



Hampshire
County Council

Dated

HAMPSHIRE COUNTY COUNCIL

-and-

THE PROVIDER

**OPEN FRAMEWORK AGREEMENT FOR SKILLS
DEVELOPMENT FOR HAMPSHIRE**

© Hampshire County Council
Elizabeth II Court
The Castle
Winchester SO23 8UJ

THIS AGREEMENT is dated the date that both parties sign the Award Letter.

BETWEEN

- (1) **HAMPSHIRE COUNTY COUNCIL** whose principal place of business is at The Castle Winchester Hampshire SO23 8UJ (the "**Council**"); and
- (2) **THE PROVIDER** is as stated in the Award Letter (the "**Provider**").

BACKGROUND

- a) The Council placed a contract notice 2023/S 000-022210 on 31 July 2023 on the UK e-notification service inviting tenders from potential providers for the provision of skill development training services (divided into Lots) under an open framework agreement.
- b) The Provider submitted an application to join the Open Framework in response to the contract notice.
- c) On the basis of the Provider's application, the Council appointed the Provider to a Lot of the Open Framework (as set out on the Award Letter) to provide skill development training services on a call-off basis in accordance with this Open Framework Agreement.
- d) This Open Framework Agreement sets out the ordering procedure for the provision of the Services (which may be required by the Council), the terms and conditions for any Call-Off Contract which the Council may conclude, and the obligations of the Provider during and after the Term of this Open Framework Agreement.

IT IS AGREED as follows:

1. INTERPRETATION

Unless the context otherwise requires, the following words and expressions shall have the following meanings:

"Approval"	means the prior written approval of the Council.
"Audit"	means an audit carried out pursuant to Clause 10.
"Auditor"	means an external or internal auditor of the Council as the context requires.
"Award Criteria"	means the specific criteria designed, developed and published by the Council to be applied to individual awards of Call-Off Contracts awarded under this Open Framework Agreement during the Open Framework Term.
"Award Letter"	means the letter sent by the Council to the Provider confirming their appointment to the Open Framework and setting out the Lot to which the Provider has been appointed.

"Business Continuity Plan"	a written plan which establishes a coherent framework that guards against business disruption in case of unforeseen events.
"Call-Off Contract"	means the legally binding agreement(s) (made pursuant to the provisions of this Open Framework Agreement) for the provision of Services made between the Council and the Provider comprising of the Provider's Tender at the call-off award stage and the Call-Off Terms and Conditions.
"Call-Off Specification"	means the specification specific to Services requested under a Call-Off Contract attached to an Order Form under Annex 1.
"Call-Off Terms and Conditions"	means the terms and conditions set out at Schedule 1 in respect of individual Call-Off Contracts.
"Change of Control"	shall have the same meaning as set out in section 450 and 451 of the Corporation Tax Act 2010.
"Commercially Sensitive Information"	means any Confidential Information comprised of information: a) which is provided in writing by the Contractor to the Council in confidence and designated as Commercially Sensitive Information; and/or b) that constitutes a trade secret.
"Complaint"	means any formal complaint raised by the Council in relation to the performance of this Open Framework Agreement or any Call-Off Contract in accordance with Clause 29.
"Confidential Information"	means: (a) any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information which would or would be likely to prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights, know-how of either Party and all Personal Data and any information derived from the above; and (b) the Commercially Sensitive Information.
"Data Protection Legislation"	all applicable data protection and privacy legislation in force from time to time in the UK including without limitation the UK GDPR; the Data Protection Act 2018 (and regulations made thereunder) (" DPA 2018 "); the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended and any successor legislation.

“Designated Contract Manager”	means the person appointed by the Provider to manage the Provider’s involvement in the Open Framework Agreement and Call-Off Contracts as notified to the Council from time to time.
"Environmental Information Regulations" and “EIR”	mean the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.
"FOIA"	means the Freedom of Information Act 2000 and any subordinate legislation made under such Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.
“Framework Rules”	means the rules governing this Open Framework as determined by the Council and set out in Schedule 4 to this Open Framework Agreement.
“Framework Manager”	means the person appointed by the Council responsible for the management of this Open Framework Agreement as notified to the Provider from time to time.
"Framework Providers"	means the group of providers who have been admitted to the Open Framework each of whom having validly executed their own copy of the Open Framework Agreement.
“Fraud”	means any offence under Laws creating offences in respect of fraudulent acts or at common law in respect of fraudulent acts in relation to this Open Framework Agreement or defrauding or attempting to defraud or conspiring to defraud the Council.
"Good Industry Practice"	means standards, practices, methods and procedures conforming to the Law and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking under the same or similar circumstances.
"Guidance"	means any guidance issued or updated by the UK Government from time to time in relation to the Regulations.
"Information"	has the meaning given under Section 84 of the Freedom of Information Act 2000.

"Intellectual Property Rights"	means patents, inventions, trademarks, service marks, logos, design rights (whether registerable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registerable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off.
"Law" and "Laws"	means any applicable Act of Parliament, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, enforceable community right within the meaning of Section 2 of the European Communities Act 1972, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements of any Regulatory Body.
"Lot"	means the Services divided into lots as referred to in the Contract Notice and set out in the Open Framework Specification.
"Management Information"	means the management information specified in the Open Framework Specification.
"Material Default"	means any breach of clauses 5 (<i>Ordering Procedure</i>), 7 (<i>Prevention of Bribery</i>), 8 (<i>Provision of Management Information</i>), 10 (<i>Records and Audit Access</i>), 11 (<i>Confidentiality</i>), 12 (<i>Data Protection</i>), 13 (<i>FOIA and EIR</i>), 17 (<i>Sub-Contracting and Assignment</i>), 30 (<i>Modern Slavery</i>), and 32 (<i>Non-Discrimination</i>).
"Month"	means a calendar month.
"MSA Offence"	Means an offence under the Modern Slavery Act 2015.
"Open Framework Agreement"	means this Agreement and all Schedules to this Agreement.
"Open Framework Agreement Commencement Date"	means the commencement date of the Open Framework Agreement: 1st August 2023.
"Open Framework Term"	means the period commencing on the Open Framework Agreement Commencement Date and continuing for a period of ten (10) years.
"Open Framework Specification"	means the specification set out at Schedule 2 in relation to the establishment and management of this Open Framework.
"Order Form"	means a document setting out details of a Call-Off Contract substantially in the form as set out in Schedule 5.

“Ordering Procedure”	means the ordering and award procedure and criteria specified in clause 5 of this Open Framework Agreement and the Framework Rules.
"Parent Company"	shall have meaning as set out in section 1162 of the Companies Act 2006.
"Party"	means the Council and/or the Provider.
“Price”	means the price to be paid to the Provider for the provision of the Services under a Call-Off Contract.
“Prohibited Act”	<p>the following constitute Prohibited Acts:</p> <ul style="list-style-type: none"> (a) to directly or indirectly offer, promise or give any person working for or engaged by the Council a financial or other advantage as an inducement or reward for any improper performance of a relevant function or activity; (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Open Framework Agreement; (c) committing any offence: <ul style="list-style-type: none"> (i) under the Bribery Act 2010; (ii) under any Laws creating offences concerning fraudulent acts relating to this Framework Agreement or any other contract with the Authority; (iii) at common law concerning fraudulent acts relating to this Framework Agreement or any other contract with the Council; or (iv) of defrauding attempting to defraud or conspiring to defraud the Council (including offences by the Supplier under Part 3 of the Criminal Finances Act 2017). (d) any activity, practice or conduct which would constitute one of the offences listed under (c) if such activity, practice or conduct had been carried out in the UK.
"Regulations"	means the Public Contracts Regulations 2015.
"Regulatory Bodies"	means those government departments 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 Open Framework Agreement or any other affairs of the Council and “Regulatory Body” shall be construed accordingly.

