

**CALL-OFF TERMS AND CONDITIONS
FOR A CONTRACT FOR THE PROVISION
OF CLEANING AND FACILITIES SERVICES**

Between

THE PLACING AUTHORITY

And

[SUPPLIER]

CONTENTS

CLAUSES

1. Definitions and interpretation
2. Term and extending the Term
3. Consents
4. Supplier's warranty and due diligence
5. Supply of services and good faith
6. Service Levels
7. Service standards
8. Health and safety
9. Authority's Assets
10. Price
11. Payment
12. Authority self-help remedy
13. Key Personnel
14. Other Personnel
15. Safeguarding
16. Employees: TUPE and equal opportunities
17. Reporting, meeting and complaints
18. Monitoring
19. Change control, benchmarking and continuous improvement
20. Dispute resolution and assistance in legal proceedings
21. Sub-contracting and assignment
22. Indemnities
23. Limitation of liability
24. Insurance
25. Freedom of information
26. Data protection
27. Confidentiality
28. Audit
29. Intellectual property
30. Termination for breach
31. Termination on notice
32. Force majeure
33. Prevention of bribery and modern slavery
34. Consequences of termination
35. Non-solicitation
36. Waiver
37. Cumulation of remedies
38. Severability
39. Partnership or agency
40. Third party rights
41. Publicity
42. Notices
43. Entire agreement
44. Counterparts
45. Governing law and jurisdiction
46. Assistance in legal proceedings

SCHEDULES

- | | |
|-------------|------------------------------------|
| Schedule 1: | Specification |
| Schedule 2: | Site Profile |
| Schedule 3: | Key Personnel |
| Schedule 4: | Change Control |
| Schedule 5: | TUPE and Pension |
| Schedule 6: | Commercially Sensitive Information |
| Schedule 7: | Supplier's Request to Participate |

THIS CALL-OFF CONTRACT is made on

BETWEEN

- (1) the entity which is set out as the Placing Authority in the Call-Off Contract Acceptance Form issued to the Supplier by the Lead Authority (the "**Placing Authority**"); and
- (2) the entity which as a sole trader, partnership or with another trading status which has its principal place of business (or as a limited company has its company number and registered office) the address set out in the Call-Off Contract Acceptance Form issued to the Supplier by the Lead Authority (the "**Supplier**").

(each of which is a "**Party**" and together they are the "**Parties**").

BACKGROUND

- (A) The Lead Authority has established the Dynamic Purchasing System for the Provision of Cleaning and Facilities Services (the "**DPS**") and has admitted the Supplier, and other such DPS Suppliers, to the DPS.
- (B) The Supplier has been selected to deliver the Services and the Lead Authority has issued a Call-Off Contract Acceptance Form to the Supplier on behalf of the Placing Authority (or itself where it is the Placing Authority).
- (C) The Supplier agrees to enter into a Call-Off Contract with the Placing Authority pursuant to the terms and conditions set out in the Call-Off Contract Acceptance Form and these Call-Off Terms and Conditions.
- (D) These Call-off Terms and Conditions do not contain pricing information. The Call-Off Contract has been awarded to the Supplier in accordance with the Contract Price set out in the Supplier's tendered pricing schedule.

AGREED TERMS

1 Definitions and interpretation

- 1.1 The definitions and rules of interpretation in this Clause 1.1 apply in these Call-Off Terms and Conditions.

Access Agreement: means the Access Agreement Pertaining to the Dynamic Purchasing System for the Provision of Cleaning and Facilities Services entered into by the Lead Authority and each of the Placing Authorities pursuant to which a Placing Authority is entitled to let a Call-off Contract in accordance with the procedure set out in the DPS Agreement (subject to the Placing Authority also entering into the Authority SLA with the Lead Authority).

Applicable Laws: means any statutes, statutory instruments or other legislative provisions (including, without limitation any successor, replacement or amendment statute, statutory instrument or other legislative provision) governing or otherwise relevant to the provision of the Services.

Associated Company: means any holding company from time to time of the Supplier and any subsidiary from time to time of the Supplier, or any subsidiary of any such holding company.

Authority SLA: means the Lead Authority's Service Level Agreement for Grounds Support Services and/or Building Cleaning/Caretaking Support Services to Schools, pursuant to which the Lead Authority has agreed to provide to the Placing Authority certain procurement and contract management services pertaining to the Services.

Best Industry Practice: means the standards which fall within the upper quartile in the relevant industry for the provision of comparable services which are substantially similar to the Services or the relevant part of them, having regard to factors such as the nature and size of the Parties, the service levels, the term, the pricing structure and any other relevant factors.

Bribery Act: means the Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning the legislation.

Call-Off Contract: means a legally binding agreement (made pursuant to the provisions of this DPS Agreement) for the provision of the Services made between a Placing Authority and the Supplier comprising a Call-off Contract Acceptance Form and its appendices, and these Call-off Terms and Conditions.

Call-Off Contract Acceptance Form: means the document setting out details of the Services and Price in the form set out in Schedule 4 of the DPS Agreement (Call-Off Contract Acceptance Form) or as otherwise agreed in accordance with Clause 4.6 of the DPS Agreement (Award Procedures).

Call-off Terms and Conditions: means these terms and conditions which are incorporated by reference to any Call-Off Contract.

Catastrophic Failure: means any action by the Supplier, whether in relation to the Services and the Call-Off Contract or otherwise, which in the reasonable opinion of the Placing Authority's Key Personnel has or may cause significant harm to the reputation of the Placing Authority.

CEDR: means the Centre for Effective Dispute Resolution.

Change: means any change to the Call-Off Contract agreed between the Parties in accordance with the Change Control Procedure.

Change Control Procedure: means the procedure for changing the Call-Off Contract, as set out in Schedule 4 (Change Control).

Commencement Date: means the date set out in the Call-Off Contract Acceptance Form.

Commercially Sensitive Information: means the information listed in Schedule 6 (Commercially Sensitive Information) comprising the information of a commercially sensitive nature relating to the Supplier, its intellectual property rights or its business or which the Supplier has indicated to the Placing Authority that, if disclosed by the Placing Authority, would cause the Supplier significant commercial disadvantage or material financial loss.

Confidential Information: means all data and information supplied by the Placing Authority (or the Lead Authority on the Placing Authority's behalf) to the Supplier and/or the Personnel (or any of them) or the supply of which is procured by the Placing Authority, whether in the form of written and/or printed documents (including facsimile transmissions), oral communication, data stored on magnetic or electronic media or data communicated over communication lines, but does not include:

- (a) information which is or which subsequently becomes within the public domain other than by reason of a breach of this agreement by the Supplier;
- (b) information which the Supplier can reasonably demonstrate was known by it, under no obligation of confidence, prior to its receipt of such information; or
- (c) information which becomes otherwise lawfully available to the Supplier other than as a result of a breach of any duty of confidence owed to the Placing Authority.

Consistent Failure: shall mean:

- (a) a failure rate of three (3) or more instances of failure to deliver the Services in a manner that is consistent with the Specification in every rolling six (6) month period for the Call-Off Contract;
- (b) the Placing Authority serving two (2) Remediation Notices in a rolling six (6) month period; or
- (c) the Placing Authority serving three (3) or more Default Notices for instances of failure to deliver the Services in a manner that is consistent with the Specification in a rolling six (6) month period.

Contract Price: means the respective sums of money set out by the Supplier in the Tender or such variation of these sums as may be provided for or agreed in accordance with these Call-off Terms and Conditions.

Contract Schedules: means the schedules specifying details of the Service to be provided under the Call-Off Contract, including timetables and other information submitted by the Supplier and supplied by the Lead Authority as part of the Tender.

Contract Manager: means the person appointed by the Lead Authority and instructed by the Placing Authority, who, in accordance with Clause 13 (Key Personnel), shall be the Placing Authority's prime contact for managing and monitoring the provision of the Services under the Call-Off Contract.

Contract Year: means a period of a calendar year, commencing on the Commencement Date and ending on the day before the anniversary of the Commencement Date.

Data Protection Legislation: shall mean all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR; the DPA (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (*SI 2003/2426*) as amended and the guidance and codes of practice issued by the Information Commissioner or other relevant regulatory authority and applicable to a party.

DBS: means the Disclosure and Barring Service.

Default Notice: has the meaning given to it in Clause 5 (Conditions of Supply).

Dispute Resolution Procedure: means the procedure set out in Clause 20 (Dispute Resolution and Assistance in Legal Proceedings).

Discrimination Acts: has the meaning given to it in Clause 16 (Employees: TUPE, Pensions and Equal Opportunities).

DPA: means the Data Protection Act 2018.

DPS: means the Dynamic Purchasing System for the Provision of Cleaning and Facilities Services, being an electronic system used by the Lead Authority and other Placing Authorities to select DPS Suppliers to provide to the Lead Authority and other Placing Authorities the cleaning and facilities services set out in this Agreement, and in accordance with the procedure set out at Regulation 34 of the Regulations.

DPS Agreement: means the Dynamic Purchasing System Agreement for the Provision of Cleaning and Facilities Services agreed between the Lead Authority and the Supplier and accepted by the Supplier as a condition of the admission of the Supplier to the DPS.

DPS Suppliers: means the suppliers, including the Supplier, which have met the criteria to be admitted to the DPS, and which have been admitted to the DPS by the Lead Authority, as potential providers of the Services pursuant to agreements identical to this DPS Agreement, *mutatis mutandis*.

Environmental Information Regulations or EIR: means the Environmental Information

Regulations 2004 (SI 2004/3391) together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.

Expiry Date: means the date of expiry of the Call-Off Contract as set out in the Call-Off Contract Acceptance Form.

FOIA: means the Freedom of Information Act 2000 and any subordinate legislation made under the 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.

Force Majeure: means, in relation to either Party, any event or circumstance which is beyond the reasonable control of such Party and which results in or causes the failure of that Party to perform any of its obligations under the Call-Off Contract, including act of God, strike, lockout or other industrial disturbance (but excluding any industrial dispute relating to the Supplier, the Supplier's Personnel or any other failure in the Supplier's supply chain), act of the public enemy, war (declared or undeclared), threat of war, terrorist act, blockade, revolution, riot, insurrection, civil commotion, public demonstration, sabotage, act of vandalism, lightning, fire, storm, flood, earthquake, accumulation of snow or ice, lack of water arising from weather or environmental problems, explosion, fault or failure of plant and equipment (which could not have been prevented by good industry practice), governmental restraint, Act of Parliament, other legislation, bye-law and or Directive provided that lack of funds shall not be interpreted as a cause beyond the reasonable control of that Party.

Information: has the meaning given under section 84 of FOIA.

Initial Term: means the period commencing on the Commencement Date to the Expiry Date or such earlier date of termination of the Call-Off Contract in accordance with the law or the provisions of the Call-Off Contract.

Intellectual Property: means any and all intellectual property rights of any nature anywhere in the world whether registered, registerable or otherwise, including patents, utility models, trademarks, registered designs and domain names, applications for any of the foregoing, trade or business names, goodwill, copyright and rights in the nature of copyright, design rights, rights in databases, moral rights, know-how and any other intellectual property rights which subsist in computer software, computer programs, websites, documents, information, techniques, business methods, drawings, logos, instruction manuals, lists and procedures and particulars of customers, marketing methods and procedures and advertising literature, including the "look and feel" of any websites.

Intellectual Property Rights: means patents, patent applications, know-how, trademarks, trade mark applications, trade names, registered designs, copyright or other similar intellectual or commercial rights.

Key Personnel: means those persons identified in Schedule 3 (Key Personnel) for the roles attributed to such persons, as modified pursuant to Clause 13 (Key personnel).

Lead Authority: means Lancashire County Council, being the contracting authority that established the DPS.

Loss: means losses, liabilities, claims, costs, charges and outgoings of every description (including legal expenses), compensation payable under contracts with suppliers and or customers, loss of normal operating profits, loss of opportunity, loss of goodwill, loss of revenue from related contracts and pure economic loss and the reasonable cost to the Placing Authority for the time spent by its officers in terminating the Call-Off Contract and in making alternative arrangements for the provision of the Services.

Modern Slavery Legislation: means the legislation referred to in section 54 of the Modern Slavery Act 2015.

Necessary Consents: means all approvals, certificates, authorisations, permissions, licences, permits, regulations and consents necessary from time to time for the performance of the Service as set out in the General Specification and/or Site Profile.

Party or Parties: means the Placing Authority and the Supplier.

Personnel: means all persons engaged by the Supplier from time to time in connection with the provision of the Services in any manner employed by the Supplier or by other contractors of the Supplier or are employed on their own account as independent contractors or the Supplier's sub-contractors, servants or agents.

Placing Authority Assets: means any materials, plant or equipment owned or held by the Placing Authority and provided by the Placing Authority for use in providing the Services.

Price: means the annual sum specified in (or calculated by reference to) the Tender.

Procurement Regulations: means the Public Contracts Regulations 2015 (SI 015/102).

Prohibited Act: the following constitute Prohibited Acts:

- (a) to directly or indirectly offer, promise or give any person working for or engaged by the Placing Authority a financial or other advantage to:
 - (i) induce that person to perform improperly a relevant function or activity; or
 - (ii) reward that person for 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 the Call-Off Contract;
- (c) committing any offence:
 - (i) under the Bribery Act;
 - (ii) under legislation creating offences concerning fraudulent acts;
 - (iii) at common law concerning fraudulent acts relating to the Call-Off Contract or any other contract with the Placing Authority; or
 - (iv) defrauding, attempting to defraud or conspiring to defraud the Placing Authority.

Regulated Activity: (in relation to children) shall have the same meaning as set out in Part 1 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006 and (in relation to vulnerable adults) shall have the same meaning as set out in Part 2 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006.

Regulated Activity Provider: shall have the same meaning as set out in section 6 of the Safeguarding Vulnerable Groups Act 2006.

Relevant Transfer: means a relevant transfer for the purposes of TUPE.

Remediation Notice: means a notice served by the Placing Authority in accordance with Clause 30 (Termination for Breach).

