APPENDIX C

DYNAMIC PURCHASING SYSTEM

TERMS AND CONDITIONS

For the provision of

**Apprenticeship Training Services**

**PARTIES**

**(1) NORTH SOMERSET COUNCIL** whose principal place of business is at Town Hall, Walliscote Grove Road, Weston-super-Mare, BS23 1UJ **(Council)**

**(2)** [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] **(Provider)**

**BACKGROUND**

**(A)**   The Council has carried out a procurement process and placed a Call for Competition Notice in the Official Journal of the European Union seeking expressions of interest from potential providers who seek to be appointed as an approved Provider for the provision of Services to the Council under a Dynamic Purchasing System (DPS) under Regulation 34 of the Public Contracts Regulations 2015.

**(B)**   On the basis of the information submitted by the Provider, the Council has agreed to allow the Provider onto this DPS from which it may provide relevant Services to the Buyer (as defined below)

**(C)**   If the Buyer agrees to take up an offer of Services from a Provider the Parties will enter into a **Call-off Contract *or a Standard Services Award*** in respect of the agreed Service.

**(D)**   This Agreement sets out the procedure for ordering Services, the main terms and conditions for the provision of the Services and the obligations of the Provider under this Agreement.

**(E)**   It is the Parties’ intention that the Buyer has no obligation to place Orders with the Provider under this Agreement or at all.

**AGREED TERMS**

1. **DEFINITIONS AND INTERPRETATION**
	1. The definitions and rules of interpretation in this clause apply in this Agreement:

**Approval:**  means the prior written approval of the Council.

**Audit:**  means an audit carried out pursuant to **Clause 10**.

**Auditor:**  means an auditor appointed by the Buyer.

**Authorised Representative(s):**  means the person(s) respectively designated as such by the Council and the Provider, the first such persons being set out in **Clause 28**

**Award Criteria:**  means the Standard Services Award Criteria and/or the Competed Services Award Criteria as the context requires.

**Buyer:** means either the Council, SCC or Taunton Deane Borough Council under the relevant Call-off Terms and Conditions

**Call-off Terms and Conditions:**  means the terms and conditions in the SQ

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

**Commencement Date:**  means [date as stipulated in the SQ].

**Competed Services:**  means the competed services set out **in Paragraph 16 of the SQ**

**Competed Services Award Criteria:**  means the award criteria to be applied to Supplemental Tenders received through mini-competitions held for the award of Contracts for Competed Services as set out in **Paragraph** **16** of the SQ and the Order Form.

**Complaint:**  means any formal complaint raised by the Council in relation to the performance under the Agreement or any Contract in accordance with **Clause 18**.

**Confidential Information:**  means any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel and suppliers of the Provider, including intellectual property rights, together with all information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as “confidential”) or which ought reasonably to be considered to be confidential.

**Contract:**  means a legally binding Agreement (made pursuant to the provisions of this Agreement) for the provision of Services made between the Buyer and the Provider comprising an Order Form, its appendices, and the Call-off Terms and Conditions (as may be amended pursuant to [**Clause**](#co_anchor_a361954_1) **4.3**).

**Data Protection Legislation:**  means the Data Protection Act 1998 (DPA), the EU Data Protection Directive 95/46/EC, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000, the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003 as amended by (i) the GDPR, the Law Enforcement Directive and any applicable national implementing Laws as amended from time to time (ii) the Data Protection Act 2018 subject to Royal Assent to the extent that it relates to processing of personal data and privacy; (iiii) all applicable Law about the processing of personal data and privacy;

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

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

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

**Default:**  means any breach of the obligations of the relevant Party under a Contract (including fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or negligent statement of the relevant Party or the Staff in connection with or in relation to the subject matter of the Contract and in respect of which such Party is liable to the other.

**DPS** **Providers:**  means the Provider and other suppliers appointed as providers under this Agreement

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

**ESFA:** means the Education and Skills Funding Agency or its successor body from time to time.

**FOIA:**  means the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time together with any Guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.

**Guidance:**  means any guidance issued or updated by the UK government from time to time in relation to the Regulations.

**GDPR**: the General Data Protection Regulation *(Regulation (EU) 2016/679)*

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

**Intellectual Property Rights:**  means patents, inventions, trade marks, 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 the United Kingdom) and the right to sue for passing off.

**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 code, judgment of a relevant court of law, or directives or requirements of any Regulatory Body.

**Management Information:**  means the details of relevant student performance and progress and the results of student satisfaction questinonnaires*.*

**Month:**  means a calendar month.

**Order:**  means an order for Services sent by the Buyer to the Provider in accordance with the award procedures in [*Clause 4*](#co_anchor_a777913_1).

**Order Form:**  means a document setting out details of an Order in the format as set out in **Schedule 3** or as otherwise agreed in accordance with **Clause 4.6**

**Parent Company:**  means any company which is the ultimate Holding Company of the Provider and which is either responsible directly or indirectly for the business activities of the Provider or which is engaged in the same or similar business to the Provider. Holding Company: shall have the meaning ascribed by section 1159 of the Companies Act 2006 or any statutory re-enactment or amendment thereto.

**Party:**  means the Buyer and/or the Provider.

**Prices:** the charges of the Provider for providing the Services.

**Prohibited Act:**  the following constitute Prohibited Acts:

**(a)**  to directly or indirectly offer, promise or give any person working for or engaged by the Council a financial or other advantage to:

**(i)**  induce that person to perform improperly a relevant function or activity; or

 (**ii)**  reward that person for improper performance of a relevant function or activity;

**(b)**  to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement;

**(c)**  committing any offence:

**(i)**  under the Bribery Act 2010;

**(ii)**  under legislation creating offences concerning fraudulent acts;

 **(iii)**  at common law concerning fraudulent acts relating to this Agreement or any other contract with the Council; or

**(d)**  defrauding, attempting to defraud or conspiring to defraud the Council.

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

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

**Requests for Information:**  means a request for information or an apparent request under the FOIA or the Environmental Information Regulations.

