OPEN FRAMEWORK PARTICULARS

**OPEN FRAMEWORK FOR THE PROVISION OF POST-ADOPTION THERAPY SERVICES FOR ADOPT THAMES VALLEY**

1. The Commencement Date is the date on which the Service Provider is accepted on to the Open Framework.
2. The Open Framework Agreement Period is the period from the Commencement Date until 19th January 2026 unless terminated earlier in accordance with the terms of the Open Framework Agreement.
3. The Council may extend the Open Framework Agreement Period for up to two (2) years in aggregate on the same terms (including, for the avoidance of doubt, at the same Schedule 2 rates) upon written notice to the Service Provider provided always that unless otherwise agreed with the Service Provider, no less than three (3) months’ prior notice will be given on each occasion.

1. Council’s Contact is Teresa Rogers.
2. The Council’s email address for notices is [activitiesoxfordshire@oxfordshire.go.uk](mailto:activitiesoxfordshire@oxfordshire.go.uk)
3. The Service Provider’s email address for notices is as set out in the Open Framework Agreement.
4. The Council’s postal address for notices shall be as set out at Condition 13.1.
5. Special Conditions – The following special conditions apply.
6. Registrations/Inspections

SC1.1 The Service Provider shall maintain all registrations/inspections which are necessary to lawfully provide the Services under the Purchasing Terms.

1. Criminal Record Checks
   1. The Service Provider shall:
      1. ensure that Staff whose work falls within the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 and, where the Services involve a Regulated Activity, all Staff carrying out a Regulated Activity are subject to a valid criminal record check undertaken through the DBS (either by the Service Provider undertaking such check or by the Service Provider carrying out a status check of the Staff member’s certificate with the DBS) at an enhanced level where permissible and including a check against the adults' barred list and/or the children's barred list where permissible;
      2. where:
2. Staff whose work falls within the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975; and/or
3. Staff carrying out a Regulated Activity, where the Services involve a Regulated Activity,

have lived and/or worked abroad for a continuous period of three months or more in the preceding five years, obtain a criminal records check, or ‘Certificate of Good Character’, from their country of origin and those countries in which they have lived and /or worked. Where such checks or certificates and other documentation are provided in a foreign language they must be translated, and that translation supported by a “Certificate of Authenticity of Translation;”

* + - 1. monitor its procedures to ensure that the appropriate checks are carried out for all Staff; and
      2. ensure that all Disclosures pursuant to Condition SC2.1.1 are renewed as required by any relevant Enactments and, in respect of any Staff working in domiciliary care and/or working with children, not less than every three (3) years and that the Service Provider checks Disclosures upon renewal.
  1. Pending the receipt of the relevant Disclosure no member of Staff requiring a Disclosure under Conditions SC2.1.1 and SC2.1.2 shall be used in the provision of the Services unless in the case of Staff carrying out a Regulated Activity such member of Staff is accompanied at all times by a DBS Checked Member of Staff, the Council’s consent has been obtained and any relevant provisions in Schedule 4 have been complied with.
  2. The Service Provider shall obtain the written consent of the Staff referred to in Conditions SC2.1.1 and SC2.1.2 to pass the Disclosures to the Council where those Disclosures reveal a conviction or other relevant information which indicates such Staff may pose a risk to the Council, Council staff or users of Council services.
  3. Where a Disclosure reveals a conviction or other relevant information (as defined in SC2.3 above) the Service Provider shall carry out a risk assessment in accordance with the Council’s instructions and shall share the details of such risk assessment with the Council’s Contact.
  4. The Service Provider shall ensure that where a conviction or other relevant information (as defined in Condition SC2.3 above) is revealed by a Disclosure or otherwise no such Staff referred to in Conditions SC2.1.1 and SC2.1.2 shall be used in the provision of the Services without the prior written permission of the Council’s Contact.
  5. For the purposes of this Condition SC2:

**“DBS”** means the Disclosure and Barring Service or any successor body;

**“DBS Checked Member of Staff”** means a member of Staff for whom a Disclosure has been obtained and if holding any convictions has been approved in writing by the Council in accordance with Condition SC2.5;

**“Disclosure(s)”** means the check(s) referred to in Conditions SC2.1.1 and SC2.1.2;

**“Regulated Activity”** has the meaning given to it in the SVGA; and

**“SVGA”** means the Safeguarding Vulnerable Groups Act 2006, as amended by the Protection of Freedoms Act 2012.imsurance

1. Regulated Activities
   1. Where the Services involve a Regulated Activity:
   2. The parties acknowledge that the Service Provider is, for the purposes of the SVGA, a Regulated Activity Provider, with ultimate responsibility for the management and control of the Regulated Activity provided pursuant to the Purchasing Terms.
   3. The Service Provider warrants that at all times for the purposes of the Purchasing Terms it has no reason to believe that any Staff are barred from the provision of the Services under the SVGA.
   4. The Service Provider shall refer information about any Staff member to the DO (and to the DBS if required by the DBS) where it has concerns about such Staff member or it removes permission for such Staff member to carry out the Services (or would have, if such Staff member had not otherwise ceased to carry out the Services) because, in its opinion, such Staff member has harmed or poses a risk of harm to the users of the Services. Such reference shall be made within 24 hours of the earlier of such concerns arising or the removal of such permission.
   5. The Service Provider shall not employ or use the services of any Staff who are barred from, or whose previous conduct or records indicate that they would not be suitable to carry out, any Regulated Activity or who may otherwise present a risk to users of the Services.

For the purposes of this Condition SC3:

**“DO”** means the designated officer as set out in the statutory guidance document entitled ‘Working Together to Safeguard Children’;

**“Regulated Activity Provider”** has the meaning given to it in the SVGA; and

the definitions given in Condition SC2.6 apply.

1. Safeguarding Policies and Procedures
   1. The Service Provider shall ensure that it has in place systems, policies and procedures to ensure the protection of children and young people consistent with the Oxfordshire Safeguarding Children Board’s (“OSCB’s”) Procedures Manual, as amended from time to time, and Section 11 of the Children Act 2004 and shall ensure compliance with such systems, policies and procedures.
   2. If the Service Provider is an employer in relation to the provision of the Services that may be required under the terms of the Open Framework Agreement, the Service Provider confirms that it has completed and returned to the Council, as part of the procurement process for entry onto to the Open Framework, an OSCB “Section 11- Self Assessment” using the toolkit provided by the Council’s designated quality and contracts officer. Throughout the Open Framework Agreement Period, upon the anniversary of the Commencement Date and at other times upon the reasonable request of the Council, the Service Provider shall update the ‘Section 11- Self Assessment’ and return it to such officer. The Service Provider shall promptly address any shortcomings identified.
2. Information Governance
   1. With respect to the parties' rights and obligations under this Contract, the parties agree that each of the Council and the Service Provider are considered Data Controllers in their own right.
   2. As each of the parties is a Data Controller in relation to the Personal Data, it will comply with the provisions of the Data Protection Legislation and it will:
      1. afford to Data Subjects such rights and protections as they have under the Data Protection Legislation;
      2. take such technical and organisational measures as may be appropriate to ensure the security of that Personal Data and the reliability of its employees, staff, officers and agents who may have access to, or be involved in, the Processing of that Personal Data. Without prejudice to the generality of the foregoing, it will keep that Personal Data secure from any unauthorised or accidental use, access, disclosure, damage, loss or destruction;
      3. give the other party such information and assistance as it reasonably requires in order to enable the other party to meet its obligations to Data Subjects, in particular complying with Data Subjects requests for access to, information about, and the rectification of their Personal Data;
      4. notify the other party immediately should it receive any request or enquiry from any Data Subject in relation to the Personal Data being Processed for the purpose of the Contract, give the other party such assistance in dealing with that request or enquiry as it may reasonably request;
      5. comply with the provisions of any data sharing agreements entered into by both parties.
      6. Upon a party ceasing to be Data Controller, the continuing Data Controller acknowledges and agrees that it remains responsible for compliance with Data Protection Legislation.
      7. The parties will agree to any reasonable amendment to this Contract to bring it into line with Data Protection Legislation.