Replacement Services: means any services that are identical or substantially similar to any of the Services and which the Placing Authority 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 Placing Authority internally or by any Replacement Supplier.

Replacement Supplier: means any third party supplier of Replacement Services appointed by the Placing Authority from time to time.

Request for Information: means a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the EIR.

Review Meeting: has the meaning given to it in Clause 17.2 (Reporting, Meeting and Complaints).

Supplier Representative: means the person appointed by the Supplier, in accordance with Clause 13 (Key Personnel), to be its prime contact point for managing and monitoring the provision of the Services under the Call-Off Contract and having the authority to contractually bind the Supplier on all matters relating to the Services.

Supplier's Personnel: means all employees, staff, other workers, agents and consultants of the Supplier and of any Sub-Contractors who are engaged in the provision of the Services from time to time.

Supplier's Request to Participate: the standard selection questionnaire submitted by the Supplier and other associated documentation set out in Schedule 7 (Supplier's Request to Participate) and accepted by the Lead Authority to enable the Supplier to join the Lead Authority's DPS as an eligible DPS Supplier.

Services: the services and/or goods to be delivered by or on behalf of the Supplier under the Call-Off Contract, as more particularly described in Schedule 1 (Specification) and Schedule 2 (Site Profile).

Site Officer: means the site-specific contact of the Placing Authority;

Specification: means the Specification prepared by or on the Placing Authority's behalf as appended to these Call-Off Terms and Conditions at Schedule 1 (Specification).

Sub-Contract: means any contract between the Supplier and a third party pursuant to which the Supplier agrees to source the provision of any of the Services from that third party.

Sub-Contractor: means any contractor or Supplier that enters into a Sub-Contract with the Supplier.

Tender: means the Supplier's submission including its Price in response to a request for Services.

Term: means the period of the Initial Term for a Contract as may be varied by:

- (a) any extensions to the Call-Off Contract which are agreed pursuant to Clause 2 (Term and Extending the Term); or
- (b) the earlier termination of the Call-Off Contract in accordance with its terms.

Termination Date: means the date of expiry or termination of the Call-Off Contract.

Termination Payment Default: means the Placing Authority's failure to pay the Supplier (following receipt of a valid, undisputed VAT invoice submitted by the Supplier) where the Supplier has also issued a notice requesting payment after thirty (30) days from the date of the invoice and where payment has not been made by the Placing Authority within the following thirty (30) days of a sum exceeding seventy-five per cent (75%) of such invoiced amount.

TUPE: means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246).

TUPE Event: means the transfer of an identifiable economic unit for the purposes of TUPE.

UK GDPR: has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.

Working Day: means Monday to Friday, excluding any public holidays in England and Wales.

1.2 In the Call-Off Contract, unless the context otherwise requires:

- a) Clause, schedule and paragraph headings are for convenience of reference only and shall not affect the interpretation or construction of the Call-Off Contract;
- b) a person includes a natural person, corporate or unincorporated body and partnerships (whether or not having separate legal personality);
- c) the schedules form part of these Call-Off Terms and Conditions and shall have effect as if set out in full in the body of these Call-Off Terms and Conditions and any reference to the Call-Off Terms and Conditions includes the schedules;
- d) a reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established;
- e) a references to any person include references to any human being, company, body corporate, association, joint venture, partnership, trust and any legal entity capable of suing and being sued;
- f) words in the singular shall include the plural and vice versa;
- g) a reference to one gender shall include a reference to the other genders;
- h) a reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it;
- i) a reference to writing or written includes email but not faxes;
- j) any obligation in the Call-Off Contract on a person not to do something includes an obligation not to agree or allow that thing to be done;
- k) a reference to a document is a reference to that document as varied or novated (in each case, other than in breach of the provisions of the Call-Off Contract) at any time;
- l) references to clauses and schedules are to the clauses and schedules of these Call-Off Terms and Conditions; references to paragraphs are to paragraphs of the relevant schedule;
- m) where there is any conflict or inconsistency between the provisions of the Call-Off Contract such conflict or inconsistency shall be resolved according to the following order of priority:
 - i. the Clauses of the Call-Off Terms and Conditions;
 - ii. Schedule 2 (Site Profile) to these Call-Off Terms and Conditions;
 - iii. Schedule 1 (Specification) to these Call-Off Terms and Conditions;
 - iv. the remaining schedules to these Call-Off Terms and Conditions other than Schedule 7 (Supplier's Request to Participate); and
 - v. Schedule 7 (Supplier's Request to Participate) to these Call-Off Terms and Conditions.
- n) Any words following the terms "**including**", "**include**", "**in particular**" or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- o) Reference to the Supplier shall include the Supplier's sub-contractors unless expressly excluded.
- p) Reference to "the Call-Off Contract" is to the Call-Off Terms and Conditions as part of the

Call-Off Contract.

2 Term and Extending the Initial Term

- 2.1 Each Call-Off Contract shall take effect on the Commencement Date and shall continue for the Term.
- 2.2 The Lead Authority may (on a Placing Authority's behalf) extend a Call-Off Contract beyond the Initial Term by a further period or periods up to a maximum of twenty-four (24) months in addition to the Initial Term (the "**Extension Period**"). The Lead Authority shall use its reasonable endeavours to give the Supplier at least two (2) weeks' written notice of a Placing Authority's intention to extend the Call-Off Contract before the expiry of the Initial Term or Extension Period.
- 2.3 If a notice to extend the Call-Off Contract is served in accordance with clause 2.2 then the Term shall be extended by the period set out in the notice on the same terms and conditions as set out in the Call-Off Contract.
- 2.4 Where a notice to extend the Call-off Contract is not served in accordance with clause 2.2, the Call-Off Contract shall expire on the expiry of the Initial Term and the provisions of Clause 34 (Consequences of Termination) shall apply.

3 Consents

- 3.1 The Supplier shall ensure that all Necessary Consents are in place to provide the Services and the Placing Authority shall not (unless otherwise agreed) be liable for any additional costs associated with obtaining, maintaining or complying with the same.
- 3.2 Where there is any conflict or inconsistency between the provisions of the Call-Off Contract and the requirements of a Necessary Consent the latter shall prevail, provided that the Supplier has made all reasonable attempts to obtain a Necessary Consent in line with the requirements of the Services.
- 3.3 The Supplier shall at its own expense obtain and keep in force any licence necessary to provide the Services and shall ensure that the requirements of that licence are observed at all times. Failure to comply may result in the Placing Authority terminating the Call-Off Contract in accordance with Clause 30.1.1 (Termination for Breach).

4 Supplier's Warranty and Due Diligence

- 4.1 The Supplier acknowledges and confirms that:
- 4.1.1 it has had an opportunity to carry out a thorough due diligence exercise in relation to the Services and has asked the Placing Authority all the questions it considers to be relevant for the purpose of establishing whether it is able to provide the Services in accordance with the terms of the Call-Off Contract;
 - 4.1.2 it has received all information requested by it from the Placing Authority to enable it to determine whether it is able to provide the Services in accordance with the terms of the Call-Off Contract;
 - 4.1.3 it has made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of the Placing Authority;
 - 4.1.4 it has raised all relevant due diligence questions with the Placing Authority before the Commencement Date; and
 - 4.1.5 it has entered into the Call-Off Contract in reliance on its own due diligence.
- 4.2 Save as provided in the Call-Off Contract, no representations, warranties or conditions are

given or assumed by the Placing Authority in respect of any information which is provided to the Supplier by the Placing Authority and any such representations, warranties or conditions are excluded, save to the extent that such exclusion is prohibited by law.

- 4.3 The Supplier warrants and undertakes to the Placing Authority that:
- 4.3.1 it has full capacity and authority to perform the Services;
 - 4.3.2 the Services shall be provided with all reasonable skill and care and that it shall ensure that the Personnel shall have the necessary skills and competencies, experience, equipment and other resources to enable them properly and expeditiously to perform the Services;
 - 4.3.3 the Services and any materials and equipment supplied in the performance of the Services shall be provided in accordance with Best Industry Practice and the highest professional standards and shall conform to any and all codes of practice, performance ratings and quality standards as are laid down in the Specification, the Supplier's Request to Participate and or elsewhere within the Call-Off Contract;
 - 4.3.4 the Services shall at all times conform to the Specification;
 - 4.3.5 it shall not without the written permission of the Placing Authority advertise the fact that it is providing the Services to the Placing Authority;
 - 4.3.6 neither it nor any person engaged by it to provide the Services shall solicit any gratuity, tip or other form of reward or charge for performing the Services other than the Price set out in the Call-Off Contract; and
 - 4.3.7 any and all Intellectual Property Rights developed under the Call-Off Contract or arising by virtue of the performance of the Services shall belong to the Placing Authority. The Supplier agrees that it shall execute or cause to be executed (by its Personnel if necessary) all deeds, documents and acts required to vest such Intellectual Property Rights in the Authority; and
 - 4.3.8 It shall promptly notify the Placing Authority in writing if it becomes aware during the performance of the Call-Off Contract of any inaccuracies in any information provided to it by the Placing Authority during such due diligence which materially and adversely affects its ability to perform the Services.
- 4.4 The Supplier shall not be entitled to recover any additional costs from the Placing Authority which arise from, or be relieved from any of its obligations as a result of, any matters or inaccuracies notified to the Placing Authority by the Supplier save where such additional costs or adverse effect on performance have been caused by the Supplier having been provided with fundamentally misleading information by or on behalf of the Placing Authority and the Supplier could not reasonably have known that the information was incorrect or misleading at the time such information was provided. If this exception applies, the Supplier shall be entitled to recover such reasonable additional costs from the Placing Authority or shall be relieved from performance of certain obligations as shall be determined by the Change Control Procedure.
- 4.5 Nothing in this Clause 4 shall limit or exclude the liability of the Placing Authority for fraud or fraudulent misrepresentation.

5 Conditions of Supply

- 5.1 The purchase of the Services by the Placing Authority pursuant to the Call-Off Contract shall, unless otherwise expressly agreed in the Call-Off Contract Acceptance Form, be on a non-exclusive basis and the Supplier acknowledges that the Placing Authority may appoint any other person to provide services which are the same as or similar to the Services provided pursuant to the Call-Off Contract.

- 5.2 The Supplier acknowledges that the Placing Authority shall have no obligation to issue a Call-Off Contract Acceptance Form pursuant to these Call-Off Terms and Conditions.
- 5.3 The Supplier shall provide the Services to the Placing Authority with effect from the Commencement Date and for the Term in accordance with the provisions of the Call-Off Contract.
- 5.4 In the event that the Supplier does not comply with the provisions of the Call-Off Contract the Placing Authority may serve the Supplier with a notice in writing setting out the details of the Supplier's default (a "**Default Notice**").
- 5.5 Both Parties shall co-operate with, and act in good faith towards each other in relation to all matters arising under the Call-Off Contract to enable the Placing Authority to derive the full benefit of the Call-Off Contract and in particular each Party shall inform the other fully and as soon as possible of any circumstance which might alter the burden of the obligations of each Party under the Call-Off Contract.
- 5.6 Both Parties shall do all things reasonably within their power which are necessary or desirable to give effect to the spirit and intent of the Call-Off Contract and its fundamental purpose.
- 5.7 Any act, omission, decision, requirement, agreement or any other step of any kind taken by either Party shall be taken reasonably and in good faith. Any reference (express or implied) to any period, time, occasion, or any other similar matter shall be subject to the qualification or reasonableness, unless the context otherwise requires.
- 5.8 Where the Placing Authority's consent is required to do anything under the Call-Off Contract there shall not be implied (unless expressly stated) any presumption that such consent shall not be unreasonably withheld or delayed.

6 NOT USED

7. Service Standards

- 7.1 The Supplier warrants that it shall provide the Services or procure that they are provided:
- 7.1.1 diligently and with all skill and care as can be reasonably expected of an appropriately qualified and competent provider or contractor experienced in performing the same services and will perform the Services at all times in compliance with the Placing Authority's requirements set out in the Call-Off Contract including, but not limited to, the Specification;
- 7.1.2 promptly (and in any event within any time targets as may be set out in the Specification), strictly in accordance with the Call-Off Contract and the Specification;
- 7.1.3 (except with the Placing Authority's prior written approval) continuously during the periods set out in the Specification;
- 7.1.4 in a professional and courteous manner so as to reflect and promote the image of the Placing Authority;
- 7.15 in accordance with Best Industry Practice;
- 7.16 to the Placing Authority's reasonable satisfaction and in accordance with the standards of service and quality assurance set out in the Specification; and
- 7.17 ensuring that the conduct and operation of the Services does not in any way interrupt or interfere with the provision by the Placing Authority of other services or any other activities carried on elsewhere.

- 7.2 The Supplier shall use as appropriate first class quality materials, skills and workmanship of their respective kinds and undertakes that the design, workmanship and materials used will be fit to achieve the purpose for which the Services are required either as specified by the Placing Authority expressly in the Call-Off Contract or as may be implied from the Call-Off Contract and the Supplier further acknowledges that in performing the Services the Placing Authority is reliant at all times on the Supplier's skill and judgement.
- 7.3 The Supplier shall (and shall procure that the Supplier's Personnel shall):
- 7.3.1 At all times comply in each and every respect with all Applicable Laws and all relevant legal, regulatory, quality and safety standards and other requirements for the time being in force (including any codes of practice issued by any governmental or regulatory body).
- 7.3.2 at all times comply with the provisions of the Human Rights Act 1998 in the performance of this agreement. The Supplier shall also undertake, or refrain from undertaking, such acts as the Placing Authority requests so as to enable the Placing Authority to comply with its obligations under the Human Rights Act 1998; and
- 7.3.3 not unlawfully discriminate within the meaning and scope of any law, enactment, order or regulation relating to discrimination in employment.