**RoATP:** means Register of Apprenticeship Training Providers

**SCC:** means Somerset County Councilwhose principal place of business is at County Hall, TAUNTON, Somerset, TA1 4DY

**SQ:** means the standard selection questionnaire of the Council, of which these terms and conditions form Appendix C

**Services:**  means the Apprenticeship Training services detailed in the Appendix A of the SQ.

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

**Standard Services:**  means the standard services referred to in the SQ.

**Standard Services Award Criteria:**  means the award criteria to be applied for the award of Contracts for Standard Services as set out in the SQ.

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

**Subcontractor:**  the contractors or service providers that enter into a Subcontract with the Provider.

**Sub-processor**: any third Party appointed to process Personal Data on behalf of the Contractor related to this Agreement.

**Supplemental Tender:**  means the documents submitted to the Buyer in response to the Buyer’s invitation to Providers for formal offers to supply it with Competed Services.

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

**The Provider’s Response*:*** means the Provider’s Response to the Buyer’s Call for Competition.

**Term:**  means the period of four [4] years from and including the Commencement Date unless earlier terminated in accordance with the terms of this Agreement.

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

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

**Year:**  means a calendar year.

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

**FRAMEWORK ARRANGEMENTS AND AWARD PROCEDURE**

1. **TERM OF AGREEMENT**
	1. The Agreement shall take effect on the Commencement Date and (unless it is terminated in accordance with the terms of this Agreement or is otherwise lawfully terminated) shall terminate at the end of the Term
2. **SCOPE OF AGREEMENT**
	1. This Agreement governs the relationship between the Buyer and the Provider in respect of the provision of the Services by the Provider to the Buyer.
	2. The Buyer appoints the Provider as a DPS Provider of the Services and the Provider shall be eligible to receive Orders for such Services from the Buyer during the Term.
	3. If and to the extent that any Services under this Agreement are required the Buyer shall:
		1. enter into a contract with the Provider for these Services materially in accordance with the terms of the Contract; and
		2. comply with the ordering procedure in [*Clause 4*](#co_anchor_a777913_1).
		3. The Provider acknowledges that, in entering this Agreement, no form of exclusivity or volume guarantee has been granted by the Buyer for the Services and that the Buyer is at all times entitled to enter into other contracts and arrangements with other suppliers for the provision of any or all services which are the same as or similar to the Services.
3. **AWARD PROCEDURES**
	1. If the Buyer decides to source Services through the Agreement then it may:
		1. satisfy its requirements for the Standard Services by awarding a Contract in accordance with the terms laid down in this Agreement without re-opening competition; or
		2. satisfy its requirements for Competed Services by awarding a Contract following a mini-competition conducted in accordance with the requirements of [*Clause 4.3*](#co_anchor_a361954_1).

***Standard Services (awards without re-opening competition)***

* 1. The Buyer ordering Standard Services under the Agreement without re-opening competition shall:
		1. identify the relevant Service which its Standard Services requirements fall into;
		2. send an Order to the DPS Provider ranked highest following the evaluation of its Tender as set out in **Paragraph 17 of the SQ**;
		3. if the DPS Provider who was ranked highest is not able to provide the Services, send an Order to the DPS Provider ranked next highest;
		4. repeat the process set out in **clause 4.2.2.** until the Order is fulfilled or there are no further DPS Providers qualified to fulfil it.

**Competed Services (awards following mini-competitions)**

* 1. The Buyer ordering Competed Services under the Agreement shall:
		1. identify the relevant **Services** that its Competed Services requirements fall into;
		2. identify the DPS Providers capable of performing the Contract for the Competed Services requirements;
		3. supplement and refine the Call-off Terms and Conditions only to the extent permitted by and in accordance with the requirements of the Regulations and Guidance;
		4. invite tenders by conducting a mini-competition for its Competed Services requirements in accordance with the Regulations and Guidance and in particular:
			1. consult in writing the DPS Providers capable of performing the Contract for the Competed Services requirements and invite them within a specified time limit being not less than 10 days unless otherwise agreed between the Buyer and all DPS Providersto submit a Supplemental Tender
			2. set a time limit for the receipt by it of the Supplemental Tenders which takes into account factors such as the complexity of the subject matter of the Contract and the time needed to submit tenders; and
			3. keep each Supplemental Tender confidential until the expiry of the time limit for the receipt by it of the Supplemental Tenders;
		5. apply the Competed Services Award Criteria to any compliant Supplemental Tenders submitted through the mini-competition; and
		6. subject to [*Clause 4.5*](#co_anchor_a495498_1) place an Order with the successful DPS Provider.
	2. The Provider agrees that all Supplemental Tenders submitted by the Provider in relation to a mini-competition held pursuant to this [*Clause 4*](#co_anchor_a777913_1) shall remain open for acceptance for 30 days (or such other period specified in the invitation to tender issued by the Buyer in accordance with this [*Clause 4*](#co_anchor_a777913_1)).
	3. Notwithstanding the fact that the Buyer has followed the procedure set out above for Competed Services, the Buyer may cancel, postpone, delay or end the procedure without placing an Order for Services or awarding a Contract. Nothing in this Agreement shall oblige the Buyer to place any Order for Services.

**Order**

* 1. Subject to [*Clause 4.1*](#co_anchor_a694179_1) above, the Buyer may place an Order with the Provider by serving an order in writing in accordance with the provisions of the SQ.

