

**INVITATION TO TENDER Call off CONTRACT**

**FOR THE PURCHASE OF**

**Greater Manchester Public Sector Apprenticeship Provision**

**DYNAMIC PURCHASING SYSTEM FOR APPRENTICESHIP TRAINING PROVIDER SERVICES**

**INDICATIVE CONTRACT TERMS AND CONDITIONS**

The following terms and conditions are indicative of the terms and conditions that will apply to all contracts awarded pursuant to this Dynamic Purchasing System which will run for 2 years with a potential 2 year extension.

These terms may not be qualified or amended with the submission of an indicative tender for selection to this Dynamic Purchasing System.

Where an invitation to tender from this Dynamic Purchasing System makes reference to these terms and conditions they will be wholly incorporated in the Contract as defined in this document, unless otherwise amended by Lead Authority in the invitation to tender.

Further conditions may be incorporated within specific contracts by the Purchasing Body. Where this is the case, details of those further conditions will be included with the invitation to tender. It is a requirement that all tenders are submitted based on all incorporated conditions communicated in the invitation to tender.

It may be necessary for the Provider and Purchasing Body to sign a written Contract and for each party to retain a copy following an award of contract from this Dynamic Purchasing System.

It is not a requirement for tenderers to sign these terms and conditions with their indicative tender offer for selection to this Dynamic Purchasing System.

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| **1** |  | **BACKGROUND** |
|  | **1.1** | The Lead Authority placed a contract notice in the Official Journal of the European Union 2017/S 199-409788 17th October 2017 seeking expressions of interest from contractors for the provision of Apprenticeship Training Provider Services to the Purchasing Body and other contracting bodies identified in the contract notice under a dynamic purchasing system. |
|  | **1.2** | The Contract is divided into the following lots:  Lot 1 – Agriculture, Environmental and Animal Care Lot 2 – Business and Administration  Lot 3 – Catering and Hospitality  Lot 4 – Childcare and Education  Lot 5 – Construction  Lot 6 – Creative & Design  Lot 7 – Digital  Lot 8 – Engineering & Manufacturing  Lot 9 – Health & Science  Lot 10 – Legal, Finance & Accounting  Lot 11 – Protective Services  Lot 12 – Sales, Marketing & Procurement  Lot 13 – Social Care  Lot 14 – Hair & Beauty  Lot 15 - Transport & Logistics |
|  | **1.3** | On the basis of the Provider’s Tender, the Purchasing Body has selected the Provider to enter into a Contract to provide the Services to the Purchasing Body. |

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| **2** |  | **DEFINITIONS**  In the Contract unless the context otherwise required the following provisions shall have the meanings give to them below: |
|  | **2.1** | **‘AGMA’** The Association of Greater Manchester Authorities is a partnership  between the ten local authorities within the Greater Manchester area. These ten  authorities co-operate on a number of issues, both statutory and non-statutory,  where there is the possibility of improving service delivery by working together. To  further increase partnership working, AGMA invited unitary local authorities from  the surrounding areas to join AGMA as associate members.    Association of Greater Manchester Authorities (AGMA) and its associate members, and Manchester Partners - includes the following Councils: Bolton, Stockport, Tameside, Oldham, Manchester, Rochdale, Bury, Salford, Wigan, Blackburn Darwen BC, Blackpool, Cheshire East, Warrington and any of their successor organisations. |
|  | **2.2** | **“Authorised Officer”** the person duly appointed by the Purchasing Body to act as the representative of the Purchasing Body for the purpose of the Contract and notified in writing to the Provider from time to time and identified in the Contract Particulars or as amended from time to time and in default of such notification the Purchasing Body’s head of procurement or similar responsible officer. |
|  | **2.3** | **‘Background IPR’** any Intellectual Property Rights vested in or licensed to the Purchasing Body or the Provider prior to or independently of the performance by the Provider of its obligations under this Contract; |
|  | **2.4** | **“Call Off Contract”** means Contract as defined below. |
|  | **2.5** | **“Change in Law”** the coming into effect or repeal (without re‑enactment or consolidation) in England and Wales of any Law, or any amendment or variation to any Law, or any judgement of a relevant court of law which changes binding precedent in England in each case after the date of this Contract. |
|  | **2.6** | **‘Commencement Date’** means the date the provision of Services commences as agreed at Contract award; |
|  | **2.7** | **‘Commercially Sensitive Information’** means the Confidential Information marked as  Confidential and comprising information:-   which is provided by the Provider and designated as commercially sensitive information by the Purchasing Body for the term of the Contract and/or   that constitutes a trade secret. |
|  | **2.8** | **‘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 the disclosure of which would, or would be likely to, prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights and know-how of either Party and all personal data and sensitive personal data within the meaning of the DPL;   the Commercially Sensitive Information, |
|  | **2.9** | **‘Contracting Officer'** means the Purchasing Body’s Officer responsible for Apprenticeship Provision |
|  | **2.10** | **‘Contract’** this agreement entered into following the Provider’s acceptance of an Invitation to Tender placed by the Purchasing Body in accordance with the DPS Agreement and in respect of the provision of the Services consisting of the following listed documents which shall be read as one document. In the event of ambiguity, conflict or contradictions between these documents the conflict will be resolved according to the following order of priority:   1. Invitation to Tender 2. these Order Conditions of Contract; 3. the Request for Quotation except to the extent that any element of the Quotation has been included in the Contract Particulars; 4. the Quotation except to the extent that any element of the Quotation has been included in the Contract Particulars; 5. the DPS Agreement; |
|  | **2.11** | **`Contract Period’** means the period from the Commencement Date to the date of  expiry as agreed at Contract award, or such earlier date of termination or partial termination of the agreement in accordance with the provisions of the Contract; |