For the purposes of Special Condition SC5 and the Information Governance Schedule:

**“Data Controller”, “Data Subject”, “Personal Data”, Data Protection Officer** shall have the same meaning set out in the Data Protection Legislation;

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

**“Data Protection Impact Assessment”** means an assessment by the Service Provider of the impact of the envisaged processing on the protection of Personal Data.

**“Data Protection Legislation”** means all applicable data protection and privacy legislation in force from time to time in the UK including without limitation the **UK GDPR** (as defined under section 3(10) (as supplemented by section 205(4) of the DPA 2018) and the Data Protection Act 2018 as the same may be amended, as well as any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.

**“Data Subject Access Request”** meansa 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.

**“Process” and “Processing**” shall have the same meanings as set out in the Data Protection Legislationbut for the purposes of this Contract shall include both manual and automatic processing.

**SC6. Exclusivity**

SC6.1. The Service Provider has not been appointed to provide any of

the services specified in Schedule 1 under the Open Framework Agreement on an exclusive basis. Other service providers have also been appointed to provide such services under similar Open Framework agreements and the Council may award contracts to those or other service providers.

SC6.2. The Council has no obligation to award Call-Off Contracts under

the Open Framework Agreement.

**SC7. Call-Off Contracts under the Open Framework Agreement**

SC7.1 The Call-Off Contract Award Procedure shall apply to the award of Call-Off Contracts under the Open Framework Agreement.

**SC8. Where the Service Provider is an individual**

SC8.1. Where the Service Provider is an individual, all Conditions relating to Staff shall apply, mutatis mutandis, to the Service Provider itself rather than Staff.

SC8.2. The Service Provider shall be an independent contractor and not an employee, worker, agent or partner of the Council and shall not hold himself out as such.

**SC9. Suspension from Participation in Call-Off Contract Award Procedure**

SC9.1. Without prejudice to any right of termination set out in these Purchasing Terms the Council may by notice in writing suspend the Service Provider from inclusion in the Call-Off Contract Award Procedure for any or all Call-Off Contracts if in the Council’s reasonable opinion:

SC9.1.1. the Service Provider is failing or has failed to meet the Selection Criteria; and/or

SC9.1.2. the Service Provider has not completed remedial action to remedy a Default by the time specified by the Council; and/or

SC9.1.3. there are serious and immediate concerns over the Service Provider’s ability to perform the Services; and/or

SC9.1.4. there are serious and immediate concerns regarding risks to the safety of Children including safeguarding and health and safety concerns; and/or

SC9.1.5. the Service Provider has experienced or is likely to experience a chronic or acute shortage of Staff which may affect the delivery of Services; and/or

SC9.1.6. the Service Provider is at risk of insolvency due to financial difficulties; and/or

SC9.1.7. a right to terminate the Purchasing Terms in whole or in part arises in accordance with Condition 12.1 or 12.2; and/or

SC9.1.8. the Service Provider declines to participate in the procedure for the award of Call-Off Contracts or declines the award of Call-Off Contracts on a regular basis; and/or

each a “Suspension Event”.

SC9.2. If in the reasonable opinion of the Council the Service Provider has successfully remedied all Suspension Events then the Council shall reinstate the Service Provider by notice in writing for inclusion in the Call-Off Award Procedure for future Call-Off Contracts.

**SC10. Conditions Precedent for Call Off Contracts**

SC10.1 The Parties acknowledge and agree that the award of any Call Off Contract shall be conditional upon the Council confirming receipt of funding with respect to each Referral under the Call Off Contract.

**SC11. Appointment to Service Categories**

SC11.1. The Service Provider has been appointed to the Service Category or Service Categories set out in the Application and may only participate in Call Off Contract Award procedures for Call-Off Contracts related to the Service Category or Service Categories to which the Service Provider has been appointed.

SC11.2. In the event that during the Open Framework Agreement Period a Service Provider has the capacity to provide services under further Service Categories the Council may agree in writing to appoint the Service Provider to such further Service Categories

**SC12 Key Performance Indicators**

SC12.1 The Service Provider agrees to provide to the Council, in a format as the Council shall require, monitoring and performance information on the Services in accordance with the monitoring provisions set out under the Performance Indicators.

SC12.2 The Service Provider shall implement all measurement and monitoring tools and procedures necessary to measure and report on the Service Provider’s performance of the Services against the applicable Key Performance Indicators (KPIs) at a level of detail sufficient to verify compliance with the KPIs.

**SC13. Termination**

SC13.1. Without prejudice to the generality of Condition 12, the parties agree that material Defaults which are not capable of remedy for the purposes of Condition 12.1.2 include but are not limited to:

SC13.1.1. Any breach of Conditions SC2, SC3 or SC4 or Schedule 7 (Safeguarding Policies and Procedures).

1. Healthwatch

SC14.1 The Service Provider shall not prevent a person authorised by a Local Healthwatch Organisation to enter the premises where the Services are provided and observe the Service.

SC14.2 For the purposes of this Condition SC14, “Local Healthwatch Organisation” means a Local Healthwatch organisation as described in s 222 of the Local Government and Public Involvement in Health Act 2007 (as amended by the Health and Social Care Act 2012) or successor body with similar functions.

1. Prevent Obligations

SC15.1 Where the nature of the Services is such that Staff are in contact with persons who may be at risk of being drawn into terrorism

* + 1. the Service Provider shall provide all reasonable support and assistance to the Council in respect of the Council’s duties under the Prevent Strategy; and
    2. the Service Provider shall ensure that all Staff are given appropriate training in the Prevent Strategy including the identification and referral of those at risk of being drawn into terrorism.

SC15.2 Any member of Staff who becomes aware of a person who may be at risk of radicalisation must promptly raise a safeguarding concern in accordance with the Council’s safeguarding policies and procedures.

For the purposes of this Special Condition SC15:

**“Prevent Strategy**” means the strategy published by the Government in 2011 to prevent people from being drawn into terrorism as set out in the document “Prevent Duty Guidance in England and Wales” (<https://www.gov.uk/government/publications/prevent-duty-guidance>)

SC16 **Intellectual Property Rights**

SC16.1 The parties acknowledge that all Intellectual Property Rights that pre-exist prior to the Call-Off Commencement Date will remain vested in the party to whom they were vested as at the Call-Off Commencement Date.

SC16.2The Service Provider hereby grants to the Council, and to each Service User a non- transferable, non-exclusive, fully paid up, royalty free licence to use the Service Provider’s materials strictly for the purpose of enabling the Service User to use the same for therapeutic purposes.

SC16.3 The Service Provider warrants and represents that neither the performance of the Call-Off Contract nor the provision or use of the Services will in any way constitute an infringement or other violation of any Intellectual Property Rights of any third party.

SC16.4 Before utilising any material in relation to the performance of the Call-Off Contract which is or may be subject to any third-party Intellectual Property Rights, the Service Provider shall procure the necessary licences to enable the Council to use such material at all times for the Council’s purposes at no cost to the Council.