**Accepting and declining Orders**

* 1. Following receipt of an Order, the Provider shall promptly and in any event within a reasonable period determined by the Buyer and notified to the Provider in writing at the same time as the submission of the Order (which in any event shall not exceed ten Working Days) acknowledge receipt of the Order and either:
		1. notify the Buyer in writing and with detailed reasons that it is unable to fulfil the Order; or
		2. notify the Buyer that it is able to fulfil the Order by signing and returning the Order Form.
		3. If the Provider:
			1. notifies the Buyer that it is unable to fulfil an Order; or
			2. the time limit referred to in [*Clause 4.8*](#co_anchor_a567906_1) has expired;

then the Order shall lapse and the Buyer may then send that Order to another DPS Provider in accordance with the procedure set out in Clause 4.2.4.

* 1. If the Provider modifies or imposes conditions on the fulfilment of an Order, then the Buyer may either:
		1. reissue the Order incorporating the modifications or conditions; or
		2. treat the Provider’s response as notification of its inability to fulfil the Order and the provisions of [*Clause 4.9*](#co_anchor_a783971_1) shall apply.
	2. The Parties acknowledge and agree that the placement of an Order is an “invitation to treat” by the Buyer. Accordingly, the Provider shall sign and return the Order Form which shall constitute its offer to the Buyer. The Buyer shall signal its acceptance of the Provider’s offer and the formation of a Contract by counter-signing the Order Form.
1. **CONTRACT PERFORMANCE AND PRECEDENCE OF DOCUMENTS**
	1. The Provider shall perform all Contracts entered into with the Buyer in accordance with:
		1. the requirements of this Agreement; and
		2. the terms and conditions of the respective Contracts.
	2. In the event of, and only to the extent of, any conflict or inconsistency between the terms and conditions of this Agreement and the terms and conditions of a Contract, such conflict or inconsistency shall be resolved according to the following order of priority:
		1. the clauses of the Contract;
		2. the Order Form except ***Provider’s Response and Supplemental Tender*** to the Order Form;
		3. the terms ***of the Agreement, and the appendices to the Order Form, except the Provider’s Provider’s Response, and Supplemental Tender;***
		4. ***any other document referred to in the clauses of the Contract; and***
		5. ***the Provider’s Response and Supplemental Tender.***
2. **PRICES FOR SERVICES**
	1. The Prices offered by the Provider for Contracts to the Buyer for both Standard and Competed Services shall be in accordance with **Appendix B Pricing Schedule to the SQ**.
	2. For the avoidance of doubt, the Prices tendered by the Provider for each individual apprenticeship course shall be fixed for the duration of that particular apprentice’s training even if the bandings quoted by the ESFA are altered.

**PROVIDER’S GENERAL DPS** **OBLIGATIONS**

1. **WARRANTIES AND REPRESENTATIONS**
	1. The Provider warrants and represents to the Council that:
		1. it has full capacity and authority and all necessary consents (including, where its procedures so require, the consent of its Parent Company) to enter into and to perform its obligations under this Agreement;
		2. this Agreement is executed by a duly authorised representative of the Provider;
		3. in entering into this Agreement or any Contract it has not committed any Prohibited Act;
		4. as at the Commencement Date it is a registered provider under RoATP and remains so registered at all times during provision of the Services;
		5. as at the Commencement Date, all information, statements and representations contained in the Provider’s Response are true, accurate and not misleading save as may have been specifically disclosed in writing to the Council before the execution of this Agreement and it will promptly advise the Council of any fact, matter or circumstance of which it may become aware during the Term that would render any such information, statement or representation to be false or misleading;
		6. no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets that will or might affect its ability to perform its obligations under this Agreement and any Contract which may be entered into with the Council;
		7. it is not subject to any contractual obligation, compliance with which is likely to have an effect on its ability to perform its obligations under this Agreement and any Contract; and
		8. no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Provider or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Provider’s assets or revenue.
2. **SERVICE PRE-REQUISITES**
	1. The Provider shall be responsible for obtaining all licences, authorisations, consents or permits required in relation to the performance of this Agreement and any Contract.