“Relevant Requirements”	means all applicable Law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010.
“Request(s) for Information”	means a request for information or an apparent request under the FOIA or the EIR.
“Services”	means the skills development training services as more particularly set out in the Call-Off Specifications published by the Council in respect of individual Call-Off Contracts.
“Special Terms and Conditions”	means: (a) the additional terms and conditions as may be imposed by an external funder; and (b) the provisions relating to data protection for a specific Call-Off Contract as set out in Annex 3 to an Order Form.
“Staff”	means all persons employed by the Provider together with the Provider's servants, agents, suppliers and sub-contractors used in the performance of its obligations under this Open Framework Agreement or Call-Off Contracts.
“Sub-Contract”	means any sub-contract entered into by the Provider or by any Sub-Contractor for the purpose of the performance of any obligation on the part of the Provider in respect of individual Call-Off Contracts.
“Sub-Contractor”	means any third party engaged by the Provider to perform any part of the Services under a Call-Off Contract.
“Tender”	means the tender submitted by the Provider to the Council in relation to a Call-Off Contract as set out in Annex 2 of the relevant Order Form.
“UK GDPR”	Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act of 2018.
“Variation Procedure”	means the procedure set out in Schedule 3 to this Open Framework Agreement.
“Working Day”	means any day other than a Saturday, Sunday or public holiday in England and Wales.
“Year”	means a calendar year.

1.1 The interpretation and construction of this Open Framework Agreement shall all be subject to the following provisions:

- a) words importing the singular meaning include where the context so admits the plural meaning and vice versa;
- b) words importing the masculine include the feminine and the neuter;
- c) the words "include", "includes" and "including" are to be construed as if they were immediately followed by the words "without limitation";
- d) 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;
- e) references to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;
- f) headings are included in this Open Framework Agreement for ease of reference only and shall not affect the interpretation or construction of this Open Framework Agreement;
- g) references in this Open Framework Agreement to any Clause or Sub-Clause or Schedule without further designation shall be construed as a reference to the Clause or Sub-Clause or Schedule to this Open Framework Agreement so numbered;
- h) references in this Open Framework Agreement to any paragraph or sub-paragraph without further designation shall be construed as a reference to the paragraph or sub-paragraph of the relevant Schedule to this Open Framework Agreement so numbered;
- i) reference to a Clause is a reference to the whole of that clause unless stated otherwise;
- j) in the event and to the extent only of any conflict between the Clauses and the remainder of the Schedules, the Clauses shall prevail over the remainder of the Schedules; and
- k) in the event and to the extent only of any conflict between this Open Framework Agreement and any Call-Off Terms and Conditions in respect of Individual Awards under the Open Framework, individual Call-Off Terms and Conditions shall prevail over this Open Framework Agreement.

1.2 In the event of and only to the extent of any conflict or inconsistency between the terms of this Open Framework Agreement, the Call-Off Terms and Conditions, the Special Terms and Conditions (if applicable), an Order Form, and any other such document referred to in this Open Framework Agreement, such conflict or inconsistency shall be resolved according to the following order of priority:

- a) the Special Terms and Conditions (if applicable);

- b) the clauses of the Call-Off Terms and Conditions;
- c) the terms of this Open Framework Agreement and the Schedules except Annex 2 to an Order Form (*Provider's Tender and Pricing*);
- d) an Order Form (excluding Annex 2);
- e) Annex 2 of an Order Form (*Provider's Tender and Pricing*).

2. TERM

- 2.1 This Open Framework Agreement shall take effect on the Open Framework Agreement Commencement Date and shall continue for the Open Framework Term.
- 2.2 This Open Framework Agreement shall expire on the expiry of the Open Framework Term and the provisions of clause 16 (*Consequences of Expiry or Termination*) shall apply.

3. SCOPE OF OPEN FRAMEWORK AGREEMENT

- 3.1 This Open Framework Agreement governs the relationship between the Council and the Provider in respect of the Provider's appointment to the Open Framework.
- 3.2 Subject to the following provisions of this clause the Council may at their absolute discretion and from time-to-time call-off Services from the Provider in accordance with the call off procedures set out in clause 5 (*Ordering Procedure*) to this Open Framework Agreement. If there is a conflict between clause 5 (*Ordering Procedure*) and the Regulations and Guidance, the provisions of the Regulations and Guidance shall prevail.
- 3.3 No undertaking or any form of statement, promise, representation or obligation shall be deemed to have been made by the Council in respect of the total quantities or values of the Services to be ordered by them pursuant to this Open Framework Agreement and the Provider acknowledges and agrees that it has not entered into this Open Framework Agreement on the basis of any such undertaking, statement, promise or representation.

4. PROVIDER'S APPOINTMENT AND NON-EXCLUSIVITY

- 4.1 The Council appoints the Provider as a potential provider of the Services and (subject to clauses 3 (*Scope of Open Framework Agreement*) and clause 15 (*Termination and Suspension*)) the Provider shall be eligible to be considered for the award of Call-Off Contracts for the Services.
- 4.2 The Provider acknowledges that, in entering this Open Framework Agreement, no form of exclusivity or volume guarantee has been granted by the Council for Services from the Provider and that the Council is at all times entitled to enter into other contracts and arrangements with other providers for the provision of any or all services which are the same as or similar to the Services.
- 4.3 The Council acknowledges that there is no obligation for the Provider to submit a Tender in response to any call-off opportunities.

5. ORDERING PROCEDURES

- 5.1 If the Council decides to source Services through this Open Framework, then it may satisfy its requirements for the Services by awarding a Call-Off Contract in accordance with provisions set out in this Open Framework Agreement and the Framework Rules to form a Call-Off Contract with the Provider.
- 5.2 The Council shall conduct any mini-competitions or electronic auctions or make any direct award under this Open Framework in accordance with the Framework Rules (as amended from time to time) and in all cases in accordance with the Public Contract Regulations 2015.
- 5.3 The Award Criteria for each Call-Off Contract will be established by the Council for each call-off opportunity. The Award Criteria and the evaluation approach shall be published to the Framework Providers through the Council's electronic tendering system.
- 5.4 The Provider may not be awarded any Call-Off Contract for the duration of any suspension of its appointment in accordance with clause 15.
- 5.5 The Council may issue an Order Form to the Provider substantially in the form set out in Schedule 5 or such other analogous form agreed with the Provider.
- 5.6 The Council shall request specific Services by attaching a Call-Off Specification under Annex 1 to the Order Form.

