**Dated 2024**



**BETWEEN**

**THE CORNWALL COUNCIL**

**AND**

**[ ]**

**APPROVED PROVIDER LIST AGREEMENT**

**FOR THE PROVISION OF COMMUNITY-BASED, OUT OF SCHOOL ALTERNATIVE EDUCATION**

Legal Services

Cornwall Council

New County Hall

Truro

Cornwall

TR1 3AY

Ref: MH/071202

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This agreement is made the day of 2024

Between:

1. The Cornwall Council of County Hall, Treyew Road, Truro, Cornwall TR1 3AY (the “**Council**”); and
2. [ ] (the “**Service Provider**”)

each a “Party” and together the “Parties”.

Background:

1. The Council has a statutory responsibility to ensure there is suitable alternative education for children of compulsory school age who cannot attend school because of illness, exclusion or for any other reason.
2. The Council published a contract notice on [Contracts Finder] seeking requests to participate from prospective providers for the provision of alternative education under an Approved Provider List ("APL").
3. On the basis of the Service Provider's Request to Participate, the Council admitted the Service Provider onto the APL to enable it to bid for Service Contracts on a mini-competition basis or for Call Off Agreements to be allocated to the Service Provider in accordance with the Call-off Procedure.
4. In applying to join the APL the Service Provider indicated in its Request to Participate that it would comply with all relevant legislation, codes of conduct and regulations governing the subject matter of the APL.
5. This Agreement sets out the award and ordering procedure for Call Off Agreement which may be required by the Council, details of the terms and conditions applicable to any Call Off Agreements, and the obligations of the Service Provider during and after the validity period of the APL.
6. It is the Parties' intention that the Council shall not have any obligation to award Call Off Agreements to the Service Provider under this Agreement or at all.

It is agreed as follows:

1. **Definitions and interpretation**
   1. Definitions

Unless the context otherwise requires, the following words and expressions shall have the following meanings in this Approved Provider Agreement:

|  |  |  |  |
| --- | --- | --- | --- |
| **Affiliates** | means in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control of that body corporate from time to time; | | |
| **APL Commencement Date** | means [ ]; | | |
| **APL Period** | means the period from the APL Commencement Date ending on the expiry of the Initial APL Period or any Extension APL Period or on earlier termination of this APL Agreement; | | |
| **APL Schedules** | means the schedules to this APL Agreement; | | |
| **APL Agreement** | means this agreement consisting of the Clauses together with the APL Schedules and any appendices and annexes to the same; | | |
| **Approved Provider List or APL** | means the list of Service Providers appointed by the Council to which this APL Agreement relates; | | |
| **Approval** | means the prior written consent of the Council and "Approve" and "Approved" shall be construed accordingly; | | |
| **Best Practice** | means those standards, practices, methods and procedures of working that conform to Law and relevant guidance, any Relevant Authority and any Regulatory Body in relation to the subject matter of the Services; | | |
| **Business Days** | means any day other than a Saturday, Sunday or public holiday in England and Wales. | | |
| **Call for Competition Procedure** | means the process for awarding a Call Off Agreement pursuant to Clause 4 (Call for Competition Procedure) and APL Schedule 3 (Call for Competition Procedure); | | |
| **Call Off Agreement** | means a legally binding agreement (entered into pursuant to the provisions of this APL Agreement) for the provision of the Services made between the Council and the Service Provider, which shall comprise the Individual Placement Agreement and the Service Conditions (amended or refined where required by the Council); | | |
| **Call Off Agreement Fees** | means the fees charged by the Service Provider for the provision of the Services under any Call Off Agreement; | | |
| **Change in Law** | means any change in Law which impacts on the supply of the Services and performance of the Call Off Agreement which comes into force after the APL Commencement Date; | | |
| **Change of Control** | means a change of control within the meaning of Section 450 of the Corporation Tax Act 2010; | | |
| **Commercially Sensitive Information** | means the Service Provider’s Confidential Information:   * + - 1. relating to the Service Provider, its IPR or its business or information which the Service Provider has indicated to the Council that, if disclosed by the Council, would cause the Service Provider significant commercial disadvantage or material financial loss; and       2. that constitutes a trade secret; | | |
| **Confidential Information** | means the Council’s Confidential Information and/or the Service Provider's Confidential Information as the context requires; | | |
| **Control** | means control in either of the senses defined in sections 450 and 1124 of the Corporation Tax Act 2010 and "**Controlled**" shall be construed accordingly; | | |
| **Council’s Confidential Information** | means all Council’s Personal Data and any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, Know How, personnel, and suppliers of the Council including all IPR, together with all information derived from any of the above, and any other information clearly designated as being confidential (whether or not it is marked “confidential”) or which ought reasonably to be considered to be confidential; | | |
| **Council Representative** | means the representative appointed by the Council from time to time in relation to this APL Agreement; | | |
| **Data Controller** | has the meaning given to it in the Data Protection Laws; | | |
| **Data Processor** | has the meaning given to it in the Data Protection Laws; | | |
| **Data Protection Laws** | means the Data Protection Act 2018 and the UK General Data Protection Regulation and any other applicable national implementing Laws, regulations and secondary legislation, as amended or updated from time to time, in the UK; | | |
| **Data Subject** | has the meaning given to it in the Data Protection Laws; | | |
| **Data Subject Access Request** | means a request made by a Data Subject in accordance with rights granted pursuant to the Data Protection Laws, to access his or her Personal Data; | | |
| **DBS** | means the Disclosure and Barring Service; | | |
| **Default** | means any breach of the obligations of the Service Provider (including but not limited to any fundamental breach or breach of a fundamental term) or any other default, act, omission, misrepresentation, negligence or negligent statement of the Service Provider or the Service Provider Staff in connection with or in relation to this APL Agreement or the subject matter of this APL Agreement and in respect of which the Service Provider is liable to the Council; | | |
| **Disclosing Party** | means a Party which discloses or makes available directly or indirectly its Confidential Information to the Recipient; | | |
| **Dispute** | means any dispute, difference or question of interpretation arising out of or in connection with this APL Agreement, including any dispute, difference or question of interpretation relating to the Services, failure to agree in accordance with the procedure for variations in Clause 9 or any matter where this APL Agreement directs the Parties to resolve an issue by reference to the Dispute Resolution Procedure; | | |
| **Dispute Notice** | means a written notice served by one Party on the other stating that the Party serving the notice believes that there is a Dispute; | | |
| **Dispute Resolution Procedure** | means the dispute resolution procedure set out in clause 28; | | |
| **Environmental Information Regulations or EIRs** | means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such regulations; | | |
| **Existing Placements** | means any placements for services which are similar to or the same as the Services which were commissioned by the Council prior to the commencement of this APL Agreement; | | |
| **Extension Period** | means such period or periods as may be specified by the Council pursuant to Clause 2.2; | | |
| **FOIA** | means the Freedom of Information Act 2000 as amended from time to time 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; | | |
| **Fraud** | means any offence under Laws creating offences in respect of fraudulent acts (including the Misrepresentation Act 1967) or at common law in respect of fraudulent acts including acts of forgery; | | |
| **Good Industry Practice** | means standards, practices, methods and procedures conforming to the Law and the exercise of the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged within the relevant industry or business sector; | | |
