

DEVON COUNTY COUNCIL (1)

and

PROVIDER (2)

**CP2491-24 OPEN LIGHT TOUCH FRAMEWORK AGREEMENT
FOR THE PROVISION OF INDEPENDENT AND ALTERNATIVE EDUCATION SUPPORT FOR CHILDREN AND
YOUNG PEOPLE IN DEVON**

FRAMEWORK TWO

Contents

1	DEFINITIONS AND INTERPRETATION	4
2	TERM OF FRAMEWORK AGREEMENT	10
3	SCOPE OF FRAMEWORK AGREEMENT	11
4	AWARD PROCEDURE	11
5	CONTRACT PERFORMANCE AND PRECEDENCE OF DOCUMENTS	12
6	PRICES FOR SERVICES.....	12
7	WARRANTIES AND REPRESENTATIONS.....	13
8	STATUTORY AND OTHER REQUIREMENTS	14
9	REPORTING AND MEETINGS	14
10	RECORDS AND AUDIT ACCESS	14
11	CONFIDENTIALITY AND TRANSPARENCY	15
12	DATA PROTECTION	16
13	FREEDOM OF INFORMATION.....	16
14	PUBLICITY	17
15	TERMINATION	18
16	SUSPENSION OF PROVIDER’S APPOINTMENT.....	20
17	CONSEQUENCES OF TERMINATION AND EXPIRY	21
18	INSURANCE	21
19	COMPLAINTS HANDLING AND RESOLUTION	21
20	DISPUTE RESOLUTION.....	22
21	PREVENTION OF BRIBERY	23
22	CONFLICTS OF INTEREST	24
23	HUMAN RIGHTS	25
24	EQUAL OPPORTUNITIES.....	25
25	SUBCONTRACTING AND ASSIGNMENT	25

26	MODIFICATIONS TO FRAMEWORK AGREEMENT.....	26
27	THIRD PARTY RIGHTS.....	26
28	SEVERANCE.....	26
29	RIGHTS AND REMEDIES.....	26
30	WAIVER AND CUMULATIVE REMEDIES.....	27
31	ENTIRE AGREEMENT	27
32	NOTICES	27
33	GOVERNING LAW AND JURISDICTION.....	28
SCHEDULE 1	PROVIDER'S LOTS	29
SCHEDULE 2	CALL-OFF PROCEDURE	30
SCHEDULE 3	ORDER FORMS.....	36
SCHEDULE 4	CALL-OFF TERMS AND CONDITIONS.....	42
SCHEDULE 5	FRAMEWORK REOPENING PROCEDURE.....	81

AGREEMENT MADE BETWEEN PARTIES

- (1) **DEVON COUNTY COUNCIL** of County Hall, Topsham Road, Exeter, EX2 4QD ("the **Authority**").
- (2) [REDACTED] incorporated and registered in England and Wales with company number [REDACTED] whose registered office is [REDACTED] ("the **Provider**").

BACKGROUND

- (A) The Authority placed a tender notice with reference 2025/S 000-066261 on 17th October 2025 on the Central Digital Platform seeking expressions of interest from potential providers for the provision of Services (divided into Lots) identified in the tender notice under a Framework Agreement.
- (B) Following receipt of expressions of interest, the Authority invited potential providers (including the Provider) to tender for the provision of the Services.
- (C) On the basis of the Provider's Tender, the Authority selected the Provider to enter into a framework agreement to provide Services to the Authority for Orders placed for the Provider's Lots in accordance with this Framework Agreement.
- (D) This Framework Agreement sets out the procedure for ordering Services, the main terms and conditions for the provision of the Services and the obligations of the Provider under this Framework Agreement.
- (E) It is the Parties' intention that the Authority has no obligation to place Orders with the Provider under this Framework Agreement or at all.

AGREED TERMS

1 DEFINITIONS AND INTERPRETATION

- 1.1 The definitions and rules of interpretation in this clause apply in this Framework Agreement.

Approval: means the prior written approval of the Authority.

Associated Person: means any provider that the Provider has relied on to satisfy the Conditions of Participation but not a provider who is to act as a guarantor as described in section 22(9) of the Act.

Audit: means an audit carried out pursuant to clause 10

Auditor: means the Authority's appointed external auditor and/or internal auditor.

Authorised Representative: means the persons respectively designated as such by the Authority and the Provider.

Authorised Subcontracts : means any subcontracts or subcontracting arrangements set out by the Provider in the Provider's Tender.

Authority's Invitation to Tender: means the Authority's invitation to providers to tender to enter a Framework Agreement to provide Services for Orders placed in accordance with this Framework Agreement.

Award Criteria: means the Direct Award Consultation Process as set out in Schedule 2 and the Mini-Competition Award Criteria as set out in the Mini-Competition Invitation to Tender

Block Contract: means a legally binding agreement (made pursuant to the provisions of this Framework Agreement) specifically provided for in Schedule 3a and the Call Off Terms and Conditions for the provision of Services between the Authority and the Provider with a fixed volume over a fixed period of time. A Block Contract will have a fixed price payable for the period of the Block Contract.

Call-Off Procedure: the procedure for awarding a Contract under this Framework Agreement as set out at Schedule 2.

Call-Off Terms and Conditions: means the terms and conditions in Schedule 4.

Central Digital Platform: means the online system defined by regulation 5(2) of the Procurement Regulations 2024

Change of Control: means a change of control within the meaning of section 1124 of the Corporation Tax Act 2010.

Commencement Date: means 19th February 2026

Complaint: means any formal complaint raised by the Authority in relation to the performance under the Framework Agreement or any Contract in accordance with clause 19.

Conditions of Participation: means any conditions in relation to the Provider's legal and financial capacity or technical ability to perform the Services specified in the procurement process in respect of this Agreement (if any).

Confidential Information: means any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information which would or would be likely to prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights, know-how of either Party and all Personal Data.

Connected Person: means a connected person to the Provider as defined in paragraph 45 of Schedule 6 Part 2 of the Act.

Consultation Process: means the process the Authority will follow to identify the most suitable placement / provision for a child or young person.

Contract: means a legally binding agreement (made pursuant to the provisions of this Framework Agreement) for the provision of Services made between an Authority and the Provider as more specifically defined in the Call-Off Terms and Conditions and includes a Block Contract.

Data Protection Legislation: all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR, the DPA 2018 (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.

Default: means any failure by the Provider to perform its material obligations under the Contract.

Debarment List: means the debarment list referred to in Section 62 of the Act.

Direct Award Consultation Process: means the direct award consultation process to be applied to the award of a Contract as set out in Schedule 2.

Dispute: means any dispute, issue, difference or question of interpretation arising out of or in connection with this Framework Agreement, including any dispute, issue, difference or question of interpretation relating to the Services.

DPA 2018: means the Data Protection Act 2018.

EIR: mean 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.

Excludable: means any of the circumstances set out in Schedule 7 of the Procurement Act applies;

Excluded: means that any of the circumstances set out in Schedule 6 of the Procurement Act applies;

FOIA: means the Freedom of Information Act 2000 and any subordinate legislation (as defined in section 84 of the Freedom of Information Act 2000) made under the Freedom of Information Act 2000 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 the Freedom of Information Act 2000.

Framework Agreement: means this framework agreement and all Schedules to this agreement.

Framework Providers: means the Provider and any other providers appointed as framework providers under this Framework Agreement.

Framework Reopening Process: means the process set out at Schedule 5 for the reopening of the Framework to providers and the award of one or more Subsequent frameworks.

Freedom of Information Officer: means the Authority's Information Governance Manager who has responsibility for managing the Authority's compliance under the FOIA and EIR.

Holding Company: shall have the meaning ascribed by section 1159 of the Companies Act 2006 or any statutory re-enactment or amendment thereto.

Information: means all information of whatever nature, however conveyed and in whatever form, including in writing, orally, by demonstration, electronically and in a tangible, visual or machine-readable medium (including CD-ROM, magnetic and digital form).

Individual Placement Agreement: means the individual contractual arrangement made on behalf of a child or young person by the Authority arising from an assessment of their needs.

Intellectual Property: means all intellectual property 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, design rights, rights in databases, moral rights, know-how and any other intellectual property which subsists in computer software, computer programmes, websites, documents, information, techniques, business models, drawings, logos, instruction manuals, lists and procedures and particulars of Authority's, marketing methods and procedures and advertising literature, including the look and feel of websites. and other similar rights or obligations whether registrable or not in any country (including the United Kingdom) and the right to sue for passing off.

Intellectual Property Rights: means any and all rights relating to Intellectual Property.

IPA: means Individual Placement Agreement

Law: the laws of England and Wales and any other laws or regulations, regulatory policies, guidelines or industry codes which apply to the provision of the Services or which the Provider is bound to comply.

Lots: means the Services divided into lots as referred to in the Tender Notice and set out in the Invitation to Tender.

Management Information: means any management information to be supplied by the Provider to the Authority as set out in the Specification.

Mini-Competition Award Criteria: means the award criteria to be applied to Supplemental Tenders for Block Contracts received through mini-competitions held for the award of Contracts for Services as set out in the Mini-Competition Invitation to Tender.

Mini-Competition Invitation to Tender: means the Authority's invitation to Framework Providers to participate in a mini-competition to supply the Authority with Services under a Block Contract.

Month: means a calendar month.

Order: means an order for Services sent by the Authority to the Provide in accordance with the award procedure in Schedule 2.

Order Form: means a document setting out details of a Block Contract Order in the form set out in Schedule 3.

Party: means the Authority and/or the Provider.

Personal Data has the meaning given in the Data Protection Legislation.

Pricing Schedules: means the pricing schedules set out in the Tender.

Procurement Act: means the Procurement Act 2023 as may be updated, supplemented or replaced from time to time.

Procurement Legislation: means the Procurement Act together with any supporting legislation or regulations, as may be updated, supplemented or replaced from time to time.

Procurement Regulations 2024: means the Procurement Regulations 2024 (SI 2024/692) as may be amended from time to time.

Prohibited Act: the following constitute Prohibited Acts:

- (a) to directly or indirectly offer, promise or give any person working for or engaged by the 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 this Framework Agreement;
- (c) committing any offence:
 - (i) under the Bribery Act 2010;
 - (ii) under legislation creating offences concerning fraudulent acts;
 - (iii) at common law concerning fraudulent acts relating to this Framework Agreement or any other contract with the Authority; or
 - (iv) defrauding, attempting to defraud or conspiring to defraud the Authority.

Provider's Lots: means the lots to which the Provider has been appointed under this Framework Agreement as set out in Schedule 1.

Protected Characteristics has the meaning set out in Clause 24.1.

PSQ: means the Procurement Specific Questionnaire

PSQ Response: means the response to the Procurement Specific Questionnaire submitted by the Provider to the Authority as part of its Tender.

Regulatory Bodies: means those government departments and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this Framework Agreement or any other affairs of the Authority.

Relevant Requirements: means all applicable Law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010.

Replacement Provider: any third-party provider appointed by the Authority to supply any services that are substantially the same as or similar to any of the Services and which the Authority receives in substitution for any of the Services following the expiry, termination or partial termination of the Contract.

Request for Information: means a request for information or an apparent request under the FOIA or the EIR.

Sensitive Commercial Information: means any information which constitutes a trade secret or which would be likely to prejudice the commercial interests of any person if it were published or otherwise disclosed.

Services: means the services detailed in the Specifications.

Signed Order Form means the Order Form signed by the Authority and Provider.

Specification: means the specification of the Services or specification of the Services as applicable as set out in the Authority's Invitation to Tender.

Staff: means all persons employed by the Provider together with the Provider's servants, agents, suppliers and subcontractors used in the performance of its obligations under this Framework Agreement or Contracts.

Subcontract: means any Contract between the Provider and a third party pursuant to which the Provider agrees to source the provision of any of the Services from that third party.

Subcontractor: means any third party that enter into a Subcontract with the Provider.

Subsequent Framework: means a Framework which replaces this Framework Agreement following the Framework Reopening Process.

Successor Body: shall have the meaning given to that term in Clause 25.2

Supplemental Specification: means the Authority's supplemental specification, if any, included as part of Authority's Mini Competition Invitation to Tender for a Block Contract.

Supplemental Tender: means the documents submitted by a Provider to the Authority in response to the Authority's Mini-Competition Invitation to Tender for a Block Contract.

Tender: means the tender submitted by the Provider to the Authority in response to the Authority's Invitation to Tender.

Tender Notice: means the notice referred to in Clause 21 of the Act.

Term: means the period of 41 weeks following the Commencement Date.

Termination Date: means the date of expiry or termination of this Framework Agreement.

UK GDPR: has the meaning given to it in section 3(1) (as supplemented by section 205(4)) of the DPA 2015.

Working Days: means any day other than a Saturday, Sunday or public holiday in England and Wales.

Year: means a calendar year.

- 1.2 The interpretation and construction of this Framework Agreement shall all be subject to the following provisions:
- 1.2.1 words importing the singular meaning include where the context so admits the plural meaning and vice versa;
 - 1.2.2 words importing the masculine include the feminine and the neuter;
 - 1.2.3 the words "include", "includes" and "including" are to be construed as if they were immediately followed by the words "without limitation";
 - 1.2.4 references to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;
 - 1.2.5 references to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;
 - 1.2.6 headings are included in this Framework Agreement for ease of reference only and shall not affect the interpretation or construction of this Framework Agreement;
 - 1.2.7 the Schedules form part of this Framework Agreement and shall have effect as if set out in full in the body of this Framework Agreement and any reference to this Framework Agreement shall include the Schedules;
 - 1.2.8 references in this Framework Agreement to any clause or sub-clause or Schedule without further designation shall be construed as a reference to the clause or sub-clause or Schedule to this Framework Agreement so numbered;
 - 1.2.9 references in this Framework Agreement to any paragraph or sub-paragraph without further designation shall be construed as a reference to the paragraph or sub-paragraph of the relevant Schedule to this Framework Agreement so numbered; and
 - 1.2.10 reference to a clause is a reference to the whole of that clause unless stated otherwise.

FRAMEWORK ARRANGEMENTS AND AWARD PROCEDURE

2 TERM OF FRAMEWORK AGREEMENT

- 2.1 The Framework Agreement shall take effect on the Commencement Date. This Framework is an “open framework” for the purposes of Section 49 of the Procurement Act. In accordance with the Procurement Act, the Provider acknowledges that, subject to clause 2.4, the Framework Agreement expires at the end of the Term and that Provider’s appointment under this Framework Agreement is for the Term only (unless it is terminated earlier in accordance with the terms of this Framework Agreement or is otherwise lawfully terminated).

- 2.2 The Authority will follow the Framework Reopening Process and, in line with that process, intends to enter into one or more Subsequent Frameworks on the same terms as this Framework Agreement (other than in accordance with the Framework Reopening Process) which shall commence immediately on expiry of this Framework Agreement.
- 2.3 The Authority gives no guarantee that the Provider will be appointed under any Subsequent Framework and the Provider's appointment to any Subsequent Framework will be subject to the Provider being appointed under the terms of the Framework Reopening Process.
- 2.4 In the event that a Subsequent Framework has not been awarded prior to expiry of this Framework, provided that the Framework Reopening Process has commenced, the Authority may continue to award Contracts under this Framework Agreement as if it had not expired until the Subsequent Framework has been awarded.

3 SCOPE OF FRAMEWORK AGREEMENT

- 3.1 This Framework Agreement governs the relationship between the Authority and the Provider in respect of the provision of the Services by the Provider to the Authority and the operation of this Framework Agreement.
- 3.2 The Authority appoints the Provider as a Framework Provider of the Services referred to in the Provider's Lots and the Provider shall be eligible to receive Orders for such Services from the Authority during the Term.
- 3.3 In consideration of the Provider agreeing to enter into this Framework Agreement and to perform its obligations under it the Authority agrees to pay and the Provider agrees to accept on the signing of this Framework Agreement the sum of one pound (£1.00) sterling (receipt of which is hereby acknowledged by the Provider).
- 3.4 The Authority may at their absolute discretion, and from time to time, order Services from the Provider in accordance with the Award Criteria and Call-Off Procedure set out in Clause 4 and Schedule 2 during the Term. If there is a conflict between Clause 4, Schedule 2 and the Procurement Act the Procurement Act shall take precedence.
- 3.5 If and to the extent that any Services under this Framework Agreement are required the Authority shall:
- 3.5.1 enter into a Contract with the Provider for these Services materially in accordance with the terms of the Contract; and
 - 3.5.2 comply with the Award Criteria and Call-Off Procedure in Clause 4 and Schedule 2.
- 3.6 The Provider acknowledges that, in entering into this Framework Agreement, no form of exclusivity or volume guarantee has been granted by the Authority for the Services and that the Authority is at all times entitled to enter into contracts and arrangements with other provider's for the provision of any or all services which are the same as or similar to the Services.

4 AWARD PROCEDURE

Awards under the Framework Agreement – Call-Off Procedure

- 4.1 The Authority will award a Contract under the Framework Agreement in accordance with the Award Criteria and using the Call-Off Procedure set out in Schedule 2 and the Procurement Act and any other guidance issued by the UK Government from time to time.

5 CONTRACT PERFORMANCE AND PRECEDENCE OF DOCUMENTS

- 5.1 The Provider shall perform all Contracts entered into with the Authority in accordance with:

5.1.1 the requirements of this Framework Agreement; and

5.1.2 the terms and conditions of the respective Contracts.

- 5.2 In the event of, and only to the extent of, any conflict or inconsistency between the terms and conditions of this Framework Agreement and the terms and conditions of a Contract, such conflict or inconsistency shall be resolved according to the following order of priority:

5.2.1 the Individual Placement Agreement (IPA);

5.2.2 the Special Conditions set out in the Signed Order Form, if any;

5.2.3 the remainder of the Signed Order Form;

5.2.4 Schedule 3 (TUPE) of the Call-Off Terms and Conditions;

5.2.5 Schedule 1 (Optional Clauses) of the Call-Off Terms and Conditions,

5.2.6 the Call-Off Terms and Conditions;

5.2.7 the terms of the Framework Agreement and the remainder of the Schedules to the Framework Agreement;

5.2.8 the Supplemental Specification, if any;

5.2.9 the Service Specifications

5.2.10 any other documents listed in the Signed Order Form;

5.2.11 the Tender Clarifications;

5.2.12 the Mini-Competition Invitation to Tender, if any;

5.2.13 the Authority's Invitation to Tender;

5.2.14 the Supplemental Tender, if any;

5.2.15 the Provider's Tender.