Special Terms and Conditions

- 5.7 Where the Council awards a Call-Off Contract using funding from an external body, the Council may be obligated to pass on certain grant funding terms and conditions as set out in Part 1 of Annex 3 to the Order Form.
- 5.8 The Council shall incorporate the Special Terms and Conditions into a Call-Off Contract by setting the same out in Annex 3 to the Order Form.
- 5.9 Any Special Terms and Conditions must relate solely to the funding terms and conditions imposed on the Council.
- 5.10 **THE PROVIDER'S ATTENTION IS SPECIFICALLY DRAWN TO ANNEX 3 OF ANY ORDER FORM AS UNDER THE SPECIAL TERMS AND CONDITIONS SHOULD THE PROVIDER FAIL TO MEET THEIR OBLIGATIONS OF THE SPECIAL TERMS AND CONDITIONS THE COUNCIL MAY BE REQUIRED TO CLAWBACK ANY OF THE MONIES DUE IN WHOLE OR IN PART TO ENABLE THE COUNCIL TO COMPLY WITH THE OBLIGATIONS PLACED ON THEM BY THE GRANT FUNDING TERMS AND CONDITIONS.**
- 5.11 The Provider should ensure that they incorporate the impact and additional costs of complying with the terms of the Special Terms and Conditions into their submission when competing for a Call-Off Contract that includes Special Terms and Conditions.
- 5.12 If the Provider does not want to accept the Special Terms and Conditions they are not obligated to submit a Tender for that particular Call-Off Contract.
- 5.13 For the avoidance of doubt, the Call-Off Contract Terms and Conditions, the Open Framework Agreement, any variations and the Special Terms and

Conditions (if applicable) shall be the only terms that apply to a Call-Off Contract.

6. PROVIDER WARRANTIES, REPRESENTATIONS AND OBLIGATIONS

6.1 The Provider warrants, represents and undertakes that:

- a) the Council has delivered or made available to the Provider all information and documents that the Provider considers necessary or relevant for the performance of its obligations under this Open Framework Agreement;
- b) it has satisfied itself before and entering into this Open Framework Agreement as to the accuracy and sufficiency of any information provided by the Council;
- c) it has satisfied itself as to the nature and extent of the risks assumed by it under the Open Framework Agreement including the accuracy of the application other financial information stated by the Provider in the application documents, which shall (except in so far as is otherwise provided in the Open Framework Agreement) cover all the Provider's obligations under the Open Framework Agreement;
- d) it has full capacity and authority and all necessary consents (including where its procedures so require the consent of its Parent Company) to enter into and to perform its obligations under this Open Framework Agreement;
- e) it will perform and procure the performance of its obligations under this Open Framework Agreement and any Call-Off Contract in compliance with all applicable Laws;
- f) it has entered into this Open Framework Agreement in reliance on its own due diligence;
- g) this Open Framework Agreement is (and any Call-Off Contract will be) executed by a duly authorised representative of the Provider;
- h) there are no actions, suits or proceedings or regulatory investigations pending or, threatened against or affecting the Provider before any court or administrative body or arbitration tribunal that might affect the ability of the Provider to meet and carry out its obligations under this Open Framework Agreement and any Call-Off Contract;
- i) it has not entered into any agreement with any other person with the aim of preventing tenders being made or as to the fixing or adjusting of the amount of any tender or the conditions on which any tender is made in respect of this Open Framework Agreement, and that it has not caused or induced any person to enter into such agreement referred to in this clause 6.1(i);
- j) it has not offered or agreed to pay or give any sum of money, inducement or valuable consideration directly or indirectly to any person for doing or having done or causing or having caused to be done any act or omission in relation to any other tender or proposed tender in relation to this Open Framework Agreement;

- k) it has, and will continue to hold, all consents and regulatory approvals necessary to fulfil its obligations under this Open Framework Agreement and any Call-Off Contract;
- l) in entering into this Open Framework Agreement and any Call-Off Contract it has not committed any Fraud or fraudulent misrepresentation;
- m) it shall discharge its obligations under this Open Framework Agreement using personnel of required skill, experience and qualifications and with all due skill, care and diligence;
- n) all information that it provides in connection with its obligations under this Open Framework Agreement and any Call-Off Contract (save for information which originated from the Council) shall in all material respects be accurate, complete and not misleading;
- o) it has not committed any Prohibited Act;
- p) no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might affect its ability to perform its obligations under this Open Framework Agreement and any Call-Off Contract;
- q) it is not subject to any contractual obligation, compliance with which is likely to have an effect on its ability to perform its obligations under this Open Framework Agreement and any Call-Off Contract;
- r) no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Provider or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Provider's assets or revenue; and
- s) in the last three (3) Years prior to the date of this Open Framework Agreement:
 - (i) it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;
 - (ii) it has been in full compliance with all applicable securities, Laws and regulations in the jurisdiction in which it is established; and
 - (iii) it has not performed any act or omission with respect to its financial accounting or reporting which could have an adverse effect on the Provider's position as an ongoing business concern or its ability to fulfil its obligations under this Open Framework Agreement.

6.2 The Provider warrants that to the best of its knowledge, information and belief, after having made appropriate enquiries, checks and registrations, at the Open Framework Commencement Date there will be no individuals working or involved in the delivery of any Call-Off Contract in any capacity,

whether as employer, employee or volunteer, who the Provider would be required to remove under the terms this Open Framework Agreement.

- 6.3 The Provider shall (at no additional cost to the Council) maintain such records as are necessary pursuant to applicable Laws and shall promptly on request make them available for inspection by any relevant authority that is entitled to inspect them and by the Council or its authorised representative.
- 6.4 The Provider warrants and represents to the Council the statement in this clause.
- 6.5 The Provider shall be responsible for obtaining all licences, authorisations, consents or permits required in relation to the performance of this Open Framework Agreement and any Call-Off Contract.

7. PREVENTION OF BRIBERY

- 7.1 The Provider shall and shall procure that the Staff shall:
- a) not in connection with this Open Framework Agreement or any Call-Off Contract commit a Prohibited Act;
 - b) not do, suffer or omit to do anything that would cause the Council or the Provider's Staff to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements;
 - c) have and maintain its own policies and procedures to ensure compliance with the Relevant Requirements and to prevent the Provider or Provider's Staff from committing a Prohibited Act and shall enforce such policies where appropriate (and shall disclose such policies to the Council on the Council's reasonable request);
 - d) notify the Council in writing if it becomes aware of any breach of clause 7.1(a), 7.1(b) or 7.2 or has reason to believe that it or any person associated with it has received a request or demand for any undue financial or other advantage in connection with performance of this Open Framework Agreement and any Call-Off Contract made under it.
- 7.2 The Provider warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by the Council, or that an agreement has been reached to that effect, in connection with the execution of this Open Framework Agreement or any Call-Off Contract, excluding any arrangement of which full details have been disclosed in writing to the Council before execution of this Open Framework Agreement.
- 7.3 The Provider shall:
- a) if requested, provide the Council with any reasonable assistance, at the Council's reasonable cost, to enable the Council to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act 2010;
 - b) if requested within ten (10) Working Days of the Commencement Date, and annually thereafter, certify to the Council in writing (such certification to be signed by an officer of the Provider) compliance with this clause 7 by the Provider and all persons associated with it. The

Provider shall provide such supporting evidence of compliance as the Council may reasonably request.