| **Guidance** | means any applicable guidance, code of practice or directions issued by a relevant authority or a Regulatory Body which the Service Provider is bound to comply pursuant to the requirements of any Law; | | |
| **Individual Placement Agreement** | means the template set out at Schedule 2 Part 2 and any accompanying documents; | | |
| **Initial APL Period** | means the period of [ ] from the APL Commencement Date; | | |
| **Insolvency Event** | means, in respect of the Service Provider (as applicable):   1. a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors; or 2. a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or 3. a petition is presented for its winding up (which is not dismissed within fourteen (14) Business Days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to section 98 of the Insolvency Act 1986; or 4. a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or 5. an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given; or 6. it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986; or 7. being a "small company" within the meaning of section 382(3) of the Companies Act 2006, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or 8. where the Service Provider is an individual or partnership, any event analogous to those listed in limbs (a) to (g) (inclusive) occurs in relation to that individual or partnership; or 9. any event analogous to those listed in limbs (a) to (h) (inclusive) occurs under the law of any other jurisdiction; | | |
| **Law** | means any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Service Provider is bound to comply; | | |
| **Learner** | means any child or young person whose educational needs are the responsibility of the Council who is subject of a Placement; | | |
| **Losses** | means all losses, liabilities, damages, costs, expenses (including legal fees), disbursements, costs of investigation, litigation, settlement, judgment, interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty, misrepresentation on otherwise and “Loss” shall be interpreted accordingly; | | |
| **Necessary Consent** | mean all approvals, permissions, consents, licences, certificates and authorisations (whether statutory or otherwise) and including any CQC registration consents or other registration consents under any Law which are required for the purposes of carrying out the obligations of the Service Provider in connection with this APL Agreement, whether required in order to comply with Law or as a result or as a result of the rights of any third party or otherwise; | | |
| **New Placements** | means any new placements commissioned by the Council under this APL Agreement; | | |
| **Personal Data** | has the meaning given to it in the Data Protection Laws; | | |
| **Personal Data Breach** | has the meaning given to it in the Data Protection Laws; | | |
| **Processing** | has the meaning given to it in the Data Protection Laws but, for the purposes of this APL Agreement, it shall include both manual and automatic processing and “**Process**” and “**Processed**” shall be interpreted accordingly; | | |
| **Prohibited Act** | means:   1. to directly or indirectly offer, promise or give any person working for or engaged by a Council and/or the Council a financial or other advantage to:    * + - 1. induce that person to perform improperly a relevant function or activity; or          2. reward that person for improper performance of a relevant function or activity; or 2. committing any offence:    * + - 1. under the Bribery Act 2010; or          2. under legislation creating offences concerning Fraud; or          3. at common law concerning Fraud; or          4. committing (or attempting or conspiring to commit) Fraud; | | |
| **Placement** | means a place with the Service Provider which has been commissioned by the Council in respect of a Learner; | | |
| **Regulated Activity** | has the meaning given to it in the Safeguarding Vulnerable Groups Act 2006; | | |
| **Regulations** | means the Public Contracts Regulations 2015; | | |
| **Regulatory Body** | means those government departments and regulatory, statutory and other entities, communities, 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 APL Agreement or any other affairs of the Council or the Service Provider as applicable; | | |
| **Relevant Person** | means any employee, agent, servant, or representative of the Council or other public body; | | |
| **Request to Participate** | means the submission by a Service Provider in response to the Council’s notice seeking admission onto the APL; | | |
| **Requests for Information** | means a request for information relating to this APL Agreement or the provision of the Services or an apparent request for such information under the Code of Practice on Access to Government Information, FOIA or the EIRs; | | |
| **Service Request** | means a request from the Council to the APL Service Providers as described in paragraph 3.1.2(e) of Schedule 3 (Call for Competition Procedure) and in the Specification; | | |
| **Service Provider Related Parties** | means the Service Provider's Affiliates, Sub-Contractors and agents and its or their directors, officers, employees and workmen in relation to the provision of the Services; | | |
| **Service Conditions** | as set out at APL Schedule 2 Part 1 which govern the provision of the Services should the Council enter into a Call Off Agreement with the Service Provider; | | |
| **Services** | means the provision of alternative education as more particularly described in the Specification and an Service Request; | | |
| **Specification** | means the Community-Based, Out of School Alternative Education Specification set out at APL Schedule 1; | | |
| **Service Provider Staff** | | means all persons employed or engaged by the Service Provider together with the Service Provider's servants, agents, suppliers, consultants and sub-contractors (and all persons employed by any sub-contractor together with the sub-contractor’s servants, consultants, agents, suppliers and sub-contractors) used in the performance of its obligations under this APL Agreement or any Call Off Agreements; |
| **Service Provider Representative** | | means the representative appointed by the Service Provider from time to time in relation to this APL Agreement; |
| **Service Provider's 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 Service Provider, including IPRs, together with 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; |
| **Termination Notice** | | means a written notice of termination given by one Party to the other, notifying the Party receiving the notice of the intention of the Party giving the notice to terminate this APL Agreement on a specified date and setting out the grounds for termination; |
| **Variation** | | has the meaning given to it in Clause 9; |
| **VAT** | | means value added tax in accordance with the provisions of the Value Added Tax Act 1994; |