8 Health and Safety

- 8.1 The Supplier shall satisfy itself that no product shall be supplied or used in the supply of the Services to the Placing Authority which shall endanger the health of the pupils, staff or others or is derived from or harmful to threatened species or environments.
- 8.2 The Supplier shall promptly notify the Placing Authority of any health and safety hazards, which may arise in connection with the performance of the Call-Off Contract. The Placing Authority shall promptly notify the Supplier of any health and safety hazards that may exist or arise at the Placing Authority's premises and that may affect the Supplier in the performance of the Call-Off Contract.
- 8.3 While on the Placing Authority's premises, the Supplier shall comply with any health and safety measures Placing Authority's premises.
- 8.4 The Supplier shall notify the Placing Authority immediately in the event of any incident occurring in the performance of the Call-Off Contract on the Placing Authority's premises where that incident causes any personal injury or damage to property that could give rise to personal injury.
- 8.5 The Supplier shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to staff and other persons working on the Placing Authority's premises in the performance of the Call-Off Contract.
- 8.6 The Supplier shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc Act 1974) is made available to the Placing Authority on request.
- 8.7 The Placing Authority is committed to using the resources entrusted to it to ensure best value for money at the least possible cost to the environment.
- 8.8 As part of this commitment to the environment, the Placing Authority's policies shall, wherever practicable, focus on specifying less environmentally damaging products, promoting greater use of renewable sources and encouraging suppliers to use environmentally friendly practices throughout the production process. The Supplier shall comply with such policies.

8.9 The Supplier shall provide on request evidence of practices and procedures as they relate to the protection of the environment.

9 Placing Authority's Assets

9.1 The Supplier shall ensure that:

9.1.1 where using any Placing Authority Assets they are kept secure and the Supplier shall comply and cooperate with the Placing Authority's reasonable directions regarding the security of the same;

9.1.2 any of the Placing Authority's Assets used by the Supplier are maintained (or restored at the end of the Term) in the same or similar condition as at the Commencement Date (fair wear and tear excepted) and are not removed unless expressly permitted under the Call-Off Contract or by the Placing Authority.

9.2 The Placing Authority shall maintain and repair the Placing Authority's Assets, however, where such maintenance or repair arises directly from the act, omission, default or negligence of the Supplier or its representatives (fair wear and tear excluded) the costs incurred by the Placing Authority in maintaining and repairing the same shall be recoverable from the Supplier as a debt.

9.3 The Supplier shall notify the Placing Authority immediately on becoming aware of any damage caused by the Supplier, its agents, employees or Sub-Contractors to any property of the Placing Authority or to any property of any other recipient of the Services in the course of providing the Services.

10 Price

10.1 The Price for each Call-Off Contract shall remain fixed and shall be the entire price payable by the Placing Authority to the Supplier in respect of the Services and shall include, without limitation, any royalties, consents, licence fees, supplies and all consumables used by the Supplier, travel costs, accommodation expenses and the cost of the Supplier Personnel.

10.2 The Supplier may request a review of the Price annually no later than one (1) month prior to each anniversary of the Commencement Date. The review shall take into account factors including but not limited to the budgetary constraints of the Placing Authority, average waste cost increases and any increases to the Consumer Prices Index (the "CPI"), as well as any other exceptional factors which may impact upon the Supplier's costs. The Placing Authority offers no guarantee and does not represent that any annual price increase will take place. If the Placing Authority decides at its discretion to increase the Price pursuant to this clause in any given Contract Year of the Term, such an increase will be notified to the Supplier as soon as reasonably practicable and, provided that the Supplier's request was submitted at least one (1) month prior to the relevant anniversary of the Commencement Date, it shall take effect on the anniversary of the Commencement Date which follows the Supplier's request for a review.

10.3 The Placing Authority shall only otherwise consider increasing the Price payable to the Contractor in exceptional cases and only where the Supplier has provided to the Placing Authority evidence of an increase in its costs which is due to factors entirely out of the control and manageability of the Supplier. These factors include but are not limited to:

10.3.1 changes to the National Minimum Wage Regulations 2015 (SI 2015/621) resulting in the delivery of the Services becoming unsustainable for the Contractor;

10.3.2 a substantial increase in auto-enrolment pension contributions;

10.3.3 an increase in the CPI; and

10.3.4 any other evidenced exceptional circumstances.

- 10.4 Prior to the Placing Authority agreeing to any increase in the Price pursuant to clause 10.3, the Supplier must agree to an open book exercise to demonstrate that the costs increases are due to factors outside of its control and that the Supplier cannot offset such costs increases by making operational efficiencies. The Placing Authority shall take into account all relevant considerations, including but not limited to budgetary constraints when assessing any requests to increase the Price.
- 10.5 The Placing Authority makes no representations and offers no guarantee that any increase will be applied to the Price following any review or assessment which is carried out by the Placing Authority.
- 10.6 No increases to the Price shall take effect unless confirmed in writing by the Customer. The Parties agree that the requirement to comply with the Change Control Procedure shall be dispensed with in such circumstances.

11 Payment

- 11.1 In consideration of the provision of the Services by the Supplier in accordance with the terms and conditions of the Call-Off Contract, the Placing Authority shall pay the Price to the Supplier in accordance with any provisions set out in this Clause 11. The Placing Authority will make no payment to the Supplier in respect of the Call-Off Contract other than the Price, as varied from time to time in accordance with the Call-Off Contract.
- 11.2 The Placing Authority will, subject to satisfactory provision of the Services make payment of the Price as specified in the Call-Off Contract and as set out in the Tender.
- 11.3 The Price is stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Placing Authority within 30 days following delivery of a valid VAT invoice.
- 11.4 The Supplier shall maintain complete and accurate records of, and supporting documentation for, all amounts which may be chargeable to the Placing Authority pursuant to the Call-Off Contract. Such records shall be retained for inspection by the Placing Authority for seven (7) years from the end of the Contract Year to which the records relate.
- 11.5 The Price set out in the Tender is an annual sum and the Price shall be paid monthly in arrears. The Supplier shall invoice the Placing Authority one twelfth (1/12) of the Price at the end of each month.
- 11.6 Any invoices for payment submitted by the Supplier will be considered and verified by the Placing Authority in a timely fashion and undue delay in doing so will not be sufficient justification for failing to regard an invoice as valid and undisputed.
- 11.7 The Placing Authority shall make payment within thirty (30) days of receipt of an undisputed invoice from the Supplier.
- 11.8 Where any Party disputes any sum to be paid by it then no payment shall be paid (for the avoidance of doubt no payment equal to the sum not in dispute shall be paid) and the dispute as to the sum that remains unpaid shall be determined in accordance with Clause 20 (Dispute Resolution and Assistance in Legal Proceedings). Provided that the sum has been disputed in good faith, interest due on any sums in dispute shall not accrue until thirty (30) days after settlement of the resolution of the dispute between the Parties.
- 11.9 Subject to Clause 11.8, interest shall be payable on the late payment of any undisputed Price properly invoiced under the Call-Off Contract in accordance with the Late Payment of Commercial Debts (Interest) Act 1998. The Supplier shall not suspend the supply of the Services if any payment is overdue.
- 11.10 Where the Supplier enters into a Sub-Contract with a supplier or contractor for the purpose of performing the Call-Off Contract, it shall include a term in its Sub-Contract that requires payment to be made of undisputed sums by the Supplier 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.

- 11.11 The Placing Authority may retain or set off any sums owed to it by the Supplier which have fallen due and payable against any sums due to the Supplier under the Call-Off Contract or any other agreement pursuant to which the Supplier or any Associated Company of the Supplier provides goods or services to the Placing Authority.

12 Default and Remedy

- 12.1 Where the Supplier fails to perform the Services in whole or in part, the Placing Authority may issue a Default Notice or Remediation Notice as a written warning to the Supplier and in the event of subsequent unreasonable failures to perform the Services the Placing Authority may terminate the Call-Off Contract in accordance with the termination events set out in Clause 30 (Termination for Breach). This is without prejudice to the Placing Authority's rights to terminate the Call-Off Contract in the event of Consistent Failure for substantial or persistent breach.
- 12.2 If the Supplier is unable to make satisfactory alternative arrangements to fulfil its obligations under the Call-Off Contract then the Placing Authority will make alternative arrangements and invoice the Supplier for the full cost of providing the alternative arrangement plus administrative costs based on Placing Authority staff costs and time taken to put such arrangements in place.
- 12.3 If the Supplier fails to perform the Services in whole or in part strictly in accordance with the terms of the Call-Off Contract (in a manner that complies with the Specification) or gives the Placing Authority insufficient notice of the Supplier's inability to perform the Services or a Supplier termination then, without prejudice to any other remedy available to the Placing Authority, the Placing Authority may make arrangements to provide and perform, by its own staff or that of a Replacement Supplier, such Services or any part of them which the Supplier fails to perform.
- 12.4 For the avoidance of doubt, the arrangements made by the Placing Authority pursuant to Clause 12.3 may include:
- 12.4.1 arranging for the provision of appropriate management or supervisory staff to enable the provision of the Services; or
 - 12.4.2 the provision of adequate equipment, materials and consumables to be used in the performance of the Services.
- 12.5 In the circumstances described in Clause 12.4.2, the Placing Authority may use all or any part of the Supplier's equipment that was allocated for the performance of the Services.
- 12.6 The operation of this Clause 12 shall not relieve the Supplier of any obligations under the Call-Off Contract in respect of the Services as a whole, nor restrict the Placing Authority's right to terminate the Call-Off Contract under Clause 30 (Termination for Breach). The Placing Authority shall be under no obligation whatsoever to affect a substituted service in accordance with these provisions.

13 Key Personnel

- 13.1 Each Party shall appoint the persons named as such in Schedule 3 (Key Personnel) as the individuals who shall be responsible for the matters allocated to such Key Personnel. The Key Personnel shall be those people who are identified by each Party as being key to the success of the implementation and/or operation of the Services and who shall be retained on the implementation and/or operation of the Services for such time as a person is required to perform the role which has been allocated to the applicable Key Personnel. The Key Personnel shall have the authority to act on behalf of their respective Party on the matters for which they are expressed to be responsible.

- 13.2 The Supplier shall not remove or replace any of the Key Personnel unless:
- 13.2.1 requested to do so by the Placing Authority;
 - 13.2.2 the person is on long-term sick leave or is deceased;
 - 13.2.3 the element of the Services in respect of which the individual was engaged has been completed to the Placing Authority's satisfaction;
 - 13.2.4 the person resigns from their employment with the Supplier; or
 - 13.2.5 the Supplier obtains the prior written consent of the Placing Authority.
- 13.3 The Supplier shall inform the Placing Authority of the identity and background of any replacements for any of the Key Personnel as soon as a suitable replacement has been identified. The Placing Authority shall be entitled to interview any such person and may object to any such proposed appointment within ten (10) Working Days of being informed of or meeting any such replacement if, in its reasonable opinion, it considers the proposed replacement to be unsuitable for any reason.
- 13.4 The Placing Authority may at its discretion appoint a Site Officer to exercise its functions, rights and powers conferred by the Call-Off Contract.
- 13.5 The Supplier shall not question the existence or extent of the Placing Authority's Site Officer or any nominee or person appointed by them.
- 13.6 The Supplier shall, subject to the prior written approval of the Placing Authority, appoint, or at the written request of the Placing Authority, remove and/or replace without delay a Supplier Representative for the management of the Call-Off Contract.
- 13.7 The Supplier shall ensure that the Supplier Representative (or subject to Clause 13.9 a competent deputy duly authorised to act on his behalf) is available to the Placing Authority at all reasonable times when the Services are being provided. During the performance of the Call-Off Contract, the Supplier must be contactable by telephone as a minimum during normal workday normal office hours between the hours of 0730hrs and 1730hrs from Monday to Friday for members of the public and officers of the Placing Authority to contact the Supplier.
- 13.9 Prior to such person acting in such capacity, the Supplier shall inform the Site Officer and Contract Manager in writing of the identity of any person authorised to act for any period as deputy for the nominated Supplier Representative as soon as practicable.
- 13.10 Each Party shall ensure that the role of each of its Key Personnel is not vacant (in terms of a permanent representative) for more than twenty (20) Working Days (or such other reasonable period as may be agreed between the Parties). Any replacement shall be as, or more, qualified and experienced as the previous incumbent and fully competent to carry out the tasks assigned to the Key Personnel whom they have replaced. A temporary replacement shall be identified with immediate effect from the Supplier or the Placing Authority becoming aware of the role becoming vacant.
- 13.11 The Placing Authority may require the Supplier to remove, or procure the removal of, any of its Key Personnel whom it considers, in its reasonable opinion, to be unsatisfactory for any reason which has a material impact on such person's responsibilities.
- 13.12 If the Supplier replaces the Key Personnel as a consequence of this Clause 13, the cost of effecting such replacement shall be borne by the Supplier.
- 14 **Other Personnel**
- 14.1 At all times, the Supplier shall ensure that:

- 14.1.1 each of the Supplier's Personnel is suitably qualified, adequately trained and capable of providing the applicable Services in respect of which they are engaged;
 - 14.1.2 there is an adequate number of Supplier's Personnel to provide the Services properly; and
 - 14.1.3 only those people who are authorised by the Supplier (having regard to any authorisation procedure agreed in writing between the Parties, in the event that such exists) are involved in providing the Services.
- 14.2 In particular, the Supplier shall provide management or supervisory personnel approved from time to time by the Placing Authority to supervise and inspect the delivery of the Services. Without prejudice to the generality of the foregoing, the Supplier shall ensure that a sufficient reserve of Personnel is available to provide the Services in accordance with the Call-Off Contract during staff holidays or absence through sickness, whether paid or unpaid.
- 14.3 The Placing Authority may refuse to grant access to, and remove, any of the Supplier's Personnel who present a security threat.
- 14.4 The Supplier shall replace, as soon as is reasonably practicable to do so, any of the Supplier's Personnel who the Placing Authority reasonably decides have failed to carry out their duties with reasonable skill and care. Following the removal of any of the Supplier's Personnel for any reason, the Supplier shall ensure such person is replaced promptly with another person with the necessary training and skills to meet the requirements of the Services and at no extra cost to the Placing Authority.
- 14.5 The Supplier shall maintain up-to-date personnel records on the Supplier's Personnel engaged in the provision of the Services and, on request, provide reasonable information to the Placing Authority on the Supplier's Personnel. The Supplier shall ensure at all times that it has the right to provide these records in compliance with the applicable Data Protection Legislation.
- 14.6 The Supplier shall use its best endeavours to ensure continuity of personnel and to ensure that the turnover rate of its staff engaged in the provision or management of the Services is at least as good as the prevailing industry norm for similar services, locations and environments.
- 15 Safeguarding**
- 15.1 The Parties acknowledge that, in the event that the Supplier in the delivery of the Services is a Regulated Activity Provider, then they shall have ultimate responsibility for the management and control of the Regulated Activity provided under the Call-Off Contract and for the purposes of the Safeguarding Vulnerable Groups Act 2006.
- 15.1 The Supplier shall ensure that all individuals engaged in the provision of the Services are:
- 15.1.1 subject to a valid enhanced disclosure check undertaken through the Disclosure and Barring Service including a check against the adults' barred list or the children's barred list, as appropriate; and
 - 15.1.2 the Supplier shall monitor the level and validity of the checks under this Clause 15.1 for each member of staff.
- 15.2 The Supplier warrants that at all times for the purposes of the Call-Off Contract it has no reason to believe that any person who is or will be employed or engaged by the Supplier in the provision of the Services is barred from the activity in accordance with the provisions of the Safeguarding Vulnerable Groups Act 2006 and any regulations made thereunder, as amended from time to time.