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|  | **2.12** | **‘Contract Price’** means the price as set out in the Pricing Schedule at Appendix 2; |
|  | **2.13** | **`DBS’** means Disclosure and Barring Service; |
|  | **2.14** | **‘Default’** means any breach of the obligations of the relevant Party (including but not limited to fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or negligent statement of the relevant Party or the Employees in connection with or in relation to the subject-matter of the Contract and in respect of which such Party is liable to the other; |
|  | **2.15** | **‘DPL’** means all legislation and regulatory requirements in force relating to the use of personal data and the privacy of electronic communications, including, without limitation (i) any data protection legislation from time to time in force in the UK including the Data Protection Act 2018 or any successor legislation, as well as (ii) the General Data Protection Regulation ((EU) 2016/679) and any other directly applicable European Union regulation relating to data protection and privacy (for so long as and to the extent that the law of the European Union has legal effect in the UK).  ; |
|  | **2.16** | **‘DPS Agreement’** means the DPS agreement entered into by the Lead Authority and the Provider as a result of the Official Journal of the European contract notice (2017/S199-409788) which makes provisions for the Purchasing Body to place an Invitation to Tender for the Services. |
|  | **2.17** | **‘Delivery Instructions’** the delivery instructions specified by the Purchasing Body and detailed in the Contract Particulars together with any other information that the Purchasing Body considers appropriate to the provision of the Services. |
|  | **2.18** | **`Environmental Information Regulations’** means the Environmental Information Regulations 2004 and any subsequent revision or amendment; |
|  | **2.19** | **‘Employees’** means all persons employed by the Provider together with the  Contractor’s servants, agents, contractors and sub-contractors used in the performance of its obligations under this Contract; |
|  | **2.20** | **‘Equipment’** means the Contractor’s equipment, plant and materials used in the performance of its obligations under this Contract; |
|  | **2.21** | **‘FOIA’** means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time with any guidance and/or codes of practice issued by the Information Commissioner in relation to the legislation; |
|  | **2.22** | **`Force Majeure’** means any event or occurrence which is outside the reasonable control of the Party concerned and which is not attributable to any act or failure to take preventative action by that Party, including fire; flood; violent storm; pestilence; explosion; malicious damage; armed conflict; acts of terrorism; nuclear, biological or chemical warfare; or any other disaster, natural or man-made, but excluding:-   Any industrial action occurring within the Contractor’s or any sub contractor’s organisation or;  • The failure by any sub-contractor to perform its obligations under any sub- contract (unless such failure itself is caused by Force Majeure); |
|  | **2.23** | **‘Foreground IPR’** means IPR arising as a result of the provision of the Services by the Provider under the Contract; |
|  | **2.24** | **‘Funding Rules’** means the Apprenticeship Funding and Performance-Management Rules for Training Providers dated April 2017 produced by the SFA and any subsequent revision of the same attached to this Agreement at Appendix 3; |
|  | **2.25** | **`Good Industry Practice’** means standards, practices, methods and procedures conforming to the Law and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking under the same or similar circumstances; |
|  | **2.26** | **`Information’** has the meaning given under section 84 of the FOIA; |
|  | **2.27** | **‘Intellectual Property Rights’** shall mean patents, trademarks, service marks, logos, design rights (whether registrable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registrable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off; |
|  | **2.28** | **‘Intellectual Property Rights’ or ‘IPR’** means all patents, trademarks, service marks, logos, design rights (whether registrable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights, and other similar rights or obligations whether registrable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off; |
|  | **2.29** | **`Law’** means any applicable Act of Parliament, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, enforceable community right within the meaning of Section 2 of the European Communities Act 1972, regulatory policy, guidance or industry codes, judgement of a relevant court of law, or directives or requirements of any Regulatory Body of which the Provider is bound to comply; |
|  | **2.30** | **“Lead Authority”** means Trafford Borough Council who procured the Services on behalf of AGMA members and who entered into the DPS Agreement with the Provider for provision of the Services |
|  | **2.31** | **‘Month’** means calendar month; |
|  | **2.32** | **‘Notice’** means notice given in accordance with clause 9 |
|  | **2.33** | **“Invitation to Tender ”** an Invitation to Tender specifying particular requirements for Services placed by the Purchasing Body to the Provider in accordance with the Invitation to Tender process detailed in Schedule 4 of the DPS Agreement, and in particular clause O4 and in accordance with the terms and conditions of the DPS Agreement |
|  | **2.34** | **“Order Conditions of Contract”** These terms and conditions which shall be applicable to any Invitation to Tender placed by the Purchasing Body and accepted by the Provider in accordance with the DPS Agreement |
|  | **2.35** | **`Parent Company’** means any company which is the ultimate Holding Company of the Provider or any other company of which the ultimate Holding Company of the Provider is also the ultimate Holding Company and which is either responsible directly or indirectly for the business activities of the Provider or which is engaged by the same or similar business to the Contractor. The term “Holding Company” shall have the meaning ascribed in Section 736 of the Companies Act 1985 or any statutory re- enactment or amendment thereto; |
|  | **2.36** | **‘Party’** means the Purchasing Body or the Provider and ‘Parties’ should be construed accordingly; |
|  | **2.37** | **‘Premises’** or **‘Site’** means any location where the Services are delivered; |
|  | **2.38** | **`Product of the Services’** means all reports, checks, collated data and documentation in whatever format that the Provider shall or may create to delivery to the Purchasing Body as part of the Services provided by the Provider; |
|  | **2.39** | **‘Prohibited Act’**: the following constitute Prohibited Acts:  1. to directly or indirectly offer, promise or give any person working for or engaged by the Purchasing Body a financial or other advantage to:  a. induce that person to perform improperly a relevant function or activity;  or  b. reward that person for improper performance of a relevant function or activity;  2. to directly or indirectly request, agreed 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 Contract;  3. committing any offence:  a. under the Bribery Act 2010;  b. under the legislation creating offences concerning fraudulent acts;  c. at common law concerning fraudulent acts relating to this Contract or |
|  |  | any other contract or agreement with the Purchasing Body; or  d. defrauding, attempting to defraud or conspiring to defraud the Purchasing Body. |
|  | **2.40** | **“Provider”** the Provider and where applicable this shall include the Provider's Employees, sub-contractors, agents, representatives, and permitted assigns and, if the Provider is a consortium or consortium leader, the consortium members. |
|  | **2.41** | **“Purchasing Body”** the AGMA Member, associate member, or other Public Body in the Greater Manchester named in the OJEU Notice 17th October 2017 2017/S 199-409788 placing an Invitation to Tender for Services and as specifically named in the Invitation to Tender as the Purchasing Body and where the context so admits includes any person which takes over or assumes the statutory functions or administrative responsibilities of the Purchasing Body (whether in part or totally) or which is controlled by or is under common control with the Purchasing Body (and the expression “control” shall mean the power to direct or cause the direction of the general management and policies of the person in question but only for so long as such control exists). |
|  | **2.42** | **`Quality Standards’** means the quality standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardisation or other reputable or equivalent body (and their successor bodies), that a skilled and experienced operator in the same type of industry or business sector as the Provider would reasonably and ordinarily be expected to comply with and any other quality standards as set out in the Specification; |
|  | **2.43** | **`Regulatory Bodies’** means those government departments and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes or practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in the Contract or any other affairs of the Purchasing Body; |
|  | **2.44** | **`Services’** means the Services as detailed in the Specification; |
|  | **2.45** | **‘SFA’** means the Skills Funding Agency being the body responsible for managing the digital apprenticeship funding service to enable employers to control funding and recruit high-quality apprentices; |
|  | **2.46** | **‘Specification’** means the specification attached at Appendix 1; |
|  | **2.47** | **`Tender’** means both the documents published by the Purchasing Body and the document(s) submitted by the Provider to the Purchasing Body in response to the Purchasing Body’s procurement process; |
|  | **2.48** | **‘Term’** means the Term as detailed in clauses 4 and 5; |
|  | **2.49** | **‘Tupe ‘**The Transfer of Undertakings (Protection of Employment) Regulations 2006. |
|  | **2.50** | **`VAT’** means value added tax in accordance with the provisions of the Value Added Tax Act 1993; |
|  | **2.51** | **‘Working Days’** means Monday to Friday inclusive but not including any declared public holiday. |

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| **3.** |  | **INTERPRETATION** |
|  |  | The interpretation and construction of the Contract, including the Appendices, shall be subject to the following provisions: |
|  | 3.1 | words importing the singular meaning include where the context so admits the plural meaning and vice versa; |
|  | 3.2 | words importing the masculine include the feminine and the neuter; |
|  | 3.3 | the words “include”, “includes” and “including” are construed as though they were immediately followed by the words “without limitation”; |
|  | 3.4 | references to any person shall include 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 and transferees; |
|  | 3.5 | reference 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; |
|  | 3.6 | headings in this Contract are for ease of reference only and shall not affect the interpretation or construction of the Contract; |
|  | 3.7 | reference to a clause is a reference to the whole of that clause unless stated otherwise; |
|  | 3.8 | references to clauses and appendices are references to clauses and Appendices to this Contract; |
|  | 3.9 | the provisions of the Appendices are incorporated in this Contract; |
|  | 3.10 | any periods of time referred to in this Contract and expressed in days shall refer to calendar days unless stated otherwise; |

**PART ONE: TERM, EXTENSION AND PRIORITY**

4. **Term**

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|  | 4.1 | The Contract shall take effect on the Commencement Date and shall expire automatically on the date agreed at Contract award, unless it is terminated earlier in accordance with the provisions of the Contract or otherwise lawfully terminated, or it is extended under clause 5 Extension of the Term |
| 5 |  | **Extension of Term** |
|  | 5.1 | Subject to satisfactory performance by the Provider of its obligations under the Contract, the Purchasing Body may, by giving Notice to the Provider extend the Contract Period by giving Notice to the Provider. |
| 6 |  | **Priority** |
|  | 6.1 | In the event of any conflict between the Specification, the Contract and any document referred to in those clauses, the conflict shall be resolved in the following order of precedence: |
|  |  | i. the Specification  ii. the Contract Terms;  iii. the Tender; and  iv. any other document referred to in the clauses of the Contract |

**PART TWO: GENERAL CONTRACT OBLIGATIONS**

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| 7 |  | **CONTRACTOR’S STATUS** |
|  | 7.1 | At all times during the Term the Provider shall be an independent Provider and nothing in the Contract shall create a contract of employment, a relationship of agency or partnership or a joint venture between the Parties and, accordingly, neither Party shall be authorised to act in the name of, or on behalf of, or otherwise bind the other Party save as expressly permitted by the terms of the Contract. |

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| 8 |  | **PURCHASING BODY’S OBLIGATIONS** |
|  | 8.1 | Save as otherwise expressly provided, the obligations of the Purchasing Body under the Contract are obligations of the Purchasing Body in its capacity as a contracting counterparty and nothing in the Contract shall operate as an obligation upon, or in any other way fetter or constrain the Purchasing Body in any other capacity or lead to any liability under the Contract (howsoever arising) on the part of the Purchasing Body to the Contractor. The Purchasing Body shall pay any undisputed sums incurred which are due prior to any termination |

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| 9 |  | **NOTICES** |
|  | 9.1 | Any Notice to be given under this Contract shall be in writing and shall be hand delivered or sent by first class mail to the address of the Provider and the Purchasing Body at the head of this Contract or such other address as that party may from time to time notify to the other party in accordance with this clause. |
|  | 9.2 | Provided the Notice sent as above is not returned as undelivered it shall be deemed to have been received: |
|  | 9.2.1 | if delivered by hand before 4pm on a Working Day, at the time of delivery, otherwise receipt will be deemed to occur at 9am on the next following Working Day; or |
|  | 9.2.2 | if delivered by first class inland mail, two Working Days after the day of posting. |
|  | 9.3 | In proving the giving of a Notice it shall be sufficient to prove that the Notice was left or that the envelope containing the Notice was properly addressed and posted. |
|  | 9.4 | For the purposes of this clause “writing” shall not include email and Notices will not be sent by email. |

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| 10 |  | **CONFLICTS OF INTEREST** |
|  | 10.1 | The Provider shall use reasonable endeavours to ensure that neither the Provider or nor any of its Employees, servants, agents, suppliers or sub-contractors is placed in a position where there is or may be an actual conflict or potential conflict between the pecuniary interests of the Provider or such persons and the duties owed to the Purchasing Body under the provisions of the Contract. The Provider shall disclose to the Purchasing Body full particulars of any such conflict of interest which may arise. |
|  | 10.2 | This clause shall apply during the Term and for a period of two (2) years after expiry of the Term. |

