.pdf>

18.16.3 it shall notify the Council immediately in writing if it becomes aware or has reason to believe that it, or any of its officers, employees, agents or Sub-Contractors have, breached or potentially breached any of the Provider's obligations under this Clause. Such notice to set out full details of the circumstances concerning the breach or potential breach of the Provider's obligations.

18.17 A breach of clause 18.16 may be considered a material breach and the Council reserves the right to terminate the Call-off Contract should the Provider fail to comply with its obligations under clause 18.16.

19 RISK, PROPERTY AND TITLE

19.1 All equipment, and materials owned by or hired or leased by or on loan to the Provider other than that provided by the Council intended to be used in the performance of the Services and stored on the Council's premises shall be deemed to be the property of the Provider and shall be stored on the premises at the sole risk of the Provider.

19.2 The Provider shall remove all equipment, and materials within such reasonable time after the end of the Order Period as may be allowed by the Authorised Officer, failing which the Council may:

19.2.1 Sell any which are the property of the Provider; and

- 19.2.2 Return any which are not the property of the Provider to the owner thereof at the Provider's expense; and
- 19.2.3 After deducting from any proceeds of sale the costs, charges and expenses of and in connection with such sale and of and in accordance with return as aforesaid shall pay the balance (if any) to the Provider but to the extent that the proceeds of any sales are insufficient to meet all such costs, charges and expenses the excess shall be a debt due from the Provider to the Council and shall be deductible or recoverable by the Council from any monies due or that may become due to the Provider under the Call-Off Contract or may be recovered by the Council from the Provider at law.
- 19.3 The Council shall not at any time be liable for the loss or damage to any of the Provider's equipment, or materials. Provided, however, that this condition shall not be applied if the Provider can show negligence on the part of the Council or other providers undertaking work on behalf of the Council. The Council will in no circumstances be responsible for any act of vandalism.
- 19.4 The operation of this Clause shall not be deemed to imply any approval by the Authorised Officer of the materials, or other matters referred to herein nor shall it prevent the rejection of any such materials or foods at any time by the Authorised Officer.

20 RETENDERING AND HANDOVER

- 20.1 Subject to clause 11 of the Open Framework Agreement (*Confidentiality*) and clause 25 of these Call-Off Terms and Conditions (*Data Protection*) the Provider shall provide at the Council's reasonable request the information set out in Appendix A to these Call-Off Terms and Conditions and such other information and data as the Council may reasonably require to enable the Council to prepare the necessary documentations to carry out a procurement process or to appoint a Replacement Supplier to provide the Services in place of the Provider.
- 20.2 The Parties agree that the provisions of Appendix A to these Call-Off Terms and Conditions shall apply to any Relevant Transfer of Staff under the Call-Off Contract.

21 LIABILITY, INDEMNITY AND INSURANCE

- 21.1 Subject to clause 21.2, the Provider shall indemnify and keep indemnified the Council against all actions, proceedings, claims, demands, liabilities, costs, expenses, damages and losses whatsoever whether arising in tort (including negligence) default or breach of contract, including but without limitation:
- 21.1.1 the Provider's breach or negligent performance or non-performance of this Call-Off Contract;
- 21.1.2 any claim made against the Council arising out of or in connection with the provision of the Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of this Call-Off Contract by the Provider or its Staff;

- 21.1.3 the enforcement of this Call-Off Contract;
 - 21.1.4 any breach of the warranties contained in clause 17;
 - 21.1.5 any breach of its obligations set out in clause 11 of the Open Framework Agreement (*Confidentiality*), 25 (*Data Protection*) and 32.1(*Intellectual Property Rights*) and Appendix A (*TUPE*) to the Call-Off Contract;
 - 21.1.6 any claim made by any employee or agent of the Provider, whether as to the terms of employment or any other matter.
- 21.2 The indemnity under clause 21.1 shall apply except insofar as the liabilities, costs, expenses, damages and losses incurred by the Council are directly caused (or directly arise) from the negligence or breach of this Call-Off Contract by the Council.
- 21.3 Subject to clauses 21.5.1 and 21.6, neither Party shall be liable to the other Party (as far as permitted by Law) for indirect, special or consequential loss or damage in connection with this Call-Off Contract which shall include, without limitation, any loss of or damage to profit, revenue, contracts, anticipated savings, use, goodwill or business opportunities whether direct or indirect.
- 21.4 Each Party shall at all times take all reasonable steps to minimise and mitigate any loss or damage for which the relevant Party is entitled to bring a claim against the other Party pursuant to this Call-Off Contract.
- 21.5 Subject to clause 21.6, the Provider's total annual aggregate liability under the Call-Off Contract:
- 21.5.1 Is unlimited in respect of:
 - a) The indemnities in clause 11 of the Open Framework Agreement (*Confidentiality*) and clauses 14.5 (*Payment of VAT*), 32.1 (*Intellectual Property Rights*), and 35 (*Taxation and National Insurance*) and Appendix A (*TUPE*) of the Call-Off Contract; and
 - b) Any claim made by any employee or agent of the Provider, whether as to the terms of employment or any other matter; and
 - c) The Provider's wilful Default;
 - 21.5.2 In respect of any breaches of its obligations under clause 25 (*Data Protection*) shall exceed £10,000,000 per Year;
 - 21.5.3 In respect of all other claims, losses or damages, whether arising from tort (including negligence), breach of statutory duty, breach of contract or otherwise in connection with this Call-Off Contract, shall in no event exceed £250,000 per Year **OR** 125% of the Price payable per Year under the Call-Off Contract, whichever is the greater.
- 21.6 Notwithstanding any other provision of the Open Framework Agreement or Call-Off Contract, neither Party limits nor excludes its liability for:
- 21.6.1 Fraud or fraudulent misrepresentation;