**“Intellectual Property Rights”** means patents, inventions, trade marks, service marks, logos, design rights (whether registrable or otherwise), applications for any of the foregoing, copyright, semi-conductor topography rights, 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;

**“Service User”** means an individual receiving Services pursuant to the Call-Off Contract;

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**CONDITIONS**

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| 1. DEFINITIONS AND INTERPRETATION |

* 1. In these Conditions, except where the context otherwise requires, the following expressions shall have the following meanings:

**“Application”** means the Service Provider’s application for inclusion on the Open Framework;

**“Associated Company”** means any holding company from time to time of the Service Provider and any subsidiary from time to time of the Service Provider, or any subsidiary of any such holding company (“holding company” and “subsidiary company” having the same meanings as in section 1159 of the Companies Act 2006);

**“Call-Off Contract”** means a written agreement between the Council and the Service Provider awarded under the Open Framework Agreement in substantially the form set out in Schedule 5 incorporating the Conditions and **“Call-Off Contracts”** means any and all Call-Off Contracts entered into between the parties;

**“Call-Off Contract Award Procedure”** means the procedure for awarding a Call-Off Contract pursuant to the Open Framework Agreement as described in Schedule 4;

**“Call-Off Contract Period”** means the call-off contract period specified in the Call-Off Contract;

**“Call-Off Contract Price”** means the call-off contract price specified in the Call-Off Contract which shall be in accordance with the schedule of rates set out in Schedule 2;

**"Conditions"** means these conditions;

**“Council Data”** means:

1. the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which:
   1. are supplied to the Service Provider by or on behalf of the Council; or
2. the Service Provider is required to generate, process, store or transmit pursuant to the Purchasing Terms:

**"Council’s Contact"** means the person specified in the Particulars and any such other person as may be appointed by the Council and notified in writing to the Service Provider to act generally or for specified purposes or periods;

**“Default”** means any breach of the obligations of the Service Provider under the Purchasing Terms or any default, act, omission or negligence of the Service Provider or Staff in connection with or in relation to the subject matter of the Purchasing Terms;

**“Open Framework”** means the purchasing system for the provision of Post-Adoption Therapy Services For Adopt Thames Valley;

**“Open Framework Agreement”** means the Open Framework Agreement entered into between the Council and the Service Provider consisting of the Open Framework Form, the Open Framework Particulars, the Open Framework Conditions including the Schedules and Annexes to them (if any);

**“Open Framework Agreement Period”** means the Open Framework Agreement period specified in the Particulars;

**“Enactments”** means directives, statutes, regulations, orders, judgments of relevant courts of law, instruments, national and governmental codes of practice and best practice guidelines or other similar instruments as the same may be amended, replaced or re-enacted by any subsequent directive, statute, regulation, order, judgment, instrument, code or guidelines and references to any statute shall also include any secondary legislation made under it and references in the Purchasing Terms to a specific Enactment shall be construed on this basis;

**“Good Industry Practice”** means all standards, practices, methods and procedures conforming to all Enactments and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from of a skilled and experienced person or body engaged in a similar type of undertaking under the same or similar circumstances and conditions;

“Prohibited Act”means the following acts:

(a) offering (directly or indirectly), promising or giving 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) requesting (directly or indirectly), agreeing to receive or accepting any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity;

(c) committing any offence: (i) under the Bribery Act 2010; (ii) under any Enactment creating offences concerning fraudulent acts; (c) at common law concerning fraudulent acts relating to the Purchasing Terms or any other contract with the Council; or

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

**“Purchasing Terms”** means the Open Framework Agreement and Call-Off Contracts;

**“Response”** means any proposal submitted by the Service Provider under the Call-Off Contract Award Procedure;

**“Selection Criteria”** means the requisite criteria that any service provider must meet and maintain throughout the Open Framework Agreement Period and any Call-Off Contract Period in order to maintain their inclusion on the Open Framework as set out in the contract notice for the Open Framework, the invitation to tender; method statements, the pricing schedule and the form of tender documents loaded onto the System;

**“Service Category/Categories”** means the Service Categories set out in Schedule 1;

**“Service Provider’s Representative”** means the person specified in the Particulars and any such other person as may be appointed by the Service Provider and notified in writing to the Council to act generally or for specified purposes or periods;

**“Services”** means the Services to be provided as specified in the specification set out in Schedule 1 and more particularly described in any Call-Off Contract; and

**“Staff"** means all persons, whether paid or unpaid, engaged by the Service Provider to perform the Purchasing Terms or used in the performance of the Purchasing Terms including the Service Provider’s employees, agents and Sub-Contractors;

**“System”** means the web-based software system used by the Council or such other technology as may be used by the Council.

**“Therapeutic Provision”** means the provision of timely therapeutic services to meet the needs of adoptive families, additional to the range of statutory services currently provided by the Council.

* 1. The definitions given in the Particulars apply.
  2. The Purchasing Terms and any claims arising out of or in connection with them or their subject matter or formation (including non-contractual disputes or claims) shall be governed by and interpreted in accordance with English law and shall be subject to the exclusive jurisdiction of the courts of England and Wales.
  3. Words denoting an obligation on a party to do any act, matter or thing include an obligation to procure that it is done and words placing a party under a restriction include an obligation not to cause permit or allow infringement of this restriction.
  4. The headings and titles in the Purchasing Terms are for ease of reference only and shall not be taken into account in its construction or interpretation.
  5. The expression “person” used in the Purchasing Terms shall include any individual, partnership, local authority or incorporated or unincorporated body.
  6. The Purchasing Terms constitutes the entire understanding between the parties in relation to the subject matter of the Purchasing Terms.
  7. If any of the Conditions become or are declared by a court of competent jurisdiction to be invalid or unenforceable such invalidity or unenforceability shall in no way impair or affect any other Conditions all of which shall remain in full force and effect.
  8. Other than as set out in Conditions 9.3 and 9.4 the Contracts (Rights of Third Parties) Act 1999 shall not apply to the Purchasing Terms and any amendment to this Purchasing Terms may be made, including altering or extinguishing any third party rights, without the consent of any third party.

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| 1. CALL-OFF CONTRACT PERIOD |

* 1. Each Call-Off Contract shall commence on the date specified in the Call-Off Contract and shall continue in force for the Call-Off Contract Period unless terminated in accordance with the Purchasing Terms.

2.2 The Council may extend the Call-Off Contract Period on the same terms (including, for the avoidance of doubt, at the same Call-Off Contract Price) upon written notice to the Service Provider. The notice period and maximum period for which the Call-Off Contract Period may be extended is specified in the Call-Off Contract.

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| 1. THE SERVICES – PROVISION/STANDARDS/MONITORING/SELECTION CRITERIA |

* 1. The Service Provider will provide the Services in accordance with the relevant Call-Off Contract and will otherwise perform its obligations in accordance with the Purchasing Terms.
  2. The Service Provider will provide the Services and perform its   
     obligations under the Purchasing Terms with all due skill, care and diligence in accordance with Good Industry Practice and any further standards specified in the Schedules and/or Call-Off Contract*.*
  3. Without prejudice to Condition 3.2, the Service Provider will provide an adequate number of Staff who are appropriately experienced, qualified and trained to perform the Services and ensure that Staff comply with the Service Provider’s obligations under the Purchasing Terms.

3.4 The Service Provider shall maintain comprehensive and accurate records of work carried out in the provision of the Services and shall retain such records for a minimum of six (6) years from the date of termination or expiry of the any Call-Off Contract or such longer period as may be required under any Enactment or such other period as specified by the Council.

3.5 The Service Provider shall retain Staff records for six (6) years following the last day Staff are engaged in providing the Services or such longer period as may be required under any Enactment.

3.6 The Service Provider will participate in annual quality and contract monitoring as described in Schedule 3 (Monitoring/Review) and will provide the Council with all reasonable assistance in this regard.

* 1. The Service Provider shall comply with all lawful and reasonable directions of the Council relating to its performance of the Services. Notwithstanding anything to the contrary in these Purchasing Terms, the Council’s discretion in carrying out its statutory duties shall not be fettered or otherwise affected by any provision of these Purchasing Terms.

3.8 The Service Provider must meet the Selection Criteria at all times and shall notify the Council within 5 Working Days if it no longer meets any of the Selection Criteria. The Service Provider acknowledges that the Council reserves the right to, at its sole discretion, expel the Service provider from the Open Framework, dependent on the nature of such changes, particularly if such changes are to the detriment of the performance or standards of this Agreement.

3.9 The Council reserves the right to request re-submission of any Selection Criteria or other Application details throughout the Open Framework Agreement Period or Call-Off Contract Period.