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| 11 |  | **PREVENTION OF BRIBERY** |
|  | 11.1 | The Contractor: |
|  | 11.1.1 | shall not, and shall procure that any agent, consultant, contractor, employee and sub- Provider of the Provider or any of its sub-contractors shall not, in connection with this Contract commit a Prohibited Act. |
|  | 11.1.2 | warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by the Purchasing Body, or that an agreement has been reached to that effect, in connection with the execution of this Contract, excluding any arrangement of which full details have been disclosed in writing to the Purchasing Body before execution of this Contract. |
|  | 11.2 | The Provider shall: |
|  | 11.2.1 | if requested, provide the Purchasing Body with any reasonable assistance, at the Purchasing Body’s reasonable cost, to enable the Purchasing Body to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act; |
|  | 11.2.2 | within 14 Working Days of the date at the head of this Contract, and annually  thereafter, certify to the Purchasing Body in writing (such certification to be signed by an officer of the Contractor) compliance with this clause 11 by the Provider and all persons associated with it or other persons who are supplying Services in connection with this Contract. The Provider shall provide such supporting evidence of compliance as the Purchasing Body may reasonably request. |
|  | 11.3 | The Provider shall have an anti-bribery policy (which shall be disclosed to the Purchasing Body) to prevent any agent, consultant, contractor, employee or sub-Provider of the Provider from committing a Prohibited Act and shall enforce it where appropriate. |
|  | 11.4 | If any breach of clause 11.1 is suspected or known, the Provider must notify the Purchasing Body immediately. |
|  | 11.5 | If the Provider notifies the Purchasing Body that it suspects or knows that there may be a breach of clause 11.1, the Provider must respond promptly to the Purchasing Body’s enquiries, co-operate with any investigation, and allow the Purchasing Body to audit books, records and any other relevant documentation. |
|  | 11.6 | The Purchasing Body may terminate this Contract by written Notice with immediate effect if the Contractor, its agents, consultants, contractors, employees or sub-contractors, (in all cases whether or not acting with the Contractor’s knowledge) breaches clause 11.1. |
|  | 11.7 | Any Notice of termination under 11.6 must specify:  a) the nature of the Prohibited Act;  b) the identity of the party whom the Purchasing Body believes has committed the Prohibited Act; and  c) the date on which this Contract will terminate. |
|  | 11.8 | Despite clause 48, any dispute relating to:  a) the interpretation of clause 11 or  b) the amount or value of any gift, consideration or commission;  shall be determined by the Purchasing Body and its decision shall be final and conclusive. |
|  | 11.9 | Any termination under clause 11.6 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Purchasing Body. |

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| 12 |  | **WARRANTIES** |
|  | 12.1 | The Provider warrants and represents to the Purchasing Body that: |
|  | 12.1.1 | it has the full capacity and authority and all necessary consents, licences and permits  to enter into and perform this Contract and that the Contract is executed by a duly authorised representative of the Provider; |
|  | 12.1.2 | as at the date of this Contract it is not in default in the payment of any due and payable taxes or in the filing, registration or recording of any document or under any legal or statutory obligation or requirement which default might have a material adverse effect on its business, assets or financial condition or its ability to observe or perform its obligations under this Contract |
|  | 12.1.3 | as at the Commencement Date, all information, statements and representations contained in the Invitation to Tender are true, accurate and not misleading save as may have been specifically disclosed in writing to the Purchasing Body prior to the execution of this Contract and it will promptly advise the Purchasing Body of any fact, matter or circumstance of which it may become aware which would render any such information, statement or representation to be false or misleading; |
|  | 12.1.4 | no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might affect its ability to perform its obligations under this Contract which may be entered into with the Purchasing Body; |
|  | 12.1.5 | 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 Contractor’s assets or revenue; |
|  | 12.1.6 | it will supply the Services using reasonable care, skill and diligence using suitably qualified Employees and in accordance with generally accepted industry standards and practice; and |
|  | 12.1.7 | in entering into the Contract it has not committed any fraud. |

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| 13 |  | **HEALTH AND SAFETY** |
|  | 13.1 | The Provider shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and all other acts, orders, regulations and codes of practice relating to health and safety which may apply to those persons on its premises while under the control of the Provider and promptly notify the Purchasing Body of any health and safety issues or incidents arising. |

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| 14 |  | **ORDERING PROCESS** |
|  | 14.1 | The Lead Authority has selected providers for appointment to the DPS Agreement in accordance with Process of the DPS Agreement. |
|  | 14.2 | The Purchasing Body has selected the Provider to supply the Services in accordance with the ordering process identified in Schedule 4 of the DPS Agreement. |

**PART THREE: SERVICES**

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| 15 |  | **CONTRACT PRICE AND PAYMENT** |
|  | 15.1.1 | In consideration of the Contractor's satisfactory performance of its obligations under the Contract, the Purchasing Body shall authorise the SFA to release payment of the Contract Price to the Contractor. |
|  | 15.1.2 | Payment shall be made in accordance with the Funding Rules and any other requirements of the SFA. |
|  | 15.1.3 | The Purchasing Body may, entirely at its discretion, pay the Provider an additional amount for additional Services the Purchasing Body deems necessary. |
|  | 15.1.4 | Payment shall, unless otherwise stated, be deemed to be inclusive of VAT, costs, expenses and overheads of any kind incurred by the Provider in providing the Services. |
|  | 15.1.5 | The Contract price shall remain fixed for the duration of the Term. |
|  | 15.1.6 | If the Purchasing Body intends to withhold all or any part of a payment it must not later than 5 Working Days before the final date for payment give notice to the Provider to that effect which notice must specify the amount proposed to be withheld and the ground for doing so. |
|  | 15.1.7 | The Purchasing Body may change the funding band structure in line with the revisions from time to time of the Education and Skills Agency as an executive agency of Department for Education or its successor. |

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| 16 |  | **RECOVERY OF SUMS DUE** | | |
|  | 16.1 | Wherever under the Contract any sum of money is recoverable from or payable by the Provider (including any sum which the Provider is liable to pay to the Purchasing Body in respect of any breach of the Contract), the Purchasing Body may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Provider under the Contract or under any other agreement or contract with the Purchasing Body. | | |
|  | 16.2 | Any overpayment, whether of the Contract Price or of VAT or otherwise, shall be a sum of money recoverable by the Party who made or authorised the overpayment from the Party in receipt of the overpayment. | | |
|  | 16.3 | The Provider shall make any payments due to the Purchasing Body without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Provider has a valid court order requiring an amount equal to such deduction to be paid by the Purchasing Body to the Provider. | | |
| 17 |  | **SUPPLY OF SERVICES** | | |
|  | 17.1 | The Provider shall supply the Services under the lots notified on Contract award in accordance with the Purchasing Body requirements in the Contract, the Specification, and any obligations implied by Section 2 of the Supply of Goods and Services Act 1982 and all relevant national specifications applicable to such including those of the British Standards Institution or European equivalent (or if there be no such specification shall be of the highest standard). | | |
|  | 17.2 | The Provider acknowledges that the Purchasing Body relies on the skill and judgment of the Provider in the supply of the Services and the performance of its obligations under the Contract. | | |
| 18 |  | | **SFA REQUIREMENTS RELATING TO SUPPLY OF SERVICES** |
|  | 18.1 | | The Provider shall: |
|  | 18.1.1 | | comply with the Funding Rules and any subsequent revision of the same; |
|  | 18.1.2 | | provide ILR data to enable the Purchasing Body to produce data returns that accurately reflect delivery information; |
|  | 18.1.3 | | give the SFA, and any other person nominated by them, access to its premises and to all documents relating to the delivery of the Services; |
|  | 18.1.4 | | provide the Purchasing Body with sufficient evidence to enable it to: |
|  | 18.1.4.1. | | assess the Provider’s performance against Ofsted’s Common Inspection  Framework or the requirements of the QAA Quality Code; |
|  | 18.1.4.2 | | incorporate the evidence provided into the Purchasing Body’s self-assessment report; |
|  | 18.1.4.3 | | guide the judgements and grades within the Purchasing Body’s self-assessment report. |
|  | 18.1.5 | | always have suitably qualified staff available to provide the Services; |
|  | 18.1.6 | | co-operate with the Purchasing Body to ensure there is continuity of learning for apprentices should this Contract be terminated for any reason; |
|  | 18.1.7 | | inform the Purchasing Body if evidence of irregular financial or delivery issues arises which could include but is not limited to non-delivery of training when funds have been paid, sanctions imposed by an awarding organisation, allegations of fraud, an inadequate Ofsted grade, not meeting relevant QAA Quality Code indicators, allegations or complaints by apprentices, employers, staff members of other relevant parties; |
|  | 18.1.8 | | not use any payment received under this Contract to make bids for or claims from any European funding on its own behalf or on behalf of the SFA; |
|  | 18.1.9 | | not use any payment made under this Contract as match funding for any European Social Fund projects. |