- 21.6.2 Death or personal injury caused by its negligence, or that of its Staff, agents or Sub-Contractors;
 - 21.6.3 Breach of any obligations as to title implied by statute; or
 - 21.6.4 Any other act or omission, liability for which may not be limited under any applicable Law.
- 21.7 Nothing in this Call-Off Contract shall impose any liability on the Council in respect of any liability incurred by the Provider to any other person, but this shall not be taken to exclude or limit any liability of the Council to the Provider that may arise by virtue of either a breach of the Call-Off Contract or by negligence on the part of the Council or the Council's employees, servants or agents.
- 21.8 Without prejudice to its liability to indemnify the Council, the Provider shall effect and maintain policies of insurance to provide the level of cover sufficient for all risks which may be incurred by the Provider under the Call-Off Contract including death or personal injury or loss of or damage to property, and shall effect the following insurances for the duration of the Call-Off Contract:
- 21.8.1 Employer's Liability Insurance Policy of not less than five million pounds sterling (£5,000,000.00) in relation to any one claim or series of claims.
 - 21.8.2 Professional Indemnity Insurance Policy of not less than two million pounds sterling (£2,000,000.00) in relation to any one claim or series of claims. In respect of professional indemnity insurance, insurance policies shall be maintained in place for a minimum period of six (6) years following expiry of the Call-Off Contract.
 - 21.8.3 Public Liability Insurance Policy of not less than five million pounds sterling (£5,000,000.00) in relation to any one claim or series of claims.
- 21.9 The Provider shall not cause or permit any breach of such insurance policy.
- 21.10 Any excess or deductibles under such insurance referred to above shall be the sole and exclusive responsibility of the Provider.
- 21.11 The Provider shall immediately notify the Council and the Provider's insurers of any happening or event which may give rise to any claim, demand, proceedings, damage, cost or charge whatsoever arising out of the Call-Off Contract, and the Provider shall indemnify the Council against any loss whatsoever which may be occasioned to the Council by the Provider's failure to give such notification.
- 21.12 The Provider shall provide evidence of such insurance policies to the Council upon the Council's request.
- 21.13 Where the Council agrees the employment by the Provider of a Sub-Contractor then the clauses above, relating to insurance, must form part of the Sub-Contract between the Provider and Sub-Contractor.

22 DISRUPTION

- 22.1 The Provider shall take reasonable care to ensure that in the performance of its obligations under the Call-Off Contract it does not disrupt the operations of the Council, its employees or any other supplier employed by the Council.
- 22.2 The Provider shall immediately inform the Council of any actual or potential industrial action, whether such action be by their own employees or others, which affects or might affect its ability at any time to perform its obligations under the Call-Off Contract.
- 22.3 In the event of industrial action by the Staff, the Provider shall seek the Council's written approval to its proposals for the continuance of the supply of the Services in accordance with its obligations under the Call-Off Contract.
- 22.4 If the Provider's proposals referred to in clause 22.3 are considered insufficient or unacceptable by the Council acting reasonably then the Council may:
- 22.4.1 require the Provider to provide alternative proposals; or
- 22.4.2 undertake the Services itself or procure the supply of the Services and charge the Provider for and the Provider shall pay any costs reasonably incurred by the Council (including any reasonable administration costs) in respect of the supply of any part of the Services by the Council or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Provider for such part of the Services and provided that the Council uses its reasonable endeavours to mitigate any additional expenditure in obtaining Replacement Services.
- 22.5 Subject to clause 22.6, nothing in this clause shall release the Provider from the proper performance of its obligations under the Call-Off Contract.
- 22.6 If the Provider is temporarily unable to fulfil the requirements of the Call-Off Contract owing to disruption of normal business by direction of the Council, an appropriate allowance by way of extension of time will be approved by the Council. In addition, the Council will reimburse any additional expense reasonably incurred by the Provider as a direct result of such disruption.