- 7.4 The Provider shall maintain appropriate and up to date records showing all payments made by the Supplier in connection with this Open Framework Agreement and any Call-Off Contract made under it and the steps taken to comply with its obligations under this clause.
- 7.5 If the Provider, its Staff or any person acting on the Provider's behalf, breaches this clause, the Council may by notice in writing:
- a) require the Provider to remove from performance of this Open Framework Agreement and any Call-Off Contract any Staff whose acts or omissions have caused the breach; or
 - b) immediately terminate this Open Framework Agreement.
- 7.6 The Council may immediately terminate its relevant Call-Off Contract(s) by notice in writing in the event that the Provider, its Staff or any person acting on the Provider's behalf breaches this clause.
- 7.7 If the Provider notifies the Council that it suspects or knows that there may be a breach of this clause, the Provider must respond promptly to the Council's enquiries, co-operate with any investigation and allow the Council to audit books, records and any other relevant documentation.
- 7.8 Despite clause 30 (*Dispute Resolution*), any dispute relating to:
- a) the interpretation of this clause 7; or
 - b) the amount or value of any gift, consideration or commission;
- shall be determined by the Council and its decision shall be final and conclusive.
- 7.9 Any termination under this clause shall be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Council.

8. BUSINESS CONTINUITY AND MANAGEMENT INFORMATION

- 8.1 The Provider shall have in place prior to its appointment to the Open Framework Commencement Date a robust Business Continuity Plan that allows for the continued delivery of the Services following an emergency or disruptive occurrence. The Business Continuity Plan shall set out the procedures and actions to be taken if a disruptive event occurs which affects the Services.
- 8.2 The Provider shall make copies of its Business Continuity Plan available to the Council upon request.
- 8.3 The Provider shall notify the Council if an incident occurs which activates the Business Continuity Plan, and details of how it managed any such incident and any subsequent amendments made to processes or systems.
- 8.4 The Provider shall as a matter of course test its Business Continuity Plan on a regular basis or when there has been any change to the mode or method in which the Services are provided or when there has been a change to any business processes or on the occurrence of any event which may increase the likelihood of the need to implement the business continuity

arrangements. The Service Provider shall give to the Council at least 10 Working Days' notice of its intention to undertake a Business Continuity Plan test. The Council reserves the right to appoint one (1) representative to attend any Business Continuity Plan test undertaken by the Provider.

- 8.5 The Provider, on request by the Council, shall provide evidence by way of a written report summarising the results of any Business Continuity Plan test and shall promptly implement any actions or remedial measures which the Council may consider to be appropriate as a result of such tests.
- 8.6 The Provider shall undertake and be able to demonstrate to the Council as required, a regular review process for its business continuity arrangements in relation to the provision of the Services.

Management Information

- 8.7 The Provider shall submit any such Management Information as reasonably requested by the Council to the Council in such form as the Council shall require throughout the Term and at such other times as the Council may request.
- 8.8 Where Management Information is requested in accordance with clause 8.7 above any such Management Information shall be submitted within twenty (20) Working Days of the Council's request.
- 8.9 The Council may make changes to the Management Information which the Provider is required to supply and shall give the Provider at least one (1) Month's written notice of any changes.
- 8.10 The Framework Manager and the Designated Contract Manager shall meet in accordance with the details set out in the Open Framework Specification and the Provider shall at each meeting present its previously circulated Management Information.

9. INTEREST

- 9.1 If any sum payable under this Open Framework Agreement is not paid within thirty (30) calendar days of the due date, the Party to whom the same is due reserves the right to charge interest from the date due 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.

10. RECORDS AND AUDIT ACCESS

- 10.1 The Provider shall keep and maintain until twelve (12) years (or such other period as specified and notified to the Provider in writing) after the expiry of this Open Framework Agreement (or as long a period as may be agreed between the Parties), full and accurate records and accounts of the operation of this Open Framework Agreement including Call-Off Contracts entered into with the Council, the amounts paid by the Council under any Call-Off Contracts and the Services provided under each Call-Off Contract.
- 10.2 The Provider shall keep the records and accounts referred to in Clause 10.1 above in accordance with good accountancy practice.

- 10.3 The Provider shall afford the Council and/or the Auditor such access to such records and accounts as may be required from time to time.
- 10.4 The Provider shall provide such records and accounts (together with copies of the Provider's published accounts) during the Term and for a period of twelve (12) years after expiry of the Term to the Council and the Auditor (or such other period as specified and notified to the Provider in writing).
- 10.5 The Council shall use reasonable endeavours to ensure that the conduct of each Audit does not unreasonably disrupt the Provider or delay the provision of the Services pursuant to the Open Framework Agreement or Call-Off Contracts; save insofar as the Provider accepts and acknowledges that control over the conduct of Audits carried out by the Auditor is outside of the control of the Council.
- 10.6 The Provider shall on demand provide the Auditor with all reasonable co-operation and assistance in relation to each Audit, including:
- a) all information requested by the Auditor within the scope of the Audit;
 - b) reasonable access to premises controlled by the Provider and to equipment used in the provision of the Services; and
 - c) access to the Staff.
- 10.7 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause 10, unless the Audit reveals a Material Default by the Provider in which case the Provider shall reimburse the Council for the Council's reasonable costs incurred in relation to the Audit.

11. CONFIDENTIALITY

- 11.1 Except to the extent set out in this Clause or where disclosure is expressly permitted elsewhere in this Open Framework Agreement, the Council and the Provider shall each for the duration of the Open Framework Agreement and any Call-Off Contract:
- a) treat the other's Confidential Information as confidential and safeguard it accordingly; and
 - b) not disclose the other's Confidential Information to any other person without the owner's prior written consent.
- 11.2 Clause 11.1 shall not apply to the extent that:
- a) such disclosure is a requirement of Law placed upon the disclosing party, including any requirements for disclosure under the FOIA or the EIR pursuant to Clause 13 (*FOI and EIR*);
 - b) such information was in the possession of the disclosing party without obligation of confidentiality prior to its disclosure by the information owner;
 - c) such information was obtained from a third party without obligation of confidentiality;

- d) such information was already in the public domain at the time of disclosure otherwise than by a breach of this Open Framework Agreement; or
 - e) it is independently developed without access to the other's Confidential Information.
- 11.3 The Provider may only disclose the Council's Confidential Information to its Staff who are directly involved in the delivery of the Services and who need to know the information, and shall ensure that such Staff are aware of and shall comply with these obligations as to confidentiality.
- 11.4 The Provider shall not, and shall procure that its Staff do not, use any of the Council's Confidential Information received otherwise than for the purposes of this Open Framework Agreement and respective Call-Off Contract.
- 11.5 At the written request of the Council, the Provider shall procure that those members of the Staff referred to in Clause 11.3 sign a confidentiality undertaking prior to commencing any work in relation to this Open Framework Agreement or any Call-Off Contract.
- 11.6 Nothing in this Agreement shall prevent the Council from disclosing the Provider's Confidential Information:
- a) to any consultant, contractor or other person engaged by the Council or any person conducting a gateway review;
 - b) for the purpose of the examination and certification of the Council's accounts;
 - c) for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Council has used its resources.
- 11.7 The Council shall use all reasonable endeavours to ensure that any government department, employee, third party or Sub-contractor to whom the Provider's Confidential Information is disclosed pursuant to Clause 11.6 is made aware of the Council's obligations of confidentiality.
- 11.8 Nothing in this Clause shall prevent either Party from using any techniques, ideas or know-how gained during the performance of the Open Framework Agreement or any Call-Off Contract in the course of its normal business to the extent that this use does not result in a disclosure of the other Party's Confidential Information or an infringement of Intellectual Property Rights.
- 11.9 The provisions of this clause shall survive for a period of six (6) years from expiry of the Open Framework Agreement or any Call-Off Contract (whichever is the later).