- 15.3 The Supplier shall immediately notify the Placing Authority of any information that it reasonably requests to enable it to be satisfied that the obligations of this Clause 15 have been met.
- 15.4 The Supplier shall refer information about any person carrying out the Services to the DBS where it removes permission for such person to carry out the Services (or would have, if such person had not otherwise ceased to carry out the Services) because, in its opinion, such person has harmed or poses a risk of harm to any pupils, service users, children or vulnerable adults.
- 15.5 The Supplier shall not employ or use the services of any person who is barred from, or whose previous conduct or records indicate that they would not be suitable to carry out Regulated Activity or who may otherwise present a risk to pupils.
- 16 **Employees: TUPE, Pension and Equal Opportunities**
- 16.1 The Parties agree that the provisions of Schedule 5 (TUPE and Pension) shall apply to any Relevant Transfer of staff under the Call-Off Contract.
- 16.2 The Supplier shall comply with its responsibilities and duties under the Equality Act 2010 and take all reasonable steps to secure the observance of these provisions by all employees, or agents of the Supplier and all sub-contractors employed in the delivery of the Call-Off Contract.
- 16.3 The Supplier shall not unlawfully discriminate either directly or indirectly on such grounds as the protected characteristics set out in the Equality Act 2010 and without prejudice to the generality of the foregoing the Supplier shall not unlawfully discriminate within the meaning and scope of the Equality Act 2010, the Human Rights Act 1998 or other relevant legislation or any statutory modification or re-enactment thereof (the "**Discrimination Acts**").
- 16.4 The Supplier shall notify the Placing Authority immediately of any investigation of or proceedings against the Supplier in relation to the Discrimination Acts and shall co-operate fully and promptly with any requests of the person or body conducting such investigation conducted or proceedings, including allowing access to any documents or data required, attending any meetings and providing any information requested.
- 16.5 The Supplier shall indemnify the Placing Authority against all costs, claims, charges, demands, liabilities, damages, losses and expenses incurred or suffered by the Placing Authority arising out of or in connection with any investigation conducted or any proceedings brought in relation to the Discrimination Acts due directly or indirectly to any act or omission by the Supplier, its agents, employees or sub-contractors.
- 16.6 The Supplier shall impose on any sub-contractor obligations substantially similar to those imposed on the Supplier by this Clause 16.
- 16.7 The Supplier shall observe as far as possible the codes of practice issued by the Equality and Human Rights Commission (including the statutory codes of practice dated 26 January 2011 on employment, equal pay and services/public functions/associations which replaced codes of practice under previous discrimination legislation), as approved by Parliament from time to time, and the Placing Authority's policies (including on disability and sexual orientation). The Supplier shall provide such information as the Placing Authority may reasonably require enabling it to assess the Supplier's compliance with these codes of practice.
- 16.8 If any court or tribunal, or the Equality and Human Rights Commission, should make any finding of unlawful discrimination against the Supplier, then the Supplier shall take all necessary steps to prevent reoccurrence of such unlawful discrimination. The Placing Authority may require the Supplier to provide full details of the steps taken to prevent such reoccurrence.
- 16.9 The Supplier's equal opportunities policy shall be set out in any instructions circulated to

those members of the Personnel concerned with recruitment, training and promotion, in relevant documentation available to its Personnel and others and in its recruitment advertisements and other relevant literature. The Supplier shall provide to the Placing Authority on request copies of such instructions, documents, advertisements and other literature.

17 Reporting, Meetings and Complaints

- 17.1 The Contract Manager and the Supplier Representative shall be the respective prime contact points between the Parties and shall have responsibility for monitoring the provision of the Services by the Supplier under the Call-Off Contract.
- 17.2 The provision of the Services shall be kept under review in accordance with the provisions of this Clause 17. Such reviews shall be carried out by way of a meeting between the Contract Manager and the Supplier Representative ("**Review Meetings**") who shall be obliged to attend such meeting, and the Site Officer who shall be permitted to attend such meetings at the Placing Authority's discretion.
- 17.3 Review Meetings shall be carried out when required by a Party on the provision of reasonable written notice to the other.
- 17.4 Each Party must submit to the other details of those matters that it requires to be discussed at the appropriate Review Meeting in writing at least fourteen (14) days prior to the date of such meeting. Such meetings shall be minuted by the Supplier and copies of such minutes circulated by the Supplier. Any complaints or problems relating to the provision of the Services shall be referred by the Contract Manager and/or the Site Officer to the Supplier Representative and shall be discussed at such meeting and appropriate action shall be taken. Any unresolved problems emerging from such meetings (which are not classified by either Party as a dispute to be resolved by the process set out in Clause 20 (Dispute Resolution and Assistance in Legal Proceedings)) shall be referred immediately to the senior management of the Supplier who shall attempt to resolve the issue.
- 17.5 If, as a result of a Review Meeting, changes are proposed to be made to the Call-Off Contract, such changes shall be made in accordance with the provisions of Clause 19 (Change Control, Benchmarking and Continuous Improvement) and Schedule 4 (Change Control).
- 17.6 If any disputes referred to in a Review Meeting cannot be settled to the satisfaction of both Parties, either Party may refer such outstanding matter for dispute resolution in accordance with the terms of Clause 20 (Dispute Resolution and Assistance in Legal Proceedings)
- 17.7 The Supplier shall provide the Authority with details of all complaints received in connection with the performance of the Call-Off Contract, together with copies or details of the Supplier's responses thereto, within five (5) Working Days of the complaint being received by the Supplier.
- 17.8 The Supplier shall keep a record of all suggestions received from third parties and its Personnel regarding the Call-Off Contract, and shall forward all relevant suggestions to the Placing Authority for consideration.
- 17.9 If it becomes impossible to operate any part of the Service, the Supplier shall immediately notify the Contract Manager and the Site Officer.

18 Monitoring

- 18.1 The Placing Authority shall be entitled to monitor the performance of the Services by the Supplier.
- 18.2 The Supplier shall co-operate, and shall procure that its Sub-Contractors co-operate, with the Placing Authority in carrying out the monitoring referred to in Clause 18.1 at no additional charge to the Placing Authority.

- 18.3 The Placing Authority shall carry out checks to ensure that the Service is being provided in accordance with the Call-Off Contract. The Supplier shall allow the Placing Authority to carry out those checks.
- 18.4 The Supplier shall allow the Contract Manager and their nominated auditors, to have access and the right to inspect the premises and records of the Supplier in relation to the operation of the Call-Off Contract, subject to prior reasonable arrangement.
- 18.5 The Supplier shall at his or her own expense co-operate with the Placing Authority in providing information or documentation should the Placing Authority receive a request pursuant to Data Protection Legislation, FOIA or EIR.
- 18.6 The Placing Authority reserves the right to carry out any other checks that may reasonably be required to ensure that the Service is carried out in accordance with the Call-Off Contract.
- 18.7 The Supplier shall notify the Contract Manager and Site Officer immediately of any breach of the Call-Off Contract setting out the details and reasons for such a breach.

19 Change Control, Benchmarking and Continuous Improvement

- 19.1 Any requirement for a Change shall be subject to the Change Control Procedure.
- 19.2 If the Placing Authority requests the Supplier to make a change or addition to the Services, the Parties shall discuss in good faith the detail of any Changes to be made.
- 19.3 If the Parties agree to make such a Change:
 - 19.3.1 the Placing Authority shall, so far as it is able and to the extent agreed with the Supplier, provide reasonable assistance in relation to the developing, testing and introduction of such Change or addition as part of the Services by the Supplier; and
 - 19.3.2 the description of the Services, the Price and any other aspects of this agreement identified shall be amended or supplemented as appropriate to reflect the Change.
- 19.4 The Placing Authority shall notify the Supplier in writing the detail of any Changes to be made as soon as practicably possible.
- 19.5 The Supplier shall have an ongoing obligation throughout the Term to identify new or potential improvements to the Services.
- 19.6 Any potential Changes highlighted as a result of the Supplier's reporting in accordance with Clause 19.5 shall be addressed by the Parties using the Change Control Procedure.
- 19.7 Any Change that may be agreed between the Parties shall be sent electronically to the Supplier by the Contract Manager (in accordance with Clause 19.1 and Schedule 4 (Change Control)) specifying the reference, nature and terms of the Change and the date from which it is to be operative. If the Supplier does not agree with the proposed Change, then it must give notice to the Placing Authority within seven (7) Working Days of the date of issue. If no such notice is served by the Supplier, the Change shall be deemed to be effective from the date of issue of the proposed Change or as otherwise agreed.
- 19.8 If the Parties cannot reach agreement on a proposed Change to the Call-Off Contract requested by the Placing Authority, acting reasonably, then the Placing Authority may terminate the Call-Off Contract by giving four (4) weeks' notice or the relevant contract notice period if shorter, unless a shorter termination period is mutually agreed.
- 19.9 Without prejudice to Clause 19.7 and Schedule 4 (Change Control) the Placing Authority may vary the Call-Off Contract, acting reasonably, by issuing a letter of amendment or re-issuing the Call-Off Contract in its entirety. Where any amendment or re-issue would substantially affect the Call-Off Contract, the Placing Authority will first consult with the

Supplier. Any amendment or re-issue shall be effective immediately after notice has been given to the Supplier.

20 Dispute Resolution and Assistance in Legal Proceedings

- 20.1 Either Party may call an extraordinary meeting of the Parties by service of not less than five (5) Working Days' written notice (or such other period as may be agreed in writing) and each Party agrees to procure that its Key Personnel shall attend all extraordinary meetings called in accordance with this Clause 20.1.
- 20.2 The members of the relevant meeting shall use their best endeavours to resolve disputes arising out of the Call-Off Contract. If any dispute referred to a meeting is not resolved at that meeting then either Party, by notice in writing to the other, may require the dispute to be referred to senior management (or other senior officers of the Parties as may be appropriate and agreed from time to time) who shall co-operate in good faith to resolve the dispute as amicably as possible within ten (10) Working Days of service of such notice. If the officers referred to in this Clause 20.2 fail to resolve the dispute in the allotted time, then the Parties shall, within that period, on the written request of either Party enter into an alternative Dispute Resolution Procedure with the assistance of a mediator agreed by the Parties or, in default of such agreement within five (5) Working Days of receipt of such request, appointed, at the request of either Party, by the CEDR or such other similar body as is agreed.
- 20.3 The Parties shall then submit to the supervision of the mediation by the CEDR for the exchange of relevant information and for setting the date for negotiations to begin.
- 20.4 Recourse to this Dispute Resolution Procedure shall be binding on the Parties as to submission to the mediation but not as to its outcome. Accordingly, all negotiations connected with the dispute shall be conducted in strict confidence and without prejudice to the rights of the Parties in any future legal proceedings. Except for any Party's right to seek interlocutory relief in the courts, no Party may commence other legal proceedings under the jurisdiction of the courts or any other form of arbitration until fifteen (15) Working Days after the Parties have failed to reach a binding settlement by mediation (at which point the Dispute Resolution Procedure shall be deemed to be exhausted).
- 20.5 If, with the assistance of the mediator, the Parties reach a settlement, such settlement shall be reduced to writing and, once signed by the Key Personnel of each of the Parties, shall remain binding on the Parties.
- 20.6 The Parties shall bear their own legal costs of this Dispute Resolution Procedure, but the costs and expenses of mediation shall be borne by the Parties equally.
- 20.7 While the Dispute Resolution Procedure referred to in this Clause 20 is in progress and any Party has an obligation to make a payment to another Party or to allow a credit in respect of such payment, the sum relating to the matter in dispute shall be paid into an interest bearing deposit account to be held in the names of the relevant Parties at a clearing bank and such payment shall be a good discharge of the Parties' payment obligations under the Call-Off Contract. Following resolution of the dispute, whether by mediation or legal proceedings, the sum held in such account shall be payable as determined in accordance with the mediation or legal proceedings, and the interest accrued shall be allocated between the Parties pro rata according to the split of the principal sum as between the Parties.
- 20.8 Both Parties agree to continue in good faith with the performance of the Call-Off Contract during any dispute process.
- 20.9 Where requested by the Contract Manager, the Supplier shall promptly provide to the Placing Authority any relevant information (including, but not limited to, documentation and statements from Personnel) in connection with:
- 20.9.1 any legal inquiry, arbitration, court proceedings or hearings in which the Placing Authority may become involved (and the Supplier shall, if required, give evidence in such inquiries, arbitrations, court proceedings or hearings); or

20.9.2 any disciplinary hearing internal to the Placing Authority.