6 PRICES FOR SERVICES

- 6.1 For a Direct Award Process, the prices offered by the Provider for Contracts to the Authority shall be the prices set out in the Pricing Schedule for the relevant Lot. The prices offered will be subject to any

inflationary increase agreed throughout the duration of the Framework Agreement as per the Fee and Inflationary Uplift Protocol.

- 6.2 For a Mini-Competition Process, which will be used for a Block Contract the prices offered by the Provider for Contracts to the Authority in the Supplemental Tender shall be no more than the prices set out in the Pricing Schedule for the relevant Lot. The prices offered will take into account any inflationary increase agreed throughout the duration of the Framework Agreement as per the Fee and Inflationary Uplift Protocol.

PROVIDER GENERAL FRAMEWORK OBLIGATIONS

7 WARRANTIES AND REPRESENTATIONS

- 7.1 The Provider warrants and represents to the Authority that:
- 7.1.1 it has full capacity and authority to enter into and to perform its obligations under this Framework Agreement;
 - 7.1.2 this Framework Agreement is executed by a duly authorised representative of the Provider;
 - 7.1.3 in entering into this Framework Agreement, it has not committed any Prohibited Act;
 - 7.1.4 it is not Excluded;
 - 7.1.5 it is not Excludable or in the event that it is Excludable, that it has submitted all material and complete information to the Authority in respect of the circumstances and such information remains true, accurate and not misleading;
 - 7.1.6 as at the Commencement Date, all information, statements and representations contained in the Tender and the PSQ Response are true, accurate and not misleading save as may have been specifically disclosed in writing to the Authority before the execution of this Framework Agreement and it will promptly advise the Authority of any fact, matter or circumstance of which it may become aware during the Term that would render any such information, statement or representation to be false or misleading;
 - 7.1.7 it shall promptly notify the Authority in writing if it becomes aware, during the Term of this Framework Agreement, that the Provider, a Connected Person, an Associated Person or a Subcontractor has been placed on the Debarment List or has become Excluded or Excludable in accordance with the Procurement Legislation, together with reasonable supporting information;
 - 7.1.8 no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets that will or might affect its ability to perform its obligations under this Framework Agreement;
 - 7.1.9 it is not subject to any contractual obligation, compliance with which is likely to have an effect on its ability to perform its obligations under this Framework Agreement; and

- 7.1.10 no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Provider or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Provider's assets or revenue.

8 STATUTORY AND OTHER REQUIREMENTS

- 8.1 The Provider shall be responsible for obtaining all licences, authorisations, consents or permits required in relation to the performance of this Framework Agreement and any Contract.
- 8.2 The Authority is committed to a policy of minimising adverse environmental, economic and social impacts associated with the products, services and works it provides and procures and the Provider shall use its reasonable endeavours to work in the same responsible manner.
- 8.3 The Authority will draw to the attention of the Provider any policies and procedures of the Authority which the Provider needs to be aware of and have regard to in the provision of the Services. The Provider shall have regard to and comply with such policies and procedures as are provided to it by the Authority's Authorised Representative.

PROVIDER'S INFORMATION OBLIGATIONS

9 REPORTING AND MEETINGS

- 9.1 The Provider shall submit Management Information to the Authority in accordance with the Specification or as otherwise agreed between the Parties throughout the Term.
- 9.2 The Authorised Representatives shall meet in accordance with the details set out in the Specification.
- 9.3 The Authority may make changes to the nature of the Management Information that the Provider is required to supply and shall give the Provider at least one month's written notice of any changes.

10 RECORDS AND AUDIT ACCESS

- 10.1 The Provider shall keep and maintain for a period of six years after the date of termination or expiry (whichever is the earlier) of this Framework Agreement (or as long a period as may be agreed between the Parties), full and accurate records and accounts of the operation of this Framework Agreement including the Services provided under it, the Contracts entered into with the Authority and the amounts paid by each Authority.
- 10.2 The Provider shall keep the records and accounts referred to in clause 10.1 in accordance with good accountancy practice.
- 10.3 The Provider shall afford the Authority or the Auditor (or both) such access to such records and accounts as may be reasonably required from time to time during the Term and for a period of six (6) years after expiry of the Term.
- 10.4 The Authority shall use reasonable endeavours to ensure that the conduct of each Audit does not unreasonably disrupt the Provider or delay the provision of the Services pursuant to any Contracts, save insofar as the Provider accepts and acknowledges that control over the conduct of Audits carried out by the Auditor is outside of the control of the Authority.

- 10.5 Subject to the Authority's rights of confidentiality, the Provider shall on demand provide the Auditor with all reasonable co-operation and assistance in relation to each Audit, including:
- 10.5.1 all information requested by the Auditor within the scope of the Audit;
 - 10.5.2 reasonable access to sites controlled by the Provider and to equipment used in the provision of the Services; and
 - 10.5.3 access to the Staff.
- 10.6 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause 10, unless the Audit reveals a default by the Provider in which case the Provider shall reimburse the Authority for the Authority's reasonable costs incurred in relation to the Audit.
- 10.7 The Authority (and the Auditor) reserves the right to visit unannounced, any of the Provider's offices or premises for the purpose of ensuring the Provider is complying with all of or any of his obligations under this Framework Agreement.

11 CONFIDENTIALITY AND TRANSPARENCY

Confidentiality

- 11.1 Subject to clause 11.2, the Parties shall keep confidential the Confidential Information of the other Party and shall use all reasonable endeavours to prevent their representatives from making any disclosure to any person of any matters relating thereto.
- 11.2 Clause 11.1 shall not apply to any disclosure of information:
- 11.2.1 required by any applicable Law, provided that Clause 13.1 shall apply to any disclosures required under the FOIA or the EIR;
 - 11.2.2 that is reasonably required by persons engaged by a Party in the performance of that Party's obligations under this Framework Agreement or Contract;
 - 11.2.3 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 11.1;
 - 11.2.4 by the Authority of any document to which it is a party and which the Parties to this Framework Agreement have agreed contains no Confidential Information;
 - 11.2.5 to enable a determination to be made under Clause 20.20;
 - 11.2.6 which is already lawfully in the possession of the receiving Party, prior to its disclosure by the disclosing Party, and the disclosing Party is not under any obligation of confidence in respect of that information;
 - 11.2.7 by the Authority to any other department, office or agency of the government, provided that the Authority informs the recipient of any duty of confidence owed in respect of the information; and

- 11.2.8 by the Authority relating to this Framework Agreement and in respect of which the Provider has given its prior written consent to disclosure.

Transparency

- 11.3 The Provider acknowledges that the Authority is required to comply with The Code of Recommended Practice on Data Transparency for Local Authorities published by The Department for Communities and Local Government under section 2 of the Local Government Planning and Land Act 1980 (the "**Transparency Code**") and the provisions of the Procurement Legislation.
- 11.4 The Provider acknowledges that the Authority may be required to publish this Framework Agreement (with the exception of any Sensitive Commercial Information), and/or including from time to time agreed changes to this Framework Agreement, to the general public in accordance with the Transparency Code and the Procurement Legislation provided that, in doing so:
- 11.4.1 the Authority shall, where reasonably practicable, seek to consult with the Provider prior to publishing the Framework Agreement in order to discuss in good faith and agree any redactions (such agreement not to be unreasonably withheld or delayed); and
- 11.4.2 the Provider shall provide reasonable assistance to the Authority to enable the Authority to publish this Framework Agreement.
- 11.5 The Provider acknowledges that the Authority may (acting in accordance with the Transparency Code and/or the Procurement Legislation) be obliged to disclose or publish information:
- 11.5.1 without consulting with the Provider; or
- 11.5.2 following consultation with the Provider and having taken its views into account,
- 11.5.3 provided always that where Clause 11.5.1 applies, the Authority shall, in accordance with any relevant recommendations of the Transparency Code, take reasonable steps, where appropriate, to give the Provider advance notice or, failing that, to draw the disclosure to the Provider's attention after any such disclosure.
- 11.6 The Provider shall indemnify and keep indemnified the Authority in full from and against all losses, claims, proceedings, actions, damages, costs, expenses and any other liabilities, including but not limited to financial loss, or any other loss which is caused directly or indirectly by any breach of this clause 11 by the Provider.

12 DATA PROTECTION

- 12.1 The Provider shall (and shall ensure that any of its Staff involved in the provision of the Framework Agreement shall) comply with any notification requirements under the Data Protection Legislation and both Parties shall duly observe all their obligations under the Data Protection Legislation, which arise in connection with this Framework Agreement.

13 FREEDOM OF INFORMATION

- 13.1 The Provider acknowledges that the Authority is subject to the requirements of the FOIA and the EIR and shall assist and co-operate with the Authority (at the Provider's expense) to enable the Authority to

comply with these information disclosure requirements.

13.2 The Provider shall and shall procure that its Subcontractors shall:

13.2.1 transfer any Request for Information to the Freedom of Information Officer as soon as practicable after receipt and in any event within two (2) Working Days of receiving a Request for Information;

13.2.2 provide the Authority with a copy of all Information in its possession or power in the form that the Authority requires within five (5) Working Days (or such other period as the Authority may specify) of the Authority requesting that Information; and

13.2.3 provide all necessary assistance as reasonably requested by the Authority to enable the 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 EIR.

13.3 In no event shall the Provider respond directly to a Request for Information unless expressly authorised to do so by the Freedom of Information Officer.

13.4 The Provider acknowledges that the Authority may (acting in accordance with the Freedom of Information Code of Practice (issued under section 45 of the FOIA, dated 4 July 2018) ("**Code**")) be obliged under the FOIA or the EIR to disclose Information:

13.4.1 without consulting with the Provider; or

13.4.2 following consultation with the Provider and having taken its views into account,

provided always that where clause 13.4.1 applies the Authority shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Provider advance notice, or failing that, to draw the disclosure to the Provider's attention after any such disclosure.

13.5 The Provider shall ensure that all Information produced in the course of the Framework Agreement or relating to the Framework Agreement is retained for disclosure and shall permit the Authority to inspect such records as requested from time to time.

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

14 PUBLICITY

14.1 Unless otherwise directed by the Authority, the Provider shall not make any press announcements or publicise this Framework Agreement in any way without the Authority's prior written consent.

14.2 The Authority shall be entitled to publicise this Framework Agreement in accordance with any legal obligation on the Authority, including any examination of this Framework Agreement by the Auditor or otherwise.

14.3 The Provider shall not do anything that may damage the reputation of the Authority or bring the Authority into disrepute.

FRAMEWORK AGREEMENT TERMINATION AND SUSPENSION

15 TERMINATION

Termination on Default

- 15.1 The Authority may terminate the Framework Agreement by serving written notice on the Provider with effect from the date specified in such notice:
- 15.1.1 where the Provider commits a Material Breach and:
 - 15.1.1.1 the Provider has not remedied the Material Breach to the satisfaction of the Authority within 20 Working Days, or such other period as may be specified by the Authority, after issue of a written notice specifying the Material Breach and requesting it to be remedied; or
 - 15.1.1.2 the Material Breach is not, in the reasonable opinion of the Authority, capable of remedy; or
 - 15.1.2 where the Authority terminates a Contract awarded to the Provider under this Framework Agreement as a consequence of Default by the Provider.
- 15.2 For the purposes of clause 15.1.1 **Material Breach** means a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit which the Authority would otherwise derive from:
- 15.2.1 a substantial portion of this Framework Agreement; or
 - 15.2.2 any of the obligations set out in clauses 5, 7, 8, 10, 11, 12, 21 and 25
- over the term of this Framework Agreement. In deciding whether any breach is material no regard shall be had to whether it occurs by accident, mishap, mistake or misunderstanding.

Termination pursuant to the Procurement Act

- 15.3 Without prejudice to any other right or remedy the Parties may have, the Authority may terminate this Framework Agreement on the occurrence of any of the statutory provisions contained in Section 78 of the Procurement Act (implied right to terminate public contracts) on written notice to the Provider.

Termination on Insolvency, Change of Control and Breach of Warranties

- 15.4 Without affecting any other right or remedy available to it, the Authority may terminate this Framework Agreement with immediate effect by giving written notice to the Provider if:
- 15.4.1 the Provider suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 has any partner to whom any of the foregoing apply;

- 15.4.2 the Provider commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of Provider with one or more other companies or the solvent reconstruction of the Provider;
 - 15.4.3 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Provider other than for the sole purpose of a scheme for a solvent amalgamation of the Provider with one or more other companies or the solvent reconstruction of the Provider;
 - 15.4.4 an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Provider);
 - 15.4.5 the holder of a qualifying floating charge over the assets of the Provider has become entitled to appoint or has appointed an administrative receiver;
 - 15.4.6 a person becomes entitled to appoint a receiver over the assets of the Provider or a receiver is appointed over the assets of the Provider;
 - 15.4.7 the Provider (being an individual) is the subject of a bankruptcy petition or order;
 - 15.4.8 a creditor or encumbrancer of the Provider attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Provider's assets and such attachment or process is not discharged within fourteen (14) days;
 - 15.4.9 any event occurs, or proceeding is taken, with respect to the Provider in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 15.4.1 to clause 15.4.8 (inclusive);
 - 15.4.10 the Provider suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.
- 15.5 The Provider shall notify the Authority immediately if the Provider undergoes a Change of Control. The Authority may terminate the Framework Agreement by giving notice in writing to the Provider with immediate effect within six (6) Months of:
- 15.5.1 being notified that a Change of Control has occurred; or
 - 15.5.2 where no notification has been made, the date that the Authority becomes aware of the Change of Control but shall not be permitted to terminate where an Approval was granted before the Change of Control.
- 15.6 Without affecting any other right or remedy available to it, the Authority may terminate this Framework Agreement with immediate effect by giving written notice to the Provider if any warranty given by the Provider in Clause 7 (Warranties and Representations) of this Framework Agreement is found to be untrue or misleading.

Termination by the Authority for convenience

- 15.7 The Authority shall have the right to terminate this Framework Agreement, or to terminate the provision of any part of the Framework Agreement at any time by giving 12 months written notice to the Provider. The Parties acknowledge that if the Authority exercises its rights under this Clause 15.7 it shall exercise its equivalent rights under all agreements with Framework Providers.

16 SUSPENSION OF PROVIDER'S APPOINTMENT

- 16.1 Without prejudice to Authority's rights to terminate the Framework Agreement in Clause 15 above, if a right to terminate this Framework Agreement arises in accordance with Clause 15 or in any of the circumstances set out in Clause 16.2, the Authority may suspend the Provider's right to receive Orders in any or all of the Provider's Lots, where applicable, by following the suspension procedure set out in this Clause 16.
- 16.2 The Authority may suspend the Provider where the Authority considers that:
- 16.2.1 the circumstances jeopardise the sustainability, quality, safety and / or outcomes to be delivered to a child or young person including but not limited to where the outcome of an external inspection raises serious concern(s)
 - 16.2.2 there is an act or omission that put a child or young person at risk
 - 16.2.3 there is a breach of duty and / or professionalism
 - 16.2.4 there is cause for concern over the achievement of outcomes for one or more child or young person, or
 - 16.2.5 one or more relevant insurances are allowed to lapse or do not meet the requirement minimum liability limit.
- 16.3 The Authority will notify the Provider in writing that they have been suspended from the Framework stating the reason(s) for the suspension alongside the period of time the suspension will last.
- 16.4 Where a Provider is suspended from the Framework this will usually be for a maximum period of three (3) calendar months' dependent upon the severity of the reason for the suspension.
- 16.5 Where a Provider is suspended from the Framework they will automatically be returned onto the Framework as a Provider on the day the suspension is lifted, as notified by the Authority in writing, assuming that the issue prompting the suspension has been satisfactorily addressed.
- 16.6 Where the Provider disagrees with the decision to suspend them from the Framework they can appeal this decision. This must be in writing to the Senior Commissioning Manager – Children's Services for this to be investigated and a decision made as to whether the suspension remains or is lifted.
- 17.6 If following this investigation and the suspension being upheld, the Provider still disagrees with the decision of their suspension they can escalate this in writing to the SEND Commissioning and Contracting Lead. Further investigation will be undertaken and a final decision will be made on whether the suspension remains or is lifted.

17 CONSEQUENCES OF TERMINATION AND EXPIRY

- 17.1 Notwithstanding the service of a notice to terminate the Framework Agreement, the Provider shall continue to fulfil its obligations under the Framework Agreement until the date of expiry or termination of the Framework Agreement or such other date as required under this clause 17.
- 17.2 Unless expressly stated to the contrary, the service of a notice to terminate the Framework Agreement shall not operate as a notice to terminate any Contract made under the Framework Agreement. Termination or expiry of the Framework Agreement shall not cause any Contracts to terminate automatically. For the avoidance of doubt, all Contracts shall remain in force unless and until they are terminated or expire in accordance with their own terms.
- 17.3 Six (6) Months prior to the end of the Term (or earlier upon the Authority's request), irrespective of whether the Framework Agreement is to be re-tendered or not, the Provider shall submit to the Authority any data relating to the Authority and Intellectual Property held by the Provider in respect of this Framework Agreement which the Authority may reasonably need for future reference or to maintain performance of this Framework Agreement internally or through another supplier. Such data shall be supplied electronically in the relevant Microsoft product (which is the Authority's standard software currently) or in such other electronic product as may be the Authority's standard at the time, and in e-gif compliant format (if applicable).
- 17.4 As a separate obligation to Clause 17.3, on or before the expiry of the Term, the Provider shall procure that all data and other material belonging to the Authority (and all media of any nature containing information and data belonging to the Authority or relating to the Framework Agreement), shall be delivered forthwith to the Authority and the Provider's Authorised Representative shall certify full compliance with this Clause.
- 17.5 Termination or expiry of this Framework Agreement shall be without prejudice to any rights, remedies or obligations of either Party accrued under this Framework Agreement before termination or expiry.
- 17.6 The provisions of clauses 7, 10, 12, 13, 14, 17, 21 and 33 shall survive the termination or expiry of the Framework Agreement, together with any other provision which is either expressed to or by implication is intended to survive termination.