12. DATA PROTECTION

- 12.1 It is not anticipated that there will be any Personal Data processed under this Open Framework Agreement with the exception of business names and contact details which the parties shall share in order to manage this Open Framework Agreement.
- 12.2 If any other Personal Data is processed, the parties shall comply at all times with provisions equivalent to the Data Protection Legislation and shall agree

any necessary amendments or variations to this clause in accordance with the provisions set out in this Open Framework Agreement.

- 12.3 Each party agrees that it shall not perform its obligations under this Open Framework Agreement in such a way as to cause the other party to breach any of its applicable obligations under the Data Protection Legislation.
- 12.4 The Council may at any time on not less than 30 Working Days' notice to the Provider revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of and certification scheme (which shall apply to this Open Framework Agreement and any Call-Off Contract when replaced by attachment to this Open Framework Agreement).
- 12.5 The provisions of this clause shall apply during the continuance of this Open Framework Agreement and indefinitely after its expiration or termination.

13. FOIA AND EIR

Provider is not a public body subject to the FOIA and EIR

- 13.1 The Provider acknowledges that the Council is a subject to the requirements of the FOIA and the EIR and shall assist and co-operate with the Council (at the Provider's expense) to enable the Council to comply with its information disclosure obligations.
- 13.2 The Provider shall and shall procure that its sub-contractors shall:
 - a) transfer to the Council all Requests for Information that it receives as soon as practicable and in any event within two (2) Working Days of receiving a Request for Information;
 - b) provide the Council with a copy of all information in its possession, or power in the form that the Council requires within five (5) Working Days (or such other period as the Council may specify) of the Council's request; and
 - c) provide all necessary assistance as reasonably requested by the Council to enable the Council to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the EIR.
- 13.3 The Council shall be responsible for determining in its absolute discretion and notwithstanding any other provision in the Open Framework Agreement or any other agreement whether the Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the provisions of the FOIA or the EIR.
- 13.4 In no event shall the Provider respond directly to a Request for Information unless expressly authorised to do so by the Council.
- 13.5 The Provider acknowledges that the Council may, acting in accordance with the Secretary of State for Constitutional Affairs Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 ("**the Code**"), be obliged under the FOIA or the EIR to disclose information concerning the Provider or the Services:
 - a) in certain circumstances without consulting the Provider; or

- b) following consultation with the Provider and having taken their views into account;
 - c) provided always that where clause 13.2 applies the Council shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Provider advanced notice, or failing that, to draw the disclosure to the Provider's attention after any such disclosure.
- 13.6 The Provider shall ensure that all information produced in the course of the Open Framework Agreement or any Call-Off Contract, or relating to this Open Framework Agreement or any Call-Off Contract, is retained for disclosure and shall permit the Council to inspect such records as requested from time to time.

Provider is a public body subject to the FOIA and EIR

- 13.7 Each Party acknowledges that the other Party is subject to the requirements of the FOIA and the EIR and each Party shall assist and co-operate with the other (at their own expense) to enable the Parties to comply with these information disclosure obligations.
- 13.8 Where a Party receives a Request for Information in relation to information which it is holding on behalf of any of the other Party, it shall:
- a) transfer the Request for Information to the relevant Party as soon as practicable after receipt and in any event within two (2) Working Days of receiving a Request for Information;
 - b) provide the relevant Party with a copy of all information in its possession or power in the form that the Party requires within five (5) Working Days (or such other period as the Party may specify) of the Party requesting that information; and
 - c) provide all necessary assistance as reasonably requested by the relevant Party to enable the Party to respond to a request for information within the time for compliance set out in the FOIA or the EIR.
- 13.9 Where a Party receives a Request for Information which relates to the Open Framework Agreement or any Call-Off Contract, it shall inform the other Party of the Request for Information as soon as practicable after receipt and in any event at least two (2) Working Days before disclosure.
- 13.10 The Parties shall be responsible for determining in their absolute discretion whether any information:
- a) is exempt from disclosure under the FOIA or the EIR;
 - b) is to be disclosed in response to a Request for Information.
- 13.11 Each Party acknowledges that the other Party may be obliged under the FOIA or the EIR to disclose information:
- a) without consulting with the other Party, or
 - b) following consultation with the other Party and having taken their views into account.

14. PUBLICITY

- 14.1 Unless otherwise directed by the Council, the Provider shall not make any press announcements or publicise:
- a) this Open Framework Agreement in any way without the Council's prior written consent; or
 - b) any Call-Off Contract in any way without the Council's prior written consent.
- 14.2 The Council shall be entitled to publicise this Open Framework Agreement and disclose it in accordance with any legal obligation upon the Council, including any examination of this Open Framework Agreement by the Auditor or otherwise. The Council shall be entitled to publicise their Call-Off Contracts in accordance with any legal obligation, including any examination of any Call-Off Contract by the Auditor or otherwise.
- 14.3 The Provider shall not do anything which may damage the reputation of the Council or bring the Council into disrepute.

15. TERMINATION AND SUSPENSION

- 15.1 Without affecting any other right or remedy available to it, the Council may terminate the Provider's appointment to the Open Framework Agreement with immediate effect in the following circumstances:
- a) where the Provider commits a Material Default and:
 - (i) the Provider has not remedied the Material Default to the satisfaction of the Council within three (3) Working Days, or such other period as may be specified by the Council, after issue of a written notice specifying the Material Default and requesting it to be remedied; or
 - (ii) the Material Default is not, in the reasonable opinion of the Council, capable of remedy; or
 - b) where any warranty given in clause 6 (*Provider's Warranties, Representations and Obligations*) is found to be untrue or misleading; or
 - c) where the Council terminates a Call-Off Contract awarded to the Provider under this Open Framework Agreement as a consequence of a default or breach of that Call-Off Contract by the Provider.
- 15.2 Without affecting any other right or remedy available to it the Council may terminate the Open Framework Agreement by serving notice on the Provider in writing with effect from the date specified in such notice where (in the reasonable opinion of the Council), there is a material detrimental change in the financial standing and/or the credit rating of the Provider which adversely impacts on the Provider's ability to supply the Services under this Open Framework Agreement.
- 15.3 Without affecting any other right or remedy available to it the Council may terminate this Open Framework Agreement with immediate effect by notice in writing where:
- a) 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 its 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;

- b) 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;
- c) 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 Supplier with one or more other companies or the solvent reconstruction of the Supplier;
- d) an application is made to court, or an order is made, for the appointment of an administrator, or a notice of intention to appoint an administrator is given or 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;
- e) the holder of a qualifying floating charge over the assets of the Supplier (being a company or limited liability partnership) has become entitled to appoint or has appointed an administrative receiver;
- f) 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;
- g) the Provider (being an individual) is the subject of a bankruptcy petition, application or order;
- h) 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;
- i) any event similar to those listed in Clause 15.3(a) to Clause 15.3(h) occurs under the law of any other jurisdiction; or
- j) if there is a Change of Control of the Provider to which the Council reasonably objects, provided that the Council serves its termination notice within six (6) Months of the date on which the Provider informs the Council (by written notice) of the Change of Control or on which the Council otherwise becomes aware of the Change of Control. The