23 TERMINATION

- 23.1 The Council may at any time by notice in writing terminate the Call-Off Contract as from the date of service of such notice if:
- 23.1.1 the Provider suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 (IA 1986) as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the IA 1986 OR (being an individual) is deemed either unable to pay their debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the IA 1986 OR (being a partnership) has any partner to

whom any of the foregoing apply; or

- 23.1.2 the Provider commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with any of its creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of the Provider with one or more other companies or the solvent reconstruction of the Provider; or
- 23.1.3 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Provider (being a company, limited liability partnership or partnership) other than for the sole purpose of a scheme for a solvent amalgamation of the Provider with one or more other companies or the solvent reconstruction of the Provider; or
- 23.1.4 an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Provider (being a company, partnership or limited liability partnership), or the Provider applies to court for, or obtains, a moratorium under Part A1 of the Insolvency Act 1986; or
- 23.1.5 the holder of a qualifying floating charge over the assets of the Provider (being a company or limited liability partnership) has become entitled to appoint or has appointed an administrative receiver;
- 23.1.6 a person becomes entitled to appoint a receiver over all or any of the assets of the Provider or a receiver is appointed over all or any of the assets of the Provider;
- 23.1.7 a creditor or encumbrancer of the Provider attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Provider's assets and such attachment or process is not discharged within 14 days;
- 23.1.8 any event occurs, or proceeding is taken, with respect to the Provider in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clauses 23.1.1 to 23.1.7 (inclusive);
- 23.1.9 the Provider suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;
- 23.1.10 the Provider's registration with the Regulatory Body is suspended or terminated under clause 3.12.

23.2 The Provider shall notify the Council immediately is the Provider undergoes a change of control within the meaning of section 1124 of the Corporation Tax Act 2010 ("**Change of Control**"). The Council may terminate the Call-Off Contract by giving notice in writing to the Provider with immediate effect within six months of:

- 23.2.1 Being notified that a Change of Control has occurred; or
- 23.2.2 Where no notification has been made, the date that the Council becomes aware of the Change of Control,

but shall not be permitted to terminate where written approval was granted before the Change of Control.

23.3 The Council may terminate the Call-Off Contract with immediate effect where:

23.3.1 The Provider commits a Call-Off Material Default and:

- a) The Provider has not remedied the Call-Off Material Default to the satisfaction of the Council within three (3) Working Days, or such other period as may be specified by the Council, of receipt of written notice of the Call-Off Material Default and requesting it to be remedied; or
- b) The Call-Off Material Default is not in the Council's reasonable opinion, not capable of remedy; or

23.3.2 Any warranty given under clause 17 (*Warranties and Representations*) is found to be untrue or misleading; or

23.3.3 The Council terminates the Provider's appointment to the Open Framework as a consequence of the Provider's default or breach of the Open Framework Agreement.

23.4 The Council may at any time by notice in writing terminate the Call-Off Contract if the Provider is in Default of any obligation under this Call-Off Contract and:

23.4.1 the Default is capable of remedy and the Provider shall have failed to remedy the Default within thirty (30) days of written notice to the Provider specifying the Default and requiring its remedy; or

23.4.2 the Default is not capable of remedy.

23.5 Termination in accordance with this clause or otherwise shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to any party.

23.6 If the Council fails to pay the Provider undisputed sums of money when due, the Provider shall notify the Council in writing of such failure to pay. If the Council fails to pay such undisputed sums within thirty (30) Working Days of the date of such written notice, the Provider may terminate the Call-Off Contract in writing with immediate effect, except that such right of termination shall not apply where the failure to pay is due to the Council exercising its rights under clause 11.

23.7 Following termination of the Call-Off Contract the Provider shall continue to fulfill such other Call-Off Contracts that maybe outstanding or that it may receive in accordance with the Open Framework Agreement up to the date of termination.

24 CONSEQUENCES OF TERMINATION OR EXPIRY

24.1 Where the Council terminates the Call-Off Contract under clauses 11.6, 23.1, 23.2

or 23.3 and then makes other arrangements for the supply of Services, the Council may recover from the Provider the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Council throughout the remainder of the Order Period. The Council shall take all reasonable steps to mitigate such additional expenditure. Where the Call-Off Contract is terminated under clauses 11.6, 23.1, 23.2 or 23.3, no further payments shall be payable by the Council to the Provider until the Council has established the final cost of making those other arrangements.

24.2 Except as otherwise expressly provided in this Call-Off Contract:

24.2.1 termination or expiry of the Call-Off Contract shall be without prejudice to any rights, remedies or obligations of either Party accrued under the Call-Off Contract before termination or expiration and nothing in the Call-Off Contract shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry; and

24.2.2 the provisions of clauses 8 (*Price*), 10 (*Recovery of Sums Due*), 11 (*Remedies for Inadequate Performance*), 14 (*Payment*), 21 (*Liability, Indemnity and Insurance*), 22 (*Disruption*), 24 (*Consequences of Termination or Expiry*), 26 (*Replacement of Corrupted Data*), 29 (*Intellectual Property Rights*), and 33 (*Taxation and National Insurance*) shall remain in full force and effect and survive the termination or expiry of the Call-Off Contract, together with any other provision which is either expressed to or by implication is intended to survive termination or expiry.