18 INSURANCE

- 18.1 The Provider shall at its own cost effect and maintain in force policies of insurance to provide a level of cover sufficient for all risks which may be incurred by the Provider under this Framework Agreement including death or personal injury, or loss of or damage to property.

GENERAL PROVISIONS

19 COMPLAINTS HANDLING AND RESOLUTION

- 19.1 The Provider shall notify the Authority of any Complaint made within two (2) Working Days of becoming aware of that Complaint and such notice shall contain full details of the Provider's plans to resolve such Complaint
- 19.2 Without prejudice to any rights and remedies that a complainant may have at Law, including under the Framework Agreement or a Contract, and without prejudice to any obligation of the Provider to take

remedial action under the provisions of the Framework Agreement or a Contract, the Provider shall use its best endeavours to resolve the Complaint within 10 Working Days and in so doing, shall deal with the Complaint fully, expeditiously and fairly.

20 DISPUTE RESOLUTION

- 20.1 The Parties shall attempt, in good faith, to resolve any Dispute promptly by negotiation which shall be conducted as follows:
- 20.1.1 the Dispute shall be referred, by either Party, to the Authorised Representatives for resolution;
 - 20.1.2 if the Dispute cannot be resolved by the Authorised Representatives within fourteen (14) days after the Dispute has been referred to them, either Party may give notice to the other Party in writing (a “**Dispute Notice**”) that a Dispute has arisen; and
 - 20.1.3 within seven (7) days of the date of the Dispute Notice, each Party shall refer the Dispute to the Chief Executives (or equivalent senior officer) of the Parties (“**Senior Representatives**”) for resolution.
- 20.2 If the Senior Representatives are unable, or fail, to resolve the Dispute within 14 days of the reference to the Senior Representatives pursuant to clause 20.1.3, the Parties may attempt to resolve the Dispute by mediation in accordance with clause 20.3
- 20.3 If, within 21 days of the Dispute Notice, the Parties have failed to agree on a resolution, either Party may with the agreement of the other Party refer any Dispute for mediation pursuant to this paragraph 20.3;
- 20.3.1 the reference shall be a reference under the Model Mediation Procedure (MMP) of the Centre of Dispute Resolution (CEDR) for the time being in force;
 - 20.3.2 both Parties shall, immediately on such referral, co-operate fully, promptly and in good faith with CEDR and the mediator and shall do all such acts and sign all such documents as CEDR or the mediator may reasonably require to give effect to such mediation, including a contract in, or substantially in, the form of CEDR’s Model Mediation Contract for the time being in force; and
 - 20.3.3 to the extent not provided for by such contract of the MMP:
 - 20.3.3.1 the mediation shall commence by either Party serving on the other written notice setting out, in summary form, the issues in dispute and calling on that other Party to agree the appointment of a mediator.
 - 20.3.3.2 unless otherwise agreed or determined, the Parties will share equally the costs of mediation; and
 - 20.3.3.3 the mediation shall be conducted by a sole mediator (which shall not exclude the presence of a pupil mediator) agreed between the Parties or, in default of agreement, appointed by CEDR.

- 20.4 If and to the extent that the parties do not resolve any Dispute or any issue in the course of any mediation, either Party may commence or continue court proceedings in respect of such unresolved Dispute or issue.
- 20.5 Nothing in this Clause 20 shall prevent either Party from instigating legal proceedings where an order for an injunction, disclosure or legal precedent is required.
- 20.6 Without prejudice to the Authority's right to seek redress in court, the Provider shall continue to provide the Services and to perform its obligations under this Framework Agreement notwithstanding any Dispute or the implementation of the procedures set out in this Clause 20.
- 20.7 Where a Dispute has been referred to mediation under this Framework Agreement and the Provider is in a related dispute with a Sub-contractor which is substantially the same as the matter referred to mediation hereunder, the Parties consent to the joinder of such Sub-contractor as a party to the mediation (subject to such Sub-contractor having agreed to be subject to the same or substantially the same obligations as those imposed on the Parties by this Clause 20 and to the reference of such related dispute to the mediator appointed hereunder and further agree that the mediator shall have power to order the consolidation of such mediation proceedings and/or to order the holding of concurrent mediation sessions.

21 PREVENTION OF BRIBERY

- 21.1 The Provider represents and warrants that, as at the Commencement Date, neither it, nor to the best of its knowledge, any of its Staff have at any time prior to the Commencement Date:
- 21.1.1 committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or
 - 21.1.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government contracts on the grounds of a Prohibited Act.
- 21.2 The Provider shall not during the Term of this Framework Agreement:
- 21.2.1 commit a Prohibited Act; and/or
 - 21.2.2 do or suffer anything to be done which would cause the Authority to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.
- 21.3 The Provider shall during the Term of this Framework Agreement:
- 21.3.1 establish, maintain and enforce, and require that its Subcontractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act; and
 - 21.3.2 keep appropriate records of its compliance with its obligations under Clause 21.3.1 and make such records available to the Authority on request.
- 21.4 The Provider shall, as soon as reasonably practicable, notify the Authority in writing if it becomes aware

of any breach of Clause 21.2.1 and/or 21.2.2, or has reason to believe that it has:

- 21.4.1 been subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/ or
 - 21.4.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or
 - 21.4.3 received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Framework Agreement or otherwise suspects that any person or Party directly connected with this Framework Agreement has committed, or attempted to commit, a Prohibited Act.
- 21.5 If the Provider makes a notification to the Authority pursuant to Clause 21.4, the Provider shall respond promptly to the Authority's reasonable enquiries and cooperate with any investigation carried out by the Authority (acting reasonably) in respect of such notification.
- 21.5.1 If the Provider is in breach of clauses 21.121.1 and/or 21.2 the Authority may by notice:
 - 21.5.2 require the Provider to remove from performance of this Framework Agreement any member of Staff or Subcontractor whose acts or omissions have caused the breach; or
 - 21.5.3 immediately terminate this Framework Agreement.
- 21.6 Any notice served by the Authority under clause 21.5.1 shall specify the nature of the Prohibited Act, the identity of the person who the Authority reasonably believes has committed the Prohibited Act and the action that the Authority requires the Provider to take as a result (including, where relevant, the date on which this Framework Agreement shall terminate).

22 CONFLICTS OF INTEREST

- 22.1 The Provider shall take appropriate steps to ensure that neither the Provider nor any Staff are placed in a position where (in the reasonable opinion of the Authority) there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Provider or Staff and the duties owed to the Authority under the provisions of this Framework Agreement or any Contract.
- 22.2 The Provider shall promptly notify and provide full particulars to the Authority if such conflict referred to in clause 22.1 22.1 arises or is reasonably foreseeable to arise.
- 22.3 The Authority reserves the right to terminate this Framework Agreement immediately by giving notice in writing to the Provider and/or to take such other steps it deems necessary where, in the reasonable opinion of the Authority, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Provider and the duties owed to the Authority under the provisions of this Framework Agreement or any Contract. The action of the Authority pursuant to this Clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Authority.
- 22.4 This Clause shall apply during the Term and for a period of two (2) Years after its termination or expiry.

23 HUMAN RIGHTS

The Provider shall comply in all respects with the provision of the Human Rights Act 1998 and will indemnify the Authority against all actions, costs, expenses, claims, proceedings and demands which may be brought against the Authority for breach of statutory duty under the Act attributable to the Provider..

24 EQUAL OPPORTUNITIES

- 24.1 The Provider shall not unlawfully harass or victimise a person or discriminate either directly or indirectly because of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, colour, nationality, ethnic or national origin, religion or belief, sex, or sexual orientation ('the **protected characteristics**') and without prejudice to the generality of the foregoing the Provider 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.
- 24.2 The Provider shall give due regard to the need to eliminate discrimination, advance equality and foster good relations within the meaning and scope of the Public Sector Equality Duty S.149 of the Equality Act 2010 in the execution of the Framework Agreement and any Contract.
- 24.3 The Provider shall take all reasonable steps to secure the observance of Clauses 24.1 and 24.2 by all servants, Staff or agents of the Provider and suppliers and Subcontractors employed in the execution of the Framework Agreement and any Contract.
- 24.4 The Provider shall demonstrate to the Authority that it has a policy to comply with its statutory obligations under the legislation referred to in Clauses 24.1 and 24.2.
- 24.5 If there should be any findings of unlawful discrimination made against the Provider by any court or employment tribunal, or an adverse finding in a formal investigation by the Equality and Human Rights Commission (or a replacement body), the Provider shall take appropriate steps to prevent repetition of the unlawful discrimination.
- 24.6 The Authority reserves the right to test the Provider's equality performance through the life of the Framework Agreement and any Contract. The Provider shall cooperate with the Authority regarding the provision of data and/or access for site visits as reasonably required by the Authority.

25 SUBCONTRACTING AND ASSIGNMENT

- 25.1 Subject to Clause 25.1 and 25.3, neither Party shall be entitled to assign, novate or otherwise dispose of any or all of its rights and obligations under this Framework Agreement without the prior written consent of the other Party (such consent not to be unreasonably withheld).
- 25.2 Upon any local government reorganisation and the Authority ceasing to exist in accordance with the Local Government and Public Involvement in Health Act 2007 and any other relevant legislation including any Order made by the Secretary of State, all rights, obligations and liabilities under this Framework Agreement will transfer in accordance with the same to the Successor Body identified therein.
- 25.3 With the exception of any Authorised Subcontracts, the Provider may not Subcontract any part of this Framework Agreement or replace any of its Subcontractors without the prior written consent of the

Authority, such consent not to be unreasonably withheld or delayed. The Parties acknowledge that the Authority may validly withhold its consent where a proposed subcontractor is named on the Debarment List, is Excluded or Excludable or the Provider is unable to evidence to the Authority's reasonable satisfaction that the Provider will continue to satisfy the Conditions of Participation, where applicable.

- 25.4 Notwithstanding any subcontracting permitted under this Clause 25, the Provider shall be responsible and liable for the acts and omissions of its Subcontractors as if they were its own acts and omissions.
- 25.5 The Provider shall not be entitled to replace an Associated Person or to terminate an Associated Person's appointment without the prior written consent of the Authority, such consent not to be unreasonably withheld or delayed. The Parties acknowledge that the Authority may validly withhold its consent where a proposed Associated Person is named on the Debarment List, is excluded or Excludable or the Provider is unable to evidence to the Authority's reasonable satisfaction that the Provider will continue to satisfy the Conditions of Participation.

26 MODIFICATIONS TO FRAMEWORK AGREEMENT

- 26.1 Any amendment or modification to the Framework Agreement shall not be effective unless it is in writing and signed by both Parties and expressed to be for the purpose of such amendment or modification.

27 THIRD PARTY RIGHTS

- 27.1 A person who is not a party to this Framework Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Framework Agreement. This does not affect any right or remedy of a third party which exists, or is available, apart from that Act.
- 27.2 The rights of the Parties to terminate, rescind or agree any variation, waiver or settlement under this Framework Agreement are not subject to the consent of any other person.

28 SEVERANCE

- 28.1 If any provision or part-provision of this Framework Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to, or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this Framework Agreement.
- 28.2 If one Party gives notice to the other of the possibility that any provision or part-provision of this Framework Agreement is invalid, illegal or unenforceable, the Parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

29 RIGHTS AND REMEDIES

Except as expressly provided in this Framework Agreement, the rights and remedies provided under this Framework Agreement are in addition to, and not exclusive of, any rights or remedies provided by Law.

30 WAIVER AND CUMULATIVE REMEDIES

- 30.1 A waiver of any right or remedy under this Framework Agreement, or by Law, is only effective if given in writing, which expressly states that a waiver is intended, and such waiver shall not be deemed a waiver of any subsequent breach or default.
- 30.2 A failure or delay by a Party in ascertaining or exercising any right or remedy provided under this Framework Agreement or by Law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under this Framework Agreement or by Law shall prevent or restrict the further exercise of that or any other right or remedy.
- 30.3 Unless otherwise provided in this Framework Agreement, rights and remedies under this Framework Agreement are cumulative and do not exclude any rights or remedies provided by Law, in equity or otherwise.

31 ENTIRE AGREEMENT

- 31.1 This Framework Agreement, 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 supersedes all prior agreements, arrangements and understandings between the Parties relating to that subject matter, provided that nothing in this clause 31 shall operate to exclude any liability for fraud.
- 31.2 Each Party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Framework Agreement. Each Party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Framework Agreement.

32 NOTICES

- 32.1 Any notice or other communication, given to a Party under or in connection with this Framework Agreement, shall be in writing marked for the attention of the Party's Authorised Representative and shall be delivered by hand, email or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case).
- 32.2 Any notice or communication shall be deemed to have been received:
- 32.2.1 if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; or
 - 32.2.2 if sent by email to an Authorised Representative; or
 - 32.2.3 if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Working Day after posting or at the time recorded by the delivery service.
- 32.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.
- 32.4 Either Party may change its address for service by serving a notice in accordance with this clause.

33 GOVERNING LAW AND JURISDICTION

- 33.1 This Framework Agreement and any Dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.
- 33.2 Each Party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Framework Agreement or its subject matter or formation (including non-contractual disputes or claims).
-

**SCHEDULE 1
PROVIDER'S LOTS**

Lot 2b	Bespoke packages of Alternative Education Provision support to enable children and young people to reintegrate to their school or move onto another education setting.
--------	--

SCHEDULE 2 CALL-OFF PROCEDURE

1 GENERAL PRINCIPLES

- 1.1 The aim of the Framework Agreement and the Contracts formed under it is to secure high quality, affordable Individual Placements for local children and young people as geographically close to the Authority as possible.
- 1.2 The Framework Agreement is made up of four Lots (detailed below):
- Lot 1a. Pre-16 Education Placements for children and young people with Special Educational Needs and Disabilities (SEND) and an Education, Health and Care Plan (EHCP) with independent schools, independent special schools or non-maintained special schools
 - Lot 1b. Post-16 Education Placements for children and young people with Special Educational Needs and Disabilities (SEND) and an Education, Health and Care Plan (EHCP) with independent post-16 settings and independent special post-16 settings schools and colleges
 - Lot 2a. Bespoke packages of Alternative Education Provision support which form part of an educated other than at school (EOTAS) which has been named within a child or young person's statutory Education, Health and Care Plan (EHCP).
 - Lot 2b. Bespoke packages of Alternative Education Provision support to enable children and young people to reintegrate to their school or move onto another education setting.
- 1.3 As part of the Invitation to Tender process and/or the Mini Competition Invitation to Tender (where applicable), Providers will provide their rates for the relevant Lot and a breakdown of the costs and any additional services required. These costs will be used as part of the placement offers/expressions of interests and Consultation Process.
- 1.4 The Authority when looking to place an Order will initially identify the Lot which provides the Services to fit the Individual Placement or Block Contract required. After the relevant Lot has been identified, the Authority will use the relevant Call Off Procedure as detailed below.
- 1.5 Once the successful Provider for an Individual Placement or Block Contract has been selected, they will be contacted by the Authority to confirm that the Individual Placement or Block Contract will be awarded. Where this is an Individual Placement the Authority will then follow the process in partnership with the Provider to arrange for the child or young person to move to the Individual Placement.
- 1.6 If no Provider on the Framework is able to meet the Authority's requirements the Authority reserves the right to access a provider not on this Framework Agreement.
- 1.7 It is at the discretion of the Authority whether they will accept placement offers / expressions of interests which are received after the deadline in the Consultation Process.
- 1.8 The exception to the Consultation Process is where the outcome of a tribunal or court case dictates which Provider or placement the Authority must use.

- 1.9 In all Individual Placement searches the Authority may undertake concurrent planning with its in-house services. If the most appropriate placement to best meet the child's needs is found in-house this may be given priority.
- 1.10 The Authority reserves the right to abandon any Call Off Procedure that it has commenced at any time.
- 1.11 The Authority reserves the right to change the Call Off Procedures used during the lifetime of the Framework Agreement to better meet the needs of children and young people and improve the efficiency and quality of the process. Any proposed changes will be consulted on with the Provider prior to implementation.

SCHEDULE 2A

CALL OFF PROCEDURE FOR INDIVIDUAL PLACEMENTS FOR ALL LOTS – VIA DIRECT AWARD

1 CONSULTATION PROCESS

1 The process to Order an Individual Placement is as follows:

- 1.1 Consultation will be undertaken by the Authority's Authorised Representative or by the relevant team.
- 1.2 The Consultation process is as follows
- 1.2.1 Needs and Outcomes summary, Placement Request Form or similar document setting out the needs of the child or young person, and the requirements of the Individual Placement to be issued via email by the Authority ("**Consultation Information**").
- 1.2.2 The Consultation Information will be sent to all Providers on the relevant Lot who meet the Individual Placement requirements for one or more of the following areas:
- Primary needs(s) of the child or young person
 - Age of child or young person
 - Key Stages of child or young person
 - Location of provision
 - Services offered to the child or young person
- 1.2.3 A deadline for placement offers / expressions of interests to be submitted by the Providers will be stated when the Consultation Information is emailed out by the Authority.
- 1.2.4 When the deadline for the placement offers / expressions of interests has expired, all placement offers/expressions of interests received at that time will be sent to the relevant team for consideration.
- 1.2.5 The relevant team will consider the placement offers / expressions of interests and whether they meet the identified needs of the child or young person to determine the most appropriate Individual Placement. This will include consideration of the location of the Individual Placement, particularly in relation to support or other services being accessed by the child or young person, transport time and cost and areas of known risk. If all other factors are equal, the Individual Placement offering the greatest value for money will be

chosen (based on the pricing set out by the Provider within their Financial Submission).