Council shall not be permitted to terminate under this clause 15.3(j) where approval of the Change of Control was granted before the Change of Control occurred; or

- k) the Council reasonably believes that the circumstances set out in regulation 73(1) of the Public Contracts Regulations 2015 apply; or
- l) the Provider, being an individual, dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation; or
- m) the Provider persistently fails to respond to any request or requirement reasonably imposed or made by the Council in accordance with the provisions of this Open Framework Agreement; or
- n) the Provider suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

Termination for convenience

- 15.4 The Council may terminate this Open Framework Agreement without cause (and without liability to the Provider) upon six (6) months' prior written notice to the Provider.
- 15.5 The Provider may terminate its appointment to this Open Framework Agreement without cause (and without liability to the Council) upon serving six (6) months' prior written notice to the Council, or a period as agreed with the Council other than in circumstances where:
 - a) the Provider is delivering Services under any existing Call-Off Contracts; or
 - b) the Provider is suspended from delivering Services under this Open Framework Agreement or any Call-Off Contracts.
- 15.6 If notice to terminate the Provider's appointment to this Open Framework Agreement is served in accordance with this clause 15, termination shall:
 - a) not affect any obligations under any existing Call-Off Contracts; and
 - b) be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Council.

Suspension

- 15.7 Without prejudice to the Council's rights to terminate the Open Framework Agreement in accordance with the terms of this Open Framework Agreement, if a right to terminate this Open Framework Agreement arises, the Council may suspend the Provider's right to receive Call-Off Contracts by giving notice in writing to the Provider.
- 15.8 The Council may suspend the Provider in the event that the Provider ceases to meet the original selection criteria at any point during the Term and the Provider shall demonstrate to the Council's satisfaction that the Provider meets the requirements of the Open Framework prior to any suspension being lifted.

- 15.9 If the Council suspends the Provider's appointment to the Open Framework in accordance with clause 15.7 the Council shall give notice in writing to the Provider to set out the period of the suspension and the Council's mechanism of review.
- 15.10 The period of suspension served by the Council shall be any such period as the Council considers necessary in order for it to investigate the reasons for the suspension(s). The Council shall work with the Provider to develop a mutually agreed action plan to address the reasons and any such evidence giving rise to a suspension(s) and timescales for such action to be taken by the Provider in order to remedy the issue(s) identified by the Council.
- 15.11 Where the Council suspends the Provider's appointment to the Open Framework Agreement under clause 15.7 the Council shall be permitted to recover from the Provider the amount of any loss resulting from such suspension.

16. CONSEQUENCES OF EXPIRY OR TERMINATION

- 16.1 The Provider shall continue to fulfil its obligations under this Open Framework Agreement until the date of expiry of this Open Framework Agreement or such other date as required under this Open Framework Agreement.
- 16.2 Termination or expiry of this Open Framework Agreement shall not cause Call-Off Contracts to terminate automatically. For the avoidance of doubt and unless expressly stated to the contrary, all Call-Off Contracts shall remain in force until expiry or terminated in accordance with the terms and conditions of such contracts.
- 16.3 Within thirty (30) Working Days of the termination or expiry of this Open Framework Agreement, the Provider shall return to the Council any data and Confidential Information belonging to the Council in the Provider's possession, power or control, either in its then current format or in a format nominated by the Council (in which event the Council will reimburse the Provider's reasonable data conversion expenses), together with other related documentation, and any other information and all copies thereof owned by the Council, save that it may keep one copy of any such data or information for a period of up to twelve (12) Months to comply with its obligations under this Open Framework Agreement, or such period as is necessary for such compliance as determined by the Council.
- 16.4 The Council shall be entitled to require access to data or information arising from the provision of the Services from the Provider until the latest of:
- a) the expiry of a period of twelve (12) Months following expiry of this Open Framework Agreement; or
 - b) the expiry of a period of three (3) Months following the date on which the Provider ceases to provide Services under any Call-Off Contract.
- 16.5 Termination or expiry of this Open Framework Agreement shall be without prejudice to any rights, remedies or obligations of either Party accrued under this Open Framework Agreement prior to termination or expiry.

- 16.6 The provisions of Clauses 6 (*Provider Warranties, Representations and Obligations*), 7 (*Prevention of Bribery*), 10 (*Records and Audit Access*), 11 (*Confidentiality*), 12 (*Data Protection*), 13 (*FOIA and ERI*), 15 (*Termination and Suspension*), 17 (*Consequences of Expiry or Termination*), 18 (*Liability*), 19 (*Insurance*) and 31 (*Law and Jurisdiction*) shall survive the termination or expiry of this Open Framework Agreement, together with any other provision which is either expressed to or by implication is intended to survive termination or expiry.

17. SUB-CONTRACTING AND ASSIGNMENT

- 17.1 This Open Framework Agreement and any Call-Off Contract awarded to the Provider is personal to the Provider and the Provider shall not assign, novate or otherwise dispose of any or all of its rights and obligations under this Open Framework Agreement or any Call-Off Contract without the prior written consent of the Council such consent not to be unreasonably withheld or delayed.
- 17.2 Subject to any Special Terms and Conditions, if sub-contracting is permitted, the Council will state so in the tendering documents for a Call-Off Contract.
- 17.3 Notwithstanding any sub-contracting permitted hereunder, the Provider shall remain primarily responsible for the acts and omissions of its sub-contractors as though they were its own.

18. LIABILITY

- 18.1 Where the Provider comprises more than one person the obligations and liabilities of the Provider under this Open Framework Agreement shall be the joint and several obligations of those persons comprised in the Provider.
- 18.2 No Party excludes or limits its liability for:
- a) death or personal injury caused by its negligence, or that of its Staff;
 - b) fraud or fraudulent misrepresentation by it or its Staff; or
 - c) breach of any obligations as to title implied by Section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982.
- 18.3 Subject to Clause 18.2 the Provider's total liability in connection with this Open Framework Agreement in each twelve (12) Month period during the Term (whether in contract, tort including negligence, breach of statutory duty or howsoever arising) shall be unlimited.
- 18.4 For the avoidance of doubt the Parties total liability under any Call-Off Terms and Conditions shall be as set out in each respective Call-Off Terms and Conditions.
- 18.5 Subject to Clause 19.3 the Provider shall indemnify and keep indemnified the Council in full from and against all claims, proceedings, actions, damages, legal costs, expenses and any other liabilities whatsoever arising out of, in respect of or in connection with this Open Framework Agreement including in respect of any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Provider, or any other loss which is caused directly or indirectly by

any act or omission of the Provider. This Clause shall not apply to the extent that the Provider is able to demonstrate that such death or personal injury, or loss or damage was not caused or contributed to by its negligence or Material Default, or the negligence or Material Default of its Staff or by any circumstances within its or their control.