24.3 On termination or expiry of the Call-Off Contract, the Provider shall:

24.3.1 immediately return to the Council all Confidential Information, Personal Data and all information and documents relating to the Council's Intellectual Property Rights in its possession or in the possession or under the control of any permitted suppliers or Sub-Contractors, which was obtained or produced in the course of providing the Services;

24.3.2 assist and co-operate with the Council to ensure an orderly transition of the provision of the Services to any Replacement Supplier and/or the completion of any work in progress; and

24.3.3 promptly provide all information concerning the provision of the Services which may reasonably be requested by the Council for the purposes of adequately understanding the manner in which the Services have been provided or for the purpose of allowing the Council or the Replacement Supplier to conduct due diligence.

24.4 If the Provider fails to comply with clause 24.3.1, the Council may recover possession thereof and the Provider grants a licence to the Council or its appointed agents to enter (for the purposes of such recovery) any premises of the Provider or its permitted suppliers or Sub-Contractors where any such items may be held.

24.5 The Provider shall provide all assistance under this clause free of charge.

25 DATA PROTECTION

25.1 The Parties acknowledge and shall comply with their obligations under the relevant Data Protection Legislation in force at the time.

25.2 The Parties acknowledge that the data protection clauses relevant to the Call-Off Contract shall be set out in Part 2 of Annex 3 to the Order Form.

25.3 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Council may on not less than thirty (30) Working Days' notice to the Provider amend this clause and the clauses set out in Part 2 of Annex 3 to the Order Form to ensure that it complies with any guidance issued by the Information Commissioner's Office.

26 REPLACEMENT OF CORRUPTED DATA

26.1 If through any Default of the Provider data transmitted or processed in connection with a Call-Off Contract is either lost or sufficiently degraded as to be unusable, the Provider shall be liable for the cost of the recovery or reconstitution of that data and shall reimburse the Council in respect of any charge levied for its transmission and any other costs charged in connection with such Default.

27 FORCE MAJEURE AND ALTERNATE PROVISION OF THE SERVICES

27.1 Provided that it has complied with the provisions of clause 28.3, if a Party is prevented, hindered or delayed in or from performing any of its obligations under this Call-Off Contract (the "**Affected Party**") as a result of acts, events, omissions or accidents beyond its reasonable control ("**Force Majeure Event**"), the Affected Party shall not be in breach of the Call-Off Contract or otherwise liable for any such failure or delay in the performance of such obligations and the time for the performance of such obligations shall be extended accordingly. "**Force Majeure Event**" shall include but is not limited to any of the following:

27.1.1 Acts of God, including but not limited to fire, flood, earthquake, windstorm, extreme adverse weather conditions or other natural disaster;

27.1.2 war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, breaking off of diplomatic relations or similar actions;

27.1.3 terrorist attack, civil war, civil commotion or riots;

27.1.4 pandemic or epidemic (excluding Covid-19).

27.2 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.

27.3 The Affected Party shall:

27.3.1 as soon as reasonably practicable after the start of the Force Majeure Event but no later than three (3) Working Days from its start, notify the other Party

in writing of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the Agreement; and

27.3.2 use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.

27.4 If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than thirty (30) calendar days, the Party not affected by the Force Majeure Event may terminate this Agreement by giving fourteen (14) calendar days' written notice to the Affected Party.

28 SERVICE OF NOTICES

28.1 Any notice or other communication required to be given under this Call-Off Contract, shall be in writing and shall be delivered personally, by email, or sent by pre-paid first-class post or recorded delivery or by commercial courier, to each party required to receive the notice or communication at its address as set out on the Order Form.

28.2 Any notice or other communication shall be deemed to have been duly received:

28.2.1 if sent electronically on a Working Day, deemed delivery shall be the Working Day of sending; or

28.2.2 if sent electronically on a non- Working Day, deemed delivery shall be the next Working Day;

28.2.3 if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;

28.2.4 if sent by pre-paid first-class post or other next Working Day delivery service, at 9.00 am on the second Working Day after posting or at the time recorded by the delivery service.

28.3 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

29 INTELLECTUAL PROPERTY RIGHTS

29.1 The Intellectual Property Rights in the Pre-Existing Data shall remain with the owner of such and neither party shall acquire any right, title or interest in the other party's Pre-Existing Data. Each party shall grant to the other party a royalty-free, non-exclusive, non-assignable, revocable licence to use the Pre-Existing Data solely for the purposes of the performance of the Services under this Call-Off Contract~~all contents and/or documents produced by or on behalf of the Provider in the performance of the Services shall vest in the Council.~~

29.2 In the absence of prior written agreement by the Council to the contrary, all Intellectual Property Rights created by or for the Provider or any employee, agent or sub-contractor of the Provider on behalf of the Council for use or intended use in the course of performing the Services or exclusively for the purpose of performing

~~the Services, shall vest in the Provider upon creation. The Provider shall at any time during or after the Call-Off Contract execute all documents and do all acts and things necessary to obtain or maintain in any part of the world any Intellectual Property Rights or other protection in respect of the documents produced by or on behalf of the Provider in the performance of the Services. Alternatively the Provider shall vest the documents produced by or on behalf of the Provider in the performance of the Services in the Council or as the Council directs.~~