1.2.6 Where the Authority has in place an existing Block Contract which meets the applicable needs of a child or young person requiring a placement, the Authority reserves the right to prioritise placements within the existing Block Contract.

1.3 The same Consultation Process will be used for emergency and planned Individual Placements with the following variances:

1.3.1 in an emergency where an Individual Placement is required Providers may be contacted by phone in the first instance rather than email.

1.3.2 summary of needs information will be provided by telephone, with additional information to be sent via email to all Providers who meet the Individual Placement requirements for one or more of the areas as stated in paragraph 1.2.2 above on the relevant Lot as soon as it is available.

2 **CONTRACT AWARD**

2.1 Once an Individual Placement has been selected using the Consultation Process stated above, the successful Provider will be contacted by the Authority to confirm the Individual Placement.

2.2 It will be the responsibility of the Authority to agree the placement cost, based on the prices set out in the Financial Submission. Reservation or active retainer fees may be agreed.

2.3 The Authority will then follow internal processes in partnership with the Provider to arrange for the child or young person to move to the Individual Placement.

2.4 The Authority will issue the Individual Placement Agreement (IPA) for the child or young person once a start date is confirmed and all details required for completion of the IPA are known. The IPA will be issued to the Provider and shall then be signed by the Provider and returned to the Authority.

2.5 The Contract will be awarded and come into force when the Authority confirms the Individual Placement to the Provider and both parties have signed the IPA.

2.6 The Contract will be made subject to the Framework Agreement, IPA terms and Call Off Terms and Conditions.

SCHEDULE 2B

1. MINI COMPETITION CALL OFF PROCEDURE FOR BLOCK CONTRACTS

1.1 There will be occasions where the Authority will have a requirement to order Services in the form of a Block Contract for a set volume, specialist need or geographical area. The Authority will use the Mini Competition Procedure set out below to award a Block Contract.

1.2 At any time during the lifetime of the Framework Agreement, where the Authority wishes to place an Order to meet a particular need for a child or young person the Authority will undertake the Mini Competition Procedure set out in Stage 1 (Mini Competition Process) and Stage 2 (Individual Placement Consultation) as set out below to award the Block Contract and subsequent Individual Placement.

2.7 STAGE 1 MINI-COMPETITION PROCEDURE

2.7.1 Preparation by Authority for the mini competition

2.7.1.1 The Authority ordering Services under the Framework Agreement by way of a mini competition shall:

2.7.1.1.1 identify the Services required (by reference to the Specification);

2.7.1.1.2 identify the volume of the Block Contract required;

2.7.1.1.3 supplement and refine the Call Off Terms and Conditions

2.8 ISSUE OF MINI-COMPETITION INVITATION TO TENDER

2.8.1 The Authority issues the Mini-Competition Invitation to Tender to all Providers who meet the Individual Placement requirements for one or more of the areas as stated in paragraph 1.2.2 above for the relevant Lot.

2.8.2 The Authority sets a time limit for receipt of Supplemental Tenders which takes into account factors such as the complexity of the subject matter of the Contract and the time needed to submit a Tender.

2.8.3 Conduct the Mini-Competition in accordance with the procedure described in the Mini-Competition Invitation to Tender.

2.9 MINI COMPETITION AWARD CRITERIA

2.9.1 The Mini-Competition Award Criteria will be set out in the Mini-Competition Invitation to Tender which will be based on the award criteria set out in the table below:

Criterion	Weightings
Quality (capacity and ability to deliver the required services)	0 – 60%
Pricing	40 – 100%

2.10 PROVIDER SUBMISSION OF SUPPLEMENTAL TENDER

2.10.1 A Provider wishing to submit a Supplemental Tender in response to a Mini-Competition Invitation to Tender shall do so by providing the documents prescribed in the Mini-Competition Invitation to Tender by the time and date specified by the Authority.

2.10.2 The Provider agrees that all Supplemental Tenders submitted by the Provider in relation to a Mini-Competition held pursuant to paragraph 2.8 above and this Schedule 2B shall

remain open for acceptance for thirty (30) days from the closing date for submission of Supplemental Tenders (or such other period specified in the Mini-Competition Invitation to Tender issued by the Authority in accordance with paragraph 2.8 above and this Schedule 2B.

2.11 EVALUATION OF SUPPLEMENTAL TENDERS

- 2.11.1 The Authority shall evaluate Supplemental Tenders using the Mini-Competition Award Criteria and weightings set out in the Mini-Competition Invitation to Tender and select the successful Provider.
- 2.11.2 Notwithstanding the fact that the Authority has followed the procedure set out above, the Authority may cancel, postpone, delay or end the procedure without placing an Order for Services or awarding a Contract. Nothing in this Framework Agreement shall oblige any Authority to place any order for Services.

2.12 AWARD OF THE BLOCK CONTRACT

- 2.12.1 Prior to award of a Block Contract the Authority will undertake due diligence on the Provider including requesting supporting documentation, which must be provided without delay. The Framework Provider will be required to provide details of its Intended Sub-Contractors and supply/confirm exclusion information for the Supplier, its Connected Persons and its Associated Persons and such other information as reasonably required by the Customer. The Authority will check the Debarment List and assess the exclusion information supplied. Award of the Call-Off Contract to the Provider will be subject to due diligence being satisfactorily completed.
- 2.12.2 Upon conclusion of the Call Off Procedure subject to Schedule 2B the Authority may award a Block Contract to the successful Provider by completing an Order Form and serving this on the successful Provider.
- 2.12.3 On receipt of the Order Form the Provider shall accept the Block Contract by signing and returning (including by electronic means) a copy of the Order Form to the Authority within five (5) Working Days
- 2.12.4 The Parties agree that no Block Contract will be entered into until the order form signed and returned by the Provide has been countersigned by the Authority and declared unconditional via the Signed Order Form.

2.13 STAGE 2 INDIVIDUAL PLACEMENT CONSULTATION

CONSULTATION PROCESS

- 2.13.1 On completion of the Mini Competition Procedure and Block Contract award, an Individual Placement may be made under the Block Contract. Consultations will be made by the Authority. The Authority is not under any obligation to order an Individual Placement under the Block Contract but may choose to do so as and when required. Where an Individual Placement is required, the process for ordering an Individual Placement is as set out in this paragraph 2.13.

- 2.13.2 The process for seeking an individual placement will be for information in the form of a Needs and Outcomes summary with a Placement Request Form or similar document setting out the needs of the child or young person and the requirements of the placement to be issued via email by the Authority. Once the Provider has confirmed that they are able to meet the needs of the child or young person to be placed, the Authority will then follow internal processes in partnership with the Provider to arrange for the child or young person to move to the placement.
- 2.13.3 The Authority will issue the IPA for the child or young person once a start date is confirmed for the placement and all details required for completion of an IPA are known. The IPA will be issued to the Provider and shall then be signed and returned to the Authority.
- 2.13.4 The IPA will be made subject to the Framework Agreement Terms and Conditions, the IPA terms, the Signed Order Form and the Call Off terms and Conditions.
- 2.13.5 Where the Authority has in place an existing Block Contract which meets the applicable needs of a child or young person requiring a placement, the Authority reserves the right to prioritise placements within the existing Block Contract.

SCHEDULE 3 ORDER FORMS

SCHEDULE 3A ORDER FORM FOR A BLOCK CONTRACT MINI COMPETITION PROCEDURE

This Order Form must be used to run a Mini-Competition under CP2491-24 Open Light Touch Framework Agreement for Independent and Alternative Education support for Children and Young People in Devon.

The Provider shall supply the Services specified in this Order Form to the Authority on and subject to the terms of this Order Form and the Call Off Terms and Conditions for the duration of the Contract Term. The Call Off Terms and Conditions that will apply to the Contract are stated in Schedule 4 of the Framework Agreement.

Order Form Completion

This Order Form consists of the following sections, to complete at follows:

Section A – General Information

The Authority must complete their details and invoicing requirements before issue to Providers with the Mini-Competition Invitation to Tender.

The Provider must complete their details and submit the order form to the Authority as part of their Supplemental Tender.

Section B – Authority Requirements

The Authority must complete the parts highlighted in **blue** in this section before issue to Providers with the Mini-Competition Invitation to Tender. The remaining parts will have been completed prior to the Framework being launched and should not be amended by the Provider other than by way of the insertion of a Special Condition.

Section C – Contract Award

The Provider must complete details in the signature box and sign before submitting a Supplemental Tender. The Authority must complete and sign this section to award a Contract to the successful Provider.

SECTION A General Information

1. Authority details	
(1.1) Authority name	Devon County Council
(1.2) Authority invoice address	Finance.purchaseorderinvoices-mailbox@devon.gov.uk
(1.3) Authority's representative	Name: Address: Phone: Email:
2. Provider details	
(1.4) Provider name	
(1.5) Provider address	
(1.6) Provider representative	Name: Address: Phone: Email:
3. Invoicing	
(3.1) Authority's invoicing requirements	All invoices must be submitted electronically in the form of PDF or TIF attachments emailed to the address stated in 1.2 above. [insert payment periods as stipulated in the mini competition Supplemental Tender document e.g. 12 equal instalments over one year]

SECTION B Authority Requirements

1. SERVICE REQUIREMENTS	
(1.1) Lot number and name	[Lot number and name]
(1.2) Services	The Services are those detailed in the Specification for this Lot in the Framework Agreement as supplemented or refined by the requirements set out in the document entitled 'Supplemental Specification' appended to the Mini-Competition Invitation to Tender.
(1.3) Service Commencement Date	[Add the date the Contract is to start]
(1.4) Initial Term (Clause 2.2. of Call Off Terms and Conditions)	From and including the Services Commencement Date until [insert exact date of the end of Initial Term]
(1.5) Extension Period (Clause 2.2. of Call Off Terms and Conditions)	[]
(1.6) Extension Period Notice (Clause 2.2. of Call Off Terms and Conditions)	[] months
(1.7) Other documents to form part of the Contract (Definition of Contract in Call Off Terms and Conditions)	[]
(1.8) Block Contract placement details within the Block Contract Price	[Insert number of placements in the block and applicable dates]

<p>(1.9) Agreed learner profile for Block Contract</p>	<p>[Insert details of the provision and the profile of the learners they will support under the Block Contract]</p>
<p>(1.10) Block Contract Price</p>	<p>[Insert agreed Price for the Block Contract]</p>
<p>(1.11) Freedom of Information Officer</p>	<p>Devon County Council's Freedom of Information Officer</p>
<p>(1.12) Authority's Data Protection Manager</p> <p>(Clause 21 of the Call Off Terms and Conditions)</p>	<p>Devon County Council's Data Protection Manager</p>
<p>(1.13) Processing, Personal Data and Data Subjects</p> <p>(Clause 21 of the Call Off Terms and Conditions)</p>	<p>The Provider shall comply with any further written instructions with respect to processing by Devon County Council. Any such further instructions shall be incorporated into clause Error! Reference source not found. of the Call Off Terms and Conditions and Error! Reference source not found.</p>
<p>(1.14) Liability Limit</p> <p>(Clause Error! Reference source not found. Call Off Terms and Conditions)</p>	<p>£5 million</p>
<p>(1.15) Insurance</p> <p>(Clause Error! Reference source not found. of Call Off Terms and Conditions)</p>	<p>The Provider shall maintain such insurances as provided for in Clause Error! Reference source not found. of the Call-Off Terms and Conditions</p>
<p>(1.16) Special Conditions</p> <p>(Error! Reference source not found. of the Call Off Terms and Conditions)</p>	<p>Schedule 1 Special Conditions shall apply to the Call Off Terms and Conditions.</p>
<p>(1.17) Optional Clauses – TUPE</p> <p>(Schedule 2 of the Call Off Terms & Conditions)</p>	<p>Schedule 2 (TUPE) shall not apply to the Contract.</p>
<p>(1.18) Optional Clauses to apply</p>	<p>No optional clauses shall apply to the Contract</p>

SECTION C Contract Award

Order Date	
Order Number	Order number xxxx This must be quoted on all correspondence and invoices relating to this Order

By signing and returning this order form the Provider agrees to enter a legally binding Contract with the Authority to provide the Services specified in this Order Form on and subject to the terms of this Order Form and the Call Off Terms and Conditions.

For and on behalf of the Provider:

Name and title	
Signature	
Date	

For and on behalf of the Authority

Name and title	
Signature	
Date	

SCHEDULE 3B INDIVIDUAL PLACEMENT AGREEMENT (IPA)

There are separate template IPA documents which will be completed following a Call-Off dependent upon the Lot. The IPA documents can be viewed via the attachments section of ProContract

- For Lot 1A see 'Framework Agreement *Schedule 3B – Lot 1a IPA*'
- For Lot 1B see 'Framework Agreement *Schedule 3B – Lot 1b IPA*'
- For Lot 2a and Lot 2b see 'Framework Agreement *Schedule 3B – Lot 2 IPA*'

**SCHEDULE 4
CALL-OFF TERMS AND CONDITIONS**

Contents

Item	Page
SECTION A: PRELIMINARIES	ERROR! BOOKMARK NOT DEFINED.
1 DEFINITIONS AND INTERPRETATION	Error! Bookmark not defined.
2 CONTRACT TERM AND EXTENSION.....	Error! Bookmark not defined.
3 DUE DILIGENCE	Error! Bookmark not defined.
4 WARRANTIES	Error! Bookmark not defined.
SECTION B: THE SERVICES	ERROR! BOOKMARK NOT DEFINED.
5 THE SERVICES	Error! Bookmark not defined.
6 EMPLOYEES	Error! Bookmark not defined.
7 CUSTOMER'S PREMISES AND ASSETS	Error! Bookmark not defined.
8 CHILDREN AND YOUNG PEOPLE'S RIGHTS	Error! Bookmark not defined.
9 NOTIFICATION AND SHARING INFORMATION RELATING TO INDIVIDUAL PLACEMENT	Error! Bookmark not defined.
10 SAFEGUARDING AND IMPROPER CONDUCT	Error! Bookmark not defined.
11 SOCIAL NETWORKING AND INTERNET.....	Error! Bookmark not defined.
12 CORONAVIRUS (COVID-19).....	Error! Bookmark not defined.
SECTION C: PAYMENT AND TAXATION	ERROR! BOOKMARK NOT DEFINED.
13 CONTRACT PRICE AND INVOICING.....	Error! Bookmark not defined.
14 PRICE ADJUSTMENT - INDIVIDUAL PLACEMENT	Error! Bookmark not defined.
15 VALUE ADDED TAX AND PROMOTING TAX COMPLIANCE	Error! Bookmark not defined.
SECTION D: CONTRACT GOVERNANCE	ERROR! BOOKMARK NOT DEFINED.
16 GOVERNANCE.....	Error! Bookmark not defined.
17 RECORDS AND AUDIT ACCESS	Error! Bookmark not defined.

18 SCRUTINY/CABINET ATTENDANCE (DCC CONTRACTS ONLY) **Error! Bookmark not defined.**

19 DISPUTES **Error! Bookmark not defined.**

SECTION E: INTELLECTUAL PROPERTY, DATA AND CONFIDENTIALITY **ERROR! BOOKMARK NOT DEFINED.**

20 INTELLECTUAL PROPERTY RIGHTS **Error! Bookmark not defined.**

21 DATA PROTECTION **Error! Bookmark not defined.**

22 CONFIDENTIALITY AND TRANSPARENCY .. **Error! Bookmark not defined.**

23 FREEDOM OF INFORMATION..... **Error! Bookmark not defined.**

24 PUBLICITY..... **Error! Bookmark not defined.**

SECTION F: LIABILITIES AND INSURANCE..... **ERROR! BOOKMARK NOT DEFINED.**

25 LIABILITY **Error! Bookmark not defined.**

26 INSURANCE **Error! Bookmark not defined.**

SECTION G: REMEDIES AND RELIEF **ERROR! BOOKMARK NOT DEFINED.**

27 FORCE MAJEURE..... **Error! Bookmark not defined.**

28 CONTINUED PERFORMANCE..... **Error! Bookmark not defined.**

SECTION H: TERMINATION AND EXIT MANAGEMENT **ERROR! BOOKMARK NOT DEFINED.**

29 TERMINATION..... **Error! Bookmark not defined.**

30 CONSEQUENCES OF EXPIRY OR TERMINATION **Error! Bookmark not defined.**

SECTION I: COMPLIANCE WITH LAWS..... **ERROR! BOOKMARK NOT DEFINED.**

31 HEALTH AND SAFETY **Error! Bookmark not defined.**

32 ENVIRONMENTAL..... **Error! Bookmark not defined.**

33 EQUAL OPPORTUNITIES **Error! Bookmark not defined.**

34 HUMAN RIGHTS ACT 1998..... **Error! Bookmark not defined.**

35 PREVENTION OF FRAUD AND BRIBERY **Error! Bookmark not defined.**

SECTION J: MISCELLANEOUS AND GOVERNING LAW **ERROR! BOOKMARK NOT DEFINED.**

36 NON-SOLICITATION OF CUSTOMER EMPLOYEES AND OFFICERS **Error! Bookmark not defined.**

37 COMPLAINTS/LOCAL GOVERNMENT AND SOCIAL CARE OMBUDSMAN **Error! Bookmark not defined.**

38 VARIATION **Error! Bookmark not defined.**

39 ASSIGNMENT AND OTHER DEALINGS **Error! Bookmark not defined.**

40 ENTIRE AGREEMENT **Error! Bookmark not defined.**

41 WAIVER AND CUMULATIVE REMEDIES **Error! Bookmark not defined.**

42 SEVERANCE **Error! Bookmark not defined.**

43 FURTHER ASSURANCES **Error! Bookmark not defined.**

44 RELATIONSHIP OF THE PARTIES **Error! Bookmark not defined.**

45 THIRD PARTY RIGHTS **Error! Bookmark not defined.**

46 NOTICES **Error! Bookmark not defined.**

47 GOVERNING LAW AND JURISDICTION **Error! Bookmark not defined.**

48 SCHEDULES **Error! Bookmark not defined.**

SCHEDULE 1 – SPECIAL CONDITIONS **ERROR! BOOKMARK NOT DEFINED.**

SCHEDULE 2 – TUPE **ERROR! BOOKMARK NOT DEFINED.**

SCHEDULE 3 – DATA PROTECTION (CONTROLLER TO CONTROLLER) **ERROR! BOOKMARK NOT DEFINED.**

SECTION A: PRELIMINARIES

1 DEFINITIONS AND INTERPRETATION

1.1 Unless otherwise defined in this Contract, terms defined in the Framework Agreement shall have the same meaning when used in this Contract.