19. INSURANCE

- 19.1 The Provider shall effect and maintain adequate policies of insurance with a reputable insurance company in respect of all risks which may be incurred by the Provider, arising out of the Provider's performance of this Open Framework Agreement and any Call-Off Contract as follows:
- (a) 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;
 - (b) 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 this Open Framework Agreement;
 - b) 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.
- 19.2 The Provider shall give the Council, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.

20. VARIATIONS AND MODIFICATIONS

- 20.1 A variation to this Open Framework Agreement or any Call-Off Contract shall be made in accordance with the Variation Procedure.
- 20.2 Subject to clause 20.1 the following provisions shall not constitute a material variation to this Agreement:
- a) In the event of any Guidance, legislative or regulatory changes coming in to force during the Term the Parties agree to modify this Open Framework Agreement accordingly to effect such change(s) in order to ensure compliance with applicable Laws and legislative requirements; or
 - b) In the event of any changes to the Council's electronic tendering system the Council reserves the right to vary how it receives notices.
- 20.3 The Parties agree that where a new provider replaces the Provider as a consequence of universal or partial succession into the position of the Provider, following corporate restructuring, takeover, merger, acquisition or insolvency, the Council may agree to the novation of this Open Framework Agreement and any Call-Off Contracts as applicable to the new provider, such agreement to be in writing, provided that:
- a) the new provider fulfils the criteria for qualitative selection initially established during the procurement of this Service;

- b) the result of the universal or partial succession does not entail other substantial modifications to the contract; and
- c) the succession complies with Regulation 72 of the Public Contract Regulations 2015.

21. RIGHTS OF THIRD PARTIES

21.1 Except as expressly stated otherwise, this Open Framework Agreement is not intended to, and does not, give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Open Framework Agreement.

22. SEVERABILITY

22.1 If any provision of this Open Framework Agreement is held invalid, illegal or unenforceable for any reason, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if this Open Framework Agreement had been executed with the invalid provision eliminated.

22.2 In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of this Open Framework Agreement, the Council and the Provider shall immediately commence good faith negotiations to remedy such invalidity.

23. RIGHTS AND REMEDIES

23.1 Except as otherwise expressly provided by this Open Framework Agreement, all rights and remedies available:

- a) to either Party for breach of this Open Framework Agreement are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies; and
- b) under this Open Framework Agreement and any Call-Off Contract are in addition to and not exclusive of any rights or remedies provided by Law.

24. WAIVER

24.1 The failure of either Party to insist upon strict performance of any provision of this Open Framework Agreement, or the failure of either Party to exercise, or any delay in exercising, any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by this Open Framework Agreement.

24.2 No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing.

25. ENTIRE AGREEMENT

25.1 This Open Framework Agreement constitutes the entire agreement and understanding between the Parties in respect of the matters dealt with in it and supersedes, cancels or nullifies any previous agreement between the Parties in relation to such matters.

25.2 Each of the Parties acknowledges and agrees that in entering into this Open Framework Agreement it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) other than as expressly set out in this Open Framework Agreement. The only remedy available to either Party of such statements, representation, warranty or understanding shall be for breach of contract under the terms of this Open Framework Agreement.

25.3 Nothing in this Clause shall operate to exclude Fraud or fraudulent misrepresentation.

26. THE COUNCIL'S STATUTORY FUNCTIONS

26.1 Nothing in this Open Framework Agreement shall prejudice or affect the Council's rights, powers, duties and obligations in relation to the exercise of its functions as a local authority.

27. NOTICES

27.1 Except as otherwise expressly provided within this Open Framework Agreement, no notice or other communication from one Party to the other shall be valid under this Open Framework Agreement unless made in writing by or on behalf of the Party sending the communication through the Council's electronic tendering system.

27.2 Any notice or communication shall be deemed to have been duly received when made through the Council's electronic tendering system and recorded as having been sent.

27.3 The Council may change the requirements for the service of notices by serving advance notice in accordance with this clause.

28. COMPLAINTS HANDLING AND RESOLUTION

28.1 The Provider shall notify the Council of any Complaint within five (5) Working Days of becoming aware of that Complaint and such notice shall contain full details of the Provider's plans to resolve such Complaint.

28.2 Without prejudice to any rights and remedies that a complainant may have at Law, including under this Open Framework Agreement or a Call-Off Contract, and without prejudice to any obligation of the Provider to take remedial action under the provisions of this Open Framework Agreement or a Call-Off Contract, the Provider shall use its best endeavours to resolve the Complaint within ten (10) Working Days and in so doing, shall deal with the Complaint fully, expeditiously and fairly.

28.3 Within five (5) Working Days of a request by the Council, the Provider shall provide full details of a Complaint to the Council, including details of steps taken to its resolution.

29. DISPUTE RESOLUTION

29.1 Any question, or difference, or dispute, arising in connection with the construction, meaning or operation of this Open Framework Agreement or any matter arising out of or in connection with this Open Framework Agreement, shall in the first instance be referred to the Open Framework Agreement Manager and the Designated Contract Manager for discussion

and resolution. If the matter is not resolved within ten (10) Working Days of such referral, the matter shall be referred to the next level of the Council's and the Provider's management which shall be directors or other senior representatives of the Parties with authority to settle the dispute.

- 29.2 If the dispute is not resolved under clause 29.1 above the Parties will attempt to settle it by mediation in accordance with the Centre for Effective Dispute Resolution (“**CEDR**”) Model Mediation Procedure. Unless otherwise agreed between the Parties, the mediator will be nominated by CEDR. To initiate the mediation a Party must give notice in writing (“**ADR notice**”) to the other Party to the dispute requesting mediation. A copy of the request should be sent to CEDR Solve. The mediation will start not later than 28 days after the date of the ADR notice.
- 29.3 No Party may commence any court proceedings or arbitration in relation to any dispute arising out of this Open Framework Agreement until it has attempted to settle the dispute by mediation and either the mediation has terminated or the other Party has failed to participate in the mediation, provided that the right to issue proceedings is not prejudiced by a delay.
- 29.4 If the unresolved matter is having a serious effect on the Services, the Parties shall use every reasonable endeavour to reduce the elapsed time in completing the process. Neither Party may initiate any legal action until the process has been completed, unless such Party has reasonable cause to do so to avoid damage to its business or to protect or preserve any right of action it may have.
- 29.5 The obligations of the Parties under this Open Framework Agreement shall not be suspended, cease or be delayed by the reference of a dispute to mediation and the Provider and its Staff and associates shall comply fully with the requirements of this Open Framework Agreement at all times.

30. MODERN SLAVERY

- 30.1 The Provider undertakes, warrants and represents that:
- a) neither the Provider nor any of its officers, employees, agents or Sub-Contractors has:
 - (i) committed an MSA Offence;
 - (ii) been notified that it is subject to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015; or
 - (iii) is aware if any circumstances within its supply chain that could give rise to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015;
 - b) 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>
 - c) it shall notify the Council immediately in writing if it becomes aware or has any 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 obligation.