29.3 ~~The Provider hereby grants to the Council a non-exclusive, royalty-free, non-assignable licence to use all Intellectual Property Rights prepared in accordance with clause 29.2 above solely for the purpose of the performance of the Services under this Call-Off Contract. Where the Provider utilises the Intellectual Property Rights of any third party in carrying out the Services the Provider warrants that it has full capacity and authority to utilise such Intellectual Property Rights.~~

29.4 If appropriate the Provider shall:

29.4.1 use all reasonable efforts to procure the right to grant to the Council a sub-licence to use any third party Intellectual Property Rights, and by the entering into this Call-Off Contract, shall grant such sub-licence (which shall be perpetual and irrevocable); or

29.4.2 if the Provider is unable to procure the right to grant the sub-licence referred to in Clause 29.4.1 the Provider shall use its best endeavours to procure that the third party grants to the Council a licence to use the third party Intellectual Property Rights provided that the terms of any sub-licence (which shall be perpetual and irrevocable) shall not detract from the rights granted to the Council under the Call-Off Contract.

29.5 ~~The Provider warrants to the Council that the Intellectual Property created by its representatives, employees, agents or sub-contractors in relation to the provision of the Services will not infringe any third party's Intellectual Property Rights. The Intellectual Property Rights in the Pre-Existing Data shall remain with the owner of such. Each party shall grant to the other party a royalty free right to use the Pre-Existing Data solely for the purposes of the Call-Off Contract.~~

30 INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS

30.1 The Provider shall fully indemnify and hold the Council harmless against all actions, claims, demands, proceedings, costs, charges and expenses (including legal fees on an indemnity basis) arising from or incurred by reason of any infringement or alleged infringement of any letters patent, designs registered or unregistered, copyright, trade mark, trade name or other Intellectual Property Rights including any wrongful use of Confidential Information arising as a result of the Council's use, possession or reproduction of the results or arising in any other way from the Provider's provision of the Services subject to:

30.1.1 the Council as appropriate promptly notifying the Provider of any alleged infringement and, subject to Clause 30.1.3 below, allowing the Provider at

its own expense to conduct all negotiations for settlement or litigation;

30.1.2 the Council as appropriate making no admission without the Provider's written consent unless and until the Provider shall have failed to take over conduct of the negotiations or litigation;

30.1.3 the conduct of the Provider of such negotiations or litigation shall be conditional upon the Provider having given the Council such reasonable security as the Council may require for the compensation, damages costs and expenses for which the Council may become liable.

30.2 The Council at the Provider's expense shall give the Provider all available assistance.

30.3 If the Services or any part thereof becomes, or in the Provider's reasonable opinion is likely to become, subject to any such action for infringement then, in addition to the indemnity under Clause 30.1, the Provider shall at its own expense negotiate to obtain the right for the Council to continue to use the infringing items, if necessary by replacing, removing or modifying them, but without reducing their quality or ability to meet the Council's requirements as specified by the Order Form.

30.4 The Provider shall indemnify the Council against all losses, costs, damages and expenses whatsoever during the period that the Council is deprived of the Services or any part thereof by reason of such negotiations, replacements or modifications the outcome of which will be confirmed by notice in writing to the Council which shall not entitle the Provider to any addition to the Price or any extension of the Call-Off Contract lead time.

30.5 Each party shall indemnify the other against all claims, demands, actions, costs, expenses, losses and damages arising from or incurred as a result of any infringement or alleged infringement of any Intellectual Property Rights in relation to the other party's use of its pre-existing data in accordance with the terms of this Call-Off Contract.

31 EQUALITIES AND DIVERSITY

31.1 The Provider agrees that there shall be no discrimination by it against any person with respect to opportunity for employment or conditions of employment, because of gender, disability, age, ethnic or national origin, marital status, religious creed, sexuality, responsibility for dependents or trade union activity.

31.2 The Provider shall in all matters arising in the performance of the Call-Off Contract conform with the provisions of the Equality Act 2010, Race Relations (Amendment) Act 2000 and any regulations made there under with due regard to the need to eliminate unlawful racial discrimination, and to promote equality, opportunity and good relationships between different racial groups.

31.3 The Provider shall, at all times, be responsible for and take all such precautions as are necessary to protect the health and safety of all employees, volunteers and any other persons involved in, or receiving the Services from, the performance of the

Call-Off Contract and shall comply with the requirements of the Health and Safety at Work Etc. Act 1974 and any other Act or Regulation relating to the health and safety of employed persons and any amendment or re-enactment thereof.

31.4 The Council shall be entitled at the Council's expense to inspect such books, accounts and records belonging to the Provider as are necessary to demonstrate compliance with the Call-Off Contract.

31.5 The cost to the Provider in meeting the requirements of this clause shall be included in the Price.

32 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

32.1 Unless it expressly states otherwise, this Call-Off Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Call-Off Contract.

32.2 The rights of the Parties to rescind or vary this Call-Off Contract are not subject to the consent of any other person.