Act means the Procurement Act 2023.

Affected Party has the meaning given to the term in Clause 27.2.

Associated Person means any provider that the Provider has relied on to satisfy the Conditions of Participation but not a provider who is to act as a guarantor as described in section 22(9) of the Act.

Audit Agents means:

- (a) the Authority 's statutory and regulatory Auditors and any other auditors appointed by the Authority; and
- (b) the Comptroller and Auditor General, their staff and/or any appointed representatives of the National Audit Office.

Authorised Subcontracts means any subcontracts or subcontracting arrangements set out by the Provider in the Tender or Supplemental Tender.

Authority means Devon County Council

Authority Assets means any assets, equipment or other property which is owned by the Authority and which is or may be used in connection with the provision or receipt of the Services.

Authority Data means any data (including any Personal Data relating to Service Users), documents, text, drawings, diagrams, images or sounds (together with any database made up of any of those), embodied in any medium, that are supplied to the Provider by or on behalf of the Authority , or which the Provider is required to generate, collect, process, store or transmit pursuant to this Contract.

Authority's Data Protection Officer means the officer specified as such in the Order Form.

Authority Premises means any Authority premises which are to be made available for use by the Provider for the provision of the Services on the terms set out in this Contract.

Authority Representative means the person appointed by the Authority and identified in the Order Form with authority to act on behalf of the Authority in relation to all matters set out in, or in connection with, this Contract

Block Contract Price means the annual charge payable by the Authority in respect of a Block Contract as set out in the Order Form.

Commercially Sensitive Information means any information of a commercially sensitive nature relating to the Provider, its Intellectual Property Rights or its business or which the Provider has indicated to the Authority that, if disclosed by the Authority would cause the Provider significant commercial disadvantage or material financial loss.

Conditions of Participation means any conditions in relation to the Provider's legal and financial capacity or technical ability specified in the procurement process in respect of this Contract.

Connected Person means a connected person to the Provider as defined in paragraph 45 of Schedule 6 Part 2 of the Act.

Contract means the agreement concluded between the Authority and the Provider for the provision of the Services comprising:

- (a) the Specification;
- (b) the Supplemental Specification, if any;
- (c) the Order Form; if any
- (d) the Individual Placement Agreement; if any
- (e) the Authority's Invitation to Tender;
- (f) the Mini-Competition Invitation to Tender, if any;
- (g) the Tender;
- (h) the Supplemental Tender, if any;
- (i) the Tender Clarifications;
- (j) these Call Off Terms and Conditions; and
- (k) any other documents listed in the Order Form or Individual Placement Agreement.

Contract Price means the charges for the provision of the Services either as set out in the Tender (Pricing Schedule) and IPA or, in the case of a Block Contract the Block Contract Price, as set out in the Order Form.

Contract Term means the period commencing on the Services Commencement Date and ending on the expiry of the Initial Term or on the expiry of any Extension Period or on earlier termination of this Contract in accordance with its terms.

Contract Year means a period of 12 Months commencing on the Services Commencement Date and/or each anniversary of the Services Commencement Date.

Controller means as defined in the Data Protection Legislation.

Data Loss Event means any event that results, or may result, in unauthorised access to Personal Data held by the Provider under this Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Contract, including any Personal Data Breach.

Data Protection Legislation means all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR, the DPA 2018 (and regulations made thereunder) and the Privacy Electronic Communications Regulations 2003 (SI 2003/2426) as amended.

Data Protection Impact Assessment means an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.

Data Protection Officer means as defined in the Data Protection Legislation.

Data Subject means as defined in the Data Protection Legislation.

Data Subject Access Request means a request made by or on behalf of a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.

Debarment List means the debarment list referred to in Section 62 of the Act.

Default means any failure by the Provider to perform its material obligations under this Contract.

Disclosing Party means a Party which discloses or makes available directly or indirectly its Confidential Information.

Dispute means any dispute, issue, difference or question of interpretation arising out of or in connection with this Contract, including any dispute, issue, difference or question of interpretation relating to the Services.

Domestic Law means the law of the United Kingdom or part of the United Kingdom.

DOTAS means the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HMRC of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to national insurance contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012(SI 2012/1868) made under section 132A of the Social Security Administration Act 1992.

DPA 2018 means the Data Protection Act 2018.

Excludable means that any of the circumstances set out in Schedule 7 (Discretionary Exclusion Grounds) of the Act applies;

Excluded means that any of the circumstances set out in Schedule 6 (Mandatory Exclusion Grounds) of the Act applies;

Extension Period means any agreed extension period as set out in the Order Form or IPA.

Extension Period Notice means the period of notice to be given by the Authority to the Provider in writing to extend this Agreement as set out in the Order Form.

Framework Agreement means the Framework Agreement for the provision of the Service between the Authority and the Provider.

Force Majeure Event means war, natural flood, exceptionally adverse weather, strike or lockout (other than a strike or lockout which is limited to the Provider's Personnel), civil disorder, act of God, power cuts or delays or other wholly exceptional events outside the control of the parties which could not have been reasonably foreseen or avoided, but excluding:

- (a) any industrial action occurring within the Provider
- (b) any industrial action occurring from any subcontractor for which the Provider is responsible for

which directly causes either Party to be unable to comply with all or a material part of its obligations under this Contract.

Freedom of Information Officer means the officer specified in the Order Form who has responsibility for managing the Authority's compliance under the FOIA and EIR.

General Anti-Abuse Rule means

- (a) the legislation in Part 5 of the Finance Act 2013; and
- (b) any future legislation introduced into Parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions.

Guidance means any applicable guidance or directions with which the Provider is bound to comply.

Initial Term means the period specified in the Order Form.

Individual Placement Agreement (IPA) means the individual contractual placement arrangement in the form set out in Schedule 3B of the Framework Agreement, made on behalf of the child or young person by the Authority arising from an assessment of the child or young person's needs. The Individual Placement Agreement will operate from the date of the child or young person's arrival at the placement and ends on the last day the child or young person attends the placement.

Losses means all losses, liabilities, damages, demands, charges, costs, expenses (including legal and other professional charges and expenses), litigation, settlement, judgment interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty or otherwise and the term Loss shall be construed accordingly.

Necessary Consents means all approvals, certificates, authorisations, permissions, licences, permits and consents necessary from time to time for the performance of the Services (which shall include any listed in the Specification).

Occasion of Tax Non-Compliance means:

- (a) any tax return of the Provider, submitted to a Relevant Tax Authority on or after 1 October 2012, found to be incorrect as a result of:
 - (i) a Relevant Tax Authority successfully challenging the Provider under the General Anti-Abuse Rule or under any tax rules or legislation in any jurisdiction that have an effect equivalent or similar to the General Anti-Abuse Rule;
 - (ii) the failure of an avoidance scheme which the Provider was involved in, and which was, or should have been, notified to a Relevant Tax Authority under the DOTAS or any equivalent or similar regime in any jurisdiction; and/or
- (b) the Provider's tax affairs give rise on or after 1 April 2013 to a conviction in any jurisdiction for tax related offences which is not spent at the Services Commencement Date or to a penalty for civil fraud or evasion.

Order means the order for Services under a Block Contract sent by the Authority to the Provider in accordance with the Framework Agreement.

Performance Levels means the performance levels against which the Authority will monitor the Services supplied by the Provider, if any, as set out in the Specification and/or the Supplemental Specification as applicable.

Personal Data means as defined in the Data Protection Legislation.

Personal Data Breach means as defined in the Data Protection Legislation.

PSQ Response means the Provider's response to the procurement specific questionnaire, where applicable.

Processor means as defined in the Data Protection Legislation.

Provider means the person, firm or Company with whom the Authority enters into the Contract as specified in the Order Form or IPA.

Provider's Equipment means any equipment belonging to the Provider which is used by the Provider in the supply of the Services to the Authority .

Provider Personnel means all directors, officers and employees of the Provider engaged in the performance of the Provider's obligations under this Contract.

Protective Measures means appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of such measures adopted by it; and a process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the processing.

Recipient shall mean the Party which receives or obtains directly or indirectly Confidential Information.

Relevant Conviction means a conviction that is relevant to the nature of the services being undertaken in accordance with the [Guidance for Safe Recruitment, Selection and Retention for Staff and Volunteers \(proceduresonline.com\)](http://proceduresonline.com) and [Disclosure and Barring Service - GOV.UK \(www.gov.uk\)](http://www.gov.uk)

Relevant Tax Authority means HMRC, or, if applicable, the tax authority in the jurisdiction in which the Provider is required to submit a tax return.

Relevant Requirements means all applicable Law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010.

Representatives mean the Authority Representative and the Provider Representative and shall mean either one of them as the context so required as identified in the Order Form.

Required Insurance means the insurances to be taken out by the Provider in accordance with Clause 26.1.

Required Professional Standard means the exercise of that degree of skill, care and diligence which would reasonably and ordinarily be expected from a skilled and experienced professional Provider of services (similar to the Services to an Authority like the Authority) and such a Provider seeking to comply at all times with their contractual and regulatory obligations and complying with applicable Laws.

Sensitive Commercial Information means any information which constitutes a trade secret or would be likely to prejudice the commercial interests of any person if it were published or otherwise disclosed.

Services means the whole of the services or any of them to be provided by the Provider, as set out the Order Form and/or an IPA as specified in the Specification and the Supplemental Specification (where applicable).

Services Commencement Date means the date this Contract starts as set out in:

- (a) Individual Placement Agreement (Schedule 3B) where an Individual Placement Agreement is used to award a Contract under Schedule 3A Call Off Procedure for Individual Placement for all Lots via a Direct Award.
- (b) Order Form (Schedule 3A), where an Order Form is used to award a Contract under Schedule 3A Call Off Procedure for Individual Placement under a Block Contract for all Lots via a Mini Competition Procedure.

Staff Vetting Procedure means policies and processes in place that the Provider will use to investigate and verify a candidate's background, qualifications and fitness to work with children and young people.

Sub-processor means any third party appointed to process Personal Data on behalf of the Provider related to this Contract.

Successor Body shall have the meaning given to that term in Clause 39.2.

Supplemental Specification means the Authority's supplemental specification, if any, included as part of Authority's Mini Competition Invitation to Tender.

Tender Clarifications means any pre-bid clarifications raised with the Authority and any post-bid clarifications raised with the Provider during either the competition for admission to the Framework Agreement or the competition for this Contract, if any.

Transparency Code means the term in Clause 22.2.

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

Value Added Tax / VAT means value added tax as provided for in the Value Added Tax Act 1994 or such similar tax which may be imposed from time to time.

- 1.2 The rules of interpretation of the Framework Agreement shall apply to this Contract as if set out in full in the body of this Contract (where the context requires references in the Framework Agreement to "the Framework Agreement" shall be interpreted as "the Contract").
- 1.3 This Contract is supplemental and collateral to the terms of the Framework Agreement. The terms of the Framework Agreement shall apply to this Contract as if set out in full within this Contract. In the event of any conflict or inconsistency with this Contract and the Framework Agreement, paragraph 5.2 of the Framework Agreement sets out the order of priority that will be used to resolve the conflict or inconsistency.

2 CONTRACT TERM AND EXTENSION

- 2.1 This Contract shall take effect on the Services Commencement Date and shall continue in force for the Contract Term.
- 2.2 The Authority may extend this Contract beyond the Initial Term by an Extension Period (the "Extended Term") (or any Extended Term agreed under this Clause). If the Authority wishes to extend this Contract by an Extension Period, it shall give the Provider a minimum of the Extension Period Notice in writing before the expiry of the Initial Term or the Relevant Extended Term as the case may be.

3 DUE DILIGENCE

- 3.1 Subject to clause 3.2 the Provider acknowledges that it is the Provider's responsibility to carry out such due diligence as it considers appropriate before entering into this Contract and, in so doing, that it:
 - 3.1.1 has had an opportunity to carry out a thorough due diligence exercise in relation to the Services and has asked the 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 this Contract;
 - 3.1.2 has received all information requested by it from the Authority pursuant to Clause 3.1.1 to enable it to determine whether it is able to provide the Services in accordance with the terms of this Contract;

- 3.1.3 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 Authority pursuant to Clause 3.1.2
- 3.1.4 has raised all relevant due diligence questions with the Authority before the Services Commencement Date; and
- 3.1.5 has entered into this Contract in reliance on its own due diligence alone.

3.2 Save as provided in this Contract, no representations, warranties or conditions are given or assumed by the Authority in respect of any information which is provided to the Provider by the Authority and any such representations, warranties or conditions are excluded, save to the extent that such exclusion is prohibited by Law.

4 WARRANTIES

4.1 Each Party represents and warrants that

- 4.1.1 it has full capacity and authority to enter into and to perform its obligations under this Contract;
- 4.1.2 there are no actions, suits or proceedings or regulatory investigations before any court, administrative body or arbitration tribunal pending or, to its knowledge, threatened against it that might adversely affect its ability to perform its obligations under this Contract;
- 4.1.3 in entering into this Contract, it has not committed any Prohibited Act or contravened any Relevant Requirements.

4.2 The Provider represents and warrants that as at the Services Commencement Date

- 4.2.1 (as appropriate) it is validly incorporated, organised and subsisting in accordance with the Laws of its place of incorporation;
- 4.2.2 it has obtained all Necessary Consents;
- 4.2.3 it is not Excluded;
- 4.2.4 it is not Excludable or in the event that it is Excludable, that it has submitted all material and complete information to the Authority in respect of the circumstances and such information remains true accurate and not misleading;
- 4.2.5 all information contained in the Tender and Supplemental Tender remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Authority prior to the Services Commencement Date and separately warrants to inform the Authority in the event there are any changes to such information during the Contract Term; and
- 4.2.6 it shall promptly notify the Authority in writing if it becomes aware, during the performance of this Contract, that the Provider, a Connected Person, an Associated Person or a Subcontractor has been placed on the Debarment List or has become Excluded or Excludable in accordance with the Procurement Legislation, together with reasonable supporting information; and

4.2.7 shall promptly notify the Authority in writing if it becomes aware, during the performance of this Contract, of any inaccuracies in any information provided to it by the Authority during such due diligence which materially and adversely affects its ability to perform the Services or meet any Performance Levels.

4.3 Each of the representations and warranties set out in Clauses 4.1 to 4.2 shall be construed as a separate representation and warranty and shall not be limited or restricted by reference to, or inference from, the terms of any other representation, warranty or any other undertaking in this Contract.

4.4 Save as expressly set out in this Contract, all warranties, representations, conditions and other terms implied by Law (whether statutory or otherwise), are hereby excluded to the fullest extent permitted by Law.

SECTION B: THE SERVICES

5 THE SERVICES

5.1 The Provider shall commence the provision of the Services on the Services Commencement Date and shall thereafter continue to provide the Services throughout the Contract Term in accordance with the terms of this Contract.

5.2 The Provider shall at all times during the Contract Term perform the Services under this Contract in accordance with:

5.2.1 all applicable Law and Guidance;

5.2.2 the Required Professional Standard;

5.2.3 the requirements for the Services set out in the Specification, the Supplemental Specification (if any), the Order Form, and/or the IPA;

5.2.4 the Performance Levels;

5.2.5 all relevant rules, codes, policies, procedures and standards of the Authority which may be referred to in the Specification and/or the Supplemental Specification;

5.2.6 the Provider's own established procedures and practices to the extent the same do not conflict with the requirements of Clauses 5.2.1 to 5.2.5 above.

5.3 The Provider shall:

5.3.1 pay proper regard to (and, where appropriate, ensure compliance with) the statutory duties of the Authority insofar as the Provider is required to perform such statutory duties on the Authority's behalf;

5.3.2 at all times allocate sufficient resources with the appropriate professional expertise to provide the Services in accordance with this Contract;

5.3.3 obtain and maintain, throughout the Contract Term, all Necessary Consents;

- 5.3.4 as far as reasonably practicable minimise any disruption to the Authority 's operations when providing the Services;
 - 5.3.5 co-operate with the Authority in all matters relating to the supply of the Services and comply with all the Authority 's reasonable instructions.
- 5.4 The Provider must give notice to the Authority immediately if there is, or is likely to be a change affecting:
- a) the ownership of the Provider, such as:
 - i. control of the majority of the shares in, or the voting rights amongst, its shareholders or members of its organisation.
 - ii. it merges with another organisation.
 - b) the legal entity responsible for the Services, including but not limited to transfers of any of its business to another organisation.
 - c) the Provider's registered status with the relevant Regulatory Body.(e.g. Ofsted)

6 EMPLOYEES

- 6.1 The Provider shall at all times ensure that, in respect of the Provider Personnel engaged in the provision of the Services
- 6.1.1 The Provider shall ensure that all Staff and people engaged by them in supplying the Services shall do so with all due skill, care and diligence and shall possess such qualifications, skills and experience as are necessary for the proper supply of the Services.
 - 6.1.2 The Provider shall ensure there is an adequate number and mix of qualified and/or experienced Staff capable of responding in a sensitive and caring way to the needs of children and/or young people. The range of qualifications and level of staffing and experience of Staff shall be provided in accordance with the IPA, the relevant Service Specification and Ofsted (or equivalent) requirements, where applicable.
 - 6.1.3 The Provider's Staff and other people engaged by them to deliver Services, shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time for the conduct of personnel when at or outside the Premises, or when representing the Provider.
 - 6.1.6 The Provider 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.
 - 6.1.7 all of the Provider Personnel, who require access to the Authority 's Premises in connection with the provision of the Services, comply with the relevant Authority policies relating to access and/or use of the Authority 's Premises, provided always that such policies (including any updates thereto) are brought to the attention of the Provider and the Provider is provided with copies of such policies.