**SUPPLIER’S INFORMATION OBLIGATIONS**

1. **REPORTING AND MEETINGS**
	1. The Provider shall submit Management Information to the Buyer on the last day of every Month (or such other reasonable time period as reasonably requested by the Buyer) and thereafter in respect of any Contract entered into with the Buyer provide details of Management Information and if necessary, provide access to this Management Information for the Buyer via an online student progress reporting tool.
	2. The Authorised Representatives shall meet monthly (or less frequently if so requested by the Buyer in writing) and the Provider shall, at each meeting, present its previously circulated Management Information in the format required by the Buyer and such meetings may, at the request of the Buyer, be by teleconference or skype.
	3. The Buyer may make changes to the nature of the Management Information that the Provider is required to supply and shall give the Provider at least one month’s written notice of any changes.
2. **RECORDS AND AUDIT ACCESS**
	1. The Provider shall keep and maintain until six years after the date of termination or expiry (whichever is the earlier) of this Agreement (or as long a period as may be agreed between the Parties), full and accurate records and accounts of the operation of this Agreement including the Services provided under it, and the amounts paid by the Buyer.
	2. The Provider shall keep the records and accounts referred to in [*Clause 10.1*](#co_anchor_a324597_1) above in accordance with good accountancy practice.
	3. The Provider shall afford the Buyer or the Auditor (or both) such access to such records and accounts as may be required from time to time.
	4. The Provider shall provide such records and accounts (together with copies of the Provider’s published accounts) during the Term and for a period of six years after expiry of the Term to the Buyer and the Auditor.
	5. The Buyer shall use reasonable endeavours to ensure that the conduct of each Audit does not unreasonably disrupt the Provider or delay the provision of the Services pursuant to the Contracts, save insofar as the Provider accepts and acknowledges that control over the conduct of Audits carried out by the Auditor is outside of the control of the Buyer.
	6. Subject to the Buyer’s rights of confidentiality, the Provider shall on demand provide the Auditor with all reasonable co-operation and assistance in relation to each Audit, including:
		1. all information requested by the Auditor within the scope of the Audit;
		2. reasonable access to sites controlled by the Provider and to equipment used in the provision of the Services; and
		3. accessto the Staff.
		4. The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this [*Clause 10*](#co_anchor_a741169_1), unless the Audit reveals a material Default by the Provider in which case the Provider shall reimburse the Buyer for the Buyer’s reasonable costs incurred in relation to the Audit.
3. **CONFIDENTIALITY**
	1. Subject to [*Clause 11.2*](#co_anchor_a731036_1), the Parties shall keep confidential the Confidential Information of the Parties and shall use all reasonable endeavours to prevent their representatives from making any disclosure to any person of any matters relating hereto.
	2. [*Clause 11.1*](#co_anchor_a564926_1)  shall not apply to any disclosure of information:
		1. required by any applicable law or to any disclosures required under the FOIA or the Environmental Information Regulations;
		2. that is reasonably required by persons engaged by a Party in the performance of that Party’s obligations under this Agreement;
		3. where a Party can demonstrate that such information is already generally available and in the public domain otherwise than as a result of a breach of [*Clause 11.1*](#co_anchor_a564926_1);
		4. by the Buyer of any document to which it is a party and which the Parties to this Agreement have agreed contains no Confidential Information;
		5. to enable a determination to be made under **Clause 19**;
		6. which is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party, and the disclosing party is not under any obligation of confidence in respect of that information;
		7. by the Buyer to any other department, office or agency of the government, provided that the Buyer informs the recipient of any duty of confidence owed in respect of the information; and
		8. by the Buyer relating to this Agreement and in respect of which the Provider has given its prior written consent to disclosure.
4. **DATA PROTECTION**

In this clause the terms **Controller**, **Processor**, **Data Subject**, **Personal Data**, **Personal Data Breach**, **Data Protection Officer** take the meaning given in the GDPR.

## The Parties acknowledge that for the purposes of the Data Protection Legislation, the Buyer is the Controller and the Provider is the Processor. The only processing that the Provider is authorised to do is listed in **Schedule 2** **Schedule of Processing, Personal Data** by the Buyer and may not be determined by the Provider.

## The Provider shall notify the Buyer immediately if it considers that any of the Buyer’s instruction infringe the Data Protection Legislation.

## The Provider shall provide all reasonable assistance to the Buyer in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Buyer include:

### A systematic description of the envisaged processing operations and the purpose of the processing;

### An assessment of the necessity and proportionality of the purpose of the processing;

### An assessment of the necessity and proportionality of the processing operations in relation to the Services;

### An assessment of the risks to the rights and freedoms of Data Subjects; and

### The measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

## The Provider shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:

### Process that Personal Data only in accordance with **Schedule 2** unless the Provider is required to do otherwise by Law. If it is so required the Provider shall promptly notify the Buyer before processing the Personal Data unless prohibited by Law;

### Ensure that it has in place Protective Measures, which have been reviewed and approved by the Buyer as appropriate to protect against a Data Loss Event having taken account of the:

#### Nature of the data to be protected;

#### Harm that might result from a Data Loss Event;

#### State of technological development; and

#### Cost of implementing any measures

### Ensure that:

#### The Staff do not process Personal Data except in accordance with this Agreement (and in particular **Schedule 2 (Schedule of Processing, Personal Data and Data)**);

#### It takes all reasonable steps to ensure the reliability and integrity of any Staff who have access to the Person Data and ensure that they:

##### Are aware of comply with the Provider’s duties under this clause:

##### Are subject to appropriate confidentiality undertakings with the Provider or any Sub-processor;

##### Are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Persona Data to any third Party unless directing in writing to do so by the Buyer or as otherwise permitted by this Agreement; and

##### Have undergone adequate training in the use, care protection and handling of Personal Data; and

##### Not transfer Personal Data outside of the EU unless the prior written consent of the Buyer has been obtained and the following conditions are fulfilled:

##### The Buyer or the Provider has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or Law Enforcement Directive *(Directive (EU) 2016/680)* Article 37) as determined by the Buyer;

##### The Data Subject has enforceable rights and effective legal remedies;

##### The Provider complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Buyer in meeting its obligations); and

##### The Provider complies with any reasonable instructions notified to it in advance by the Buyer with respect to the processing of the Personal Data;

##### At the written direction of the Buyer, delete or return Personal Data (and any copies of it) to the Buyer on termination of the Agreement unless the Provider is required by Law to retain the Personal Data.

## Subject to **clause 12.6** the Provider shall notify the Buyer immediately if it:

### Receives a Data Subject Access Request (or purported Data Subject Access Request);

### Receives a request to rectify, block or erase any Personal Data;

### Receives any other request, complaint or communication relating to either Party’s obligations under the Data Protection Legislation;

### Receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;

### Receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law.

### Becomes aware of a Data Loss Event.

## The Provider’s obligation to notify under **clause 12.5** shall include the provision of further information to the Buyer in phases, as details become available.