31. CONFLICTS OF INTEREST

- 31.1 The Provider shall take appropriate steps to ensure that neither the Provider nor any Staff are placed in a position where (in the reasonable opinion of the Council), there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Provider or Staff and the duties owed to the Council under the provisions of the Open Framework Agreement.
- 31.2 The Provider shall promptly notify the Council (and provide full particulars to the Council) if any conflict referred to in clause 31.1 arises or is reasonably foreseeable.
- 31.3 The Council reserves the right to terminate the Open Framework Agreement immediately by giving notice in writing to the Provider and/or to take such other steps it deems necessary where, in the reasonable opinion of the Council, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Provider and the duties owed to the Council under the provisions of the Open Framework Agreement. The actions of the Council under this clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Council.

32. NON-DISCRIMINATION

- 32.1 The Provider shall not unlawfully discriminate within the meaning and scope of any Law, enactment, order or regulation relating to discrimination (whether in race, gender, religion, disability, sexual orientation or otherwise).
- 32.2 The Provider shall take all reasonable steps to secure the observance of Clause 32.1 by all servants, employees or agents of the Provider and all Providers and sub-contractors employed in the execution of the Open Framework Agreement and any Call-Off Contracts.

33. GOVERNING LAW AND JURISDICTION

- 33.1 This Open Framework Agreement 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.
- 33.2 The Parties irrevocably agree that subject to Clause 29 (*Dispute Resolution*), the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Open Framework Agreement or its subject matter.

SCHEDULE 1 – CALL-OFF CONTRACT TERMS AND CONDITIONS

As set out on the Council's webpage.

SCHEDULE 2 – OPEN FRAMEWORK SPECIFICATION

As set out on the Council's webpage.

SCHEDULE 3 – VARIATION PROCEDURE

1. Introduction

1.1 The Council may propose a variation to the Open Framework Agreement and any Call-Off Contract in accordance with this Schedule only where the variation does not amount to a material change in the Open Framework Agreement or the Call-Off Contract or the Services.

2. Procedure for proposing a Variation

2.1 Except where paragraph 5 applies, the Council may propose a variation using the procedure contained in this paragraph 2.

2.2 In order to propose a variation, the Council shall serve the Provider with written notice of the proposal to vary the Open Framework Agreement or Call-Off Contract (as applicable) ("**Notice of Variation**").

2.3 The Notice of Variation shall:

- contain details of the proposed variation providing sufficient information to allow each Provider to assess the variation and consider whether any changes to the Price is necessary; and
- require the Provider to notify the Council within fifteen (15) days of any proposed changes to the Price.

2.4 Upon receipt of the Notice of Variation, the Provider has fifteen (15) days to respond in writing with any objections to the variation.

2.5 Where the Council does not receive any written objections to the variation within the timescales detailed in paragraph 2.4, the Council may then serve the Provider with a written agreement detailing the variation to be signed and returned by the Provider within fifteen (15) days of receipt.

2.6 Upon receipt of a signed agreement from the Provider, the Council shall notify the Provider in writing of the commencement date of the variation.

3. Objections to a Variation

3.1 In the event that the Council receives one or more written objections to a variation, the Council may:

- withdraw the proposed variation; or
- propose an amendment to the variation.

4. Price

4.1 Any decrease to the Price must be notified and offered to the Council immediately.

5. Changes to the Pricing Due to a Variation

5.1 Where a Provider can demonstrate that a variation would result in a change to the Price set out in its Tender, the Council may require further evidence from the Provider that any additional costs to the Provider will be kept to a minimum.

- 5.2 The Council may require the Provider to meet and discuss any proposed changes to the Price that would result from a variation.
- 5.3 Where a change to the Price is agreed by the Council, the Council shall notify its acceptance of the change to the Provider in writing.
- 5.4 In the event that the Council and the Provider cannot agree to the changes to the Price, the Council may:
- withdraw the variation; or
 - propose an amendment to the variation.

6. Variation of the Framework Rules

- 6.1 The Council may at its absolute discretion amend the Framework Rules as set out in Schedule 4 to this Open Framework Agreement and shall communicate such amendments to the Framework Providers as soon as practicable after such variation.

7. Variations to Call-Off Contracts for Further Training Opportunities

- 7.1 Where a Call-Off Contract has been awarded to a Provider and a further opportunity for training is required for a similar requirement, the Council may at its discretion approach the Provider and if both parties agree, a contract variation will be actioned to award the additional delivery to the Provider without the need for a new Call-Off Contract or further competition.

8. Variations which are not permitted

- 8.1 In addition to the provisions contained in paragraph 1.2, the Council may not propose any variation which:
- may prevent the Provider from performing its obligations under the Open Framework Agreement or any Call-Off Contract; or
 - is in contravention of any Law.

VARIATION FORM TEMPLATE

No. of Call-Off Contract being varied

Variation Form No.

BETWEEN:

The Council

and

The Provider

1. The [Open Framework Agreement/Call-Off Contract] is varied as follows:

[list details of the Variation]

2. Words and expressions in this Variation Form shall have the meanings given to them in the Open Framework Agreement and Call-Off Terms and Conditions.
3. The [Open Framework Agreement/Call-Off Contract], including any previous Variation Forms, shall remain effective and unaltered except as amended by this Variation Form.

Authorised to sign for and on behalf of the Council

Signature

Date

Name in Capitals

Address

.....
.....
.....
.....

Authorised to sign for and on behalf of the Provider

Signature

Date

Name in Capitals

Address

.....
.....
.....
.....

SCHEDULE 4 – FRAMEWORK RULES

As set out on the Council's webpage.

**SCHEDULE 5 – ORDER FORM TEMPLATE
FROM**

The Council	
Service Address	
For the attention of:	
E-mail:	
Telephone Number:	

TO

Provider:	[insert Provider's name]
Service Address:	
For the attention of:	
E-mail:	
Telephone Number:	

1. SERVICES REQUIREMENTS
(1.1) Service Commencement Date:
(1.2) Service Order Period:
(1.3) Service Extension Period (if applicable):
(1.4) Price Payable: As per Annex 2 of this Order Form.

BY SIGNING AND RETURNING THIS FORM THE PROVIDER AGREES to enter into a legally binding contract with the Council to provide the Services as specified in Annex 1 to this Order Form issued under this Open Framework Agreement which shall incorporate the rights and obligations in the Call-Off Terms and Conditions set out in the Open Framework Agreement entered into by the Provider and the Council for the provision of skill development services.

For the avoidance of doubt, the Call-Off Terms and Conditions and the provisions of the Open Framework Agreement and any variations thereto (together with any Special Terms and Conditions if applicable) shall be the only terms applicable to a Call-Off Contract issued under this Open Framework Agreement and no other terms shall apply.

For and on behalf of the Provider:

Name and Title	
Signature	
Date	

For and on behalf of the Council:

Name and Title	
Signature	
Date	

ANNEX 1 TO THE ORDER FORM – CALL-OFF SPECIFICATION

[insert on call-off award]

ANNEX 2 TO THE ORDER FORM – PROVIDER’S TENDER AND PRICING

[insert on call-off award]

ANNEX 3 – SPECIAL TERMS AND CONDITIONS

Part 1 – Funding stream terms and conditions

[insert on call-off award as required]

Part 2 – Data Protection terms and conditions

In accordance with clause 25 of the Call-Off Terms and Conditions, the following Data Protection clauses shall apply between the Council and the Provider for the above Services to be provided under this Call-Off Contract:

[insert relevant data protection provisions on call-off award as required]