6.2 The Authority reserves the right to refuse to admit (acting reasonably) to the Authority 's Premises any person employed or engaged by the Provider (including any Subcontractor) where admission would, in the reasonable opinion of the Authority:

6.2.1 present a risk to the Authority or to children and/or young people; or

6.2.2 would be a threat to the security or operations of the Authority .

6.3 Where the Authority exercises its right to refuse admission to any person employed or engaged by the Provider pursuant to Clause 6.2, the Authority shall notify the Provider in writing of such refusal without delay, including the identity of the person who has been refused such admission and the Authority 's reasons for refusing admission to such persons.

7 AUTHORITY 'S PREMISES AND ASSETS

7.1 Where the Provider (and its Subcontractors) are required by the Authority to access parts of the Authority 's Premises, for the purposes only of properly providing the Services, then the Authority shall provide such necessary access to the Authority Premises to the Provider for this purpose.

7.2 In the event of the expiry or termination of the Contract, the Authority shall on reasonable notice provide the Provider with such access as the Provider reasonably requires to the Authority 's Premises to remove any of the Provider's Equipment. All such equipment shall be promptly removed by the Provider.

7.3 The Provider shall ensure that

7.3.1 where using the Authority 's Premises and any Authority Assets they are kept properly secure and it will comply and cooperate with the Authority 's Representative's reasonable directions regarding the security of the same;

7.3.2 only those of the Provider Personnel that are duly authorised to enter upon the Authority 's Premises for the purposes of providing the Services, do so;

7.3.3 any Authority Assets used by the Provider are maintained (or restored at the end of the Contract Term) in the same or similar condition as at the Services Commencement Date (fair wear and tear excepted) and are not removed from Authority Premises unless expressly permitted under this Contract or by the Authority 's Representative.

7.4 The Provider shall notify the Authority immediately on becoming aware of any damage caused by the Provider, its agents, employees or Subcontractors to any Authority Assets, to any of the Authority 's Premises or to any property of any other recipient of the Services in the course of providing the Services.

8 CHILDREN AND YOUNG PEOPLE'S RIGHTS

8.1 The Provider shall at all times in its performance of the Services and its treatment of the children and young people, have regards to, and abide by the principles of the Human Rights Act.

8.2 These policies and procedures shall be made clear to Provider's Staff via induction, training and development, Staff meetings and supervision.

- 8.3 The Provider shall ensure that information is designed with participation of the children in mind and as required, is produced in a variety of ways to ensure that the needs of any child with specific needs is met e.g. through the use of Braille, audio tapes, different languages, pictures and symbols.
- 8.4 The Provider shall comply with the Law, regulatory requirements and codes of practice applicable to the provision of the Services and shall comply with all further reasonable written requirements and instructions of the Authority in relation to the Order Form or IPA.

9 NOTIFICATION AND SHARING INFORMATION RELATING TO INDIVIDUAL PLACEMENTS

- 9.1 The Provider will promptly provide the Authority with the following information:
- (a) Change of Ownership (including mergers)
 - (b) Intention to close the business
 - (c) Intention to terminate the Framework Agreement or any Contract awarded under it
 - (d) The findings from any formal investigation by the Equality and Human Rights Commissioner any finding of unlawful discrimination under the Equality Act 2010 by any court or tribunal
 - (e) The findings from any formal inspection by the Care Quality Commission and /or OFSTED (or equivalent Regulatory Body)
 - (f) Prosecution of the Provider or any of its directors, trustees, committee members, management or staff of any criminal offence (excluding minor traffic offences).
 - (g) Any act of insolvency
 - (h) Notification of an Inadequate OFSTED (or equivalent) grading
 - (i) Any other issues that are notifiable to OFSTED (or equivalent Regulatory Body)
 - (j) Any issues notifiable to Local Safeguarding Boards

10 SAFEGUARDING AND IMPROPER CONDUCT

- 10.1 For the purposes of this clause, capitalised terms shall have the same meaning as provided under the Safeguarding Vulnerable Groups Act 2006 or the meaning given to such term where it is defined elsewhere in this Contract.
- 10.2 The Parties acknowledge that the Provider is a Regulated Activity Provider with ultimate responsibility for the management and control of the Regulated Activity provided under this Contract and for the purposes of the Safeguarding Vulnerable Groups Act 2006.
- 10.3 The Provider shall have in place Staff Vetting Procedures which comply with the Safeguarding of Vulnerable Groups Act 2006 in respect of all persons employed or engaged in the provision of the Services. The Provider confirms that all persons employed or engaged by the Provider were vetted and recruited on a basis that is equivalent to and no less strict than the Staff Vetting Procedures.

- 10.4 The Provider will ensure that any person employed in the provision of the Services has undertaken a Disclosure and Barring Service (DBS) check as required by regulation and Staff Vetting Procedures. The Provider shall ensure that no person who discloses that he/she has a Relevant Conviction or is found by the Provider to have a Relevant Conviction (whether as a result of a police check or through the DBS check or otherwise) is employed or engaged in the provision of any part of the Services.
- 10.5 The Provider 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 children or young persons.
- 10.6 The Provider shall:
- 10.6.1 ensure that all individuals engaged in Regulated Activity are subject to a valid enhanced disclosure check for regulated activity undertaken through the Disclosure and Barring Service; and
 - 10.6.2 monitor the level and validity of the checks under this clause 10.6 for each member of Provider Personnel;
 - 10.6.3 not employ or use the services of any person who is barred from, or whose previous conduct or records indicate that he or she would not be suitable to carry out Regulated Activity or who may otherwise present a risk to Service Users;
 - 10.6.4 at the Services Commencement Date have in place an improper conduct policy and use reasonable endeavours to ensure all Provider Personnel comply with its policy;
 - 10.6.5 ensure adequate training is annually provided to Provider Personnel on the prevention of improper conduct, identifying incidents and reporting processes; and
 - 10.6.6 comply with all the Authority 's safeguarding procedures.
- 10.7 The Provider warrants that at all times for the purposes of this Contract it has no reason to believe that any person who is or will be employed or engaged by the Provider 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.
- 10.8 The Provider shall immediately notify the Authority of any information it reasonably requests to enable it to be satisfied that the obligations of this Clause 10 have been met.
- 10.9 The Provider 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 Service Users, or children or vulnerable adults.

11 SOCIAL NETWORKING AND INTERNET

- 11.1 The Provider is only permitted to use social media platforms to market or deliver the Services when the Authority has given prior written approval to do so.

- 11.2 If, subject to Clause 11.1, the Provider uses social media platforms to market or deliver the Services, all Provider Personnel who administer them must ensure they are used in a professional context and have undertaken e-Safety training.
- 11.3 If the Provider uses social media platforms to market or deliver the Services, a risk assessment must be undertaken and can be requested by the Authority at any time.
- 11.4 The Provider must have a social networking and/or social media policy and guidance for all Provider Personnel.
- 11.5 Subject to clause 11.1, if in the course of providing the Services the Provider uses social media platforms or any other medium to offer any information society services to children, the Provider shall comply with all applicable requirements of the Data Protection Legislation, including those set out at Article 8 of the UK GDPR, and without limitation shall:
- 11.5.1 use consent as the justification for the processing of Personal Data relating to any child of an age lower than the relevant threshold specified in the Data Protection Legislation applicable from time to time only where such consent is given or authorised by the holder of parental responsibility over the child or young person; and
 - 11.5.2 make reasonable efforts to verify in such cases that consent is given or authorised by the holder of parental responsibility over the child, taking into consideration available technology.

SECTION C: PAYMENT AND TAXATION

13 CONTRACT PRICE AND INVOICING

- 13.1 The Provider shall comply with the Authority's invoicing requirements as set out in the Order Form or IPA as applicable.
- 13.2 In consideration of the provision of the Services by the Provider in accordance with this Contract, the Authority shall pay the Contract Price to the Provider.
- 13.3 The Provider shall invoice the Authority in accordance with any requirements set out in the Order Form or IPA for payment of the Contract Price at the times the Contract Price is expressed to be payable.
- 13.4 Where the Provider submits an invoice to the Authority in accordance with the requirements set out in the Order Form or IPA the Authority shall notify the Provider without undue delay if it considers that the invoice is invalid or disputed..
- 13.5 The Authority shall pay the Provider any sum due under a valid and non-disputed invoice within a period of thirty (30) days receipt of that invoice or if later, the day on which the payment falls due in accordance with the invoice..
- 13.6 Where the Provider enters into any Subcontract, the Provider shall include in that Subcontract
- 13.6.1 provisions having the same effect as clauses 13.4 and 13.5 of this Contract; and

13.6.2 a provision requiring the counterparty to that Subcontract to include, in any subcontract which it awards, provisions having the same effect as clauses 13.4 and 13.5 of this Contract.

13.7 If the Authority fails to pay any undisputed Contract Price properly invoiced under this Contract, the Provider shall have the right to charge interest on the overdue amount at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998 (as amended), accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.

13.8 The Authority may at any time, without limiting any of its other rights or remedies, set off any liability of the Provider to the Authority against any liability of the Authority to the Provider.

13.9 The Provider acknowledges that the Authority is required to publish a payments compliance notice if during the relevant reporting period (as defined in the Procurement Legislation):

13.9.1 the Authority made a payment under the Contract; and/or

13.9.2 a sum owed by the Authority under the Contract became payable.

13.10 The Provider acknowledges that such payments compliance notices shall contain specific information about the Authority's compliance with its obligations under clause 13.5. The Provider shall not seek to prevent the Authority complying with its obligations pursuant to clause 13.9.

14 PRICE ADJUSTMENT - INDIVIDUAL PLACEMENT

14.1 The Contract Price (excluding the Block Contract Price) in the IPA may only be adjusted in accordance with the circumstances set out in clauses 14.3 and 14.4 below.

14.2 The Block Contract Price in the Order Form may only be adjusted in accordance with the circumstances set out in clause 14.4 below.

14.3 Where there are significant changes to the needs of the child and/or young person:

14.3.1 either Party may, acting reasonably, request a review of the Contract Price in the IPA resulting from significant changes in the needs of the child and/or young person. Where this results in an alteration to the Contract Price payable in the IPA this will take effect when agreed by the Authorised Representatives of each Party and confirmed in writing via a letter of variation or by completing a new IPA.

14.3.2 if the Parties are unable to agree a variation in the Contract Price in the IPA in accordance with clause 14.2.1 the Individual Placement Agreement will be subject to review and if resolution is not achieved, the Authority may terminate the IPA.

14.3.3 If a variation in the Contract Price is agreed between the Authority and the Provider; the revised Contract Price will take effect from the first day of any period of extension or amendment of the original IPA and shall apply for the agreed period.

14.4 Clauses 14.1 and 14.2 are subject to the Fee and Inflationary Uplift Protocol.

15 VALUE ADDED TAX AND PROMOTING TAX COMPLIANCE

- 15.1 The Contract Price is stated exclusive of VAT. Where VAT is chargeable in respect of any of the Services, the Provider shall calculate the amount of VAT to be paid by the Authority at the applicable prevailing rate, which shall be added to the Contract Price and paid by the Authority following the submission of a VAT invoice by the Provider in respect of the same.
- 15.2 The Provider shall indemnify the Authority against any liability (including any interest, penalties or costs incurred) which is levied, demanded or assessed on the Authority at any time in respect of the Provider's failure to account for, or to pay, any VAT relating to payments made to the Provider under this Contract.
- 15.3 If, at any point during the Contract Term, an Occasion of Tax Non-Compliance occurs, the Provider shall
- 15.3.1 notify the Authority in writing of such fact within five (5) Working Days of its occurrence; and
 - 15.3.2 promptly provide to the Authority :
 - (a) details of the steps that the Provider is taking to address the Occasion of Tax Non-Compliance and prevent the same from recurring, together with any mitigating factors that it considers relevant; and
 - (b) such other information in relation to the Occasion of Tax Non-Compliance as the Authority may reasonably require.

SECTION D: CONTRACT GOVERNANCE

16 GOVERNANCE

- 16.1 The Parties shall comply with the provisions of the Specification and Supplemental Specification, if any, in relation to the management and governance of this Contract.

17 RECORDS AND AUDIT ACCESS

- 17.1 The Provider shall keep and maintain for a period of six (6) years after the expiry of the Contract Term (or as long a period as may be agreed between the Parties), full and accurate records and accounts of the operation of this Contract including the Services provided under it and the amounts paid by the Authority .
- 17.2 The Provider shall keep the records and accounts referred to in clause 17.1 above in accordance with good accountancy practice.
- 17.3 The Provider shall afford the Authority or the Audit Agent (or both) such access to such records and accounts as may be reasonably required from time to time during the Contract Term and for a period of six (6) years after expiry of the Contract Term.
- 17.4 The Authority shall use reasonable endeavours to ensure that the conduct of each Audit does not unreasonably disrupt the Provider or delay the provision of the Services pursuant to this Contract; save insofar as the Provider accepts and acknowledges that control over the conduct of Audits carried out by the Audit Agent is outside of the control of the Authority .

- 17.5 Subject to the Authority's rights of confidentiality, the Provider shall, on demand, provide the Audit Agent with all reasonable co-operation and assistance in relation to each Audit, including:
- 17.5.1 all information requested by the Audit Agent within the scope of the Audit;
 - 17.5.2 reasonable access to sites controlled by the Provider and to the Provider's Equipment; and
 - 17.5.3 access to the Provider Personnel.
- 17.6 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause 17, unless the Audit reveals a default by the Provider, in which case the Provider shall reimburse the Authority for the Authority's reasonable costs incurred in relation to the Audit.
- 17.7 The Authority reserves the right to visit unannounced any of the Provider's offices or premises for the purpose of ensuring the Provider is complying with all of or any of its obligations under this Contract.

18 SCRUTINY/CABINET ATTENDANCE

- 18.1 Where the value of the Services to be supplied under the Contract exceeds one hundred thousand pounds (£100,000) in value, during the Contract Term and for a period of six (6) years after termination or expiry of the Contract, the Authority reserves the right to require the Provider to
- 18.1.1 provide all reasonable assistance for the purposes of answering the Authority's questions pertaining to the operation of the Contract (including but not limited to the Provider's performance of the Contract); and,
 - 18.1.2 attend the Authority's Scrutiny Committee and/or Cabinet as and when reasonably required by the Authority,

and the Provider shall comply with any such requirements. Wherever possible, the Authority will aim to give the Provider reasonable advanced notice if the Provider's attendance is required at the Authority's Scrutiny Committee and/or Cabinet.

- 18.2 If, pursuant to Clause 18.1 DCC requires the Provider to attend the Authority's Scrutiny Committee and/or Cabinet following termination or expiry of the Contract, the Authority shall reimburse the Provider for reasonable travel costs incurred.

19 DISPUTES

- 19.1 The Parties shall resolve Disputes arising out of or in connection with this Contract in accordance with the procedure set out in Clause 20 of the Framework Agreement, which shall apply as if the Parties to this Contract were parties to the Framework Agreement save that any references in Clause 20 of the Framework Agreement to "the Authorised Representatives" shall be construed as references to the Authority Representative and the Provider Representative.

SECTION E: INTELLECTUAL PROPERTY, DATA AND CONFIDENTIALITY

20 INTELLECTUAL PROPERTY RIGHTS

- 20.1 All Intellectual Property Rights in any materials provided by the Authority to the Provider for the purposes of this Contract shall remain the property of the Authority but the Authority hereby grants the Provider a royalty-free, non-exclusive and non-transferable licence to use such materials as required until termination or expiry of the Contract for the sole purpose of enabling the Provider to perform its obligations under the Contract.

21 DATA PROTECTION

- 21.1 Both Parties will comply with all applicable requirements of the Data Protection Legislation. This Clause 21 is in addition to, and does not relieve, remove, or replace, a Party's obligations or rights under the Data Protection Legislation. Schedule 4 shall apply to this Contract.

22 CONFIDENTIALITY AND TRANSPARENCY

- 22.1 The Parties agree that Clause 11 of the Framework Agreement shall apply to this Contract as if the Parties to this Contract were parties to the Framework Agreement.
- 22.2 The Provider acknowledges that the Authority is required to comply with The Codes of Recommended Practice on Data Transparency for Local Authorities published by the Ministry of Housing, Communities & Local Government under section 2 of the Local Government Planning and Land Act 1980 (the 'Transparency Code') and the provisions of the Procurement Legislation.
- 22.3 The Provider acknowledges that the Authority may be required to publish this Contract (with the exception of any Sensitive Commercial Information), to the general public in accordance with the Transparency Code provided that, in doing so
- 22.3.1 the Authority shall, where reasonably practicable, seek to consult with the Provider prior to publishing the Contract in order to discuss in good faith and agree any redactions (such agreement not to be unreasonably withheld or delayed); and
 - 22.3.2 the Provider shall provide reasonable assistance to the Authority to enable the Authority to publish this Contract.
- 22.4 The Provider acknowledges that the Authority may (acting in accordance with the Transparency Code and/or the Procurement Legislation) be obliged to disclose or publish information:
- 22.4.1 without consulting with the Provider; or
 - 22.4.2 following consultation with the Provider and having taken its views into account,
 - 22.4.3 provided always that where Clause 22.4.1 applies, the Authority shall, in accordance with any relevant recommendations of the Transparency Code, take reasonable steps, where appropriate, to give the Provider advance notice or, failing that, to draw the disclosure to the Provider's attention after any such disclosure.

23 FREEDOM OF INFORMATION

- 23.1 The Provider acknowledges that the Authority is subject to the requirements of the FOIA and the EIRs and the Parties agree that Clause 13 of the Framework Agreement shall apply to this Contract as if the Parties to this Contract were parties to the Framework Agreement.

24 PUBLICITY

- 24.1 Unless otherwise directed by the Authority , the Provider shall not make any press announcements or publicise this Contract in any way without the Authority's prior written consent.
- 24.2 The Authority shall be entitled to publicise this Contract in accordance with any legal obligation on the Authority , including any examination of this Contract by the Audit Agent or otherwise.
- 24.3 The Provider shall not do anything that may damage the reputation of the Authority or bring the Authority into disrepute.