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|  | 18.2 | The Provider shall indemnify the Purchasing Body in respect of any recovery of the Contract Price by the SFA arising from the Provider’s failure to comply with the requirements of the Funding Rules. |
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| 19 |  | **DELIVERY** |
|  | 19.1 | The Provider shall deliver the Services at the time(s), date(s) and Premises as specified and strictly in accordance with the Specification at all times. |
|  | 19.2 | The Provider shall not deliver any Services without the Purchasing Body’s prior request and approval. |
|  | 19.3 | The Purchasing Body shall be under no obligation to accept or pay for any Services delivered in excess of those ordered. |
|  | 19.4 | The Purchasing Body shall be under no obligation to accept or pay for any Services supplied earlier than the date for delivery specified. |
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| 20 |  | **SAFEGUARDING CHILDREN AND VULNERABLE ADULTS** |
|  | 20.1 | The Provider shall comply with all legislative requirements and good practice guidance in respect of safeguarding children and vulnerable adults, including carrying out DBS checks, to the extent that such are applicable to the provision of the Services. |
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| 21 |  | **SURVIVAL** |
|  | 21.1 | The following clauses will survive termination or expiry of the Contract: Clause 42 (Consequences of Termination), Clause 27 (Intellectual Property), Clause 34(Confidentiality and Publicity), Clause 33 (Data Protection), Clause 35(Freedom of Information), Clause 36 (Record Keeping and Monitoring), Clause 23 (TUPE and Re-Tendering), Clause 32 (Severance), Clause 53 (Non Solicitation and Offers of Employment) and Clause 50 (Law and Jurisdiction). |
| 22 |  | **CORPORATE REQUIREMENTS** |
|  | 22.1 | The Provider shall comply with all obligations under the HRA. |
|  | 22.2 | The Provider shall adopt and comply with its own policies and rules, such as, but not limited to:  22.2.1 equality and diversity policies which shall comply with its statutory obligations under the Equalities Act 2010 (“Equalities Act”) and all other relevant anti-discrimination and equalities legislation, codes of practice and guidance and accordingly will not unlawfully discriminate against (either directly or indirectly) or treat less favourably than others any person or group of people because of their colour, race, nationality or ethnic origin, disability, sex or sexual orientation, religion or belief, or age;  22.2.2 sustainability;  22.2.3 information security rules;  22.2.4 whistleblowing and/or confidential reporting policies; and  22.2.5 all site rules and relevant legislation relevant to the fulfilment of the Provider’s obligations in the performance and delivery of the Services.    The Provider shall ensure that such policies are compatible with the Purchasing Body’s policies and shall at its own costs provide copies of any such policies to the Purchasing Body upon request by the Purchasing Body. |
|  | 22.3 | The Provider shall not unlawfully discriminate within the meaning and scope of any law including but not limited to the Provider’s obligations under the Equalities Act and all regulations and Codes of Practice made thereunder, enactment, order, or regulation relating to discrimination (whether age, race, gender, religion, disability, sexual orientation or otherwise) in employment and the Provider in performing the Services shall have due regard to the need:  22.3.1 to eliminate unlawful racial discrimination; and  22.3.2 to promote equality of opportunity and good relations between people of different racial groups  22.3.3 the Provider shall comply at all times with any Race Relations Performance Requirements in the performance of the Services. |
|  | 22.4 | The Provider shall comply with all relevant legislation relating to its Employees however employed including (but not limited to) the compliance in law of the ability of the Employees to work in the United Kingdom. |
|  | 22.5 | If the Provider has a finding against it relating to its obligations under clause 25.4 it will provide the Purchasing Body with:  22.5.1 details of the finding; and  22.5.2 the steps the Provider has taken to remedy the situation. |
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| 23 |  | **TUPE AND RE-TENDERING** |
|  | 23.1 | In the event of expiry or termination of this Contract or whenever reasonably requested by the Purchasing Body in preparation for tendering arrangements the Provider will provide the Purchasing Body with such assistance as the Purchasing Body may require and provide at no cost to the Purchasing Body any information the Purchasing Body (whether on its own account or on behalf of any potential or confirmed Replacement Contractor) may request in relation to the Employees including but not limited to, providing employee liability information as required under Regulation 11 of TUPE and such information is to be provided by the Provider to the Purchasing Body within a reasonable period as specified by the Purchasing Body which shall be no longer than 28 days from the Purchasing Body’s request for such information in any event. |
|  | 23.2 | The Provider authorises the Purchasing Body to pass any information supplied to any Replacement Contractor or potential Replacement Contractor and the Contractor will secure all necessary consents from relevant Employees in order to do this. |
|  | 23.3 | The Provider will keep the Purchasing Body and any Replacement Provider indemnified in full against all Liabilities arising directly or indirectly in connection with any breach of this clause or inaccuracies in or omissions from the information provided. |
|  | 23.4 | The Provider shall comply with the TUPE requirements as detailed in the Special Terms and Conditions. |
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| 24 |  | **INDUCEMENTS** |
|  | 24.1 | The Provider shall not offer or give, or agree to give, to any employee, agent, servant or representative of the Purchasing Body any gift or consideration of any kind as an inducement or reward for doing, any act in relation to the obtaining or execution of the Contract or any other contract with the Purchasing Body, or for showing or refraining from showing favour or disfavour to any person in relation to the Contract or any such contract. The attention of the Provider is drawn to the criminal offences under the Prevention of Corruption Acts 1889 to 1916. |
|  | 24.2 | The Provider warrants that it has not paid commission nor agreed to pay any commission to any Employee or representative of the Purchasing Body by the Provider or on the Provider’s behalf. |
|  | 24.3 | Where the Provider engages in conduct prohibited by clauses 35.1 and 35.2 in relation to this or any other contract with the Purchasing Body, the Purchasing Body has the right to:  24.3.1 terminate the Contract and recover from the Provider the amount of any loss suffered by the Purchasing Body resulting from the termination, including the cost reasonably incurred by the Purchasing Body of making other arrangements for the provision of the Services and any additional expenditure incurred by the Purchasing Body throughout the remainder of the Contract Period; or  24.3.2 recover in full from the Provider any other loss sustained by the Purchasing Body in consequence of any breach of this clause whether or not the Contract has been terminated. |
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| 25 |  | **COSTS AND EXPENSES** |
|  | 25.1 | Each of the parties will pay their own costs and expenses incurred in connection with the negotiation, preparation, execution, completion and implementation of this Contract. |
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| 26 |  | **PROVIDER’S EMPLOYEES** |
|  | 26.1 | The Provider warrants and represents that all its Employees assigned to the performance of the Services shall be suitably qualified, trained and experienced to provide the Services required and shall be made fully aware of the Provider’s obligations under the Contract as it affects them in the performance of the Services. |
|  | 26.2 | The Provider shall employ sufficient persons to ensure the Services are provided at all times and in all respects in accordance with the Contract. |
|  | 26.3 | The Providers Employees shall not act in a manner likely to bring discredit to the Purchasing Body. |
|  | 26.4 | The Provider shall ensure all Employees deployed on work relating to the Purchasing Body are properly managed and sufficiently instructed, trained and supervised with regard to the provision of the Services. |
|  | 26.5 | The Provider shall give, and ensure that its Employees give all reasonable assistance to the Purchasing Body in the investigation of complaints, disciplinary matters, claims for damages, and similar matters. |
|  | 26.6 | Should the Purchasing Body acting reasonably require the involvement in the Services of any Employee to be suspended or terminated, the Provider shall provide a replacement that is acceptable to the Purchasing Body. Purchasing Body shall in no circumstances to be liable either to the Provider or to the Employee in respect of any award, cost, expenses, liability, loss or damage occasioned by such removal and the Provider shall fully indemnify the Purchasing Body against any such claims made. |
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| 27 |  | **INTELLECTUAL PROPERTY RIGHTS** |
|  | 27.1 | Neither the Purchasing Body nor the Provider shall acquire any right, title or interest in the other’s Background IPR used in connection with the Services. |
|  | 27.2 | The Provider shall not (except where necessary for the performance of the Services) without the Purchasing Body’s prior written approval, use or disclose any Purchasing Body |
|  |  | Background IPR. |
|  | 27.3 | All title to and all rights and interest in any Foreground IPR shall vest in the Provider other than where the Purchasing Body commissions bespoke resources under this Contract in which case the Foreground IPR shall vest in the Purchasing Body and the Provider shall assign and/or grant to the Purchasing Body title to and all rights and interest in such Foreground IPR. |
|  | 27.4 | The Provider shall, during and after the Contract Period, indemnify the Purchasing Body against any claim that the performance by the Providerof the Services infringes a third party’s IPR. |
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| 28 |  | **BUSINESS CONTINUITY** |
|  | 28.1 | The Provider shall have contingency arrangements in place to ensure the continuity of the Services at all times at no extra cost to the Purchasing Body. These shall include but not be limited to arrangements to deal with staff absences. |
|  | 28.2 | The Provider shall demonstrate that it has adequate business continuity plans and associated contingency arrangements in place to ensure minimum disruption in the provision of any part of the Services in the event of a major incident affecting its ability to provide the Services. |

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| 29 |  | **CONTRACT PERFORMANCE** |
|  | 29.1 | The Provider shall perform its obligations under the Contract: |
|  | 29.1.1 | with appropriately experienced, qualified and trained Employees with all due skill, care and diligence; |
|  | 29.1.2 | in a timely manner; and |
|  | 29.1.3 | in compliance with all applicable legislation, including but not limited to, any obligations implied by Section 2 of the Supply of Goods and Services Act 1982. |
|  | 29.2 | The Provider shall ensure that the Services conform in all respects with the Specification and are fit and sufficient for all the purposes for which such Services are ordinarily used and for any particular purpose made known to the Provider by the Purchasing Body. |
|  | 29.3 | The Provider shall meet with the Purchasing Body at the intervals detailed in the Specification in order to review Contract performance. |