20.10 Where the Supplier or any of its Personnel become aware of any incident, accident or other matter which may give rise to a claim or legal proceedings in respect of the provision or failure to provide the Services, the Supplier shall notify the Contract Manager and Site Officer immediately in writing. Such notification shall include all relevant information to enable the Contract Manager and Site Officer to investigate the matter fully.

20.11 Information provided or assistance rendered pursuant to the obligation in Clause 20.9 and/or Clause 20.10 respectively, in whatever form, shall be at no cost to the Placing Authority.

21 Sub-contracting and Assignment

21.1. Subject to Clause 21.3, neither Party shall be entitled to assign, novate or otherwise dispose of any or all of its rights and obligations under the Call-Off Contract without the prior written consent of the other Party (and in the event of such consent being granted by the Placing Authority any transfer, novation or assignment shall be subject to such conditions as the Placing Authority may think fit but such consent, if given, shall not relieve the Supplier from any liability or obligation under the Call-Off Contract), neither may the Supplier sub-contract the whole or any substantial part of its obligations under the Call-Off Contract except with the express prior written consent of the Placing Authority.

21.2 In the event that the Supplier enters into any Sub-Contract in connection with the Call-Off Contract it shall:

21.2.1 remain responsible to the Placing Authority for the performance of its obligations under the Call-Off Contract notwithstanding the appointment of any Sub-Contractor and be responsible for the acts, omissions and neglects of its Sub-Contractors;

21.2.2 impose obligations on its Sub-Contractor in the same terms as those imposed on it pursuant to the Call-Off Contract and shall procure that the Sub-Contractor complies with such terms; and

21.2.3 provide a copy, at no charge to the Placing Authority, of any such Sub-Contract on receipt of a request for such by the Placing Authority's Key Personnel.

21.3 The Placing Authority shall be entitled to novate the Call-Off Contract to any other body which substantially performs any of the functions that previously had been performed by the Placing Authority.

22 Indemnities

22.1 The Supplier shall indemnify and keep indemnified the Placing Authority against all actions, proceedings, costs, claims, demands, liabilities, losses and expenses whatsoever whether arising in tort (including negligence) default or breach of the Call-Off Contract, to the extent that any such loss or claim is due to the act, omission, breach of contract, negligence, wilful default or fraud of itself or of its employees or of any of its Representatives or sub-contractors arising out of or in connection with the Call-Off Contract and the performance of it, with the exception of death or personal injury resulting from negligence by the Placing Authority, save to the extent that the same is directly caused by or directly arises from the negligence, breach of this agreement or applicable law by the Placing Authority or its Representatives (excluding any Supplier's Personnel).

23 Limitation of liability

23.1 Subject to Clause 23.5 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 the Call-Off Contract which shall include, without limitation, any loss of or damage to profit, revenue, contracts, anticipated savings, goodwill or business opportunities whether direct or indirect.

- 23.2 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 agreement.
- 23.3 Subject to Clause 23.5, the Placing Authority's total aggregate liability:
- 23.3.1 in respect of the indemnities given by the Placing Authority in Schedule 5 (TUPE and Pension) is unlimited; and
- 23.3.2 in respect of all other claims, losses or damages, whether arising from tort (including negligence), breach of contract or otherwise under or in connection with the Call-Off Contract (other than a failure to pay any of the Price that is properly due and payable and for which the Placing Authority shall remain fully liable), shall in no event exceed seventy-five percent (75%) of the Contract Price.
- 23.4 Subject to Clause 23.5, the Supplier's total aggregate liability in respect of:
- 23.4.1 the indemnities given by the Supplier in Clause 22 (Indemnities), Clause 29 (Intellectual property) and Schedule 5 (TUPE and Pension) is unlimited; and
- 23.4.2 all other claims, losses or damages, whether arising from tort (including negligence), breach of contract or otherwise under or in connection with this agreement, shall in no event exceed one hundred and seventy-five percent (175%) of the Contract Price.
- 23.5 Notwithstanding any other provision of the Call-Off Contract neither Party limits or excludes its liability for:
- 23.5.1 fraud or fraudulent misrepresentation;
- 23.5.2 death or personal injury caused by its negligence;
- 23.5.3 breach of any obligation as to title implied by statute; or
- 23.5.4 any other act or omission, liability for which may not be limited under any applicable law.

24 Insurance

- 24.1 The Supplier shall at its own cost effect and maintain with a reputable insurance company such policies of insurance as are reasonably required for the delivery of the Services including but not limited to the following:
- 24.1.1 public liability insurance with a limit of indemnity of not less than five million pounds (£5,000,000) in relation to any one (1) claim or series of claims;
- 24.1.2 employer's liability insurance with a limit of indemnity of not less than ten million pounds (£10,000,000) in relation to any one (1) claim or series of claims;
- 24.1.3 where the Services include the supply of goods, product liability insurance with a limit of indemnity of not less than £2,000,000 (two million pounds) in relation to any one (1) claim arising out of each and every event without limit on the number of claims in any one (1) year,

(the "**Required Insurances**") in respect of all risks which may be incurred by the Supplier, arising out of the Supplier's performance of the Call-Off Contract, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Supplier.

- 24.2 The Supplier shall give the Placing Authority, on request, copies of all insurance policies referred to in this Clause 24 or a broker's verification of insurance to demonstrate that the Required Insurances are in place, together with receipts or other evidence of payment of the latest premiums due under those policies. The Placing Authority may approach the Supplier's insurers to verify any information regarding insurance submitted to the Placing Authority and the Supplier must authorise any such approach.
- 24.3 If, for whatever reason, the Supplier fails to give effect to and maintain the Required Insurances, the Placing Authority may make alternative arrangements to protect its interests and shall be entitled to recover the costs of such arrangements from the Supplier.
- 24.4 The terms of any insurance or the amount of cover shall not relieve the Supplier of any liabilities under the Call-Off Contract.
- 24.5 The Supplier shall hold and maintain the Required Insurances for a minimum of six (6) years following the expiration or earlier termination of the Call-Off Contract.
- 24.6 The Supplier shall give immediate notice by letter or e-mail to the Placing Authority if for any reason whatsoever any Required Insurance required to meet the requirements of Clauses 24.1 to 24.3 is cancelled or becomes inoperative. Failure to have the correct insurance at any time during the Call-Off Contract may result in the Authority terminating the Call-Off Contract in accordance with Clause 30.1.1 (Termination for Breach).

25 Freedom of Information

- 25.1 The Supplier acknowledges that the Placing Authority is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and co-operate with the Placing Authority (at the Supplier's expense) to enable the Placing Authority to comply with these information disclosure requirements.
- 25.2 The Supplier shall and shall procure that its Sub-Contractors shall:
- 25.2.1 transfer the Request for Information to the Placing Authority as soon as practicable after receipt and in any event within two (2) Working Days of receiving a Request for Information;
 - 25.2.2 provide the Placing Authority with a copy of all Information in its possession or power in the form that the Placing Authority requires in a timely manner but in any event within five (5) Working Days (or such other period as the Placing Authority may specify) of the Placing Authority requesting that Information; and
 - 25.2.3 provide all necessary assistance as reasonably requested by the Placing Authority to enable the Placing Authority to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.
- 25.3 The Placing Authority shall be responsible for determining at its absolute discretion whether the Commercially Sensitive Information and/or any other Information:
- 25.3.1 is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations; and/or
 - 25.3.2 is to be disclosed in response to a Request for Information.
- 25.4 In no event shall the Supplier respond directly to a Request for Information unless expressly authorised to do so by the Placing Authority.
- 25.5 The Supplier acknowledges that the Placing Authority may, acting in accordance with the Secretary of State for Constitutional Affairs' Code of Practice on the discharge of public authorities' functions under Part 1 of FOIA (issued under section 45 of the FOIA, July 2018) be obliged under the FOIA or the Environmental Information Regulations to disclose

Information:

25.5.1 without consulting with the Supplier; or

25.5.2 following consultation with the Supplier and having taken its views into account,

provided always that where Clause 23.5.2 applies the Placing Authority shall, in accordance with any recommendations of the Code referred to in Clause 23.5, take reasonable steps, where appropriate, to give the Supplier advanced notice, or failing that, to draw the disclosure to the Supplier's attention after any such disclosure.

25.6 The Supplier shall ensure that all Information produced in the course of the Call-Off Contract or relating to the Call-Off Contract is retained for disclosure and shall permit the Placing Authority to inspect such records as requested from time to time.

25.7 The Supplier acknowledges that any lists or schedules provided by it outlining Confidential Information are of indicative value only and that the Placing Authority may nevertheless be obliged to disclose Confidential Information in accordance with Clause 25.5.

26 Data Protection

26.1 The Parties agree to ensure that they shall at all times comply with the provisions and obligations imposed by Data Protection Legislation in relation to the storing and processing of personal data and all personal data acquired by either Party from the other shall be returned to the disclosing Party on request. Both Parties agree to indemnify each other in respect of any unauthorised disclosure or processing of personal data or breach of Data Protection Legislation to the extent it applies to the Call-Off Contract.

27 Confidentiality

27.1 Subject to Clause 27.2, the Parties shall keep confidential all matters relating to the Call-Off Contract and shall use all reasonable endeavours to prevent their Representatives from making any disclosure to any person of any matters relating hereto. The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA or EIR, the content of the Call-Off Contract is not Confidential Information. The Supplier and the Supplier's staff shall regard as confidential and shall not disclose to any person other than a person authorised by the Placing Authority or the Lead Authority any information acquired by the Supplier or the Supplier's staff in or in connection with the provision of the Service under the Call-Off Contract concerning the Placing Authority or its staff or its procedures.

27.2 Clause 27.1 shall not apply to any disclosure of information:

27.2.1 required by any applicable law, provided that Clause 25 (Freedom of information) shall apply to any disclosures required under the FOIA or the Environment Information Regulations;

27.2.2 that is reasonably required by persons engaged by a Party in the performance of such Party's obligations under the Call-Off Contract;

27.2.3 where a Party can demonstrate that such information is already generally available and in the public domain otherwise than as a result of a breach of Clause 27.1;

27.2.4 by the Placing Authority of any document to which it is a Party and which the Parties to the Call-Off Contract have agreed contains no commercially sensitive information;

27.2.5 to enable a determination to be made under Clause 20 (Dispute Resolution and Assistance in Legal Proceedings);

27.2.6 which is already lawfully in the possession of the receiving Party, prior to its

disclosure by the disclosing Party;

27.2.7 by the Placing Authority to any other department, office or agency of the Government; and

27.2.8 by the Placing Authority relating to the Call-Off Contract and in respect of which the Supplier has given its prior written consent to disclosure.

27.3 On or before the Termination Date the Supplier shall ensure that all documents and/or computer records in its possession, custody or control which relate to personal information of the Placing Authority's employees or ratepayers, are delivered up to the Placing Authority or securely destroyed.

28 Audit

28.1 During the Term and for a period of seven (7) years after the Termination Date, the Placing Authority may conduct or be subject to an audit for the following purposes:

28.1.1 to verify the accuracy of the Contract Price and Price (and proposed or actual variations to them in accordance with the Call-Off Contract) and/or the costs of all suppliers (including Sub-Contractors) of the Services;

28.1.2 to review the integrity, confidentiality and security of any data relating to the Placing Authority or any pupils;

28.1.3 to review the Supplier's compliance with the DPA, the FOIA, in accordance with Clause 26 (Data protection) and Clause 25 (Freedom of information) and any other legislation applicable to the Services;

28.1.4 to review any records created during the provision of the Services;

28.1.5 to review any books of account kept by the Supplier in connection with the provision of the Services;

28.1.6 to carry out the audit and certification of the Placing Authority's accounts;

28.1.7 to carry out an examination of the economy, efficiency and effectiveness with which the Placing Authority has used its resources;

28.1.8 to verify that the Services have been supplied as set out as required in the Call-Off Contract.

28.2 Except where an audit is imposed on the Placing Authority by a regulatory body, the Placing Authority may not conduct an audit under this Clause 28 more than twice in any calendar year.

28.3 The Placing Authority shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Supplier or delay the provision of the Services.

28.4 Subject to the Placing Authority's obligations of confidentiality, the Supplier shall on demand provide the Placing Authority and any relevant regulatory body (and/or their agents or representatives) with all reasonable co-operation and assistance in relation to each audit, including:

28.4.1 all information requested by the above persons within the permitted scope of the audit;

28.4.2 reasonable access to any sites controlled by the Supplier and to any equipment used (whether exclusively or non-exclusively) in the performance of the Services; and

28.4.3 access to the Supplier's Personnel.

- 28.5 The Placing Authority shall endeavour to (but is not obliged to) provide at least fifteen (15) Working Days' notice of its or, where possible, a regulatory body's, intention to conduct an audit.
- 28.6 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause 28, unless the audit identifies a material failure on the part of the Supplier to perform its obligations under the Call-Off Contract in any material manner in which case the Supplier shall reimburse the Placing Authority for all the Placing Authority's reasonable costs incurred in the course of the audit.
- 28.7 If an audit identifies that:
- 28.7.1 the Supplier has failed to perform its obligations under the Call-Off Contract in any material manner the Parties shall agree and implement a remedial plan. If the Supplier's failure relates to a failure to provide any information to the Placing Authority about the Contract Price or Price, proposed Price or the Supplier's costs, then the remedial plan shall include a requirement for the provision of all such information;
- 28.7.2 the Placing Authority has overpaid any Price the Supplier shall pay to the Placing Authority the amount overpaid within twenty (20) Working Days. The Placing Authority may deduct the relevant amount from the Price if the Supplier fails to make this payment; and
- 28.7.3 the Placing Authority has underpaid any Price the Placing Authority shall pay to the Supplier the amount of the under-payment less the cost of audit incurred by the Placing Authority if this was due to a default by the Supplier in relation to invoicing within twenty (20) Working Days.
- 28.8 The Supplier shall allow the Placing Authority and its Key Personnel access to, and permission to take copies of, all records relevant to the Call-Off Contract and its performance at the Supplier's premises at any reasonable time and shall give such explanations of records as may be required. Failure to provide the information will be considered as a breach counting towards a Consistent Failure for the purposes of Clause 30.1.4 (Termination for breach).