SECTION F: LIABILITIES AND INSURANCE

25 LIABILITY

- 25.1 Nothing in this Contract shall limit or exclude the Provider's or the Authority's liability for:
- 25.1.1 death or personal injury caused by its negligence, or the negligence of its personnel, agents or subcontractors;
 - 25.1.2 fraud or fraudulent misrepresentation;
 - 25.1.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession); and
 - 25.1.4 any other liability which cannot be limited or excluded by applicable Law.
- 25.2 Nothing in this Contract shall limit or exclude
- 25.2.1 the Provider's liability under Clause 15.2 (VAT indemnity), Clause 20.3 (IPR indemnity), Clause 34 (Human Rights Act indemnity) and Schedule 3 (TUPE indemnities) and no amounts awarded or agreed to be paid under those Clauses or Schedule shall count towards the cap on the Provider's liability; or
 - 25.2.2 the Authority's liability under Schedule 3 (TUPE indemnities).
- 25.3 Subject to Clauses 25.1, 25.2 and 25.6 neither Party shall have any liability to the other Party, whether in contract, tort (including negligence), breach of statutory duty, or otherwise for any indirect or consequential loss arising under or in connection with this Contract.
- 25.4 Subject to Clause 25.1 and Clause 25.2, the Provider's total aggregate liability to the Authority, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with this Contract shall, in no event, exceed the amount in each Contract Year as set out in the Order Form.
- 25.5 Notwithstanding the provisions of Clause 25.3 but subject always to Clause 25.4, the Provider assumes responsibility for the following losses which may be recoverable by the Authority
- 25.5.1 the Authority's additional operational and administrative costs and expenses caused by the act or omission of the Provider;

25.5.2 the Authority 's wasted expenditure or charges reasonably incurred by the Authority caused by the act or omission of the Provider;

25.5.3 any loss or corruption to or alteration of any Authority Data; and

25.5.4 losses incurred by the Authority arising out of or in connection with any claim, demand, fine, penalty, action, investigation or proceedings by any third party (including any Subcontractor, Provider Personnel, regulator or Service User) against the Authority caused by the act or omission of the Provider.

25.6 Nothing in this Contract shall be taken as in any way reducing or affecting a general duty to mitigate loss suffered by a Party.

26 INSURANCE

26.1 Without prejudice to Clause 25 (Liability), the Provider shall at its own cost effect and maintain in force (with reputable insurance companies) such policies of insurance with the minimum levels of cover as set out below (the **Required Insurances**).

- (a) Employer's Liability - a minimum of £10 million in respect of any single occurrence covering all employees. This is not applicable to sole traders.
- (b) General or Public Liability – a minimum of £5 million in respect of any single occurrence.
- (c) Professional Indemnity - a minimum of £2 million per claim for advice given to individuals in respect of any one insurance year.
- (d) Where the Provider provides any special therapy, such therapy shall be carried out by suitably qualified professionals covered by professional indemnity and public liability insurance of a minimum of £1 million per claim.
- (f) Sexual abuse and molestation public liability cover – a minimum of £1 million must be provided for in respect of any one claim for proven bodily or mental injury, disease, death or suffering of a child or young person following sexual abuse or molestation. This cover may also be taken out as an extension to a Professional Indemnity policy;
- (h) Provide vehicle and passenger insurance cover where the Provider will be using their own vehicles to transport children or young people.
- (i) Provide travel insurance where visits are conducted involving one or more overnight stay(s).

26.2 Following a written request of the Authority acting reasonably) for the same, the Provider shall provide the Authority with:

26.2.1 copies of all insurance policies relating to the Required Insurances (or a broker's verification of insurance) and the Authority shall be entitled to inspect such insurance policies at reasonable times during ordinary business hours; and

26.2.2 evidence that the premiums payable under the insurance policies relating to the Required Insurances have been paid and that the insurances are in full force and effect.

- 26.3 Without prejudice to the Authority's other rights under this Contract, if, for whatever reason, the Provider fails to give effect to and maintain the Required Insurances, the Authority may make alternative arrangements to keep such insurance in force and may recover the costs of such arrangements from the Provider.
- 26.4 The Authority shall immediately notify the Provider of any claims or potential claims of which it becomes aware in relation to any risk covered by any of the Required Insurances and for which it reasonably believes that the Provider is responsible and shall provide the Provider with all information and assistance it may reasonably require in order for the Provider to effectively manage such claim.

SECTION G: REMEDIES AND RELIEF

27 FORCE MAJEURE

- 27.1 Subject to the remaining provisions of this clause 27, neither Party shall in any circumstances be liable to the other Party for any delay, or non-performance of its obligations under this Contract to the extent that such delay or non-performance is due to a Force Majeure Event.
- 27.2 In the event that either Party (the '**Affected Party**') is delayed or prevented from performing its obligations under this Contract due to a Force Majeure Event, the Affected Party shall:
- 27.2.1 give notice in writing of such delay or prevention to the other Party as soon as reasonably possible, stating the commencement date and the extent of such delay or prevention, the cause thereof, its estimated duration and any action proposed to mitigate its effect;
 - 27.2.2 use all reasonable endeavours to mitigate the effects of such delay or prevention on the performance of its obligations under this Contract; and
 - 27.2.3 resume performance of its obligations as soon as reasonably possible after the removal of the cause of the delay or prevention.
- 27.3 The Affected Party cannot claim relief if the Force Majeure Event is attributable to the Affected Party's wilful act, neglect or failure to take reasonable precautions against the relevant Force Majeure Event.
- 27.4 As soon as is practicable, following the Affected Party's notification pursuant to clause 27.2, 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 this Contract.
- 27.5 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 this Contract. Following such notification, this Contract shall continue to be performed on the terms existing immediately prior to the occurrence of the Force Majeure Event unless agreed otherwise by the Parties in writing.
- 27.6 The Authority may, during the continuation of any Force Majeure Event, terminate this Contract by written notice to the Provider in the event that a Force Majeure Event occurs that affects all or a substantial part of the Services and which continues for more than twenty (20) Working Days.

28 CONTINUED PERFORMANCE

- 28.1 Save as may be required to give effect to the granting of relief from obligations under clause 27 (Force Majeure), the Parties shall continue to perform their obligations under this Contract notwithstanding the giving of any notice of termination, or natural expiry, of this Contract until the termination or expiry of this Contract becomes effective in accordance with the relevant provision.

SECTION H: TERMINATION AND EXIT MANAGEMENT

29 TERMINATION

Termination on Default

- 29.1 The Authority may terminate this Contract by serving written notice on the Provider with effect from the date specified in such notice where the Provider commits a Default and:
- 29.1.1 the Provider has not remedied the Default to the satisfaction of the Authority within twenty (20) Working Days, or such other period as may be specified by the Authority, after issue of a written notice specifying the Default and requesting it to be remedied; or
 - 29.1.2 the Default is not, in the reasonable opinion of the Authority, capable of remedy.

Termination for Repeated Breaches

- 29.2 The Authority may terminate this Contract by serving written notice on the Provider with effect from the date specified in such notice where the Provider repeatedly breaches any of the terms and conditions of this Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms and conditions of this Contract.

Termination for Catastrophic Failure

- 29.3 The Authority may terminate this Contract by serving written notice on the Provider with effect from the date specified in such notice, where the Provider takes any action in relation to the Services, this Contract or otherwise which:
- 29.3.1 in the reasonable opinion of the Authority has or may cause significant harm to the reputation of the Authority, or
 - 29.3.2 in the reasonable opinion of the Authority has or may cause significant harm to a child or young person.
- 29.4 The Authority shall be entitled to terminate the Contract with immediate effect and recover from the Provider the amount of any loss resulting from such a termination in the following circumstances where the Provider
- (a) has Staff that are convicted under Schedule 1 of the Children and Young Persons Act 1933; or of any offence relevant to the welfare of children and young people;
 - (b) has a proprietor/director placed on the Children's and Adults' Barred Lists, as part of the Vetting and Barring Scheme run by the Disclosure and Barring Service as originally required by the Protection of Children Act 1999 as repealed by the Safeguarding Vulnerable Groups Act 2006, or the Provider/manager ceases to be fit to carry on/manage the Services.

Termination of Individual Placement Agreement (IPA)

- 29.5 The Authority reserves the right to terminate an IPA with immediate effect where the Authority considers that the circumstances jeopardise the sustainability, quality, safety and / or outcomes to be delivered to a child or young person including but not limited to:
- 29.5.1 provision or services which the child or young person should have received according to their statutory plans and/or IPA have not been delivered.
 - 29.5.2 there are safeguarding issues and/ or risks relating to a child or young person and this is negatively impacting the education and learning of the child or young person and/ or their ability to attend their placement.
 - 29.5.3 persistent non-attendance of a child or young person where no mitigations are in place or mitigations have not resolved the situation.
 - 29.5.4 an act or omission occurs which has put a child or young person at risk.
 - 29.5.5 a serious breach of duty and/ or professionalism.
 - 29.5.6 financial instability.
 - 29.5.7 services under the IPA can no longer be provided due to the Provider ceasing operation.
 - 29.5.8 misleading or false information has been provided in the Tender or Supplemental Tender
 - 29.5.9 unethical or illegal business conduct.
 - 29.5.10 there is a breach of Contract.
 - 29.5.11 where a child or young person has passed away.
 - 29.5.12 where a child or young person has moved away from the area.
 - 29.5.13 the provision no longer meets the needs of the child or young person.
- 29.6 Either Party can terminate an IPA at any time by giving a minimum three (3) calendar months' notice.
- 29.7 When an IPA is to be terminated, both Parties shall support a smooth transition of the arrangements for each affected child or young person.

Termination pursuant to the Act

- 29.8 Without prejudice to any other right or remedy the Parties may have, in the event that Regulation 78 of the Act applies (implied right to terminate public contracts), the Authority may terminate this Contract on written notice to the Provider.

Termination on Insolvency, Change of Control and Breach of Warranties

- 29.9 Without affecting any other right or remedy available to it, the Authority may terminate this Contract with immediate effect by giving written notice to the Provider if

- 29.9.1 the Provider suspends, or threatens to suspend payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 OR is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 OR has any partner to whom any of the foregoing apply;
 - 29.9.2 the Provider commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of the Provider with one or more other companies or the solvent reconstruction of the Provider;
 - 29.9.3 a petition is filed, a notice is given, a resolution is passed, or an order is made, for, or in connection with, the winding up of the Provider other than for the sole purpose of a scheme for a solvent amalgamation of the Provider with one or more other companies or the solvent reconstruction of the Provider;
 - 29.9.4 an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Provider;
 - 29.9.5 the holder of a qualifying floating charge over the assets of the Provider has become entitled to appoint or has appointed an administrative receiver;
 - 29.9.6 a person becomes entitled to appoint a receiver over the assets of the Provider or a receiver is appointed over the assets of the Provider;
 - 29.9.7 the Provider is the subject of a bankruptcy petition or order;
 - 29.9.8 a creditor or encumbrancer of the Provider attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Provider's assets and such attachment or process is not discharged within 14 days;
 - 29.9.9 any event occurs, or proceeding is taken, with respect to the Provider, in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in Clause 29.9.1 to Clause 29.9.8; or
 - 29.9.10 the Provider threatens to suspend or cease or suspends or ceases carrying on all or a substantial part of its business.
- 29.10 The Provider shall notify the Authority immediately if the Provider undergoes a Change of Control. The Authority may terminate this Contract by giving notice in writing to the Provider with immediate effect within six (6) months of
- 29.10.1 being notified that a Change of Control has occurred; or
 - 29.10.2 where no notification has been made, the date that the Authority becomes aware of the Change of Control;

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

- 29.11 Without affecting any other right or remedy available to it, the Authority may terminate this Contract with immediate effect by giving written notice to the Provider if: any warranty given by the Provider in Clause 4 (Warranties) of this Contract is found to be untrue or misleading.
- 29.12 If this Contract is terminated by the Authority for cause then subject to Clause 25.4, such termination shall be at no Loss or cost to the Authority and the Provider hereby indemnifies against any such Loss or costs which the Authority may suffer as a result of any such termination for cause including the cost of procuring and implementing replacement provision for the Services.

30 CONSEQUENCES OF EXPIRY OR TERMINATION

- 30.1 The termination or expiry of this Contract shall not affect
- 30.1.1 the continuing rights and obligations of the Parties pursuant to Clauses 17 (Records and Audit Access), 21 (Data Protection), 22 (Confidentiality and Transparency), 23 (Freedom of Information), 25 (Liability), 26 (Insurance), 29 (Termination) and this Clause 30 (Consequences of Expiry or Termination) and any other provision of this Contract that expressly, or by implication, is intended to come into or continue in force after the termination or expiry of this Contract; and
 - 30.1.2 any rights, remedies, obligations or liabilities of the Parties that have accrued up to the date of termination or expiry of this Contract.
- 30.2 Six (6) Months prior to the end of the Contract Term (or earlier upon the Authority's request), irrespective of whether the Contract is re-tendered or not, the Provider shall submit to the Authority the Authority Data and Intellectual Property held by the Provider in respect of this Contract which the Authority may reasonably need for future reference or to maintain performance of this Contract internally or through another Provider. Such data shall be supplied electronically in the relevant Microsoft product (which is the Authority's standard software currently) or in such other electronic product as may be Authority's standard at the time, and in e-gif compliant format (if applicable).
- 30.3 As a separate obligation to Clause 30.2, on or before the expiry of the Contract Term, the Provider shall procure that the Authority Assets, the Authority Data and all data and other material belonging to the Authority (and all media of any nature containing information and data belonging to the Authority or relating to the Services), shall be delivered forthwith to the Authority or at the Authority's request, to a replacement Provider, and the Provider Representative shall certify full compliance with this clause.
- 30.4 The Provider shall co-operate fully with the Authority to ensure an orderly migration of the Services to the Authority or at the Authority's request, a replacement Provider.

SECTION I: COMPLIANCE WITH LAWS

31 HEALTH AND SAFETY

- 31.1 The Provider shall perform its obligations under this Contract (including those in relation to the Services) in accordance with

31.1.1 all applicable Law regarding health and safety; and

31.1.2 the Authority 's health and safety policy.

31.2 The Provider shall notify the Authority, as soon as practicable, of any health and safety incidents or material health and safety hazards on any premises, where the Services are being provided, of which it becomes aware and which relate to or arise in connection with the performance of this Contract. Each Party shall instruct their personnel (as applicable) to adopt any necessary associated safety measures in order to manage any such material health and safety hazards.

32 ENVIRONMENTAL

32.1 The Provider shall

32.1.1 when working on premises where the Services are being provided, perform this Contract in accordance with the Authority 's environmental policy which is committed to the prevention of pollution, reduction of CO2 emissions, minimising the environmental impacts associated with all activities, products and services of the Authority's business;

32.1.2 follow a sound environmental management policy so that its activities comply with all applicable environmental legislation and regulations and that the Services are procured and delivered in ways that are appropriate from an environmental protection perspective; and

32.1.3 comply with all applicable environmental legislation and other requirements as appropriate to the Services, which may apply in the performance of this Contract.

33 EQUAL OPPORTUNITIES

33.1 Clause 24 of the Framework Agreement shall apply to this Contract as if the Parties to this Contract were parties to the Framework Agreement.

34 HUMAN RIGHTS ACT 1998

34.1 Clause 23 of the Framework Agreement shall apply to this Contract as if the Parties to this Contract were parties to the Framework Agreement.

35 PREVENTION OF FRAUD AND BRIBERY

35.1 Clause 21 of the Framework Agreement shall apply to this Contract as if the Parties to this Contract were parties to the Framework Agreement.

SECTION J: MISCELLANEOUS AND GOVERNING LAW

36 NON-SOLICITATION OF AUTHORITY EMPLOYEES AND OFFICERS

36.1 In order to protect the legitimate business interests of the Authority , the Provider covenants with the Authority that it shall not (except with the prior written consent of the Authority)

36.1.1 attempt to solicit or entice away; or

36.1.2 solicit or entice away,

from the employment or service of the Authority the services of any officers or employees of the Authority other than by means of a advertising campaign open to all-comers and not specifically targeted at such staff of the Authority .

36.2 The Provider shall be bound by the covenant set out in Clause 36.1 during the term of this agreement, and for a period of six (6) months after termination or expiry of this Agreement.

36.3 If the Provider commits any breach of this Clause 36, the Provider shall, on demand, pay to the Authority a sum equal to six (6) months' basic salary that was payable by the Authority to the Authority officer or employee in question, plus the reasonable recruitment costs incurred by the Authority in replacing such person.

37 COMPLAINTS/LOCAL GOVERNMENT OMBUDSMAN

37.1 The Provider shall keep a record of any complaints in relation to the Services received (whether received orally or in writing, and whether from members of the Authority , members of the public or otherwise) and of the action taken by the Provider to remedy or fully investigate each such complaint. Such records shall be kept available for inspection by the Authority 's Representative at all reasonable times during normal working hours.

37.2 The Provider shall provide the Authority with all reasonable cooperation and assistance in relation to any investigation by the Local Government Ombudsman in connection with the performance by the Provider of the Services under this Contract.

38 MODIFICATION

38.1 No amendment or modification of this Contract shall be effective unless it is in writing and signed by the Parties and is expressed to be for the purpose of such amendment or modification.

39 ASSIGNMENT AND OTHER DEALINGS

39.1 Subject to Clauses 39.2 and 39.3, neither Party shall assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights and obligations under this Contract without the prior written consent of the other Party (such consent not to be unreasonably withheld or delayed).

39.2 Upon any local government reorganisation and the Authority ceasing to exist in accordance with the Local Government and Public Involvement in Health Act 2007 and any other relevant legislation including any Order made by the Secretary of State, all rights, obligations and liabilities under this Contract will transfer in accordance with the same to the Successor Body identified therein.