**PART FOUR: STATUTORY OBLIGATIONS AND REGULATIONS**

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| **30** |  | **STATUTORY REQUIREMENTS** |
|  | 30.1 | The Provider shall be responsible for obtaining all licences, authorisations, consents  or permits required in relation to the performance of this Contract. |
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| **31** |  | **DISCRIMINATION** |
|  | 31.1 | The Provider shall not unlawfully discriminate in the provision of the Services either directly or indirectly on such grounds as race, colour, ethnic or national origin, culture and linguistic background, disability, gender or sexual orientation, pregnancy and maternity, gender reassignment, marriage and civil partnership, religion or belief or age and, without prejudice to the generality of the foregoing, shall not unlawfully discriminate within the meaning and scope of the Equality Act 2010 or other relevant legislation. |
|  | 31.2 | The Provider shall at all times operate a policy of equal opportunity in both staffing and service delivery which accords with that of the Purchasing Body. The Provider shall forward a copy of this policy to the Purchasing Body when required and demonstrate its operation in the performance of the Contract. |
|  | 31.3 | The Contract shall take all reasonable steps to secure the observance of this clause by all Employees employed in the performance of the Contract. |
|  | 31.4 | In the event of a finding of discrimination being made by any court or employment tribunal against the Contract or any sub-contractor appointed by the Provider during the performance of this Contract, or of an adverse finding in any formal investigations by the Equality and Human Rights Commission during the performance of this Contract, the Provider shall inform the Purchasing Body of this finding and shall take appropriate steps to prevent repetition of the unlawful discrimination. |
|  | 31.5 | The Provider shall indemnify the Purchasing Body in respect of any claims against the Purchasing Body which arise by reason of the Contractor’s breach of the legislation referred to in clause 31.1 where such breach arises in the performance of its obligations under this Contract. |
|  | 31.6 | The Provider may be required to answer questions raised by the Purchasing Body on matters referred to in this clause. |
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| **32** |  | **THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999** |
|  | 32.1 | A person who is not a Party to the Contract has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its provisions which, expressly or by implication, confer a benefit on him. |

**PART FIVE: PROTECTION OF INFORMATION**

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| **33** |  | **DATA PROTECTION** |
|  | 33.1 | The definitions of “Data Subject, Data Processor, Data Controller, Data Protection Risk Assessment, Personal Data, Personal Data Breach & Sub-processor” shall have the meanings given within the Data Protection Act 2018. |
|  | 33.2 | The Parties agree that the provisions within this Clause and of the Data Sharing Schedule 7 shall apply. |
|  | 33.3 | Both Parties will comply with all applicable requirement of the DPL. These clauses are in addition to, and do not relieve, remove or replace, a party’s obligation under the DPL. |
|  | 33.4 | Where the Provider is acting as a Data Processor Clauses 33.7-33.10 |
|  | 33.5 | Where the Service Provider is acting as a Data Controller or both Parties are considered as a Data Controller and Data Processor, Clauses 33.11-33.16 apply. |
|  | 33.6 | Without prejudice to the generality of clause 33.2, the Purchasing Body will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Service Provider for the duration and purposes of this Contract. |
|  | 33.7 | Without prejudice to the generality of clause 33.3, the Service Provider shall, in relation to any Personal Data processed in connection with the performance by the Provider of its obligations under this Contract: |
|  | 33.7.1 | process Personal Data only on the written instructions of the Purchasing Body unless the Service Provider is required by the laws of any member of the European Union or by the laws of the European Union applicable to the Service Provider to process Personal Data (Applicable Laws). Where the Provider is relying on laws of a member of the European Union or European Union law as the basis for processing Personal Data, the Service Provider shall promptly notify the Council of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Service Provider from so notifying the Purchasing Body; |
|  | 33.7.2 | ensure that it has in place appropriate technical and organisational measures, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its 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 the technical and organisational measures adopted by it); |
|  | 33.7.3 | ensure that only personnel who are required to assist the Service Provider in fulfilling its obligations under the terms of this Contract have access to any Personal Data are obliged to keep that Personal Data confidential. Such staff must be adequately trained; and |
|  | 33.7.4 | not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Purchasing Body has been obtained and the following conditions are fulfilled:   1. the Purchasing Body or the Service Provider has provided appropriate safeguards in relation to the transfer; 2. the data subject has enforceable rights and effective legal remedies 3. the Service Provider complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and 4. the Service Provider complies with reasonable instructions notified to it in advance by the Purchasing Body with respect to the processing of the Personal Data; |
|  | 33.7.5 | assist the Purchasing Body at no additional cost to the Council Purchasing Body, in responding to any request from a Data Subject within 21 days of the request and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators; |
|  | 33.7.6  33.7.7 | notify the Purchasing Body without undue delay on becoming aware of a Personal Data breach, of any data loss, or any request to erase, block or transfer Personal Data;.  at the written direction of the Purchasing Body, delete or return Personal Data and copies thereof to the Purchasing Body on termination of the agreement unless required by Applicable Law to store the Personal Data; and |
|  | 33.7.8 | maintain and submit complete and accurate records and information to demonstrate its compliance with this agreement and allow and contribute to audits by the Purchasing Body or the Purchasing Body’s designated auditor. |
|  | 33.7.9 | Comply with the Data Sharing Code of Practice as issued by the ICO |
|  | 33.8 | The Provider shall not be entitled to appoint any third party processor of Personal Data under this Contract unless prior written consent is provided by the Council. The Provider confirms that it has entered or (as the case may be) will enter with the third-party processor into a written agreement incorporating terms which are substantially similar to those set out in this this Schedule. As between the Purchasing Body and the Provider, the Provider shall remain fully liable for all acts or omissions of any third-party processor appointed. |
|  | 33.9 | Either party may, at any time on not less than 30 days’ notice, revise this Schedule by replacing it with any applicable controller to processor standard clauses or similar terms forming party of an applicable certification scheme (which shall apply when replaced by attachment to this Contract |
|  | 33.10 | On satisfactory completion of the Service or on termination of this agreement, the Service Provider (Data Processor) will ensure that the Personal Data is securely removed from their systems and any printed copies securely destroyed. In complying with this clause, electronic copies of the Personal Data shall be securely destroyed by either physical destruction of the storage media or secure deletion using appropriate electronic shredding software that meets HM Government standards. Any hard copy will be destroyed by cross-cut shredding and secure re-cycling of the resulting paper waste. |
|  | 33.11 | **CONTROLLER TO CONTROLLER CLAUSES BELOW:**  Where both Parties are considered Data Controllers; Each party acknowledges that one party (the Data Discloser) will regularly disclose to the other party (the Data Recipient) Personal data as identified in the Schedule 7 and collected by the Data Discloser for the Purpose outlined in the Schedule 7 |
|  | 33.12 | 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 agreement with immediate effect |
|  | 33.13 | Each party shall*:*   1. ensure that it has all necessary notices and consents in place to enable lawful transfer of the Data identified in the Appendices to the Permitted Recipients for the purposes outlined in the appendices 2. give full information to any Data Subject whose personal data may be processed under this agreement of the nature such processing. This includes giving notice that, on the termination of this agreement, 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; 3. process the Data only for the Purpose outlined in the Appendices; 4. not disclose or allow access to the disclosed Personal Data to anyone other than the Permitted Recipients; 5. ensure that all Permitted Recipients are subject to written contractual obligations concerning the disclosed Personal Data (including obligations of confidentiality) which are no less onerous than those imposed by this agreement; 6. 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. 7. not transfer any personal data received from the Data Discloser outside the EEA unless the transferor:    1. complies with the provisions of Articles 26 of the GDPR (in the event the third party is a joint controller); and    2. ensures that (i) the transfer is to a country approved by the European Commission as providing adequate protection pursuant to Article 45 GDPR;    3. there are appropriate safeguards in place pursuant to Article 46 GDPR; or (iii) one of the derogations for specific situations in Article 49 GDPR applies to the transfer. |
|  | 33.14 | Each party shall assist the other in complying with all applicable requirements of the Data Protection Legislation. In particular, each party shall:   1. consult with the other party about any notices given to Data Subjects in relation to Personal Data disclosed under this contract; 2. promptly inform the other party about the receipt of any Data Subject access request; 3. provide the other party with reasonable assistance in complying with any Data Subject access request 4. not disclose or release any Personal Data in response to a Data Subject access request without first consulting the other party wherever possible; 5. notify the other party without undue delay on becoming aware of any breach of the Data Protection Legislation; 6. at the written direction of the Data Discloser, delete or return Personal Data and copies thereof to the Data Discloser on termination of this agreement unless required by law to store the personal data; 7. use compatible technology for the processing of Shared Personal Data to ensure that there is no lack of accuracy resulting from personal data transfers; 8. maintain complete and accurate records and information to demonstrate its compliance with this clause and allow for audits by the other party or the other party's designated auditor; and 9. provide the other party with contact details of at least one employeeas 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 data security breach, and the regular review of the parties' compliance with the Data ProtectionLegislation. |
|  | 33.15 | 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. |
|  | 33.16 | Either party may, at any time on not less than 30 days’ notice; revise these clauses or Appendix 4 by replacing it with any applicable amendments published by the ICO or in line with any other government body. |