29 Intellectual Property

- 29.1 In the absence of prior written agreement by the Placing Authority to the contrary, all Intellectual Property created by the Supplier or any employee, agent or Sub-Contractor of the Supplier:
- 29.1.1 in the course of performing the Services; or
- 29.1.2 exclusively for the purpose of performing the Services,
- shall vest in the Placing Authority on creation.
- 29.2 The Supplier shall indemnify the Placing Authority against all claims, demands, actions, costs, expenses (including legal costs and disbursements on a solicitor and client basis), losses and damages arising from or incurred by reason of any infringement or alleged infringement (including the defence of such alleged infringement) of any Intellectual Property Right by the availability of the Services, except to the extent that they have been caused by or contributed to by the Placing Authority's acts or omissions.

30 Termination for Breach

- 30.1 The Placing Authority may terminate the Call-Off Contract in whole or part with immediate effect by the service of written notice on the Supplier in the following circumstances:

- 30.1.1 if the Supplier is in breach of any material obligation under the Call-Off Contract it may terminate the Contract forthwith:
 - 30.1.1.1 provided that if the breach is capable of remedy, the Authority may only terminate the Call-Off Contract under this Clause 30.1 if the Supplier has failed to remedy such breach within fourteen (14) days (or such other longer period if stipulated by the Authority in writing) of receipt of notice from the Authority (a "**Remediation Notice**") to do so;
 - 30.1.1.2 where the Authority has specified in the Call-Off Contract such a breach as an irremediable material breach for the purposes of this Clause 30.1.1;
- 30.1.2 if the Supplier is in default of any duty or care or any fiduciary duty or statutory duty owed to the Authority, employees or agents of the Placing Authority;
- 30.1.3 if the Supplier purports to assign or sub-contract the Call-Off Contract in breach of the terms of the Call-Off Contract;
- 30.1.4 if a Consistent Failure has occurred;
- 30.1.5 if a Catastrophic Failure has occurred;
- 30.1.6 if a resolution is passed or an order is made for the winding up of the Supplier (otherwise than for the purpose of solvent amalgamation or reconstruction) or the Supplier becomes subject to an administration order or a receiver or administrative receiver is appointed over or an encumbrancer takes possession of any of the Supplier's property or equipment (or has anything similar or analogous happen in relation to it in any jurisdiction outside England and Wales);
- 30.1.7 if the Supplier ceases or threatens to cease to carry on business in the United Kingdom;
- 30.1.8 (unless previously approved in writing by the Placing Authority) if there is a change of control (where the Supplier is a company as defined in section 574 of the Capital Allowances Act 2001) of the Supplier to which the Placing Authority reasonably objects;
- 30.1.9 notwithstanding the occurrence of any Consistent Failure the Supplier persistently, and without reasonable cause, fails to operate the Services in accordance with the Call-Off Contract and to the entire satisfaction of the Placing Authority; or
- 30.1.10 the Supplier has, at the time of award of the Call-Off Contract, been subject to a conviction as proscribed by regulation 57(1), including as a result of the application of regulation 57(2) of the Procurement Regulations, and should therefore have been excluded from the procurement procedure.
- 30.2 The Placing Authority may terminate the Call-Off Contract in accordance with the provisions of Clause 33 (Prevention of Bribery and Modern Slavery).
- 30.3 The Supplier may terminate the Call-Off Contract in the event that the Placing Authority commits a Termination Payment Default by giving thirty (30) days' written notice to the Placing Authority. In the event that the Placing Authority remedies the Termination Payment Default in the thirty (30) day notice period, the Supplier's notice to terminate the Call-Off Contract shall be deemed to have been withdrawn.

31 Termination on Notice

- 31.1. The Placing Authority may terminate the Call-Off Contract at any time by giving not less than four (4) weeks' written notice to the Supplier.

- 31.2 The Supplier may terminate the Call-Off Contract at any time by giving not less than four (4) weeks' written notice to the Placing Authority.
- 31.3 Both Parties may terminate the Call-Off Contract at any time by mutual consent.
- 31.4 The Placing Authority may terminate the Call-Off Contract following a Force Majeure Event in accordance with the provisions of Clause 32 (Force majeure).
- 31.5 The Placing Authority may terminate the Call-Off Contract if:
 - 31.5.1 the Call-Off Contract has been subject to a substantial modification which would have required a new procurement procedure in accordance with regulation 72(9) of the Procurement Regulations; or
 - 31.5.2 the Call-Off Contract should not have been awarded to the Supplier in view of a serious infringement of the obligations under the Procurement Regulations.

Termination upon Expiration or Termination of the Authority SLA and/or Access Agreement

- 31.6 The Call-Off Contract shall automatically terminate upon the expiration or termination, for any reason, of the Authority SLA and/or Access Agreement separately entered into between the Lead Authority and the Placing Authority. Unless an earlier Termination Date is agreed between the Placing Authority and the Supplier, the Termination Date of the Call-Off Contract shall be coterminous with the termination date of either the Authority SLA or Access Agreement, whichever is the earlier.
- 31.7 Upon the termination of the Call-Off Contract pursuant to Clause 31.6, the Placing Authority and the Supplier shall cease to have any further obligations or liabilities pursuant to the Call-Off Contract, except for any obligations and liabilities that have accrued prior to the date of termination or expiration of the Call-Off Contract, or such obligations and liabilities that expressly survive termination pursuant to the Call-Off Contract.
- 31.8 The Placing Authority shall notify the Supplier of the termination or expiration of the Authority SLA or Access Agreement in writing promptly and as far in advance as reasonably practicable, and in any event within five (5) Working Days of it becoming aware of the date upon which the Authority SLA shall terminate or expire.

32 Force Majeure

- 32.1 Subject to the remaining provisions of this Clause 32, neither Party to the Call-Off Contract shall be liable to the other for any delay or non-performance of its obligations under the Call-Off Contract to the extent that such delay or non-performance is due to a Force Majeure Event.
- 32.2. In the event that either Party is delayed or prevented from performing its obligations under the Call-Off Contract by a Force Majeure Event, such Party shall:
 - 32.2.1 give notice in writing of such delay or prevention to the other Party as soon as reasonably possible, stating the commencement date and extent of such delay or prevention, the cause thereof and its estimated duration;
 - 32.2.2 use all reasonable endeavours to mitigate the effects of such delay or prevention on the performance of its obligations under the Call-Off Contract; and
 - 32.2.3 resume performance of its obligations as soon as reasonably possible after the removal of the cause of the delay or prevention.
- 32.3. A Party cannot claim relief if the Force Majeure Event is attributable to that Party's wilful act, neglect or failure to take reasonable precautions against the relevant Force Majeure Event.

- 32.4 The Supplier cannot claim relief if the Force Majeure Event is one where a reasonable Supplier should have foreseen and provided for the cause in question.
- 32.5 As soon as practicable following the affected Party's notification, the Parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and to facilitate the continued performance of the Call-Off Contract. Where the Supplier is the affected Party, it shall take and/or procure the taking of all steps to overcome or minimise the consequences of the Force Majeure Event in accordance with Best Industry Practice.
- 32.6 The affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the affected Party to be unable to comply with its obligations under the Call-Off Contract. Following such notification, the Call-Off Contract shall continue to be performed on the terms existing immediately before the occurrence of the Force Majeure Event unless agreed otherwise by the Parties.
- 32.7 The Placing Authority may, during the continuance of any Force Majeure Event, terminate the Call-Off Contract by written notice to the Supplier if a Force Majeure Event occurs that affects all or a substantial part of the Services and which continues for more than thirty (30) Working Days.

33 Prevention of Bribery and Modern Slavery

- 33.1 The Supplier:
- 33.3.1 shall not, and shall procure that any Supplier Party and all Supplier Personnel shall not, in connection with the Call-Off Contract commit a Prohibited Act;
 - 33.3.2 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 Placing Authority, or that an agreement has been reached to that effect, in connection with the execution of the Call-Off Contract, excluding any arrangement of which full details have been disclosed in writing to the Placing Authority before execution of the Call-Off Contract.
- 33.2 The Supplier shall:
- 33.2.1 if requested, provide the Placing Authority with any reasonable assistance, at the Placing Authority's reasonable cost, to enable the Placing Authority to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act;
 - 33.2.2 within ten (10) Working Days of the Commencement Date, and annually thereafter, certify to the Placing Authority in writing (such certification to be signed by an officer of the Supplier) compliance with this Clause 33 by the Supplier and all persons associated with it or other persons who are supplying goods or services in connection with the Call-Off Contract. The Supplier shall provide such supporting evidence of compliance as the Placing Authority may reasonably request.
- 33.3 The Supplier shall have an anti-bribery policy (which shall be disclosed to the Placing Authority) to prevent any Supplier Party or Supplier Personnel from committing a Prohibited Act and shall enforce it where appropriate.
- 33.4 If any breach of Clause 33.1 is suspected or known, the Supplier must notify the Placing Authority immediately.
- 33.5 If the Supplier notifies the Placing Authority that it suspects or knows that there may be a breach of Clause 33.1, the Supplier must respond promptly to the Placing Authority's enquiries, co-operate with any investigation, and allow the Placing Authority to audit books, records and any other relevant documentation. This obligation shall continue for seven (7)

years following the expiry or termination of the Call-Off Contract.

- 33.6 The Placing Authority may terminate the Call-Off Contract by written notice with immediate effect if the Supplier, Supplier Party or Supplier Personnel (in all cases whether or not acting with the Supplier's knowledge) breaches Clause 33.1. In determining whether to exercise the right of termination under this Clause 33.6, the Placing Authority shall give all due consideration, where appropriate, to action other than termination of the Call-Off Contract unless the Prohibited Act is committed by the Supplier or a senior officer of the Supplier or by an employee, Sub-Contractor or supplier not acting independently of the Supplier. The expression "not acting independently of" (when used in relation to the Supplier or a Sub-Contractor) means and shall be construed as acting:
- 33.6.1 with the authority; or
 - 33.6.2 with the actual knowledge;
 - of any one (1) or more of the directors of the Supplier or the Sub-Contractor (as the case may be); or
 - 33.6.3 in circumstances where any one (1) or more of the directors of the Supplier ought reasonably to have had knowledge.
- 33.7 Any notice of termination under Clause 33.6 must specify:
- 33.7.1 the nature of the Prohibited Act;
 - 33.7.2 the identity of the Party whom the Placing Authority believes has committed the Prohibited Act; and
 - 33.7.3 the date on which the Call-Off Contract will terminate.
- 33.8 Notwithstanding the provisions of Clause 20 (Dispute Resolution and Assistance in Legal Proceedings), any dispute relating to:
- 33.8.1 the interpretation of Clause 33; or
 - 33.8.2 the amount or value of any gift, consideration or commission,
- shall be determined by the Placing Authority and its decision shall be final and conclusive.
- 33.9 Any termination under Clause 33.6 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Placing Authority.
- 33.10 The Placing Authority may, following termination of the Call-Off Contract pursuant to Clause 33.6 (including for committing a Prohibited Act) recover from the Supplier any resulting loss.
- 33.11 The Supplier undertakes to the Placing Authority that:
- 33.11.1 in performing its obligations under the Call-Off Contract, the Supplier shall comply with all Law concerning anti-slavery and human trafficking (including but not limited to the Modern Slavery Act 2015); and
 - 33.11.2 it shall include in its Sub-contracts with its Sub-contractors (if any) and suppliers anti-slavery and human trafficking provisions that each of its Sub-Contractors and suppliers shall comply with its own anti-slavery policy or such as may be set out by the Placing Authority and with all Law concerning anti-slavery and human trafficking (including but not limited to the Modern Slavery Act 2015).
- 33.12 If the Supplier or Supplier Personnel commit an offence under the Modern Slavery Act 2015 or other Law concerning anti-slavery and human trafficking in relation to the Call-Off Contract or any other Call-off Contract or any other contract with the Placing Authority then the Placing Authority may terminate the Call-Off Contract by written notice to the Supplier with immediate

effect (and terminate any other Call-off Contract or other contract the Supplier has with the Placing Authority) and recover from the Supplier the amount of any losses suffered by the Placing Authority resulting from the termination including the cost reasonably incurred by the Placing Authority in making other arrangements for the supply of the Services for the remainder of the Term of the Call-Off Contract had it not been terminated.