## Taking into account the nature of the processing, the Provider shall provide the Buyer with full assistance in relation to either Party’s obligations under Data Protection legislation and any complaint, communication or request made under **clause 12.5** (and insofar as possible within the timescales reasonable required by the by the Buyer) including by promptly providing:

### The Buyer with full details and copies of the complaint, communication or request;

### Such assistance as is reasonably requested by the Buyer to enable the Provider to comply with a Data Subject Access Request within the relevant timescales set out in the DPL;

### The Buyer, at its request with any Personal Data it holds in relation to a Data Subject;

### Assistance as requested by the Buyer following any Data Loss Event

### Assistance as requested by the Buyer with respect to any request from the Information Commissioner’s Office.

## The Provider shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Provider employs fewer than 250 staff, unless:

### The Buyer determines that the processing is not occasional;

### The Buyer determines the processing includes special categories of date as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and

### The Buyer determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.

## The Provider shall allow for audits of its Data Processing activity by the Buyer or the Buyer’s designated auditor.

## The Provider shall designate a data protection officer if required the Data Protection Legislation.

## Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Provider must:

### Notify the Buyer in writing of the intended Sub-process and processing;

### Obtain the written consent of the Buyer;

### Enter into a written agreement with the Sub-processor which give effect to the terms set out in this **clause 12.11.3** such that they apply to the Sub-processor as the Buyer may reasonably require.

## The Provider shall remain fully liable for all acts or omissions of any Sub-processor.

## The Provider may, at any time on not less than 30 Working Days’ notice, revise this clause by replacing it with any applicable controller to processor stand alone clause or similar terms forming part of an application certification scheme (which shall apply when incorporate by attachment to this Agreement).

## The Parties agree to take account of any guidance issued by the Information Commissioner’s Office. The Buyer may on not less than 30 Working Days’ notice to the Provider amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner’s Office.

## **FREEDOM OF INFORMATION**

## The Provider acknowledges that the Council and SCCis subject to the requirements of the FOIA and the EIRs. The Provider shall:

## provide all necessary assistance and cooperation as reasonably requested by the Buyer to enable the Buyer to comply with its obligations under the FOIA and EIRs;

##  transfer to the Buyer all Requests for Information relating to this Agreement that it receives as soon as practicable and in any event within 2 Working Days of receipt;

## provide the Buyer with a copy of all Information belonging to the Buyer requested in the Request For Information which is in its possession or control in the form that the Buyer requires within 5 Working Days (or such other period as the Buyer may reasonably specify) of the Buyer’s request for such Information; and

## not respond directly to a Request For Information unless authorised in writing to do so by the Buyer.

## The Provider acknowledges that the Buyer may be required under the FOIA and EIRs to disclose Information (including Confidential Information) without consulting or obtaining consent from the Provider. The Buyer shall take reasonable steps to notify the Provider of a Request For Information (in accordance with the Secretary of State’s section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Agreement) the Buyer shall be responsible for determining in its absolute discretion whether any Confidential Information and/or any other information is exempt from disclosure in accordance with the FOIA and/or the EIRs.

## **PUBLICITY**

##  Unless otherwise directed by the Buyer, the Provider shall not make any press announcements or publicise this Agreement in any way without the Buyer’s prior written consent.

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

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

## **AGREEMENT TERMINATION AND SUSPENSION**

## **TERMINATION**

## **Termination on Default**

## The Buyer may terminate the Agreement by serving written notice on the Provider with effect from the date specified in such notice:

## Where the Provider has committed any act, or permitted any matter to arise which would bring the Buyer into disrepute

## Where the Provider failing to be registered as a RoATP,

## where the Provider commits a material breach and:

## the Provider has not remedied the material breach to the satisfaction of the Buyer within 20 Working Days, or such other period as may be specified by the Buyer, after issue of a written notice specifying the material breach and requesting it to be remedied; or

##  the material breach is not, in the reasonable opinion of the Buyer, capable of remedy; or

## where any warranty given in [*Clause 7*](#co_anchor_a950750_1) of this Agreement is found to be untrue or misleading;

## if any of the provisions of Regulation 73(1) of the Public Contracts Regulations 2015 apply.

## For the purposes of **Clause 15.1.1**, **material breach** means a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit which the Buyer would otherwise derive from:

## a substantial portion of this Agreement; or

## any matter which would bring the Buyer into disrepute

## the Provider failing to be registered as a RoATP,

over the term of this Agreement. In deciding whether any breach is material no regard shall be had to whether it occurs by some accident, mishap, mistake or misunderstanding.

**Termination on insolvency and Change of Control**

## Without affecting any other right or remedy available to it, the Council may terminate this Agreement with immediate effect by giving written notice to the Provider if:

##  the Provider suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 **OR** (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 **OR** (being a partnership) has any partner to whom any of the foregoing apply;

## the Provider commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;

## a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Provider (being a company);

## an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Provider (being a company);

## the holder of a qualifying floating charge over the assets of the Provider (being a company) has become entitled to appoint or has appointed an administrative receiver;

## a person becomes entitled to appoint a receiver over the assets of the Provider or a receiver is appointed over the assets of the Provider;

## the Provider (being an individual) is the subject of a bankruptcy petition or order;

## a creditor or encumbrancer of the Provider attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Provider’s assets and such attachment or process is not discharged within 14 days;

## any event occurs, or proceeding is taken, with respect to the Provider in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in **clause 15.2.1 and 15.2.10** (inclusive); or

## the Provider suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

## The Provider shall notify the Buyer immediately if the Provider undergoes a Change of Control. The Buyer may terminate the Agreement by giving notice in writing to the Provider with immediate effect within six Months of:

##  being notified that a Change of Control has occurred; or

##  where no notification has been made, the date that the Buyer becomes aware of the Change of Control;

## but shall not be permitted to terminate where an Approval was granted before the Change of Control.

## **Termination by Buyer for convenience**

##  **SUSPENSION OF PROVIDER’S APPOINTMENT**

## Without prejudice to the Buyer’s rights to terminate the Agreement in **Clause 15**above, if a right to terminate this Agreement arises in accordance with **Clause 15**, the Buyer may suspend the Provider’s right to receive Orders by giving notice in writing to the Provider. If the Buyer provides notice to the Provider in accordance with this **Clause 16**, the Provider’s appointment shall be suspended for the period set out in the notice or such other period notified to the Provider by the Buyer in writing from time to time.