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| 1. PAYMENT |

* 1. In consideration of the performance of the Service Provider’s obligations under any Call-Off Contract, the Council shall pay the Call-Off Contract Price which shall be the full and exclusive remuneration of the Service Provider in respect of the supply of the Services.
  2. Unless otherwise set out in Schedule 2, the Call-Off Contract Price is exclusive of value added tax (“**VAT**”) where VAT is applicable. The Council shall pay to the Service Provider any VAT chargeable on the amounts set out in Schedule 2 subject to the provision to the Council of a proper VAT invoice.
  3. Where the Service Provider submits an invoice to the Council in accordance with this Condition 4 and Schedule 2, the Council will consider and verify that invoice in a timely fashion.
  4. Unless a shorter period is agreed in Schedule 2, the Council shall pay the Service Provider any sums due under such an invoice (or part thereof) no later than a period of 28 days from the date on which the Council has determined that the invoice (or part thereof) is valid and undisputed.
  5. Where the Council fails to comply with Condition 4.3 and there is an undue delay in considering and verifying the invoice, the invoice shall be regarded as valid and undisputed for the purposes of Condition 4.4 after a reasonable time has passed.
  6. Unless otherwise agreed in Schedule 2, invoices shall be submitted monthly in arrears for Services provided.
  7. Where an invoice is disputed, the parties shall seek to resolve the dispute promptly and, if necessary, the matter shall be dealt with in accordance with Condition 15. The Council shall be under no obligation to pay the disputed charge until the dispute has been resolved. For the avoidance of doubt, where an invoice is disputed in part, the Council shall pay such part of the invoice which is not in dispute in accordance with Condition 4.4.
  8. Each invoice shall:

1. be submitted to the address of the Council specified in Schedule 2 (or if none is specified to the address set out in the Open Framework Form);
2. be in PDF format and contain a valid PO number and a detailed breakdown of Services supplied;
3. be supported by any information required by the Council to substantiate such invoice; and
4. comply with any other provisions in Schedule 2 or the Call-Off Contract in respect of invoices.
   1. Without prejudice to any other right or remedy of the Council, the Council may, acting reasonably, reduce payment in respect of any Services which the Service Provider has failed to provide or has provided inadequately.
   2. The Council shall be entitled to deduct from any payment due any sums recoverable from or payable by the Service Provider or any Associated Company.
   3. In the event of termination or expiry of any Call-Off Contract, the Service Provider shall repay to the Council any amount which it has been paid in respect of Services not provided by the Service Provider at the date of termination or expiry.
   4. In the event of overpayment by the Council a refund shall be made by the Service Provider within 28 days of notification of the overpayment.

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| 1. VARIATIONS |

* 1. No variation to the Purchasing Terms shall have any effect unless it is made in writing and signed on behalf of the Council and the Service Provider.
  2. Variations to the service specification (as set out in Schedule 1) may be requested by the Council by notice given by the Council including:
  3. following quality monitoring as described in Schedule 3; and
  4. following contract monitoring as described in Schedule 3,

provided that such variations fall within the remit of the Service Provider. For the avoidance of doubt, such variations may include increases or decreases in volume and scope of services

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| 1. STAFF |

* 1. When requested by the Council on reasonable grounds the Service Provider shall, following reasonable notice, make available to the Council records of all Staff involved in the provision of the Services.
  2. The Service Provider’s employment systems shall accord with the Council’s policy on checking criminal records and the Service Provider shall on request supply to the Council such information as it may reasonably require to ensure that its employment systems do so accord.
  3. The Service Provider will ensure that that there is a satisfactory recruitment process recorded in writing for all Staff and shall provide details of its policies and procedures for recruitment, training, development, supervision and other Staff-related policies when requested to do so.
  4. The Service Provider will ensure that it has in place an effective whistleblowing procedure whereby Staff may raise in confidence concerns about possible malpractice without fear of victimisation, subsequent discrimination or disadvantage.
  5. When requested by the Council on reasonable grounds, the Service Provider will cease to use any member of Staff specified by the Council for the provision of the Services.
  6. The Service Provider shall have an anti-bribery policy (which shall be disclosed to the Council upon request) to prevent the Service Provider and its Staff from committing a Prohibited Act and shall enforce it where appropriate.

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| 1. COMPLAINTS |

* 1. If any complaint or significant concern is made or raised (whether orally or in writing) concerning the Services, the Service Provider shall immediately investigate it in a courteous and efficient manner and take such corrective action as is appropriate. The Service Provider shall record details of all complaints and concerns and how they were resolved in a written register. The register will be freely available to the Council.
  2. The Service Provider shall provide any information requested by the Council in connection with any complaint or significant concern relating to the Services (whether made to the Council or the Service Provider and whether made orally or in writing) and co-operate fully and promptly in every way required by the Council or by any person or body conducting any investigation regarding a complaint or significant concern including attending meetings, and permitting Staff to attend meetings and allowing access to and investigation of documents and data.

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| 1. CONFIDENTIALITY |

8.1. The Service Provider shall not, and shall ensure that Staff shall not use or disclose any Council Data and other confidential material provided by the Council pursuant to the Purchasing Terms or by any Child otherwise than for the performance of the Purchasing Terms save as may be agreed by the Council or required by law.

For the avoidance of doubt, confidential information shall not include (a) any information obtained from a third party who is free to divulge such information; (b) any information which is already in the public domain otherwise than as a breach of the Purchasing Terms; or (c) any information which was rightfully in the possession of a party prior to the disclosure by the other party and lawfully acquired from sources other than the other party.

8.2 The Service Provider shall take all necessary precautions to ensure that confidential information is only made available to Staff on a “need to know” basis and shall ensure that such Staff are aware of and comply with the confidentiality obligations under the Purchasing Terms.

8.3 The Council shall take all necessary precautions to ensure that the Service Provider confidential information is only made available to Council staff on a “need to know” basis and shall ensure that such Council staff are aware of and comply with the Council’s confidentiality obligations under the Purchasing Terms.

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| 1. COMPLIANCE WITH STATUTE AND OTHER REQUIREMENTS |

* 1. The Service Provider shall, in the provision of the Services and the performance of its obligations under the Purchasing Terms, comply with all Enactments.
  2. The Service Provider shall maintain its own health and safety policy in accordance with the Health and Safety at Work etc Act 1974. The Service Provider shall provide a copy of such policy to the Council upon request and shall notify the Council of any revision to it.
  3. The Service Provider shall act in respect of any person who receives Services under the Purchasing Terms as if it were a public authority for the purposes of the Human Rights Act 1998. This Condition 9.3 shall be enforceable by persons who receive Services under the Purchasing Terms
  4. The Service Provider:
     1. shall not in relation to the employment of persons for the purposes of providing the Services or in relation to the provision of the Services to any person unlawfully discriminate within the meaning of any Enactment relating to discrimination or equality whether in relation to race, gender, religion or belief, disability, age, sexual orientation or otherwise and shall where reasonably requested by the Council assess and monitor its policies and practices as to their impact on the promotion of equality and report on this to the Council.
     2. shall, in relation to the employment of persons for the purposes of providing the Services or in relation to the provision of the Services, comply with the duties imposed by the Equality Act 2010 and will assist the Council in meeting its duties under the Equality Act 2010.

This Condition 9.4 shall be enforceable by persons who receive Services under the Purchasing Terms.

* 1. Whilst on Council premises the Service Provider shall ensure that Staff comply with the Council’s safety policies and any amendments to them notified to the Service Provider and with the proper requirements of the Council’s safety officers.
  2. The Service Provider will following request from the Council fully and accurately disclose all information relating to Staff engaged in providing the Services including the total number of Staff whose employment with the Service Provider is liable to be terminated at the expiry of any Call-Off Contract (but for operation of law), their age and gender, the terms and conditions of their employment (including salary, bonus payments, allowances, pay settlements, redundancy entitlement, relevant collective agreements, pension entitlement and working arrangements) their job titles and the qualifications required for each position. The Service Provider shall permit the Council to use the information for the purposes of the Transfer of Undertakings (Protection of Employment) Regulations 2006 and any related Enactments and for the purposes of re-tendering.