34 Consequences of Termination

- 34.1 On the expiry of the Term or if the Call-Off Contract is terminated in whole or in part for any reason the Supplier shall co-operate fully with the Placing Authority to ensure an orderly migration of the Services to the Placing Authority or, at the Placing Authority's request, a Replacement Supplier.
- 34.2 On termination of the Call-Off Contract the Supplier shall:
 - 34.2.1 procure that all data and other material belonging to the Placing Authority (and all media of any nature containing information and data belonging to the Placing Authority or relating to the Services), shall be delivered to the Placing Authority forthwith and the Supplier Representative shall certify full compliance with this Clause 34;
 - 34.2.2 return all documentation, manuals, statements and other materials (and all copies thereof) supplied under or in connection with performance or receipt of the Services which contains Confidential Information. If requested the Supplier shall certify in writing that it has fully complied in all respects with this provision after the return of such documentation;
 - 34.2.3 agree that upon termination of the Call-Off Contract for any reason or expiry of the Call-Off Contract it shall not be entitled to make a claim against the Placing Authority in relation to costs incurred by the Supplier in providing the Services or in engaging third parties in connection with the Services (whether or not such costs were amortised in the calculation of the Price payable by the Placing Authority under the Call-Off Contract). For the avoidance of doubt, the Supplier shall not be restricted from making any claim in respect of such Price to the extent it is outstanding, due and payable; and
 - 34.2.4 subject to Clause 26 (Data Protection), Clause 27 (Confidentiality) and Clause 28 (Audit) retain all papers, files and records relating to the provision of the Services for a period of seven (7) years after the date of the termination of the Call-Off Contract and thereafter shall not destroy them but where requested by the Placing Authority deliver them to the Placing Authority.
- 34.3 Where any notice of termination has been served under the Call-Off Contract, the Supplier undertakes to continue to provide the Services to the Placing Authority in accordance with the Call-Off Contract until expiry of the period of notice and the Placing Authority undertakes to continue to pay the Supplier for the Services in accordance with the terms of the Call-Off Contract.
- 34.4 Termination or variation of the Call-Off Contract shall not prejudice the rights, duties or liabilities of either Party that have arisen on or before the date of termination or the date of the Change.
- 34.5 If the Call-Off Contract is terminated, the Placing Authority shall:
 - 34.5.1 cease to make use of the Services (and the Supplier shall cease to provide the Services);
 - 34.5.2 cease to be under any obligation to make payment in respect of any period after the date of termination;
 - 34.5.3 cease to be under any obligation to make payment in respect of any period prior to

the date of termination until the costs, loss and/or damage resulting from or arising out of the termination have been calculated and provided such calculation shows a sum or sums due to the Supplier;

- 34.5.4 be entitled to exercise a lien over any of the materials, clothing, equipment or other goods belonging to the Supplier for any sum due hereunder or otherwise from the Supplier to the Placing Authority;
 - 34.5.5 be entitled to employ and pay other persons to provide the Services or any part thereof; and
 - 34.5.6 be entitled to recover from the Supplier any losses arising as a result of any antecedent breach of the Call-Off Contract by the Supplier.
- 34.6 If the Call-Off Contract is terminated by the Placing Authority for Supplier breach in accordance with Clauses 30 (Termination for Breach) such termination shall be at no loss or cost to the Placing Authority and the Supplier hereby indemnifies the Placing Authority against any such losses or costs resulting from or arising out of the termination which the Placing Authority may suffer (and which the Placing Authority shall be entitled to deduct from any sums which would have been due from the Placing Authority to the Supplier under the Call-Off Contract or any other contract or recover from the Supplier as a debt) including:
- 34.6.1 the reasonable cost to the Placing Authority of the time spent by its officers in terminating the Call-Off Contract and in making alternative arrangements for the provision of the Services or any part thereof; and
 - 34.6.2 the additional cost to the Placing Authority of providing a replacement service or any alternative arrangements provided under Clause 34.6.1 above for a maximum period of four (4) calendar weeks following the date on which the termination takes effect.
- 34.7 The provisions of Clause 22 (Indemnities), Clause 24 (Insurance), Clause 25 (Freedom of Information), Clause 26 (Data Protection), Clause 28 (Audit), Clause 30 (Termination for Breach) and this Clause 34 (Consequences of Termination) and any other clauses in the Call-Off Contract which expressly or impliedly have effect after termination or expiry shall survive termination or expiry of the Call-Off Contract.

35 Non-solicitation

- 35.1 Neither Party shall (except with the prior written consent of the other) during the term of the Call-Off Contract, and for a period of one (1) year thereafter, solicit the services of any senior staff of the other Party who have been engaged in the provision of the Services or the management of the Call-Off Contract or any significant part thereof either as principal, agent, employee, independent contractor or in any other form of employment or engagement other than by means of an open national advertising campaign and not specifically targeted at such staff of the other Party.

36 Waiver

- 36.1 No forbearance or delay by either Party in enforcing its respective rights will prejudice or restrict the rights of that Party, and no waiver of any such rights or of any breach of any contractual terms will be deemed to be a waiver of any other right or of any later breach.
- 36.2 Failure by the Placing Authority at any time to enforce the provisions of the Call-Off Contract or to require performance strictly or otherwise by the Supplier of any provisions of the Call-Off Contract or any failure or delay by the Supplier to exercise any act right or remedy shall not be construed as a waiver of or as creating an estoppel in connection with any such provisions and shall not affect the validity of the Call-Off Contract or any part thereof or the right of the Supplier to enforce any provision.
- 36.3 In particular, but without limitation to the generality of the foregoing, any prior acceptance or approval communicated by the Placing Authority to the Supplier in respect of the Services

or any omission on the part of the Placing Authority to communicate such prior acceptance or approval shall not relieve the Supplier of its obligations to deliver the Services in accordance with the provisions of the Call-Off Contract.

37 Cumulation of Remedies

37.1 Subject to the specific limitations set out in this agreement, no remedy conferred by any provision of the Call-Off Contract is intended to be exclusive of any other remedy except as expressly provided for in the Call-Off Contract and each and every remedy shall be cumulative and shall be in addition to every other remedy given thereunder or existing at law or in equity by statute or otherwise.

38 Severability

38.1 If any of the provisions of the Call-Off Contract is judged to be illegal or unenforceable, the continuation in full force and effect of the remainder of them will not be prejudiced.

39 Partnership or Agency

39.1 Nothing contained in the Call-Off Contract shall constitute a partnership or joint venture or employment or agency with or between either of the Parties and no Party shall hold itself out as an agent or an employee of the other Party. Neither the Supplier nor its Personnel shall in any circumstances hold itself or themselves out as:

39.1.1 being the servant or agent of the Placing Authority otherwise than in circumstances expressly permitted by the Call-Off Contract;

39.1.2 being authorised to enter into any contract on behalf of the Placing Authority or in any other way to bind the Placing Authority to the performance, variation, release or discharge of any obligation; or

39.1.3 having the power to make, vary, discharge or waive any by-law or any regulation of any kind.

40 Third Party Rights

40.1 No term of the Call-Off Contract is intended to confer a benefit on, or to be enforceable by, any person who is not a Party to it, save for the Lead Authority who may enforce its terms upon instruction from the Placing Authority.

40.2 The Placing Authority and the Supplier agree that, other than the Lead Authority where the Lead Authority has been so instructed by the Placing Authority, they do not intend that any third party may benefit from the Call-Off Contract or any part of it, nor shall they have any rights of enforcement under the terms of the Contracts (Rights of Third Parties) Act 1999.

41 Publicity

41.1 The Supplier shall not:

41.1.1 make any press announcements or publicise the Call-Off Contract or its contents in any way; or

41.1.2 use the Placing Authority's name or brand in any promotion or marketing or announcement of orders,

without the prior written consent of the Placing Authority.

42 Notices

42.1 Any notice, which includes any other communication whatsoever which is made in

accordance with the Call-Off Contract, shall without prejudice to any other method of giving it, be sufficiently given if it is sent by registered or recorded delivery first class post, delivered by hand (for which a receipt has been obtained) or by e-mail (with a hard copy confirmation letter to follow):

42.1.1 in the case of the Supplier to the address and e-mail address specified in the "Contact Details" box in Part 1 of the Request to Participate submitted by the Supplier in the Lead Authority's DPS (as may be amended by Supplier notification to the Lead Authority from time to time); and

42.1.2 in the case of the Placing Authority to:

FAO Mark Hodges (Asset Management Service)
Lancashire County Council
PO Box 100
County Hall
Preston
Lancashire
PR1 0LD

E-mail: Mark.Hodges@lancashire.gov.uk

Any e-mail notice shall be deemed to have been delivered by a Party after four (4) hours, unless it is sent after 5:00 PM on a Working Day in which case it shall be deemed delivered at 9:00 AM on the next Working Day, or sooner where the e-mail receipt has been acknowledged by the other Party. Notices posted shall be deemed to have been properly given after five (5) days in the case of notices sent inland and ten (10) days in the case of notices sent overseas.

43 Entire Agreement

43.1 The Call-Off Contract, the schedules and the documents annexed to it or otherwise referred to in it contain the whole agreement between the Parties relating to the subject matter hereof and supersede all prior agreements, arrangements and understandings between the Parties relating to that subject matter.

44 Counterparts

44.1 The Call-Off Contract may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original of the Call-Off Contract, but all the counterparts shall together constitute the same Call-Off Contract. No counterpart shall be effective until each Party has executed at least one (1) counterpart.

45 Governing Law and Jurisdiction

45.1 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.

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

Schedule 1: Specification

The Specification shall be incorporated by reference.

Schedule 2: Site Profile

The Site Profile shall be incorporated by reference.

Schedule 3: Key Personnel

The Placing Authority's initial Key Personnel shall be as follows:

Site Officer

Contract Manager

The Supplier's initial Key Personnel shall be the person whose contact details are as shown in the "Contact Details" box as set out in Part 1 of the standard selection questionnaire (which was submitted by the Supplier to the Lead Authority leading to selection of the Supplier by the Lead Authority to be an eligible Supplier to join the Lead Authority's DPS for grounds maintenance services).

Schedule 4: Change Control

1. General Principles

- 1.1 Subject to the Price variation procedure set out in Clause 10 (Price) and Clause 19 (Change Control, Benchmarking and Continuous Improvement), where the Placing Authority or the Supplier sees a need to vary the Call-Off Contract, the Placing Authority may at any time request, and the Supplier may at any time recommend to the Placing Authority, such Change only in accordance with the Change Control Procedure set out in paragraph 2 of this Schedule 4. For the avoidance of doubt, the Placing Authority is not obliged to pursue any Supplier recommendation for a Change.
- 1.2 Until such time as a Change is made in accordance with the Change Control Procedure, the Placing Authority and the Supplier shall, unless otherwise agreed in writing, continue to perform the Call-Off Contract in compliance with its terms before such Change.
- 1.3 Any discussions which may take place between the Placing Authority and the Supplier in connection with a request or recommendation before the authorisation of a resultant Change shall be without prejudice to the rights of either Party.
- 1.4 Any work undertaken by the Supplier and the Supplier's Personnel which has not been authorised in advance by a Change, and which has not been otherwise agreed in accordance with the provisions of this Schedule 4, shall be undertaken entirely at the expense and liability of the Supplier.

2. Procedure

- 2.1 Discussion between the Placing Authority and the Supplier concerning a Change requested by the Placing Authority or for a Change recommended by the Supplier which the Placing Authority agrees to consider as a Change shall result in any one of the following:
 - (a) no further action being taken;
 - (b) a request to change this agreement by the Placing Authority; or
 - (c) a recommendation to change the Call-Off Contract by the Supplier.
- 2.2 Where an electronic written request for an amendment is received from the Placing Authority, the Supplier shall, unless otherwise agreed, submit a Change Control Note electronically signed by the Supplier to the Placing Authority within three (3) Working Days of the date of the request.
- 2.3 A recommendation to amend the Call-Off Contract by the Supplier shall be submitted directly as an electronic written request to the Placing Authority in the form of a Change Control Note electronically signed by the Supplier at the time of such recommendation. The Placing Authority shall give its response electronically in writing to the Change Control Note within three (3) Working Days.
- 2.4 Each Change Control Note shall contain:
 - (a) the title of the Change;
 - (b) the originator and date of the request or recommendation for the Change;
 - (c) the reason for the Change;
 - (d) full details of the Change, including any specifications;
 - (e) the price, if any, of the Change;

- (f) a timetable for implementation, together with any proposals for acceptance of the Change;
- (g) a schedule of payments if appropriate;
- (h) details of the likely impact, if any, of the Change on other aspects of the Call-Off Contract including:
 - (i) the timetable for the provision of the Change;
 - (ii) the personnel to be provided;
 - (iii) the Price;
 - (iv) the Documentation to be provided;
 - (v) the training to be provided;
 - (vi) working arrangements;
 - (vii) other contractual issues;
- (i) the date of expiry of validity of the Change Control Note; and
- (j) provision for signature by the Placing Authority and the Supplier.

2.5 For each Change Control Note submitted by the Supplier the Placing Authority shall, within the period of the validity of the Change Control Note:

- (a) allocate a sequential number to the Change Control Note; and
- (b) evaluate the Change Control Note and, as appropriate:
 - (i) request further information;
 - (ii) arrange for the Change Control Note to be electronically signed by or on behalf of the Placing Authority and returned to the Supplier; or
 - (iii) notify the Supplier of the rejection of the Change Control Note.

2.6 A Change Control Note electronically signed by both the Placing Authority and by the Supplier shall constitute an amendment to the Call-Off Contract.

Schedule 5: TUPE and Pension

1. Interpretation

The definitions and rules of interpretation in this paragraph apply in this Schedule:

Acquired Rights Directive: the Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses, as it applies in England and Wales from time to time including as retained, amended, extended, re-enacted or otherwise given effect on or after 11 pm on 31 January 2020.

Admission Agreement: the agreement to be entered into in accordance with regulation 3 of the Local Government Pension Scheme Regulations 2013, as amended, by the administering authority, the Placing Authority and the Supplier or Sub-Contractor, as appropriate in the administering authority's standard form.

Appropriate Pension Provision: in respect of Eligible Employees, either:

- a) membership, continued membership or continued eligibility for membership of their Legacy Scheme; or
- b) membership or eligibility for membership of a pension scheme, which is certified by the Government Actuary's Department (GAD) as being broadly comparable to the terms of their Legacy Scheme.

Supplier's Final Staff List: the list of all the Supplier'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.

Supplier's Provisional Staff List: the list prepared and updated by the Supplier of all the Supplier'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 date of the preparation of the list.

Data Protection Legislation: all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003 No. 2426) as amended; any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of Personal Data (including, without limitation, the privacy of electronic communications); and the guidance and codes of practice issued by the relevant data protection or supervisory authority and applicable to a Party.

Effective Date: the date(s) on which the Services (or any part of the Services), transfer from the Placing Authority or any Third Party Employer to the Supplier or Sub-Contractor, and a reference to the Effective Date shall be deemed to be the date on which the employees in question transferred or will transfer to the Supplier or Sub-Contractor.

Eligible Employees:

- a) the Transferring Employees who are active members of (or are eligible to join) the LGPS on the date of a Relevant Transfer including the Effective Date; and/or
- b) the Third Party Employees who are former employees of the Placing Authority or Lead Authority and who were active members of (or who were eligible to join) the LGPS on the date of a previous Relevant Transfer of the Services.