## **CONSEQUENCES OF TERMINATION AND EXPIRY**

## Notwithstanding the service of a notice to terminate the Agreement, the Provider shall continue to fulfil its obligations under the Agreement until the date of expiry or termination of the Agreement or such other date as required under this **Clause 17.**

## Unless expressly stated to the contrary, the service of a notice to terminate the Agreement shall not operate as a notice to terminate any Contract made under the Agreement. Termination or expiry of the Agreement shall not cause any Contracts to terminate automatically. For the avoidance of doubt, all Contracts shall remain in force unless and until they are terminated or expire in accordance with their own terms.

## Within 30 Working Days of the date of termination or expiry of the Agreement, the Provider shall return or destroy at the request of the Buyer any data, personal information relating to the Buyer or its personnel or Confidential Information belonging to the Buyer in the Provider’s possession, power or control, either in its then current format or in a format nominated by the Buyer (in which event the Buyer will reimburse the Provider’s reasonable data conversion expenses), together with all training manuals and other related documentation, and any other information and all copies thereof owned by the Buyer, save that it may keep one copy of any such data or information for a period of up to 12 Months to comply with its obligations under the Agreement, or such period as is necessary for such compliance.

## Termination or expiry of this Agreement shall be without prejudice to any rights, remedies or obligations of either Party accrued under this Agreement before termination or expiry.

## The provisions of **Clause 7 (warranties), Clause 10 (Records), Clause 11 (Confidentiality)**, **Clause 12 (Data Protection), Clause 13 (FOI), Clause 14 (Publicity), Clause 17 (Consequences of Termination), Clause 20 (Bribery), and** **Clause 29 (Jurisdiction**)shall survive the termination or expiry of the Agreement, together with any other provision which is either expressed to or by implication is intended to survive termination.

## **COMPLAINTS HANDLING AND RESOLUTION**

## Within two Working Days of a request by the Buyer, the Provider shall provide full details of a Complaint to the Buyer, including details of steps taken to its resolution.

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

##  **DISPUTE RESOLUTION**

## If a dispute arises out of or in connection with this Agreement or the performance, validity or enforceability of it (Dispute) then except as expressly provided in this Agreement, the parties shall follow the procedure set out in this clause:

## either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (Dispute Notice), together with relevant supporting documents. On service of the Dispute Notice, the Senior Leader Learning and Development of the Buyer and [EMPLOYEE TITLE] of the Provider shall attempt in good faith to resolve the Dispute;

## if the Senior Leader Learning and Development of The Buyer and [EMPLOYEE TITLE] of the Provider are for any reason unable to resolve the Dispute within 30 days of service of the Dispute Notice, the Dispute shall be referred to the Head of Performance Improvement and Human Resources of the Buyer and [SENIOR OFFICER TITLE] of the Provider who shall attempt in good faith to resolve it; and

##  if the Head of Performance Improvement and Human Resources of the Buyer and [SENIOR OFFICER TITLE] of the Provider are for any reason unable to resolve the Dispute within 30 days of it being referred to them, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR Solve. To initiate the mediation, a party must serve notice in writing (ADR notice) to the other party to the Dispute, requesting a mediation. A copy of the ADR notice should be sent to CEDR Solve. The mediation will start not later than 30 days after the date of the ADR notice.

## The commencement of mediation shall not prevent the parties commencing or continuing court proceedings in relation to the Dispute under Clause 29 which clause shall apply at all times.

## If the Dispute is not resolved within 40 days after service of the ADR notice, or either party fails to participate or to continue to participate in the mediation before the expiration of the said period of 40 days, or the mediation terminates before the expiration of the said period of 40 days, the Dispute shall be finally resolved by the courts of England and Wales in accordance with **Clause 29** in this Agreement.

## **GENERAL PROVISIONS**

## **PREVENTION OF BRIBERY**

## The Provider:

## shall not, and shall procure that the Staff and all Sub-Contractor personnel shall not, in connection with this Agreement and any Contract made under it commit a Prohibited Act; and

##  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 Buyer, or that an Agreement has been reached to that effect, in connection with the execution of this Agreement, excluding any arrangement of which full details have been disclosed in writing to the Buyer before execution of this Agreement.

## The Provider shall:

##  if requested, provide the Buyer with any reasonable assistance, at the Buyer’s reasonable cost, to enable the Buyer to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act 2010; and

## within 28 Working Days of the Commencement Date, and annually thereafter, certify to the Buyer in writing (such certification to be signed by an officer of the Provider) compliance with this **clause 20** by the Provider and all persons associated with it or other persons who are supplying goods or services in connection with this Agreement. The Provider shall provide such supporting evidence of compliance as the Buyer may reasonably request.

##  The Provider shall have an anti-bribery policy (which shall be disclosed to the Buyer) to prevent any Staff or Sub-Contractors from committing a Prohibited Act and shall enforce it where appropriate.

##  If any breach of **Clause 20.1** is suspected or known, the Provider must notify the Buyer immediately.

## If the Provider notifies the Buyer that it suspects or knows that there may be a breach of **clause 20**, the Provider must respond promptly to the Buyer’s enquiries, co-operate with any investigation, and allow the Buyer to audit books, records and any other relevant documents. This obligation shall continue for six years following the expiry or termination of this Agreement.