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| **34** |  | **CONFIDENTIAL INFORMATION** |
|  | **34.1** | Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in this Contract, each Party shall: |
|  | 34.1.1 | treat the other Party's Confidential Information as confidential and safeguard it accordingly; and; |
|  | 34.1.2 | not disclose the other Party's Confidential Information to any other person without the owner's prior written consent. |
|  | 34.2 | Clause 34.1 shall not apply to the extent that: |
|  | 34.2.1 | such disclosure is a requirement of Law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations pursuant to clause 35 (Freedom of Information); |
|  | 34.2.2 | such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner; |
|  | 34.2.3 | such information was obtained from a third party without obligation of confidentiality; |
|  | 34.2.4 | such information was already in the public domain at the time of disclosure otherwise than by a breach of this Contract; or |
|  | 34.2.5 | it is independently developed without access to the other party's Confidential Information. |
|  | 34.3 | The Provider may only disclose the Purchasing Body’s Confidential Information to its Employees who are directly involved in the provision of the Services and who need to know the information, and shall ensure that such Employees are aware of and shall comply with these obligations as to confidentiality. |
|  | 34.4 | The Provider shall not, and shall procure that its Employees do not, use any of the Purchasing Body’s Confidential Information received otherwise than for the purposes of this Contract. |
|  | 34.5 | Nothing in this Contract shall prevent the Purchasing Body from disclosing the Contractor’s |
|  |  | Confidential Information: |
|  | 34.5.1 | to any Crown Body or any other contracting authority. All Crown Bodies or contracting authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Crown Bodies or other contracting authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Crown Body or any contracting authority; |
|  | 34.5.2 | to any consultant, Provider or other person engaged by the Purchasing Body; |
|  | 34.5.3 | for the purpose of the examination and certification of the Purchasing Body's accounts; |
|  | 34.5.4 | for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Purchasing Body has used its resources. |
|  | 34.6 | The Purchasing Body shall use all reasonable endeavours to ensure that any government department, contracting authority, employee, third party or Provider to whom the Contractor's Confidential Information is disclosed pursuant to clause 34 is made aware of the Purchasing Body's obligations of confidentiality. |
|  | 34.7 | Nothing in this clause 34 shall prevent either Party from using any techniques, ideas or know-how gained during the performance of the Contract in the course of its normal business to the extent that this use does not result in a disclosure of the other party's Confidential Information or an infringement of Intellectual Property Rights. |

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| **35** |  | **FREEDOM OF INFORMATION** |
|  | 35.1 | The Provider acknowledges that the Purchasing Body is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Purchasing Body to enable the Purchasing Body to comply with its Information disclosure obligations. |
|  | 35.2 | The Provider shall and shall procure that its sub-contractors shall:   1. transfer to the Purchasing Body all requests for Information that it receives as soon as practicable and in any event within two Working Days of receiving a request for Information;   b) provide the Purchasing Body with a copy of all Information in its possession, or power in the form that the Purchasing Body requires within five Working Days (or such other period |
|  |  | as the Purchasing Body may specify) of the Contractor’s request; and  c) provide all necessary assistance as reasonably requested by the Purchasing Body to enable the Purchasing Body to respond to the request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations. |
|  | 35.3 | The Purchasing Body shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Contract or any other contract whether the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations. |
|  | 35.4 | In no event shall the Provider respond directly to a request for Information regarding this Contract unless expressly authorised to do so by the Purchasing Body. |
|  | 35.5 | The Provider acknowledges that (notwithstanding the provisions of clause 34.2) the Purchasing Body may, acting in accordance with the Secretary of State for Constitutional Affairs Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 (“the Code”), be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Provider or the Services:  a) in certain circumstances without consulting the Provider where required to disclose the information by Law or pursuant to a lawful authority; or  b) following consultation with the Provider and having taken their views into account;  provided always that where 35.3 applies the Purchasing Body shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Provider advanced notice, or failing that, to draw the disclosure to the Contractor’s attention after any such disclosure. |
|  | 35.6 | The Provider shall ensure that all Information is retained for disclosure and shall permit the Purchasing Body to inspect such records as requested from time to time. |
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| **36** |  | **RECORDS AND AUDIT ACCESS** |
|  | 36.1 | The Provider shall keep and maintain until six (6) years after the date of termination or expiry (whichever is the earlier) of the Contract, full and accurate records and accounts of the operation of the Contract including the Services provided under it. |
|  | 36.2 | The Provider shall keep the records and accounts referred to in clause 36.1 above in accordance with good accountancy practice. |
|  | 36.3 | The Provider shall on request afford the Purchasing Body, the Purchasing Body's representatives and/or its auditor access to such records and accounts as may be required by the Purchasing Body from time to time. |
|  | 36.4 | The Provider shall provide such records and accounts (together with copies of the Contractor’s published accounts) during the Term and for a period of six (6) years after the expiry of the Term to the Purchasing Body and the auditor. |
|  | 36.5 | The Purchasing Body 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 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 Purchasing Body. |
|  | 36.6 | Subject to the Purchasing Body's rights of Confidential Information, the Provider shall on demand provide the auditors with all reasonable co-operation and assistance in relation to each audit, including:- |
|  | 36.6.1 | all information requested by the Purchasing Body within the scope of the audit; |
|  | 36.6.2 | reasonable access to sites controlled by the Provider used in the provision of the Services; and |
|  | 36.6.3 | reasonable access to Employees. |
|  | 36.7 | The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause 36, unless the audit reveals a material Default by the Provider in which case the Provider shall reimburse the Purchasing Body for the Purchasing Body's reasonable costs incurred in relation to the audit. |
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| **37** |  | **CONTROL OF CONTRACT** |
|  | 37.1 | The Provider shall not assign, novate, sub-contract or in any other way dispose of the Contract or any part of it without the Purchasing Body’s prior approval. |
|  | 37.2 | The Provider shall be responsible for the acts and omissions of its sub-contractors as though they are its own. |
|  | 37.3 | Where the Purchasing Body has consented to the placing of sub-contracts, copies of each sub-contract shall, at the request of the Purchasing Body, be sent by the Provider to the Purchasing Body as soon as reasonably practicable. |
|  | 37.4 | The Purchasing Body may assign, novate or otherwise dispose of its rights and obligations under the Contract, including to any statutory successor to its functions, provided that any such assignment, novation or other disposal shall not increase the burden of the Contractor's obligations under the Contract. |
|  | 37.5 | The Purchasing Body may disclose to any transferee any Confidential Information of the Provider which relates to the performance of the Contractor’s obligations under the Contract. In such circumstances the Purchasing Body shall authorise the transferee to use such Confidential Information only for purposes relating to the performance of the Contractor's obligations under the Contract and for no other purposes and shall take all reasonable steps to ensure that the transferee gives a Confidential Information undertaking in relation to such Confidential Information. |

**PART SIX: INADEQUATE PERFORMANCE AND DISRUPTION**

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| **38** |  | | **REMEDIES IN THE EVENT OF INADEQUATE PERFORMANCE** | |
|  | 38.1 | | In the event that the Purchasing Body is of the reasonable opinion that there has been a material breach of the Contract by the Contractor, then the Purchasing Body may, without prejudice to its rights under clause 41, do any of the following:- | |
|  | 38.1.1 | | without terminating the Contract, itself supply or procure the supply of all or part of the Services until such time as the Provider shall have demonstrated to the reasonable satisfaction of the Purchasing Body that the Provider will once more be able to supply all or such part of the Services in accordance with the Contract; | |
|  | 38.1.2 | | without terminating the whole of the Contract, terminate the Contract in respect of part of the Services only (whereupon a corresponding reduction in the Contract Price shall be made) and thereafter itself supply or procure a third party to supply such part of the Services; | |
|  | 38.1.3 | | terminate, in accordance with clause 41 the whole of the Contract; and/or | |
|  | 38.1.4 | | charge the Provider for, and the Provider shall pay any costs reasonably incurred by, the Purchasing Body (including any reasonable administration costs) in respect of the supply of any part of the Services by the Purchasing Body or a third party provided that the Purchasing Body uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Services. | |
|  | 38.2 | | If the Provider fails to supply any of the Services in accordance with the provisions of the Contract and such failure is capable of remedy, then the Purchasing Body shall instruct the Provider to remedy the failure and the Provider shall at its own cost and expense remedy such failure (and any damage resulting from such failure) within 10 (ten) Working Days of the Purchasing Body’s instructions or such other period of time as the Purchasing Body may direct. | |
|  | 38.3 | | In the event that the Contractor:- | |
|  |  | | (a) fails to comply with clause 38.2 above and the failure is materially adverse to the interests of the Purchasing Body or prevents the Purchasing Body from discharging a statutory duty; or | |
|  |  | | (b) persistently fails to comply with clause 38.2 above; | |
|  |  | | then the Purchasing Body may terminate the Contract with immediate effect by giving the Provider Notice. | |
|  | 38.4 | | Without prejudice to any other right or remedy which the Purchasing Body may have, if any Services are not supplied in accordance with, or the Provider fails to comply with any of the terms of the Contract the Purchasing Body shall be entitled to avail itself of any one or more of the following remedies at its discretion whether or not any part of the Services have been accepted by the Purchasing Body:-  (a) to rescind the Contract;  (b) to reject the Services (in whole or in part) and return them to the Provider at the risk and cost of the Provider on the basis that a full refund for the Services so returned shall be paid forthwith by the Contractor;  (c) at the Purchasing Body’s option to give the Provider the opportunity at the Contractor’s expense to either remedy any defect in the Services or to supply replacement Services; | |
|  |  | | (d) to refuse to accept any further deliveries of the Services but without any liability to the Purchasing Body; and  (e) to claim such damages as may have been sustained in consequence of the Contractor’s breach or breaches of the Contract. | |
| **39** |  | **DISRUPTION** | |
|  | 39.1 | The Provider shall immediately inform the Purchasing Body of any actual or potential industrial action, whether such action be by its own Employees or others, which affects or might affect its ability at any time to perform its obligations under the Contract. | |
|  | 39.2 | In the event of industrial action by the Employees, the Provider shall seek the Purchasing Body’s approval to its proposals for the continuance of the supply of the Services in accordance with its obligations under the Contract. | |
|  | 39.3 | If the Contractor’s proposals referred to in clause 39.2 are considered insufficient or unacceptable by the Purchasing Body acting reasonably then the Contract may be terminated with immediate effect by the Purchasing Body by Notice in writing. | |
|  | 39.4 | If the Provider is temporarily unable to fulfil the requirements of the Contract owing to disruption of normal business by direction of the Purchasing Body, an appropriate allowance by way of extension of time will be approved by the Purchasing Body. In addition, the Purchasing Body will reimburse any additional expense reasonably incurred by the Provider as a direct result of such disruption. | |
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| **40** |  | **FORCE MAJEURE** | |
|  | **40.1** | Neither Party shall be liable to the other Party for any delay in performing, or failure to perform, its obligations under the Contract (other than a payment of money) to the extent that such delay or failure is a result of Force Majeure. Notwithstanding the foregoing, each Party shall use all reasonable endeavours to continue to perform its obligations under the Contract for the duration of such Force Majeure. However, if such Force Majeure prevents either Party from performing its material obligations under the Contract for a period in excess of six Months, either Party may terminate the Contract with immediate effect by Notice in writing. | |
|  | **40.2** | Any failure or delay by the Provider in performing its obligations under the Contract which results from any failure or delay by an agent, sub-contractor or Providers hall be regarded as due to Force Majeure only if that agent, sub-contractor or Provider is itself impeded by Force Majeure from complying with an obligation to the Provider. | |