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| 1. INDEMNITY AND INSURANCE |

* 1. Without prejudice to Condition 10.3, the Service Provider shall at all times maintain insurance cover with a reputable company to include:
     1. public liability insurance in the minimum sum of £10,000,000 (ten million pounds) for each and every claim;
     2. employer’s liability insurance in the sum of £10,000,000 (ten million pounds) for each and every claim; and
     3. professional indemnity insurance in the sum of £5,000,000 (five million pounds) for each and every claim which insurance shall be maintained for no less than 6 years after the end of the Call-Off Contract Period.
     4. (Unincorporated charities only) Trustee liability insurance in the sum of £1,000,000 (one million pounds) for each and every claim which insurance shall be maintained for no less than 6 years after the end of the Call-Off Contract period.

* 1. The Service Provider shall supply to the Council’s Contact annually and at any other time within 14 days of request a copy of all insurance policies, cover notes, premium receipts or such other documents as may satisfy the Council that such insurance is in place.
  2. The Service Provider shall indemnify and keep indemnified the Council from and against any and all claims, demands, proceedings, actions, damages, costs, expenses, loss and liability arising from a Default, save to the extent that it arises from any default or negligence of the Council or its employees provided always, for the avoidance of doubt, that this does not extend to any loss of profits suffered by the Council.

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| 1. ASSIGNMENT AND SUB-CONTRACTING |

11.1 The Service Provider shall not assign the benefit or advantage of the Purchasing Terms in whole or in part.

11.2 The Service Provider shall not sub-contract the provision of the Services to any person without the written consent of the Council and should such consent be given it shall not relieve the Service Provider from any liability or obligation under the Contract and the Service Provider shall be responsible for the acts, omissions, defaults or neglect of any sub-contractor and its agents or employees in all respects as if they were the acts, omissions, defaults or neglect of the Service Provider.

11.3 Where the Council gives consent to the Service Provider sub-contracting the Services (or any part of the Services) under Condition 11.2, such consent shall be limited to the matters within the scope of that permission and the Service Provider shall not proceed unless it has satisfied any matters required by the Council as a condition of grant of its consent.

11.4 Where the Service Provider enters into a Sub-Contract, the Service Provider shall include in that Sub-Contract:

11.4.1 provisions having the same effect as Conditions 4.3 to 4.5 of this Open Framework Agreement; and

11.4.2 a provision requiring the counterparty to that Sub-Contract to include in any Sub-Contract which its awards provisions having the same effect as Conditions 4.3 to 4.5 and this Condition 11.4 of this Open Framework Agreement.

11.5 Without prejudice to Condition 11.4, where the Service Provider enters into a Sub-Contract such Sub-Contract must impose obligations on the proposed sub-contractor in the same terms as those imposed on it pursuant to this Open Framework Agreement to the extent practicable and the Service Provider shall procure that the sub-contractor complies with such terms.

11.6 In Conditions 11.4 and 11.5 “Sub-Contract” means a contract between two or more suppliers, at any stage of remoteness from the Council in a subcontracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of the Purchasing Terms.

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| 1. TERMINATION |

12.1 If the Service Provider:

12.1.1 commits a material Default and the Service Provider has not remedied the Default to the satisfaction of the Council within 20 days or such other shorter or longer period which may be specified by the Council after issue of a written notice specifying the Default and requesting it to be remedied; or

12.1.2 commits a material Default which is not capable of remedy (including no longer meeting any of the Selection Criteria); or

12.1.3 commits a Default on a persistent or repeated basis, whether in respect of the same or different obligations of the Service Provider under the Purchasing Terms and whether or not rectified; or

12.1.4 is an individual or a firm and a petition is presented for the Service Provider’s bankruptcy or a criminal bankruptcy order is made against the Service Provider or any partner in the firm, or the Service Provider or any partner in the firm makes any composition or arrangement with or for the benefit of creditors, or makes any conveyance or assignment for the benefit of creditors, or an administrator is appointed to manage the Service Provider’s affairs; or

12.1.5 is incorporated, and passes a resolution for its winding up or dissolution (otherwise than for the purposes of and followed by an amalgamation or reconstruction) or an application is made for, or any meeting of its directors or members resolves to make an application for an administration order in relation the Service Provider or any person gives or files notice of intention to appoint an administrator or such an administrator is appointed, or the court makes a winding-up order, or the Service Provider makes a composition or arrangement with its creditors, or an administrator, administrative receiver, receiver, manager or supervisor is appointed by a creditor or by the court, or possession is taken of any of its property under the terms of a fixed or floating charge; or

12.1.6 is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or

12.1.7 ceases to carry on its business or disposes of all its assets or ceases to carry on a substantial part of its business or disposes of a substantial part of its assets which in the reasonable opinion of the Council would materially affect the delivery of the Services; or

12.1.8 undergoes a change of control and for this purpose where the Service Provider is a company, there is a change of control if the majority of shares carrying a right to vote in the Service Provider or its holding company are acquired by a person who is not at the date of the Open Framework Agreement a major shareholder (“holding company” having the same meaning as in section 1159 of the Companies Act 2006) save that if there is a change of control which is only a change from one subsidiary company to another (“subsidiary company” having the same meaning as in section 1159 of the Companies Act 2006) then that shall be deemed not to be a change of control for the purposes of this Condition 12.1.8;

12.1.9 is convicted (or any member of Staff is convicted) of a serious criminal offence related to the business or professional conduct;

12.1.10 commits (or any member of Staff commits) an act of grave misconduct in the course of the business;

12.1.11 has provided any information as part of its Application including that given in the questionnaire or given information to the Council at any time prior to the Council entering into a binding contract with the Service Provider which proves to be materially untrue or incorrect, or

12.1.12 has a contract for services which are similar to the Services terminated by the Council due to the Service Provider’s default,

then in any such circumstances the Council may, without prejudice to any other rights or remedies of the Council, terminate the Purchasing Terms in whole or in part by notice in writing, such notice to have effect from the date specified in it. By way of example, the Council is entitled to terminate all Call-Off Contracts and the Open Framework Agreement where the Service Provider is in breach of a Call-Off Contract.

* 1. The Council may terminate the Purchasing Terms by notice in writing, such notice to have effect from the date specified in it, and recover from the Service Provider the amount of any loss resulting from such termination if the Service Provider or any of its Staff (in all cases whether or not acting with the Service Provider’s knowledge):
     1. commit a Prohibited Act, or
     2. give any financial or other advantage to any person working for or engaged by the Council.
  2. The Service Provider shall be liable for all and any losses the Council suffers as a result of the termination of the whole or any part of the Purchasing Terms under Condition 12.1 or 12.2.
  3. The Council shall be entitled to terminate all or any Call-Off Contracts (whereupon a corresponding reduction in the price shall be made) on one months’ written notice or on such lesser period as the parties may agree. For the avoidance of doubt, the Council shall be under no obligation to give any reason for such termination) and no compensation by way of damages or otherwise (howsoever arising) shall be payable to the Service Provider in such circumstances.
  4. The Council shall have the right to terminate this Open Framework Agreement in whole or in part at any time by giving not less than 6 months’ written notice to the Service Provider, unless otherwise specified in the Particulars. For the avoidance of doubt, no compensation by way of damages or otherwise (howsoever arising) shall be payable to the Service Provider in such circumstances.
  5. The expiry or termination of the Purchasing Terms for whatever cause shall not affect any provision of these Conditions capable of surviving and shall be without prejudice to the rights and remedies of one party against the other.
  6. The Council shall be entitled to suspend the provision of the Services and carry out itself, or engage a third party to carry out, the Services or any of them on a temporary basis (without terminating the Call-Off Contract) where the Service Provider is in default and the Service Provider shall be liable for any additional costs incurred by the Council in this regard.
  7. The Council shall be entitled to terminate these Purchasing Terms or reduce the Services on written notice to the Service Provider where the Council’s funding is reduced (including, for the avoidance of doubt, totally withdrawn). For the avoidance of doubt, no compensation by way of damages or otherwise (howsoever arising) shall be payable to the Service Provider in such circumstances.