33 TAXATION AND NATIONAL INSURANCE

33.1 The Parties acknowledge and agree that the Call-Off Contract constitutes a contract for the provision of Services and not a contract of employment. The Provider shall at all times indemnify the Council and keep the Council indemnified in full from and against all claims, proceedings, actions, damages, costs, expenses, liabilities and demands whatsoever and howsoever arising by reason of any circumstances whereby the Council is alleged or determined to have assumed or been imposed with the liability or responsibility for the Staff (or any of them) as an employer of the Staff and/or any liability or responsibility to HM Revenue & Customs as an employer of the Staff whether during the Order Period or arising from termination or expiry of the Call-Off Contract.

34 DEED OF GUARANTEE

34.1 If the Provider is a subsidiary Company within the meaning of Section 1159 of the Companies Act 2006 and where the Council so requires under the Call-off Specification or at any time as the Council may reasonably require, the Provider may be required to provide a Guarantee by the holding company or companies to secure the due performance by the Provider of its obligations to the Council.

35 CALL-OFF CONTRACT VARIATION

35.1 Subject to clause 36.2, this Call-Off Contract shall not be varied or amended unless such variation or amendment is agreed in writing by a duly authorised representative of the Council on behalf of the Council and by a duly authorised representative of the Provider on behalf of the Provider in accordance with the Variation Procedure.

35.2 In the event that the Council receives additional external funding in relation to services of the same or similar nature to the Services provided under an existing Call-Off Contract, the Call-Off Contract may be varied to extend the scope of the

Services being provided so as to incorporate such additional external funding and procure additional services of the same or similar nature to the Services provided for in the Call-Off Specification.

35.3 The Council may amend the Call-Off Contract in the event of (but shall not be limited to) the following circumstances:

35.3.1 In the event of changes to the industry standards in place at the commencement of the Call-Off Contract, such amendments as may be required to ensure that the Services are delivered in accordance with such changed industry standards;

35.3.2 changes to the UK Government's funding bands as established by the Education and Skills Funding Agency or such other successors body.

36 NO PARTNERSHIP OR AGENCY

36.1 At all times during the Order Period the Provider shall be an independent service provider and nothing in the Call-Off Contract shall create a contract of employment, a relationship of agency or partnership or a joint venture between the Parties and, accordingly, neither Party shall be authorised to act in the name of, or on behalf of, or otherwise bind the other Party except as expressly permitted by the terms of the Call-Off Contract.

37 WAIVER

37.1 The failure of either party to insist upon strict performance of any provision of this this Call-Off Contract or the failure of either party to exercise any right or remedy to which it is entitled hereunder, shall not constitute a waiver thereof and shall not cause a diminution of obligations established by this this Call-Off Contract.

37.2 A waiver of any Default shall not constitute a waiver of any subsequent Default.

37.3 No waiver of any of the provisions of this this Call-Off Contract shall be effective unless it is expressly stated to be a waiver and communicated to the other party in writing in accordance with the provisions of clause 28.

38 ENTIRE AGREEMENT

38.1 The Open Framework Agreement, these Call-Off Contract Terms and Conditions and the Order Form, together with the annexes, schedules, appendices and the documents appended or otherwise referred to constitute the entire agreement between the Provider and the Council for the Services set out in the Order Form and supersede and extinguish all previous and contemporaneous agreements, promises, assurances and understandings between them, whether written or oral, relating to its subject matter.

38.2 Each Party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Call-Off Contract. Each Party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any

statement in this Call-Off Contract.

38.3 Nothing in this clause shall limit or exclude any liability for fraud.

39 GOVERNING LAW AND JURISDICTION

39.1 The Call-Off Contract and any dispute or claim arising out of or in connection with it or its subject matter shall be governed by and construed in accordance with the law of England and Wales.

39.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any claim or dispute that arises out of or in connection with the Call-Off Contract or its subject matter.

APPENDIX A – TUPE

1 INTERPRETATION

1.1 The definitions and rules of interpretation in this paragraph 1 apply in this Appendix A.

“Acquired Rights Directive”	means Directive 77/187/EEC as amended and updated.
“Employed In Connection With”	means employed by the Provider (or its Sub-Contractor(s) if relevant) solely or mainly (i.e. more than 50% of their working time) in the delivery of the provision of the Services under the Call-Off Contract;
“Employee Liability Information”	<p>means the information that a Transferor is obliged to notify to a Transferee under Regulation 11(2) of TUPE:</p> <ul style="list-style-type: none"> (a) the identity and age of the employee; (b) the employee's written statement of employment particulars (as required under section 1 of the Employment Rights Act 1996); (c) information about any disciplinary action taken against the employee and any grievances raised by the employee, where a Code of Practice issued under Part IV of the Trade Union and Labour Relations (Consolidation) Act 1992 relating exclusively or primarily to the resolution of disputes applies, within the previous two (2) years; (d) information about any court or tribunal case, claim or action either brought by the employee against the Transferor within the previous two (2) years or where the Transferor has reasonable grounds to believe that such action may be brought against the Provider arising out of the employee's employment with the Transferor.
“Employment Liabilities”	means all claims, including without limitation claims for redundancy payments, unlawful deduction of wages, unfair, wrongful or constructive dismissal compensation, compensation for sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy or maternity, or sexual orientation discrimination, claims for equal pay, compensation for less favourable treatment of part-time workers, and any claims (whether in tort, contract, statute or otherwise), demands, actions, proceedings and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs and expenses reasonably incurred in connection with a claim or investigation (including any investigation by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body), and of implementing any requirements which may arise from such investigation, and any legal costs and expenses;
“Provider’s Final Staff List”	means the list of all the Provider’s and Sub-Contractor’s personnel engaged in, or wholly or mainly assigned to, the provision of the Services or any part of the Services at the Service Transfer Date;
“Provider’s Provisional Staff”	means the list prepared and updated by the Provider of all the Provider’s and Sub-Contractor’s personnel engaged in, or wholly or