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|  | **40.3** | If either Party becomes aware of a Force Majeure event or occurrence which gives rise to or which is likely to give rise to any such failure or delay on its part as described in clause 40.1 it shall immediately notify the other by the most expeditious method then available and shall inform the other of the period during which it is estimated that such failure or delay shall continue. |

**PART SEVEN: CONTRACT TERMINATION AND SUSPENSION**

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| **41** |  | **TERMINATION** |
|  | **41.1** | This Contract shall terminate: |
|  | **41.1.1** | On the expiry of the Term; |
|  | **41.1.2** | Immediately if either party commits a fundamental breach of the terms and conditions  of the Contract, with the offended party serving Notice to the party in breach, giving details of the way in which it is considered they are in breach; |
|  | **41.2** | The Purchasing Body may by Notice in writing to the Provider terminate this Contract as from the date of service of such Notice if: |
|  | **41.2.1** | the Provider passes a resolution or a court makes an order that the Provider be wound up otherwise than for the purpose of a bona fide solvent reconstruction or amalgamation; or |
|  | **41.2.2** | circumstances exist which entitle a court or a creditor to appoint a receiver, manager or administrator or which entitle a court otherwise than for the purpose of a bona fide solvent reconstruction or amalgamation to make a winding-up order regarding the Contractor; or |
|  | **41.2.3** | the Provider undergoes a change of control, within the meaning of section 416 of the Income and Corporation Taxes Act 1988, which impacts adversely and materially on the performance of this Contract; or |
|  | **41.2.4** | the Provider becomes the subject of a voluntary arrangement under s1 of the Insolvency Act 1986; or |

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|  | **41.2.5** | the Provider has a receiver, manager, administrator, or administrative receiver appointed over all or any part of its undertakings, assets or income, or has passed a resolution for its winding up; or |
|  | **41.2.6** | the Provider has a petition presented to any court for its winding up or for an administration order; or |
|  | **41.2.7** | the Provider is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or |
|  | **41.2.8** | the Provider suffers any distraint, execution or other process to be levied or enforced on any of its property by any third party and is not paid out, withdrawn or discharged within 7 days; or |
|  | **41.2.9** | the Provider is in breach of paragraph 4.4 of the Specification in respect of its Ofsted rating. |
|  | **41.3** | The Purchasing Body may only exercise its right under clause 41.2.3 within six months after a change of control occurs and shall not be permitted to do so where it has agreed in advance to the particular change of control that occurs. The Provider shall notify the Contracting Officer immediately any change of control occurs. |
|  | **41.4** | The Purchasing Body shall be entitled to terminate this Contract immediately and recover from the Provider the amount of any loss resulting from such cancellation if, in relation to any agreement with the Purchasing Body, the Provider or any person employed by him or acting on his behalf shall have committed an offence under the Bribery Act 2010, or shall have given any fee or reward, the receipt of which is an offence under sub-section (2) of Section 117 of the Local Government Act 1972. |
|  | **41.5** | The Purchasing Body may at any time by Notice in writing to the Provider terminate this Contract as from the date of service of such Notice whenever any of the following events occurs: |
|  | **41.5.1** | the Provider commits a material breach of any of its obligations under or in relation to this Contract which is not capable of remedy or, if capable of remedy, is not remedied within 30 days after receipt of written Notice from the non-breaching party of its intention to terminate; or |
|  | **41.5.2** | the Provider is continually in breach or commits a series of repeated breaches of this Contract, which cannot be remedied within 30 days of written Notice from the Purchasing Body of its intention to terminate. |

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|  | **41.6** | The Purchasing Body shall have the right to terminate this Contract or to terminate the provision of any part of the Contract at any time by giving three month’s written Notice to the Provider. |
|  | **41.7** | When requested to do so by the Purchasing Body, the Provider shall upon the termination of the Contract, immediately deliver up to the Purchasing Body all correspondence, documents, specification papers and property belonging to the Purchasing Body which may be in his possession or under his control. |
|  | **41.8** | An Ofsted Grade 4 award for the successful provider will result in immediate termination of the contract. |
|  | **41.9** | Failure to deliver an embedded programme of safeguarding and prevent activities to learners will result in the immediate termination of the contract. |
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| **42** |  | **CONSEQUENCES OF EXPIRY OR TERMINATION** |
|  | **42.1** | Where the Purchasing Body terminates the Contract under clause 41.5 and then makes other arrangements for the supply of the Services, the Purchasing Body may recover from the Provider the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Purchasing Body throughout the remainder of the Term. The Purchasing Body shall take all reasonable steps to mitigate such additional expenditure. Where the Contract is terminated due to the Contractor’s Default, no further payments shall be payable by the Purchasing Body until the Purchasing Body has established the final cost of making those other arrangements. |
|  | **42.2** | Subject to clause 41 where the Purchasing Body terminates the Contract under clause 41.5, the Purchasing Body shall indemnify the Provider against any commitments, liabilities or expenditure which would otherwise represent an unavoidable loss by the Provider by reason of the termination of the Contract, provided that the Provider takes all reasonable steps to mitigate such loss. Where the Provider holds insurance, the Provider shall reduce its unavoidable costs by any insurance sums available. |
|  | **42.3** | The Purchasing Body shall not be liable under clause 42.2 to pay any sum which:-  (a) was claimable under insurance held by the Contractor, and the Provider has failed to make a claim on its insurance, or has failed to make a claim in accordance with the procedural requirements of the insurance policy; or  (b) when added to any sums paid or due to the Provider under the Contract, exceeds the total sum that would have been payable to the Provider if the Contract had not been terminated prior to the expiry of the Term. |

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|  | **42.4** | Save as otherwise expressly provided in the Contract, termination or expiry of the  Contract shall be without prejudice to any rights, remedies or obligations accrued under the Contract prior to termination or expiration and nothing in the Contract shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry |
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| **43** |  | **RECOVERY UPON TERMINATION** |
|  | **43.1** | On the termination of the Contract for any reason, the Provider shall: |
|  | **43.1.1** | Immediately deliver to the Purchasing Body all property that may have been provided to the Provider by the Purchasing Body; |
|  | **43.1.2** | Assist and co-operate with the Purchasing Body to ensure an orderly transition of the provision of the Contract to the replacement Provider and /or the completion of any work in progress. |

**PART EIGHT: LIABILITY AND INSURANCE**

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| **44** |  | **LIABILITIES AND INDEMNITIES** |
|  | **44.1** | Nothing in this clause attempts to limit or exclude either Party’s liability for: |
|  | **44.1.1** | Death or personal injury caused by its negligence; |
|  | **44.1.2** | Fraud or fraudulent misrepresentation by it or its Employees; |
|  | **44.1.3** | Breach of any obligations as to title implied by Section 2 of the Supply of Goods and  Services Act 1982 |
|  | **44.2** | Subject to clause 44.1, both Parties agree that each Party’s total aggregate liability in connection with this Contract whether those liabilities are expressed as an indemnity or otherwise in each twelve (12) month period during the Term (whether in contract, tort including negligence breach of statutory duty or howsoever arising) shall in no event exceed one hundred and fifty per cent (150%) of the Contract Price for the Contract. |
|  | **44.3** | Subject to clause 44.1 and 44.2 the Provider shall indemnify and keep indemnified the Purchasing Body on demand in full from and against all legally enforceable claims, proceedings, actions, damages, legal costs, expenses and any other liabilities whatsoever arising out of, in respect of or in connection with any death or personal |