**Termination by the Service Provider**

* 1. If the Council commits a material breach of a Call-Off Contract which:
     1. the Council has not remedied to the satisfaction of the Service Provider within 20 days or such longer period which may be specified by the Service Provider after issue of a written notice specifying the material breach and requesting it to be remedied: or
     2. is not capable of remedy,

then in any such circumstances the Service Provider may, without prejudice to any other rights or remedies of the Service Provider terminate the Call-Off Contract by notice in writing, such notice to have effect from the date specified in it.

* 1. The Service Provider shall have the right to be removed from the Open Framework Agreement upon giving one month’s notice in writing to the Council. For the avoidance of doubt, Call-Off Contracts awarded to the Service Provider prior to the removal from the Open Framework Agreement shall continue until terminated in accordance with Purchasing Terms.

* 1. On expiry or termination of any Call-Off Contract howsoever arising, the Service Provider shall make arrangements with the Council to forthwith deliver to the Council, at no additional cost all Council Data relating to such Call-Off Contract, unless the Council requests destruction of the Council Data. Where the Council Data is delivered to the Council it shall be delivered in such usable format as the Council may reasonably specify, or in the case of IT data, in Common Data Interchange Format (CIF) unless otherwise specified by the Council. Where the Council requests destruction of the Council Data, the Service Provider shall securely destroy and permanently delete the Council Data forthwith and shall provide a certificate signed by an authorised signatory confirming that such Council Data have been destroyed.

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| 1. SERVICE OF NOTICE |

* 1. Any demand or notice required to be given under the Purchasing Terms shall be sufficiently served if:
     1. served personally on the addressee;
     2. sent by prepaid first class recorded delivery post to the registered office or last known address of the Service Provider where notice is required to the Service Provider and, unless otherwise set out in the Particulars or notified by the Council in accordance with this Condition 13.1, to the name of the Council’s Contact, County Hall, Oxford OX1 1ND where notice is required to the Council; or
     3. subject to Condition 13.2, emailed to the address of the relevant party set out in the Particulars or such other address as the party may from time to time notify to the other party in accordance with this Condition 13.1.
  2. Demands or notices served by email shall only be valid if the demand or notice is then sent to the recipient by personal delivery or recorded delivery in the manner set out in Condition 13.1.1 or 13.1.2 within two Working Days.
  3. Any demand or notice served in accordance with:
     1. Condition 13.1.1 shall be deemed to have been served on the date of delivery if it is delivered before 4pm on a Working Day and otherwise on the next Working Day;
     2. Condition 13.1.2 shall be deemed to have been served two Working Days from the date of posting;
     3. Condition 13.1.3 shall be deemed to have been served on the date of sending if it is sent before 4pm on a Working Day and otherwise on the next Working Day unless in either case an error message is received.

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| 1. WAIVER |

* 1. The failure of the Council or the Service Provider to exercise any right or remedy shall not constitute a waiver of that right or remedy.
  2. No waiver shall be effective unless it is communicated to the Council or the Service Provider in writing and expressly stated to be a waiver.
  3. A waiver of any right or remedy arising from a breach of the Purchasing Terms shall not constitute a waiver of any right or remedy arising from any other breach of the Purchasing Terms.
  4. Unless otherwise provided in the Purchasing Terms, rights and remedies under the Purchasing Terms are cumulative and do not exclude and are without prejudice to any rights or remedies provided by law, in equity or otherwise.

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| 1. DISPUTE RESOLUTION |

15.1 A dispute relating to the provision of the Services, the Call-Off Contract Price, or payments which cannot be resolved in the first instance between the Service Provider’s Representative and the Council’s Contact within a month shall be referred to the persons specified in the Particulars.

15.2 Nothing in this Condition 15 shall prejudice the right of either party to apply to the court for interim relief to prevent the violation by the other party of any proprietary interest or any breach of that party’s obligations.

15.3 Services to be provided under a Call-Off Contract shall not cease or be delayed by this dispute resolution procedure.

15.4 If any dispute cannot be resolved between the Service Provider and the Council within a month of referral as set out in Condition 15.1, then the Service Provider or the Council may refer the matter to mediation in accordance with the Centre for Effective Dispute Resolution’s (“CEDR”) Model Mediation Procedure.

15.5 To initiate the mediation, either party may give notice in writing to the other requesting mediation in accordance with this Condition 15. The initiating party shall send a copy of such request to CEDR.

15.6 If there is any issue on the conduct of the mediation (including as to the nomination of the mediator) upon which the parties cannot agree within a reasonable time, CEDR will, at the request of either party, decide the issue.

15.7 If the dispute is not resolved within 90 days of the initiation of the mediation, or if either party will not participate in the mediation either party may commence proceedings.

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| 1. NO AGENCY / EMPLOYMENT / PARTNERSHIP |

Nothing in these Purchasing Terms shall be construed as creating a legal partnership or contract of employment or a relationship of principal and agent between the Council and the Service Provider and the Service Provider shall not at any time or in any circumstances take any action so as to bind (or purport to bind) the Council nor shall the Service Provider hold itself out as having authority to bind the Council and shall ensure that the Staff do not hold themselves out likewise.

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| 1. ACTS OF GOD etc |

Neither the Service Provider nor the Council shall be liable for breach of its obligations under the Contract to the extent that such breach is caused by any act of God, natural flood, fire (save where such fire is due to the negligence or fault of the Service Provider) lightning or earthquake, war, military operations, act of terrorism or riot but nonetheless each party shall use all reasonable endeavours to perform its obligations under the Contract.

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| 1. RECORDS |

The Service Provider acknowledges that the Council Data is the property of the Council and the Council hereby reserves all Intellectual Property Rights which may subsist in the Council Data.

* 1. The Service Provider shall not delete or remove any proprietary notices contained within or relating to the Council Data.
  2. The Service Provider shall not store, copy, disclose, or use the Council Data except as necessary for the performance by the Service Provider of its obligations under this Contract or as otherwise expressly authorised in writing by the Council.
  3. To the extent that Council Data is held and/or processed by the Service Provider, the Service Provider shall supply that Council Data to the Council or any provider acting on the Council’s behalf to deliver services similar to the Services as requested by the Council. The Service Provider shall take all actions necessary to ensure that it can legally comply with this obligation.
  4. The Service Provider shall take responsibility for preserving the integrity of Council Data and preventing the corruption or loss of Council Data.
  5. The Service Provider shall ensure that any system or media on which the Service Provider holds any Council Data, including back-up data, is a secure system that complies with the Council’s written instructions.
  6. All Council Data shall be stored in a useable format to ensure that the Service Provider can comply with Condition 12.11.
  7. The Service Provider shall comply with all relevant Council policies where the Service Provider has access (remote or otherwise) to any systems or equipment of the Council.
  8. Where the Service Provider access the Council’s ICT Systems, it must comply with all instructions and guidance issued by the Council from time to time relating to the Service Provider’s access and use (remote or otherwise) of the Council’s ICT systems and ensure all Staff are made aware of this obligation. The Service Provider must ensure that it has a comprehensive training system in place for all Staff, including induction procedures and regular awareness sessions related to information sharing protocols.
  9. The Service Provider shall permit the Council, or its nominated agent, to access the Service Provider’s premises to test its data security measures and its compliance with this Condition 18.
  10. The Service Provider shall maintain comprehensive and accurate records of work carried out in the provision of the Services and shall retain such records and Council Data for a minimum of six (6) years from the date of termination or expiry of the Contract or such longer period as may be required under any Enactment or such other period as specified by the Council.
  11. Not Used
  12. The Service Provider shall retain Staff records for six (6) years following the last day Staff are engaged in providing the Services or such longer period as may be required under any Enactment.
  13. The Service Provider shall provide the Council with access to all Council Data and records relating to the Services upon request.
  14. The Service Provider shall ensure that any information supplied by the Council or a user of the Services is treated as confidential and shall not be disclosed to any person other than the Council except as may be required by law or when such disclosure is in accordance with any shared information protocol which has been approved by the Council.
  15. The Service Provider shall not without prior consultation with the Council seek any publicity or, without prior notification, make any announcement to the press or respond to press enquiries relating to the Services and shall where reasonably practicable agree joint press releases with the Council.
  16. The Service Provider undertakes to provide the Council with information to allow for the monitoring, review and assessment of the Service Provider’s capabilities to provide the standards of education, health and care required by this Contract and thereby to ensure that the Council fully meets its statutory obligations in regard to this information.
  17. The Service Provider acknowledges the Council's obligations under the Freedom of Information Act 2000 (FOIA) and Environmental information Regulations 2004 (EIRs) and in particular that the Council may be required to provide information relating to this Contract or the Service Provider to a person in order to fully comply with its obligations under the FOIA.
  18. The Service Provider will use best endeavours to facilitate the Council's full compliance, in connection with this Contract, with the Council's obligations under the FOIA and EIRs and fully and promptly comply with appropriate and reasonable requests from the Council for that purpose. Any FOIA or EIRs request made direct to the Service Provider relating to the Services will be immediately forwarded in writing to the Council.