List	mainly assigned to, the provision of the Services or any part of the Services at the date of the preparation of the list, and in the format requested by the Council;
“Redundancy Costs”	means statutory redundancy payments, contractual redundancy payments and contractual notice pay payable by the Provider in respect of its own Staff;
“Relevant Employees”	means those employees who are Employed in Connection With the Services and whose contracts of employment transfer with effect from the Service Transfer Date to the Council or a Replacement Provider by virtue of the application of TUPE;
“Relevant Transfer”	means a relevant transfer of the Services for the purposes of TUPE, including upon or as a result of expiry or termination of the Call-Off Contract;
“Relevant Transfer Date”	in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place;
“Service Transfer Date”	means the date on which the Services (or any part of the Services), transfer from the Provider or Sub-contractor to the Council or any Replacement Supplier;
“Staffing Information”	means in relation to all persons detailed on the Provider’s Provisional Staff List, in an anonymised format, such information as the Council may reasonably request including the Employee Liability Information and details of whether the personnel are employees, workers, self-employed, contractors or consultants, agency workers or otherwise, and the amount of time spent on the provision of the Services;
“Subsequent Transfer”	means, following the commencement of the Call-Off Contract, circumstances whereby the identity of the provider of the Services (or any part of the Services) changes (whether as a result of termination of this Call-Off Contract, or part or otherwise) resulting in a transfer of the Services in whole or in part from the Provider to the Council or Replacement Supplier;
“Transferor” and “Transferee”	has the meaning given in TUPE;
“TUPE Information”	has the meaning given in paragraph 2.6;

1.2 All other words, terms and expressions used in this Appendix A shall have the meanings given to them in clause 1 of the Open Framework Agreement and the Call-Off Terms and Conditions.

1.3 Where a provision in this Appendix imposes an obligation on the Provider to provide an indemnity, undertaking or warranty, the Provider shall procure that each of its Sub-Contractors shall comply with such obligation and provide such indemnity, undertaking or warranty to the Council, Replacement Supplier or replacement Sub-Contractor, as the case may be.

1.4 Notwithstanding any other provisions of this Appendix A, where in this Appendix A the Council accepts an obligation to procure that a Third Party Employer does or does not do something, such obligation shall be limited so that it extends only to the extent that the Council’s contract with the Third Party Employer contains a

contractual right in that regard which the Council may enforce, or otherwise so that it requires only that the Council must use reasonable endeavours to procure that the Third Party Employer does or does not act accordingly.

2 EMPLOYMENT EXIT PROVISIONS

2.1 This Call-Off Contract envisages that subsequent to its commencement, the identity of the supplier of the Services may be subject to a Subsequent Transfer.

2.2 Where a Subsequent Transfer constitutes a Relevant Transfer then the Council or Replacement Supplier will inherit liabilities in respect of the Relevant Employees with effect from the relevant Service Transfer Date.

2.3 The Provider shall and shall procure that any Sub-Contractor shall:

2.3.1 on request from the Council on a date not more than twelve (12) months immediately preceding the expiry of the Call-Off Contract and/or any review date; and/or

2.3.2 on receiving notice of termination of the Call-Off Contract (on whatever grounds and in whatever circumstances) or otherwise; and/or

2.3.3 at such times as required by TUPE;

provide promptly (and in any event within ten (10) days of request) and at no cost to the Council, in respect of any person engaged or employed by the Provider or any Sub-Contractor in the provision of the Services, the Provider's Provisional Staff List and the Staffing Information together with any additional information required by the Council (notwithstanding this may be beyond the information required to be provided under TUPE), including information as to the application of TUPE to the employees. The Provider shall notify the Council, within ten (10) days of the event (and in any event before the Service Transfer Date), of any material changes to the information supplied, discovery of further relevant information or on receipt of a request for or clarification or amplification by the Council.

2.4 At least twenty-eight (28) days prior to the Service Transfer Date, the Provider shall and shall procure that any Sub-Contractor shall prepare and provide to the Council and/or, at the direction of the Council, to the Replacement Supplier, the Provider's Final Staff List, which shall be complete and accurate in all material respects. The Provider's Final Staff List shall identify which of the Provider's and Sub-Contractor's Staff/personnel named are Relevant Employees.