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|  |  | injury or loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Contractor, or any other loss which is caused by an act or omission of the Contractor. |
|  | **44.4** | Clause 44.3 shall not apply to the extent that the Provider is able to demonstrate that such loss detailed in that clause was not caused or contributed to by its negligence or Default, or the negligence or Default of the Contractor’s Employees. |
|  | **44.5** | In no event shall either Party be liable to the other for:  (a) Loss of profits;  (b) Loss of business;  (c) Loss of revenue;  (d) Loss of or damage to goodwill;  (e) Subject to 44.6, any indirect, special or consequential loss or damage |
|  | **44.6** | In accordance with clause 44.3, the Provider shall be liable for the following types of loss, damage, cost or expense flowing from an act or Default of the Provider which shall (without in any way limiting other categories of loss, damage, cost or expense which may be recoverable by the Purchasing Body) be recoverable by the Purchasing Body:  (a) any additional operational and/or administrative costs and expenses arising from any Default;  (b) the cost of procuring, implementing and operating any alternative or replacement services to the Services;  (c) any wasted expenditure or charges rendered unnecessary and/or incurred by the Purchasing Body arising from the Contractor’s Default (to include wasted staffing costs in the event of delayed delivery);and  (d) Any regulatory losses, fines, expenses or other losses arising from a breach by the Provider of any Law. |
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| **45** |  | **INSURANCE** |
|  | 45.1 | The Provider shall effect and maintain the following insurances at its own expense for the duration of the Contract in relation to the performance of the Contract: |
|  | 45.1.1 | a valid policy or policies of public liability insurance with a minimum level of indemnity of £5 million for any one claim. |
|  | 45.1.2 | a valid policy or policies or employer’s liability insurance with a minimum level of indemnity of £5 million for any one claim in respect of all sums the Provider is found legally liable to pay for injury, illness or disease suffered by an employee of the Provider acting in the course of his duties. |
|  | 45.1.3 | Not used |
|  | 45.1.4 | Not used |
|  | 45.2 | Details of the above policies together with evidence that the policies are currently in force must be produced to the Purchasing Body on demand. |
|  | 45.3 | The terms of any insurance or the amount of cover shall not relieve the Provider of any liabilities arising under the Contract. |
|  | 45.4 | If, for whatever reason, the Provider fails to give effect to and maintain the insurances required by the Contract then the Purchasing Body may make alternative arrangements to protect its interests and recover the costs of such arrangements from the Contractor. |

**PART EIGHT: OTHER PROVISIONS**

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| **46** |  | **VARIATIONS TO THE CONTRACT** |
|  | 46.1 | The Purchasing Body may propose a variation to the Contract by serving the Provider with written notice of the proposal to vary the Contract. |
|  | 46.2 | The notice of variation will contain sufficient detail to allow the Provider to consider whether any changes to the Pricing Schedule are necessary. |
|  | 46.3 | On receipt of the notice, the Provider has 7 days to respond in writing with any objections to the variation. Where the Purchasing Body does not receive any written objections within the timescales detailed, the Purchasing Body may serve the Provider with a written agreement detailing the variation to be signed and returned by the Provider within 7 days of receipt. |
|  | 46.4 | Where the Provider can demonstrate that a variation would result in a change to the prices set out in the Pricing Schedule, the Purchasing Body may require further evidence from the Provider that any additional costs to the Provider will be kept to a minimum. |
|  | 46.5 | The Purchasing Body may require the Provider to meet and discuss any proposed changes to the Pricing Schedule that would result from a variation. |
|  | 46.6 | Where a change to the Pricing Schedule is agreed by the Purchasing Body the Purchasing Body shall notify its acceptance of the change to the Provider in writing. |
|  | 46.7 | In the event that the Purchasing Body and the Provider cannot agree to the changes to the prices set out in the Pricing Schedule, the Purchasing Body may withdraw the variation or propose an amendment to it. |
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| **47** |  | **WAIVER** |
|  | 47.1 | Failure by the Purchasing Body or the Provider to insist on strict performance of this Contract or to exercise any right or remedy upon breach of any provision of this Contract shall not constitute a waiver of the contract conditions or a waiver of any subsequent breach or default in the performance of the Contract. The rights and remedies provided in this Contract are cumulative and not exclusive of any rights and remedies provided by law. |
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| **48** |  | **DISPUTE RESOLUTION** |
|  | 48.1 | Not used |
|  | 48.2 | In the event that any disagreement or difference of opinion arises out of this Contract the matter shall be dealt with as follows: |
|  | 48.2.1 | the Contracting Officer and the Contractor’s representative shall meet to seek a resolution. In the event that they do not meet within ten Working Days of the date on which either party convenes a meeting to resolve the matter or should they not be able to resolve the matter within ten Working Days of the first meeting, the matter shall be promptly referred by either party to the next level of management within the respective organisations for immediate resolution. |
|  | 48.2.2 | if within fourteen Working Days of the matter having been referred to the next level of management no agreement has been reached as to the matter in dispute, the Parties shall thereafter seek to determine the matter in dispute by adopting the procedure set out below: |
|  |  | (a) An independent expert shall be appointed by agreement between the Parties. |

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|  |  | The Parties shall promptly furnish to such expert all information relating to the  dispute to enable him to give a decision as to what course of action in his reasonable opinion ought to be followed to give an outcome equitable to the Parties taking into account the respective rights and obligations of the Parties.  (b) The decision of the expert shall be final and binding on the Parties.  (c) The Parties shall share equally the fees and expenses of the expert unless the expert directs otherwise. |
|  | 48.2.3 | Alternatively, either Party may refer the matter for decision to arbitration whereupon the  Parties shall comply with the following provisions:  (a) the arbitration shall be governed by the provisions of the Arbitration Act 1996; (b) the arbitration fees shall be met by the Purchasing Body and Provider in equal shares; (c) the decision of the arbitrator shall be binding on the Parties. |
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| **49** |  | **SEVERANCE** |
|  | **49.1** | If any apart of this Contract becomes invalid, illegal or unenforceable, the Parties shall  negotiate in good faith in order to agree the terms of a mutually satisfactory provision to be substituted which gives effect to their original intentions. |
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| **50** |  | **LAW AND JURISDICTION** |
|  | **50.1** | This Contract shall be governed by and constructed in accordance with English law  and each Party agrees to submit to the exclusive jurisdiction of the English courts. |
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| 51 |  | **NO AGENCY OR PARTNERSHIP** |
|  | 51.1 | Nothing contained in this Contract, and no action taken by the parties pursuant to this Contract, will be deemed to constitute a relationship between the parties of partnership, joint venture, principal and agent or employer and employee. Neither party has, nor may it represent that it has, any authority to act or make any commitments on the other party’s behalf. |
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| 52 |  | **NON SOLICITATION AND OFFERS OF EMPLOYMENT** |
|  | 52.1 | The Provider agrees that it will not, without the prior written consent of the Purchasing Body, whether directly or indirectly, and whether alone or in conjunction with, or on behalf of, any other person and whether as a principal, shareholder, director, Employee, agent, consultant, partner or otherwise during the Contract Period or for a period of 12 months following termination of this Contract:  52.1.1 solicit or entice, or endeavour to solicit or entice, away from the Purchasing Body, any person directly related to the Services employed in a senior capacity in a managerial, supervisory, technical, sales or administrative capacity by, or who is or was a consultant to, the Purchasing Body at the date of the termination of this Contract or at any time during the period of one month immediately preceding the date of termination; or  52.1.2 attempt, or knowingly assist or procure any other person to do the above. |
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| 53 |  | **OBIGATION TO MITIGATE** |
|  | 53.1 | The rights and remedies of the Provider and the Purchasing Body under the Contract are without prejudice to their obligations at common law to mitigate their losses. |
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| 54 |  | **LOCAL AUTHORITY RIGHTS** |
|  | 54.1 | Where the Purchasing Body is a local authority, nothing contained in this Contract shall prejudice the Purchasing Body’s rights, powers and duties as a local authority. |
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| **55** |  | **LAW AND CHANGE IN LAW** |
|  | 55.1 | The Provider shall comply at all times with the Law in its performance of the Contract |
|  | 55.2 | On the occurrence of a Change in Law which has a direct effect upon the Price the parties shall meet within fourteen (14) days of the Provider notifying the Purchasing Body of the Change in Law to consult and seek to agree the effect of the Change in Law and any change in the Price as a result following the principle that this clause is not intended to create an artificial cushion from market forces for the Provider. If the parties, within fourteen (14) days of this meeting, have not agreed the occurrence or the impact of the Change in Law, either party may refer the matter to dispute resolution in accordance with clause 48. |
|  | 55.3 | Any agreed additional sums payable as a result of the operation of clause 55.2 shall be included in the Price. For the avoidance of doubt nothing in this Contract is intended to allow the Provider double recovery of any increase in costs. |
| **56** |  | **ENTIRE AGREEMENT** |
|  | **56.1** | This Contract constitutes the entire agreement between the Parties relating to the  subject matter of the Contract. This Contract supersedes all prior negotiations, representations and undertakings whether written or oral, except that this clause shall not exclude liability in respect of any fraudulent misrepresentation |
|  | **56.2** | Each of the Parties acknowledges and agrees that in entering into the Contract it does  not rely on, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) other than as expressly set out in the Contract. The only remedy available to either Party for any  such statements, representation, warranty or understanding shall be for breach of contract under the terms of the Contract. |
|  | **56.3** | Nothing in clauses 56.1 and 56.2 shall operate to exclude Fraud or fraudulent  misrepresentation. |

The following to be incorporated upon award of Contract:

**Appendix 1- Specification**

**Appendix 2 - Pricing Schedule Appendix 3 - Funding Rules**