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| 1. VARIATIONS TO THE PURCHASING TERMS |

The Council shall be entitled to vary the terms of the Open Framework Agreement on giving 3 months’ notice to the Service Provider of the proposed changes. For the avoidance of doubt, such notice may be given by email to the email address of the Service Provider’s Representative. The Service Provider shall be entitled to terminate the Open Framework Agreement where it does not wish to accept the new terms at the end of the 3-month period. For the avoidance of doubt, no change to the Open Framework Agreement shall affect existing Call-Off Contracts which shall remain in full force and effect on their original terms.

**Schedule 1**

**Specification**

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**Schedule 2**

**Finance**

* 1. The Prices that shall apply for the provision of Services under the terms of this Open Framework Agreement will be reflected in the Pricing table contained in Section C within the Open Framework Response Pack for the Post Adoption Therapy Services Open Framework Application FINAL, submitted by the Bidder which will form the basis of your bid.
  2. In relation to any direct award for the provision of Services by the Service Provider under the terms of this Open Framework Agreement in accordance with the Call Off Contract Award Procedure, the Maximum Daily Rate that shall apply shall, subject to the review provisions as set out in paragraph 1.4 of this Schedule, be the Maximum Daily Rate as set out in the Service Provider’s tender.
  3. Rates are to be inclusive of all expenses and mileage unless agreed otherwise. No additional costs will be accepted that are over and above the rates stipulated.
  4. Should a request not be received or should a request not be received prior to the Deadline for submission of Notice of Request for an Increase to the Council, then the current Rates will remain in force for the next Contract year starting from the 1st September in each year until the next Annual Review occurs
  5. In exceptional cases, where there is an urgent need for higher cost support, local authorities or ATV are asked to match-fund applications.

Criteria for match-funding:

* a high risk of adoption breakdown without high cost support
* OCC and ATV dealing with an unusually high number of complex cases that they cannot afford to fund without additional support from the ASF
* additional funding would help to progress hard to place adoptions
* a lack of available, affordable therapeutic support means higher cost provision is required

The ASF can fund up to 50% of the amount above the fair access limits, up to a maximum of £30,000 per child including the fair access limits.

**Payment**

1. Invoices must be submitted in PDF format with a valid Purchase Order clearly displayed. They then must be sent to[**VIMenquiries@hants.gov.uk**](mailto:VIMenquiries@hants.gov.uk)
2. Payment shall be made within 30 days of receipt of a valid written invoice from the Service Provider.
3. All invoices must include a valid Purchase Order (PO) number to avoid any delay in payment. PO Order numbers will be supplied by the Council.

**Schedule 3**

**Monitoring/Review**

As per the framework terms

**Schedule 4**

**Call-Off Contract Procedure under the Open Framework**

**Definitions**

In this Schedule 4 except where the context otherwise requires, the following expression shall have the following meaning:

**“Providers”** means service providers (including the Service Provider) who have been accepted on to the Open Framework to provide the Services and have entered into agreements with the Council similar to the Open Framework Agreement and **“Provider”** shall mean any one of them.

**The following process will be followed for the Call-Off Contracts****:**

Providers on the Framework will be invited to bid for specific Work Packages in their relevant category and preferences (further competition).   For each individual Work Package opportunity, A Work Package request will be issued by the Council, setting out the exact requirements at that time. The Council will contact Providers, initially via an eBrokerage system, however the Council may choose to conduct Work Package request activities via the Portal, or another system in the future.

**Evaluation process**

On submission of a Call-off by further competition a local evaluation will be undertaken to determine the preferred Bidder on the basis of the criteria set out in the Call-Off by further competition documentation.

In all Rounds, where the submissions are equal based upon the Prices submitted in that round, the Evaluating team will make the final decision based on the Quality score achieved in the Method Statements (Quality Scoring).

All decisions will be recorded for audit purposes and all Service Providers notified of the outcome wherever possible within 15 working days of the outcome. Feedback will be available to unsuccessful Service Providers on request.

An individual Call-off Contract will be issued to the successful Service Provider detailing the agreed final Call off Contract Price and Services required.

**Call off without competition**

There may be some circumstances where the Council needs to call off a service at short notice, in an emergency or following an internal matching process, which may include matching the work package requirement and assessed needs of the child to a Provider’s geographical location, their capacity to provide the support, previous history of working with this child to support continuity or a family’s request to work with a preferred Provider (there may be other criteria considered during this process). Where this is the case the Council will call off from the Open Framework without going out to competition and this is known as a Direct Award.

Schedule 5

Form of Call of Contract

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**Schedule 6**

**Data Sharing Protocol/Agreement**

The definitions given in the Open Framework Terms and Conditions apply. In addition, the following definitions apply to this Data Sharing Protocol:

1. Agreed Purposes: The purposes set out in Clause 1.3 below.
2. Permitted Recipients: The parties to the Call Off Contract, the employees of each party, any third parties engaged to perform obligations in connection with the Call Off Contract, and where necessary to continue to provide the Services, a replacement service provider.
3. Shared Personal Data: The Personal Data and/or Special Category Data to be shared between the parties for the purposes of the Open Framework Agreement as shown in Clause 1.4 below.
4. Special Category Personal Data: the categories of Personal Data set out in the Data Protection Legislation.
5. ATV: Adopt Thames Valley administered by the Oxfordshire County Council
6. DATA PROTECTION
   1. This Schedule sets out the framework for the sharing of data between the parties, as Data Controllers. Each party acknowledges that one party (the Data Discloser) may regularly disclose to the other party (the for the Agreed Purposes.
   2. **Legal basis for sharing** 
      1. The Council shares:
      2. Personal Data in the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller (Art 6(e) UK GDPR);
      3. Special Category Personal Data:
         * 1. the Council relies on section 10(3) of and Schedule 1 to the Data Protection Act 2018 and Article 9(2)(g) of the UK GDPR; and/or
           2. on the basis that the data subject has given explicit consent to the processing of those personal data for one or more specified purposes, except where Union or Member State law provide that the prohibition referred to in paragraph 1 of the UK GDPR may not be lifted by the data subject
      4. The Service Provider shares:
         1. Personal data on the basis that
            1. the data subject has given consent to the processing of his or her personal data for one or more specific purposes; and/or
            2. processing is necessary for compliance with a legal obligation to which the Service Provider controller is subject under the Access to Medical Records Act (1990), The Access to Medical Reports Act (1998); and/or
            3. [ ]
         2. Special Category Personal Data on the basis that the data subject has given explicit consent to the processing of those personal data for one or more specified purposes, except where Union or Member State law provide that the prohibition referred to in paragraph 1 UK GDPR may not be lifted by the data subject; and/ or
         3. [ ]
   3. **Purpose of Sharing**

The parties consider this data sharing initiative necessary for the Services. The aim of the data sharing initiative is to enable the ATV meet the needs of adoptive families via the provision of therapeutic services, additional to the range of statutory services currently provided by the local authorities, as stipulated in S. 2(6) of the Adoption and Children Act 2002 and The Adoption Support Services Regulations 2005.