39.3 With the exception of any Authorised Subcontracts, the Provider may not Subcontract any part of this Contract without the prior written consent of the Authority, such consent not to be unreasonably withheld or delayed. The Parties acknowledge that the Authority may validly withhold its consent where a proposed subcontractor is named on the Debarment List, is Excluded or Excludable or the Provider is unable to evidence to the Authority's reasonable satisfaction that the Provider will continue to satisfy the Conditions of Participation, where applicable..

39.4 The Provider shall ensure that any Subcontractor that performs any part of the Services pursuant to this Clause 39 shall be fully supplied with all relevant information about the Provider's obligations under this Contract. Notwithstanding any subcontracting permitted under this Clause 39, the Provider shall be responsible and liable for the acts and omissions of its Subcontractors as if they were its own acts and omissions.

39.5 The Provider shall not be entitled to replace an Associated Person or to terminate an Associated Person's appointment without the prior written consent of the Authority, such consent not to be unreasonably withheld or delayed. The Parties acknowledge that the Authority may validly withhold its consent where a replacement Authorised Person is named on the Debarment List, is Excluded or Excludable or the Provider is unable to evidence to the Authority's reasonable satisfaction that the Provider will continue to satisfy the Conditions of Participation.

40 ENTIRE AGREEMENT

40.1 This Contract, the schedules and the documents referred to in it, constitutes the entire agreement between the Parties in respect of its subject matter and supersedes and extinguishes all prior negotiations, arrangements, understanding, course of dealings or agreements made between the Parties in relation to its subject matter, whether written or oral.

40.2 Neither Party has been given, nor entered into this Contract in reliance on, any warranty, statement, promise or representation other than those expressly set out in this Contract.

40.3 Nothing in this Clause 40 shall exclude any liability in respect of misrepresentations made fraudulently.

41 WAIVER AND CUMULATIVE REMEDIES

41.1 A waiver of any right or remedy under this Contract, or by Law, is only effective if given in writing, which expressly states that a waiver is intended, and such waiver shall not be deemed a waiver of any subsequent breach or default.

41.2 A failure or delay by a Party in ascertaining or exercising any right or remedy provided under this Contract or by Law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under this Contract or by Law shall prevent or restrict the further exercise of that or any other right or remedy.

41.3 Unless otherwise provided in this Contract, rights and remedies under this Contract are cumulative and do not exclude any rights or remedies provided by Law, in equity or otherwise.

42 SEVERANCE

42.1 If any provision or part-provision of this Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this Clause shall not affect the validity and enforceability of the rest of this Contract.

42.2 If one Party gives notice to the other of the possibility that any provision or part-provision of this Contract is invalid, illegal or unenforceable, the Parties shall negotiate in good faith to amend such

provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

43 FURTHER ASSURANCES

43.1 At its own expense, each Party shall, and shall use all reasonable endeavours to procure that any necessary third party shall, promptly execute and deliver such documents and perform such acts as may reasonably be required for the purpose of giving full effect to this Contract.

44 RELATIONSHIP OF THE PARTIES

44.1 Except as expressly provided otherwise in this Contract, nothing in this Contract, nor any actions taken by the Parties pursuant to this Contract, shall create a partnership, joint venture or relationship of employer and employee or principal and agent between the Parties, or authorise either Party to make representations or enter into any commitments for or on behalf of any other Party.

45 THIRD PARTY RIGHTS

45.1 A person who is not a party to this Contract shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Contract.

45.2 The rights of the Parties to terminate, rescind or agree any variation, waiver or settlement under this Contract are not subject to the consent of any other person.

46 NOTICES

46.1 Any notice or other communication, given to a Party under or in connection with this Contract, shall be in writing marked for the attention of the Party's Representative and shall be delivered by hand, by e-mail or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case).

46.2 Any notice or communication shall be deemed to have been received

- 46.2.1 if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;
- 46.2.2 if sent by email to an Authorised Representative; or
- 46.2.3 if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Working Day after posting or at the time recorded by the delivery service.

46.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

47 GOVERNING LAW AND JURISDICTION

47.1 This Contract and any issues, disputes or claims (whether contractual or non-contractual) arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance with the laws of England and Wales

- 47.2 Subject to clause 19 (Disputes), the Parties agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (whether contractual or non-contractual) that arises out of or in connection with this Contract or its subject matter or formation.

48 SCHEDULES

- 48.1 Schedule 1 Special Conditions shall apply to this Contract
- 48.2 If specifically stated in the Order Form or IPA, the provisions of Schedule 3 (TUPE) shall apply to this Contract.

SCHEDULE 1 – SPECIAL CONDITIONS

1 Individual Placement Agreement (IPA)

- 1.1 The IPA will be reviewed as a minimum in accordance with the statutory requirements. Wherever possible, education, social care, health and other reviews will take place together. Either Party to the IPA may reasonably request a review meeting and consider what amendments (if any) are required to be made resulting from changes in the needs of a child or young person.
- 1.3 Following the review meetings any changes discussed regarding the IPA will not be implemented until relevant documentation has been updated by the Authority and signed by both Parties. The updated documentation will reflect the change(s) in assessed need and any fair and reasonable cost implications.
- 1.4 Changes to Services provided as identified in this Clause will be effective from a date agreed by both Parties and invoices should not reflect any change prior to the agreed date. Any invoices received detailing changes to the Services prior to the agreed date shall not be processed for payment by the Authority.

2 Absence and Unauthorised Absence

- 2.1 Where the child or young person becomes absent from the placement for a period of seven (7) days, the IPA will be reviewed and, if appropriate, varied to take regard of the Services required by the child or young person and the Contract Price varied according to any cost differentials.
- 2.2 During any Absence, the Provider must not fill a child or young persons' placement with another child or young person unless agreed in advance by the Authority in writing.
- 2.3 The Authority and the Provider shall agree in writing whether or not the placement shall be retained, during the child or young person's absence for an agreed period of time. If the placement is not retained the Authority will not be liable for any fees after seven (7) days following the child or young person's absence.
- 2.4 In the event that the child or young person's absence continues after any retention period agreed under paragraph 2.3, the IPA shall terminate in accordance with Clause 29.5 of the Framework Call-Off Terms and Conditions unless the Authority and Provider agree otherwise in writing.
- 2.5 Where the child or young person takes unauthorised absence, the Provider shall notify the Authority immediately and shall fully comply with the relevant protocols and also notify the Authority's individual case manager and the Authorised Representative. Unless notice to terminate the Contract has already

been served by either of the Parties, the twenty-eight (28) days' notice shall be deemed to have been served by the Provider which shall commence on the date that the child or young person left the placement unless otherwise agreed between the Parties.

- 3 Monitoring and KPI data** The Provider will supply the Authority with all monitoring and KPI data as detailed within the overarching and Lot specific specifications.

SCHEDULE 2 – TUPE

1. INTERPRETATION

The definitions in this paragraph apply in this Agreement:

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

- (a) the identity and age of the employee;
- (b) the employee's written statement of employment particulars (as required under section 1 of the Employment Rights Act 1996);
- (c) information about any disciplinary action taken against the employee and any grievances raised by the employee, where a Code of Practice issued under Part IV of the Trade Union and Labour Relations (Consolidation) Act 1992 relating exclusively or primarily to the resolution of disputes applied, within the previous two years;
- (d) 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 Provider arising out of the employee's employment with the transferor;
- (e) information about any collective agreement that will have effect after the Service Transfer Date, as the case may be, in relation to the employee under regulation 5(a) 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.

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

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

Replacement Services: any services that are fundamentally the same as any of the Services and which the Authority receives in substitution for any of the Services following the termination or expiry of this agreement, whether those services are provided by the Council internally or by any Replacement Provider.

Replacement Provider: any third party Provider of Replacement Services appointed by the Authority from time to time.

Service Transfer Date: the date on which the Services (or any part of the Services), transfer from the Provider or Subcontractor to the Council or any Replacement Provider.

Staffing Information: in relation to all persons detailed on the Provider's Provisional Staff List, in an anonymised format, such information as the Authority may reasonably request including the Employee Liability Information and details of whether the personnel are employees, workers, self-employed, contractors or consultants, agency workers or otherwise, and the amount of time spent on the provision of the Services.

Provider's Final Staff List: the list of all the Provider's and Subcontractor's personnel engaged in, or wholly or mainly assigned to, the provision of the Services or any part of the Services at the Service Transfer Date.

Provider's Provisional Staff List: the list prepared and updated by the Provider of all the Provider's and Subcontractor'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.

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

2. EMPLOYMENT EXIT PROVISIONS

- 2.1 This Agreement 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 expiry or termination of this Agreement, or part or otherwise) resulting in a transfer of the Services in whole or in part ("Subsequent Transfer"). If a Subsequent Transfer is a Relevant Transfer, then the Council or Replacement Provider will inherit liabilities in respect of the Relevant Employees with effect from the relevant Service Transfer Date.
- 2.2 The Provider shall and shall procure that any Subcontractor shall on receiving notice of termination of this Agreement or otherwise, on request from the Council and at such times as required by TUPE, provide in respect of any person engaged or employed by the Provider or any Subcontractor in the provision of the Services, the Provider's Provisional Staff List and the Staffing Information together with any additional information required by the Council, including information as to the application of TUPE to the employees. The Provider shall notify the Council of any material changes to this information as and when they occur.
- 2.3 At least 28 days prior to the Service Transfer Date, the Provider shall and shall procure that any Subcontractor shall prepare and provide to the Council and/or, at the direction of the Council, to the Replacement Provider, the Provider's Final Staff List, which shall be complete and accurate in all

material respects. The Provider's Final Staff List shall identify which of the Provider's and Subcontractor's personnel named are Relevant Employees.

- 2.4 The Council shall be permitted to use and disclose the Provider's Provisional Staff List, the Provider's Final Staff List and the Staffing Information for informing any tenderer or other prospective Replacement Provider for any services that are substantially the same type of services as (or any part of) the Services.
- 2.5 The Provider warrants to the Council and the Replacement Provider that the Provider's Provisional Staff List, the Provider's Final Staff List and the Staffing Information ("TUPE Information") will be true and accurate in all material respects and that no persons are employed or engaged in the provision of the Services other than those included on the Provider's Final Staff List.
- 2.6 The Provider shall and shall procure that any Subcontractor shall ensure at all times that it has the right to provide the TUPE Information under the DPA.
- 2.7 The Council regards compliance with this paragraph 2 as fundamental to the Agreement.
- 2.8 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 this Agreement shall not (so far as reasonably practicable) take place without the Council's prior written consent, unless such changes are required by law. The Provider shall and shall procure that any Subcontractor shall supply to the Council full particulars of such proposed changes and the Council shall be afforded reasonable time to consider them.
- 2.9 In the six (6) months prior to termination of this Agreement, the Provider shall not and shall procure that any Subcontractor shall not materially increase or decrease the total number of staff listed on the Provider's Provisional Staff List, their remuneration, or make any other change in the terms and conditions of those employees without the Council's prior written consent (such consent not to be unreasonably withheld).
- 2.10 The Provider shall indemnify and keep indemnified in full the Council and any Replacement Provider against all Employment Liabilities relating to:
 - (a) any person who is or has been employed or engaged by the Provider or any Subcontractor in connection with the provision of any of the Services; or
 - (b) any trade union or staff association or employee representative
- 2.11 Arising from or connected with any failure by the Provider and/or any Subcontractor to comply with any legal obligation, whether under regulation 13 or 14 of TUPE or any award of compensation under regulation 15 of TUPE or otherwise and, whether any such claim arises or has its origin before or after the Service Transfer Date.
- 2.12 The Parties shall co-operate to ensure that any requirement to inform and consult with the employees and or employee representatives in relation to any Relevant Transfer as a consequence of a Subsequent Transfer will be fulfilled.
- 2.13 The Parties agree that the Contracts (Rights of Third Parties) Act 1999 shall apply from paragraph 2.2 to paragraph 2.12, to the extent necessary to ensure that any Replacement Provider shall have the right to enforce the obligations owed to, and indemnities given to, the Replacement Provider by the

Provider or the Council in its own right under section 1(1) of the Contracts (Rights of Third Parties) Act 1999.

- 2.14 Despite paragraph 2.13, it is expressly agreed that the Parties may by agreement rescind or vary any terms of this Agreement 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

SCHEDULE 3 – DATA PROTECTION (CONTROLLER TO CONTROLLER)

1. Interpretation

The definitions in this paragraph apply in this Agreement:

Agreed Purposes: purpose of carrying out its function in providing educational services to the individual child/young person within an Independent Special School or Alternative Education Placement. .

Controller, processor, data subject, personal data, personal data breach, processing and appropriate technical and organisational measures: as set out in the Data Protection Legislation.

Data Discloser: a party that discloses Shared Personal Data to the other party.

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

Permitted Recipients: the parties to this agreement, the employees of each party, any third parties engaged to perform obligations in connection with this agreement.

Shared Personal Data: the personal data to be shared between the parties under paragraph 2.1 of this agreement. Shared Personal Data shall be confined to the following categories of information relevant to the following categories of data subject:

- a) Personal information,
- b) special categories of personal data; and
- c) criminal offence data

2. Data Protection

- 2.1 **Shared Personal Data.** This paragraph sets out the requirements for the sharing of personal data between the Parties as controllers. Each party acknowledges that one Party (referred to in this paragraph as the Data Discloser) will regularly disclose to the other Party Shared Personal Data collected by the Data Discloser for the Agreed Purposes.
- 2.2 **Effect of non-compliance with Data Protection Legislation.** Each Party shall comply with all the obligations imposed on a controller under the Data Protection Legislation, and any material breach of the Data Protection Legislation by one party shall, if not remedied within 30 days of written notice from the other Party, give grounds to the other Party to terminate this Contract with immediate effect.
- 2.3 **Particular obligations relating to data sharing.** Each party shall:

- (a) ensure that it has all necessary notices and consents and lawful bases in place to enable lawful transfer of the Shared Personal Data to the Permitted Recipients for the Agreed Purposes;
- (b) give full information as required under article 13 and article 14 of the UK GDPR to any data subject whose personal data may be processed under this agreement of the nature of such processing. This includes giving notice that, on the termination of this Contract, personal data relating to them may be retained by or, as the case may be, transferred to one or more of the Permitted Recipients, their successors and assignees;
- (c) process the Shared Personal Data only for the Agreed Purposes;
- (d) not disclose or allow access to the Shared Personal Data to anyone other than the Permitted Recipients;
- (e) ensure that all Permitted Recipients are subject to written contractual obligations concerning the Shared Personal Data (including obligations of confidentiality) which are no less onerous than those imposed by this Contract;
- (f) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the other Party, to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data and shall provide written notice to the other if it becomes aware of a personal data breach involving Shared Personal Data.
- (g) not transfer any personal data received from the Data Discloser outside the UK unless the transferor ensures that (i) the transfer is to a country approved under the applicable Data Protection Legislation as providing adequate protection; or (ii) there are appropriate safeguards or binding corporate rules in place pursuant to the applicable Data Protection Legislation; or (iii) the transferor otherwise complies with its obligations under the applicable Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred; or (iv) one of the derogations for specific situations in the applicable Data Protection Legislation applies to the transfer.

2.4 **Mutual assistance.** Each Party shall assist the other in complying with all applicable requirements of the Data Protection Legislation. In particular, each Party shall:

- (a) consult with the other Party about any notices given to data subjects in relation to the Shared Personal Data;
- (b) promptly inform the other party about the receipt of any data subject rights request;
- (c) provide the other Party with reasonable assistance in complying with any data subject rights request;
- (d) not disclose, release, amend, delete or block any Shared Personal Data in response to a data subject rights request without first consulting the other Party wherever possible;
- (e) assist the other Party, at the cost of the other Party, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation

with respect to security, personal data breach notifications, data protection impact assessments and consultations with the Information Commissioner or other regulators;

- (f) notify the other Party without undue delay on becoming aware of any breach of the Data Protection Legislation;
- (g) at the written direction of the Data Discloser, delete or return Shared Personal Data and copies thereof to the Data Discloser on termination of this agreement unless required by law to store the Shared Personal Data;
- (h) use compatible technology for the processing of Shared Personal Data to ensure that there is no lack of accuracy resulting from personal data transfers;
- (i) maintain complete and accurate records and information to demonstrate its compliance with this paragraph 2.4 and allow for audits by the other Party or the other Party's designated auditor; and
- (j) provide the other Party with contact details of at least one employee as point of contact and responsible manager for all issues arising out of the Data Protection Legislation, including the joint training of relevant staff, the procedures to be followed in the event of a personal data breach, and the regular review of the Parties' compliance with the Data Protection Legislation.

2.5 **Indemnity.** Each Party shall indemnify the other against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the indemnified party arising out of or in connection with the breach of the Data Protection Legislation by the indemnifying party, its employees or agents, provided that the indemnified party gives to the indemnifier prompt notice of such claim, full information about the circumstances giving rise to it, reasonable assistance in dealing with the claim and sole authority to manage, defend and/or settle it.

SCHEDULE 5 FRAMEWORK REOPENING PROCEDURE

1 TERM

- 1.1 No later than the end of the Term, the Authority will issue a Tender Notice (a Subsequent Framework Tender Notice) via the Central Digital Platform to commence a competitive tendering procedure in relation to the Subsequent Framework.
- 1.2 There is no maximum number of Framework Providers under the Subsequent Framework. The Provider will automatically be reappointed onto their relevant Lots of the Subsequent Framework, on the basis of its Tender, unless the Provider notifies the Authority in writing by email to procurementpeople-mailbox@devon.gov.uk by no later than 12th December 2025 that they either wish to submit a new Tender or they do not want to be reappointed on to one or more Lots of the Subsequent Framework.

2 AWARD OF CALL-OFF CONTRACTS

- 2.1 In the event that the Subsequent Framework has not been awarded on expiry of the Term (or the relevant subsequent Term, as the case may be), the Authority may continue to award Contracts to Framework Providers under the terms of this Framework Agreement (or relevant Subsequent Framework) as if the relevant agreement had not expired until the Subsequent Framework has been awarded.