## The Buyer may terminate this Agreement by written notice with immediate effect if the Provider, its Staff or Sub-Contractors (in all cases whether or not acting with the Provider’s knowledge) breaches **Clause 20.1**. In determining whether to exercise the right of termination under this **clause 20.6**, the Buyer shall give all due consideration, where appropriate, to action other than termination of this Agreement unless the Prohibited Act is committed by the Provider or a senior officer of the Provider or by an employee, Sub-Contractor or supplier not acting independently of the Provider. The expression “not acting independently of” (when used in relation to the Provider or a Sub-Contractor) means and shall be construed as acting:

##  with the authority or with the actual knowledge of any one or more of the directors of the Provider or the Sub-Contractor (as the case may be); or

## in circumstances where any one or more of the directors of the Provider ought reasonably to have had such knowledge

## Any notice of termination under **Clause 20.6** must specify;

##  the nature of the Prohibited Act;

##  the identity of the party whom the Buyer believes has committed the Prohibited Act; and

## the date on which this Agreement will terminate.

## Despite **clause 20**, any dispute relating to:

## the interpretation of this **clause 20**; or

##  the amount or value of any gift, consideration or commission,

## shall be determined by the Buyer and its decision shall be final and conclusive.

## Any termination under this **clause 20** will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Buyer.

##  **SUBCONTRACTING AND ASSIGNMENT**

## Subject to **clause 20.8.2**, neither party shall be entitled to assign, novate or otherwise dispose of any or all of its rights and obligations under this Agreement without the prior written consent of the other party, neither may the Provider subcontract the whole or any part of its obligations under this Agreement.

## The Buyer shall be entitled to novate the Agreement to any other body which substantially performs any of the functions that previously had been performed by the Buyer.

## **VARIATIONS TO AGREEMENT**

## Any variations to the Agreement must be made only in accordance with the Agreement Variation Procedure set out in **Schedule 1**..

## **THIRD PARTY RIGHTS**

## Except as provided in [*Clause 3*](#co_anchor_a599894_1) *and*, [*Clause 4*](#co_anchor_a777913_1), a person who is not a party to this Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

## **SEVERANCE**

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

## If one party gives notice to the other of the possibility that any provision or part-provision of this Agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

## **RIGHTS AND REMEDIES**

## The rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

## **INTEREST**

## Each party shall pay interest on any sum due under this Agreement, calculated as follows:

## Rate. **4%** a year above the Bank of England’s base rate from time to time, but at 4% a year for any period when that base rate is below 0%.

## Period. From when the overdue sum became due, until it is paid.

##  **WAIVER**

## No failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

## **ENTIRE AGREEMENT**

## This Agreement, the schedules and the documents annexed to it or otherwise referred to in it and the Provider’s Response and Supplemental Tender contain the whole Agreement between the parties relating to the subject matter hereof and supersedes all prior Agreement, arrangements and understandings between the parties relating to that subject matter, provided that nothing in this **Clause 27** shall operate to exclude any liability for fraud.

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

##  **NOTICES**

## Except as otherwise expressly provided within this Agreement, no notice or other communication from one Party to the other shall have any validity under the Agreement unless made in writing by or on behalf of the Party sending the communication.

## Any notice or other communication which is to be given by either Party to the other shall be given by letter (sent by hand, post, registered post or by the recorded delivery service), (confirmed in either case by letter). Such letters shall be addressed to the other Party in the manner referred to in **Clause 28.3**. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given two Working Days after the day on which the letter was posted, or four hours, in the case of or sooner where the other Party acknowledges receipt of such letters.

##  For the purposes of **Clause 28.2**, the address of each Party shall be:

## For the Council:

North Somerset Council

Address: Town Hall, Walliscote Grove, Road, Weston-super-Mare, BS23 1UJ:

For the attention of: Head of Performance Improvement and Human Resources

Tel:01934 888888

## For the Provider:

[NAME OF SERVICE PROVIDER’S AUTHORISED REPRESENTATIVE]

Address:

For the attention of:

Tel:

##  Either Party may change its address for service by serving a notice in accordance with this clause.

## **GOVERNING LAW AND JURISDICTION**

## This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

## Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

This Agreement has been entered into on the date stated at the beginning of it.

Signed by [NAME OF DIRECTOR]

for and on behalf of [NAME OF COUNCIL]

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

Director

Signed by [NAME OF DIRECTOR]

for and on behalf of [NAME OF SERVICE PROVIDER]

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

Director

**SCHEDULE 1**

**AGREEMENT VARIATION PROCEDURE**

**1.**  **INTRODUCTION**

    **1.1**  **Schedule 1** details the scope of the variations permitted and the process to be followed where the Council proposes a variation to the Agreement.

    **1.2**  The Council may propose a variation to the Agreement under **Schedule 1** only where the variation does not amount to a material change in the Agreement or the Services.

**2.**  **PROCEDURE FOR PROPOSING A VARIATION**

    **2.1**  Except where [*Paragraph 5*](#co_anchor_a733057_1) applies, the Council may propose a variation using the procedure contained in this [*Paragraph 2*](#co_anchor_a1041099_1).

    **2.2**  In order to propose a variation, the Council shall serve each DPS Provider with written notice of the proposal to vary the Agreement (**Notice of Variation**).

    **2.3**  The Notice of Variation shall:

**(a)**  contain details of the proposed variation providing sufficient information to allow each DPS Provider to assess the variation and consider whether any changes to the Prices are necessary; and

**(b)**  require each DPS Provider to notify the Council within 10 days of any proposed changes to the Prices.

    **2.4**  On receipt of the Notice of Variation, each DPS Provider has 5 days to respond in writing with any objections to the variation.