Employee Liability Information: the information that a transferor is obliged to notify to a transferee under regulation 11(2) of TUPE:

- c) the identity and age of the employee;
- d) the employee's written statement of employment particulars (as required under section 1 of the Employment Rights Act 1996);

- e) 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 applied, within the previous two years;
- f) information about any court or tribunal case, claim or action either brought by the employee against the transferor within the previous two years or where the transferor has reasonable grounds to believe that such action may be brought against the Supplier arising out of the employee's employment with the transferor;
- g) information about any collective agreement that will have effect after the Effective Date or the Service Transfer Date, as the case may be, in relation to the employee under regulation 5 of TUPE.

Employment Liabilities: All claims, including claims without limitation 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.

Legacy Scheme: the pension scheme of which the Eligible Employees are members, or are eligible for membership of, or are in a waiting period to become a member of, prior to the Relevant Transfer.

LGPS: Local Government Pension Scheme.

LGPS Regulations: the Local Government Pension Scheme Regulations 2013 (*SI 2013/2356*).

Relevant Employees: those employees whose contracts of employment transfer with effect from the Service Transfer Date to the Placing Authority or a Replacement Supplier by virtue of the application of TUPE.

Relevant Transfer: a relevant transfer of the Services for the purposes of TUPE.

Replacement Supplier: any third party supplier of Replacement Services appointed by the Placing Authority from time to time.

Replacement Services: any services that are fundamentally the same as any of the Services and which the Placing Authority 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 Placing Authority internally or by any Replacement Supplier.

Service Transfer Date: the date on which the Services (or any part of the Services), transfer from the Supplier or Sub-Contractor to the Placing Authority or any Replacement Supplier.

Staffing Information: in relation to all persons detailed on the Supplier's Provisional Staff List, in an anonymised format, such information as the Placing Authority may reasonably request including but not limited to 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.

Sub-Contractor: the contractors engaged by the Supplier to provide goods, services or works to, for or on behalf of the Supplier for the purposes of providing the Services to the Placing Authority.

Third Party Employees: employees of Third Party Employers whose contracts of employment transfer with effect from the Effective Date to the Supplier or Sub-Contractor by virtue of the application of TUPE. An indicative list of the Third Party Employees, as at the date of execution of the Call-Off Contract, is attached at Annex B.

Third Party Employer: a supplier engaged by the Placing Authority to provide some or all of the Services to the Placing Authority before the Effective Date and whose employees will transfer to the Supplier on the Effective Date.

Transferring Employees: employees of the Placing Authority whose contracts of employment transfer with effect from the Effective Date to the Supplier by virtue of the application of TUPE. A list of the Transferring Employees, as at the date of execution of the Call-Off Contract, is attached at Annex A.

TUPE: the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246), as amended.

2. Transfer of Employees to the Supplier on the Effective Date

- 2.1 The Placing Authority and the Supplier agree that where the identity of the supplier of any of the Services changes, this shall constitute a Relevant Transfer and the contracts of employment of any Transferring Employees and Third Party Employees shall transfer to the Supplier or Sub-Contractor. The Supplier shall comply and shall procure that each Sub-Contractor shall comply with their obligations under TUPE. The first Relevant Transfer shall occur on the Effective Date.
- 2.2 The Placing Authority shall be responsible for all remuneration, benefits, entitlements and outgoings in respect of the Transferring Employees, including without limitation, all wages, holiday pay, bonuses, commissions, payments of PAYE, National Insurance contributions, pension contributions and otherwise, up to the Effective Date. The Placing Authority shall provide and, where necessary, update the Employee Liability Information for the Transferring Employees to the Supplier, as required by TUPE. The Placing Authority shall warrant that such information is complete and accurate as it is aware or should reasonably be aware as at the date it is disclosed.
- 2.3 Subject to paragraph 2.4, the Placing Authority shall indemnify and keep indemnified the Supplier against any losses, except indirect losses, incurred by the Supplier or any relevant Sub-Contractor in connection with any claim or demand by any Transferring Employee arising out of the employment of any Transferring Employee. This indemnity shall apply provided that it arises from any act, fault or omission of the Placing Authority in relation to any Transferring Employee prior to the Effective Date (except where such act, fault or omission arises as a result of the Supplier or any relevant Sub-Contractor's failure to comply with regulation 13 of TUPE) and any such claim is not in connection with the transfer of the Services by virtue of TUPE on the Effective Date.
- 2.4 The Supplier shall be liable for and indemnify and keep indemnified the Placing Authority and any Third Party Employer against any Employment Liabilities arising from or as a consequence of:
- (a) any proposed changes to terms and conditions of employment the Supplier or Sub-Contractor may consider making on or after the Effective Date;
 - (b) any of the employees informing the Placing Authority and any Third Party Employer they object to being employed by the Supplier or Sub-Contractor; and
 - (c) any change in identity of the Transferring Employees' and Third Party Employees' employer as a result of the operation of TUPE or as a result of any proposed measures the Supplier or Sub-Contractor may consider taking on or after the Effective Date.
- 2.5 The Supplier shall be liable for and indemnify and keep indemnified the Placing Authority and any Third Party Employer against any failure to meet all remuneration, benefits, entitlements and outgoings for the Transferring Employees, the Third Party Employees, and any other person who is or will be employed or engaged by the Supplier or any Sub-Contractor in connection with the provision of the Services, including without limitation, all wages, holiday pay, bonuses, commissions, payments of PAYE, National Insurance contributions, pension contributions, termination costs and otherwise from and including the Effective Date.

2.6 The Supplier shall immediately on request by the Placing Authority and/or the Third Party Employer provide details of any measures that the Supplier or any Sub-Contractor envisages it will take in relation to any Transferring Employees and any Third Party Employees, including any proposed changes to terms and conditions of employment. If there are no measures, the Supplier will give confirmation of that fact, and shall indemnify the Placing Authority and any Third Party Employer against all Employment Liabilities resulting from any failure by it to comply with this obligation.

3. Employment Exit Provisions

3.1 The Call-Off Contract envisages that subsequent to its commencement, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of termination of the Call-Off Contract, or part or otherwise) resulting in a transfer of the Services in whole or in part (a "**Subsequent Transfer**"). If a Subsequent Transfer is a Relevant Transfer then the Placing Authority or Replacement Supplier will inherit liabilities in respect of the Relevant Employees with effect from the relevant Service Transfer Date.

3.2 The Supplier shall and shall procure that any Sub-Contractor shall on receiving notice of termination of the Call-Off Contract or otherwise, on request from the Placing Authority and at such times as required by TUPE, provide in respect of any person engaged or employed by the Supplier or any Sub-Contractor in the provision of the Services, the Supplier's Provisional Staff List and the Staffing Information together with any additional information required by the Placing Authority, including information as to the application of TUPE to the employees. The Supplier shall notify the Placing Authority of any material changes to this information as and when they occur.

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

3.4 The Placing Authority shall be permitted to use and disclose the Supplier's Provisional Staff List, the Supplier'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 the Services (or any part of the Services).

3.5 The Supplier warrants to the Placing Authority and the Replacement Supplier that the Supplier's Provisional Staff List, the Supplier's Final Staff List 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 Supplier's Final Staff List.

3.6 The Supplier shall and shall procure that any Sub-Contractor shall ensure at all times that it has the right to provide the TUPE Information under Data Protection Legislation.

3.7 The Placing Authority regards compliance with this paragraph 3 as fundamental to the Call-Off Contract. In particular, failure to comply with paragraph 3.2 and paragraph 3.3 of this Schedule in respect of the provision of accurate information about the Relevant Employees shall entitle the Placing Authority to suspend payment of the Price until such information is provided, or indefinitely. The maximum sum that may be retained under this paragraph 3.7 shall not exceed an amount equivalent to the Price that would be payable in the three (3) month period following the Supplier's failure to comply with paragraph 3.2 or paragraph 3.3, as the case may be.

3.8 Any change to the TUPE Information which would increase the total employment costs of the staff in the six (6) months prior to termination of the Call-Off Contract shall not (so far as reasonably practicable) take place without the Placing Authority's prior written consent, unless

such changes are required by law. The Supplier shall and shall procure that any Sub-Contractor shall supply to the Placing Authority full particulars of such proposed changes and the Placing Authority shall be afforded reasonable time to consider them.

3.9 In the six (6) months prior to termination of the Call-Off Contract, the Supplier shall not and shall procure that any Sub-Contractor shall not materially increase or decrease the total number of staff listed on the Supplier's Provisional Staff List, their remuneration, or make any other change in the terms and conditions of those employees without the Placing Authority's prior written consent.

3.10 The Supplier shall indemnify and keep indemnified in full the Placing Authority and each and every Replacement Supplier against all Employment Liabilities relating to:

(a) any person who is or has been employed or engaged by the Supplier or any Sub-Contractor in connection with the provision of any of the Services; or

(b) any trade union or staff association or employee representative,

arising from or connected with any failure by the Supplier 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.

3.11 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.

3.12 The Parties agree that the Contracts (Rights of Third Parties) Act 1999 shall apply from paragraph 3.2 to paragraph 3.11, 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 Supplier or the Placing Authority in its own right under section 1(1) of the Contracts (Rights of Third Parties) Act 1999.

3.13 Despite paragraph 3.12, it is expressly agreed that the Parties may by agreement rescind or vary any terms of the 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.

4. Pensions

4.1 The Supplier shall or shall procure that any relevant Sub-Contractor shall ensure that all Eligible Employees are offered Appropriate Pension Provision with effect from the Effective Date.

4.2 The provisions of paragraph 4, paragraph 5 and paragraph 6 shall be directly enforceable by an affected employee against the Supplier or any relevant Sub-Contractor and the Parties agree that the Contracts (Rights of Third Parties) Act 1999 shall apply to the extent necessary to ensure that any affected employee shall have the right to enforce any obligation owed to such employee by the Supplier or Sub-Contractor under those paragraphs in their own right under section 1(1) of the Contracts Rights of Third Parties Act 1999.

5. Admitted Body Status to the Local Government Pension Scheme

5.1 Where the Supplier or Sub-Contractor wishes to offer the Eligible Employees membership of the LGPS, the Supplier shall or shall procure that it and/or each relevant Sub-Contractor shall enter into an Admission Agreement to have effect from and including the Effective Date or, if the Relevant Transfer occurs after the Effective Date, from and including the date of that Relevant Transfer. The Supplier or Sub-Contractor will bear the cost of any administrative charges and actuarial assessment associated with the Admission Agreement, as outlined in the Lancashire County Pension Fund's Admission and Termination Policy.

- 5.2 For the purposes of calculating the employer's contribution rate, any termination payment, and any other sums due to the administering authority under the Admission Agreement, the Placing Authority shall ensure that the Eligible Employees' past service benefits accrued prior to the Effective Date are fully funded as at the Effective Date.
- 5.3 The Supplier shall indemnify and keep indemnified the Placing Authority and/or any Replacement Supplier and, in each case, their sub-contractors, from and against all direct losses suffered or incurred by it or them, which arise from any breach by the Supplier or Sub-Contractor of the terms of the Admission Agreement, to the extent that such liability arises before or as a result of the termination or expiry of the Call-Off Contract.
- 5.4 The Supplier shall and shall procure that it and any Sub-Contractor shall prior to the Effective Date or, if the Relevant Transfer occurs after the Effective Date, from and including the date of that Relevant Transfer, obtain any indemnity or bond required in accordance with the Admission Agreement. The Supplier or Sub-Contractor will bear the cost of any administrative charges and of any actuarial assessment required in order to assess the value of the bond or guarantee.
- 5.5 The Supplier shall and shall procure that any relevant Sub-Contractor shall award benefits (where permitted) to the Eligible Employees under the LGPS Regulations in circumstances where the Eligible Employees would have received such benefits had they still been employed by the Placing Authority or Lead Authority. The Supplier shall be responsible for meeting all costs associated with the award of such benefits.

6. Supplier Pension Scheme

- 6.1 Where the Supplier or Sub-Contractor does not wish to or is otherwise prevented from offering the Eligible Employees membership or continued membership of the LGPS, the Supplier shall or shall procure that any relevant Sub-Contractor shall offer the Eligible Employees membership of an occupational pension scheme with effect from the Effective Date or, if the Relevant Transfer occurs after the Effective Date, from and including the date of that Relevant Transfer. Such an occupational pension scheme must be:
- (a) established no later than three (3) months prior to the date of the Relevant Transfer; and
 - (b) certified by the GAD as providing benefits that are broadly comparable to those provided by the Legacy Scheme,
- and the Supplier shall produce evidence of compliance with this paragraph 6 to the Placing Authority prior to the date of the Relevant Transfer.
- 6.2 The Placing Authority's actuary shall determine the terms for bulk transfers from the LGPS to the Supplier's scheme following the Effective Date and any subsequent bulk transfers on termination or expiry of the Call-Off Contract.
- 6.3 The Supplier shall and shall procure that each relevant Sub-Contractor shall:
- (a) maintain such documents and information as will be reasonably required to manage the pension rights of and aspects of any onward transfer of any person engaged or employed by the Supplier or any Sub-Contractor in the provision of the Services on the expiry or termination of the Call-Off Contract (including without limitation identification of the Eligible Employees);
 - (b) promptly provide to the Placing Authority such documents and information mentioned in paragraph 6.3(a) which the Placing Authority may reasonably request in advance of the expiry or termination of the Call-Off Contract; and
 - (c) fully cooperate (and procure that the trustees of the Supplier's scheme shall fully cooperate) with the reasonable requests of the Placing Authority relating to any administrative tasks necessary to deal with the pension rights of and aspects of any onward transfer of any person engaged or employed by the Supplier or any Sub-Contractor in the provision of the Services on expiry or termination of the Call-Off Contract.

Annex A List of Transferring Employees

Annex B List of Third Party Employees

Schedule 6: Commercially Sensitive Information

Schedule 7: Supplier's Request to Participate

The Supplier's Request to Participate shall be incorporated by reference.