The parties shall not process Shared Personal Data in a way that is incompatible with the Agreed Purposes.

* 1. **Shared Personal Data**
     1. The following types of Personal Data, concerning both parents and children, will be shared between the parties during the Call Off Contract Period:

Names (of children and adoptive parents), address, date of birth, contact information, date of Adoption, marital status.

* + 1. The following types of Special Categories Personal Data, concerning both parents and children, will be shared between the parties during the Call Off Contract Period:

medical history, diagnosed or suspected mental health conditions, medication detail, religious beliefs, ethnicity, sexuality, gender

* 1. **Effect of non-compliance with Data Protection Legislation.** Each party shall comply with all the obligations imposed on a Data 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 the Call-Off Contract with immediate effect.
  2. **Particular obligations relating to data sharing.** Each party shall:
     1. ensure that it has all necessary notices and where required, consents in place to enable lawful transfer of the Shared Personal Data to the Permitted Recipients for the Agreed Purposes;
     2. ensure that it has legitimate grounds under the Data Protection Legislation for the processing of Shared Personal Data;
     3. in compliance with Data Protection Legislation, give full information to any Data subject whose Personal Data may be transferred and Processed under the Call Off Contract, of the nature such Processing. This includes giving notice that, on the termination of this Call Off Contract, Personal Data relating to them may be retained by or, as the case may be transferred to one or more of the Permitted Recipients, their successors and assignees;
     4. Process the Shared Personal Data only for the Agreed Purposes; and process the Shared Personal Data fairly and lawfully during the Call Off Contract Period;
     5. not disclose or allow access to the Shared Personal Data to anyone other than the Permitted Recipients;
     6. ensure that all Permitted Recipients are subject to written contractual obligations concerning the Shared Personal Data (including obligations of confidentiality) which are no less onerous than those imposed by the Open Framework Agreement;
     7. 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.
     8. not transfer any Personal Data received from the Data Discloser outside the UK unless this is done in compliance with the Data Protection Legislation and sufficient information about such transfer is given to Data Subjects.
     9. agrees that The Shared Personal Data must not be irrelevant or excessive with regard to the Agreed Purposes;
     10. remain responsible for maintaining the quality and accuracy of the Personal Data that it shares.
     11. agrees to take reasonable steps to inform the other if necessary to enable the correction or updating of records and Personal Data.
  3. **Mutual assistance.** 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 the Shared Personal Data;
     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 to enable the other party to respond within the time limits imposed by the Data Protection Legislation;
     4. not disclose or release any Shared Personal Data in response to a Data Subject Access Request without first consulting the other party wherever possible;
     5. assist the other party, at the cost of the other party, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
     6. notify the other party without undue delay on becoming aware of any breach of the Data Protection Legislation;
     7. without prejudice to the provisions of Condition 12.11 of the Open Framework Conditions dealing with return of Personal Data which shall be applicable only where the Council is the sole Data Controller, at the written direction of the Data Discloser, delete or return Shared Personal Data and copies thereof to the Data Discloser on termination of the Call Off Contract unless required by law to store the Personal Data;
     8. use compatible technology for the Processing of Shared Personal Data to ensure that there is no lack of accuracy resulting from Personal Data transfers;
     9. maintain complete and accurate and up to date records and information to demonstrate its compliance with this Clause 1.7 and allow for audits by the other party or the other party's designated auditor; and
     10. provide the other party with contact details of at least one employee as point of contact and responsible manager for all issues arising out of this data sharing initiative 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 Protection Legislation.
  4. If a party appoints a third-party processor to process the Shared Personal Data it shall comply with Article 28 and Article 30 of the UK GDPR and shall remain liable for the acts and/or omissions of the processor.
  5. A Data Subject will be consulted before any data is shared between the Parties. The Data Subject will have the right to object to the transfer of the data providing it does not fall within the reasons set out above at Clause 1.2(a)(i). The Parties will make their best endeavours to explain to a Data Subject why it is necessary for their data to be shared and even if data is not transferred it may result in new current data being collected about the data subject for the purposes of full filling the obligations set out in Clause 1.2(a)(i).
  6. Where a Data Subject is being referred they will be advised of the Referral before it is made and they will be asked to provide their consent. In the event that a Data Subject refuses to give consent, the service will stop and the Service Provider will be informed that the Data Subject has withdrawn their consent.

1. DATA LOSS EVENTS AND REPORTING PROCEDURES
   1. The parties shall each comply with its obligation under Data Protection Legislation to report Data Loss Events to the regulatory authority and (where applicable) Data Subjects under Article 33 of the UK GDPR and shall each inform the other party of any Data Loss Events irrespective of whether there is a requirement to notify any regulatory authority or Data Subject(s).
   2. The parties agree to provide reasonable assistance as is necessary to each other to facilitate the handling of any Data Loss Event in an expeditious and compliant manner.
2. INDEMNITY
   1. The parties undertake to indemnify each other and hold each other harmless from any cost, charge, damages, expense or loss which they cause each other as a result of their breach of any of the provisions of this Data Sharing Agreement, except to the extent that any such liability is excluded under Clause 4 below.
   2. Indemnification hereunder is contingent upon
      1. the party(ies) to be indemnified (the indemnified party(ies)) promptly notifying the other party(ies) (the indemnifying party(ies)) of a claim,
      2. the indemnifying party(ies) having sole control of the defence and settlement of any such claim, and
      3. the indemnified party(ies) providing reasonable co-operation and assistance to the indemnifying party(ies) in defence of such claim.
   3. Nothing in this Agreement shall derogate from the Indemnified party’s duty to mitigate its loss.
3. LIMITATION OF LIABILITY
   1. Neither party excludes or limits liability to the other party for:
      1. fraud or fraudulent misrepresentation;
      2. death or personal injury caused by negligence;
      3. a breach of any obligations implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
      4. any matter for which it would be unlawful for the parties to exclude liability.
   2. Neither party shall in any circumstances be liable whether in contract, tort (including for negligence and breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, for:
      1. any loss (whether direct or indirect) of profits, business, business opportunities, revenue, turnover, reputation or goodwill;
      2. loss (whether direct or indirect) of anticipated savings or wasted expenditure (including management time); or
      3. any loss or liability (whether direct or indirect) under or in relation to any other contract.

**Schedule 7**

**Safeguarding Policies and Procedures**

1. The Service Provider shall ensure the highest standards of protection for vulnerable young people and adhere to such standards throughout the Call-Off Contract Period.
2. The Service Provider shall ensure it is aware of the principles and standards detailed by the Oxfordshire Safeguarding Children’s Board (OSCB) and adopts all relevant procedures as part of its normal operating practice.
3. The Service Provider will ensure that all new members of Staff have received the appropriate DBS Check. DBS Adult or Child First Check and shall comply with the requirements relating to DBS checks set out in the Purchasing Terms.
4. The Service Provider will ensure that all Staff are aware of “whistleblowing” procedures and are aware of legal safeguards in accordance with the Public Interest Disclosure Act 2003 ([www.pcaw.co.uk](http://www.pcaw.co.uk)).
5. The Service Provider will ensure that all Staff are trained and comply with the Service Provider’s Safeguarding Escalation policy, which must detail the process to be followed in the event of a concern being raised about the safety of a young person.
6. The Service Provider will ensure that any immediate and serious safeguarding concerns that may arise during telephone conversations with young people or their families are communicated immediately to the Oxfordshire Multi-Agency Safeguarding Hub (MASH) on **03450 507666**.
7. The Service Provider will also notify the Council’s representatives of any safeguarding concerns that may arise.