    **2.5**  Where the Council does not receive any written objections to the variation within the timescales detailed in [*Paragraph 2.4*](#co_anchor_a325899_1), the Council may then serve each DPS Provider with a written Agreement detailing the variation to be signed and returned by each DPS Provider within 10 days of receipt.

    **2.6**  On receipt of a signed Agreement from each DPS Provider, the Council shall notify all DPS Providers in writing of the commencement date of the variation.

**3.**  **OBJECTIONS TO A VARIATION**

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

**(a)**  withdraw the proposed variation; or

**(b)**  propose an amendment to the variation.

**4.**  **CHANGES TO THE PRICING**

    **4.1**  Where a DPS Provider can demonstrate that a variation would result in a change to its Prices, the Council may require further evidence from the DPS Provider that any additional costs to the DPS Provider will be kept to a minimum.

    **4.2**  The Council may require the DPS Provider to meet and discuss any proposed changes to the Prices that would result from a variation.

    **4.3**  Where a change to a DPS Provider’s Prices prices is agreed by the Council, the Council shall notify its acceptance of the change to the DPS Provider in writing.

    **4.4**  In the event that the Council and the DPS Provider cannot agree to the changes to the Prices, the Council may:

**(a)**  withdraw the variation; or

**(b)**  propose an amendment to the variation.

**5.**  **VARIATIONS THAT ARE NOT PERMITTED**

    In addition to the provisions contained in [*Paragraph 1.2*](#co_anchor_a312179_1), the Council may not propose any variation that:

**(a)**  may prevent one or more of the **DPS** Providers from performing its obligations under the Agreement; or

**(b)**  is in contravention of any Law.

|  |  |
| --- | --- |
| Signed by [NAME OF DIRECTOR]for and on behalf of [NAME OF COUNCIL] | ......................Director |
| Signed by [NAME OF DIRECTOR]for and on behalf of [NAME OF SERVICE PROVIDER] | ......................Director |

**SCHEDULE 2**

**Schedule of Processing, Personal Data**

## The Provider shall comply with any further written instructions with respect to processing by the Council

## Any such further instructions shall be incorporated into this Schedule.

|  |  |
| --- | --- |
| **Description** | **Details** |
| Subject matter of the processing | Details of those persons embarking on an apprenticeship programme. |
| Duration of the processing | For the length of the apprenticeship programme and in compliance with GDPR requirements thereafter. |
| Nature and purposes of the processing | Collection and storage of personal information. For the purpose of statutory requirements by the ESFA, Ofsted and any other overseeing body to allow the provider to claim relevant funding, provide accredited qualifications/apprenticeship standards, assess apprentice progress and provide tailored individual support where required.  |
| Type of Personal Data | Name, address, date of birth, NI number, work telephone number, place of work, job title. |
| Categories of Data Subject | The Buyer’s staff. |
| Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data | For the duration of the apprenticeship programme and in compliance with GDPR requirements thereafter. |

**SCHEDULE 3**

**ORDER FORM**

Agreement

**FROM**

|  |  |
| --- | --- |
| **Council:** |   |
| **Service address:** |   |
| **Invoice address:** |   |
| **Authorised Representative:** | Ref:Phone:E-mail: |
| **Order number:** | To be quoted on all correspondence relating to this Order: |
| **Order date:** |   |

**TO**

|  |  |
| --- | --- |
| **Provider:** | [SERVICE PROVIDER’S NAME] |
| **For the attention of:****E-mail:****Telephone number:** |   |
| **Address:** |   |

|  |
| --- |
| **1. SERVICES REQUIREMENTS** |
| **(1.1) Services [and deliverables] required:** |
| **(1.2) Service Commencement Date:** |
| **(1.3) Price payable by Council and payment profile:** |
| **(1.4) Completion date (including any extension period or periods):** |

|  |
| --- |
| **2 [MINI-COMPETITION ORDER: ADDITIONAL REQUIREMENTS** |
| **(2.1) Detailed Specification and Supplemental requirements in addition to Call-off Terms and Conditions:** |
| **(2.2) Variations to Call-off Terms and Conditions:** |

|  |
| --- |
| **3. PERFORMANCE OF THE SERVICES [AND DELIVERABLES]** |
| **(3.1) Key personnel of the Provider to be involved in the Services [and deliverables]:** |
| **(3.2) Performance standards:** |
| **(3.3) Location(s) at which the Services are to be provided:** |
| **(3.4) Quality standards:** |
| **(3.5) Contract monitoring arrangements:** |
| **(3.6) Management Information and meetings** |

|  |
| --- |
| **4. CONFIDENTIAL INFORMATION** |
| **(4.1) The following information shall be deemed Confidential Information:** **(4.2) Duration that the information shall be deemed Confidential Information:** |

**BY SIGNING AND RETURNING THIS ORDER FORM THE PROVIDER AGREES** to enter a legally binding contract with the Council to provide to the Council the Services specified in this Order Form (together with, where completed and applicable, the mini-competition order (additional requirements) set out in section 2 of this Order Form) incorporating the rights and obligations in the Call-off Terms and Conditions set out in the Agreement entered into by the Provider and the Council on [DATE].

For and on behalf of the Provider:

|  |  |
| --- | --- |
| Name and title |   |
| Signature |   |
| Date |   |
| Provider’s Authorised Representative for the Contract (if different) | [NAME] |

For and on behalf of the Council:

|  |  |
| --- | --- |
| Name and title |   |
| Signature |   |
| Date |   |

**Appendix 1: Specification for the Services**

**Appendix 2: Provider’s Tender**

**Appendix 3: Supplemental Tender (for Competed Services)**

|  |  |  |
| --- | --- | --- |
|  | **END OF DOCUMENT** |  |