2.5 The Council shall be permitted to use and disclose the Provider's Provisional Staff List, the Provider's Final Staff List and the Staffing Information for informing any tenderer or other prospective Replacement Supplier for any services that are substantially the same type of services as (or any part of) the Services.

2.6 The Provider warrants to the Council and the Replacement Supplier that the Provider's Provisional Staff List, the Provider's Final Staff List, the Employee Liability Information and the Staffing Information (the "**TUPE Information**") will be true and

accurate in all material respects and that no persons are employed or engaged in the provision of the Services other than those included on the Provider's Final Staff List.

- 2.7 The Provider shall and shall procure that any Sub-Contractor shall ensure at all times that it has the right to provide the TUPE Information to the Council (including, but not limited to, for the purposes of the Council managing this Call-Off Contract with the Provider, monitoring the delivery of the Services and in relation to exit/succession planning and/or re-procurement of the Services on the expiry or termination of this Call-Off Contract (in whole or in part)) and any Replacement Supplier under the Data Protection Legislation.
- 2.8 The Council regards compliance with this paragraph 2 as fundamental to this Call-Off Contract. In particular, failure to comply with paragraphs 2.3 and 2.4 in respect of the provision of accurate information about the Relevant Employees shall entitle the Council to suspend payment of the Price until such information is provided.
- 2.9 Any change to the TUPE Information which would increase the total employment costs of the staff in the six (6) Months prior to expiry or termination of this Call-Off Contract shall not (so far as reasonably practicable) take place without the Council's prior written consent, unless such changes are required by law. The Provider shall and shall procure that any Sub-Contractor shall supply to the Council full particulars of such proposed changes and the Council shall be afforded reasonable time to consider them.
- 2.10 In the six (6) Months prior to expiry or termination of this Call-Off Contract or from the date of service of a termination notice of this Call-Off Contract, (whichever is the longer) the Provider shall not and shall procure that any Sub-Contractor shall not materially increase or decrease the total number of Staff/personnel listed on the Provider's Provisional Staff List, their remuneration, or make any other change in the terms and conditions of those employees or transfer or remove from the performance of the Services any supervisory or managerial staff/personnel without the Council's prior written consent (such consent not to be unreasonably withheld or delayed).
- 2.11 The Provider shall indemnify and keep indemnified in full the Council and each and every Replacement Supplier against all Employment Liabilities arising from or connected with:
 - 2.11.1 any person who is or has been employed or engaged by the Provider or any Sub-Contractor in connection with the provision of any of the Services;
 - 2.11.2 any trade union or staff association or employee representative (where such claim arises as a result of any act, fault or omission of the Provider and/or any Sub-Contractor);
 - 2.11.3 any failure by the Provider and/or any Sub-Contractor to comply with any legal obligation, whether under regulation 13 or 14 of TUPE or any award of compensation under regulation 15 of TUPE, under the Acquired Rights

Directive or otherwise and, whether any such claim arises or has its origin before or after the Service Transfer Date.

- 2.11.4 any failure by the Provider or any Sub-Contractor to supply or delay in supplying the Staffing Information, the Provider's Provisional Staff List, the Provider's Final Staff List and the Employee Liability Information and any other information herein required (or inaccuracy or incompleteness of the same) or to inform and consult in accordance with TUPE;
- 2.11.5 any failure on the part of the Provider or any Sub-Contractor to provide the Relevant Employees with any benefit of any nature including any pension provision or failure to make all due payments to the Relevant Employees or applicable pension fund;
- 2.11.6 any failure or omission of any legal or statutory obligation on the Provider;
- 2.11.7 any claim by any Relevant Employee arising out of any personal injury or injury at work of whatever nature prior to the termination of this Call-Off Contract; and
- 2.11.8 any other obligations of or arising under this Call-Off Agreement;

whether any such claim arises on or after the Service Transfer Date if it has its origins before such date.

- 2.12 The Parties shall co-operate to ensure that any requirement to inform and consult with the employees and or employee representatives in relation to any Relevant Transfer as a consequence of a Subsequent Transfer will be fulfilled.
- 2.13 The Parties agree that the Contracts (Rights of Third Parties) Act 1999 shall apply to paragraphs 2.3 to 2.12, to the extent necessary to ensure that any Replacement Supplier shall have the right to enforce the obligations owed to, and indemnities given to, the Replacement Supplier by the Provider or the Council in its own right under section 1(1) of the Contracts (Rights of Third Parties) Act 1999.
- 2.14 Notwithstanding paragraph 2.13, it is expressly agreed that the Parties may by agreement rescind or vary any terms of this Call-Off Contract without the consent of any other person who has the right to enforce its terms or the term in question despite that such rescission or variation may extinguish or alter that person's entitlement under that right.
- 2.15 The Council shall not be liable to the Provider or any Sub-Contractor in respect of any Redundancy Costs either upon the Services Commencement Date or the expiry or termination of the Call-Off Contract in whole or in part.