* 1. Interpretation
     1. In this APL Agreement, unless the context otherwise requires:
        1. the singular includes the plural and vice versa;
        2. reference to a gender includes the other gender and the neuter;
        3. references to a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity or Crown Body;
        4. a reference to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time;
        5. the words "including", "other", "in particular", "for example" and similar words shall not limit the generality of the preceding words and shall be construed as if they were immediately followed by the words "without limitation";
        6. references to “writing” include typing, printing, lithography, photography, display on a screen, electronic and facsimile transmission and other modes of representing or reproducing words in a visible form and expressions referring to writing shall be construed accordingly;
        7. references to “representations” shall be construed as references to present facts; to “warranties” as references to present and future facts; and to “undertakings” as references to obligations under this APL Agreement;
        8. references to “Clauses” and “APL Schedules” are, unless otherwise provided, references to the clauses and schedules of this APL Agreement and references in any APL Schedule to paragraphs, parts, annexes and tables are, unless otherwise provided, references to the paragraphs, parts, annexes and tables of the APL Schedule or the part of the APL Schedule in which the references appear;
     2. If there is any conflict between the provisions of this APL Agreement and provisions of any Call Off Agreement, the provisions of the relevant Call Off Agreement shall prevail over the provisions of this APL Agreement.

1. **APL Agreement Period**
   1. This APL Agreement shall take effect on the APL Commencement Date and (unless it is otherwise terminated in accordance with the terms of this APL Agreement or it is otherwise lawfully terminated) shall terminate on the expiry of the APL Initial Period. This APL Agreement shall take effect on the APL Commencement Date and shall, unless it is terminated earlier in accordance with the terms of this APL Agreement or otherwise by the operation of Law, expire either:
      1. at the end of the Initial APL Period; or
      2. at the end of the Extension Period where the Council elects to extend the Initial APL Period in accordance with Clause 2.2 below.
   2. The Council may extend the duration of this APL Agreement by giving the Service Provider no less than [INSERT] written notice prior to the expiry of the then current APL Period. The maximum duration of this APL Agreement will not exceed [INSERT].
2. **Service Provider’s Admittance and Scope of APL Agreement**
   1. The Council hereby admits the Service Provider to the Approved Provider List as a potential provider of the Services and the Service Provider shall be eligible to be considered for the award of Call Off Agreements by the Council during the APL Period.
   2. Without prejudice to Clause 26 (Third Party Rights), this APL Agreement governs the relationship between the Council and the Service Provider in respect of the provision of the Services by the Service Provider to the Council.
   3. The Service Provider acknowledges and agrees that:
      1. there is no obligation whatsoever on the Council to invite or select the Service Provider to provide any Services and/or to purchase any Services under this APL Agreement; and
      2. in entering into this APL Agreement no form of exclusivity has been conferred on the Service Provider nor volume or value guarantee granted by the Council in relation to the provision of the Services by the Service Provider and that the Council is at all times entitled to enter into other contracts and agreements with other suppliers for the provision of any or all Services which are the same as or similar to the Services.
3. **Call for Competition Procedure**
   1. If the Council decides to source any of the Services through this APL Agreement, then it shall be entitled at any time in its absolute and sole discretion during the APL Period to award Call Off Agreements for the Services from the Service Provider by following the procedure set out in APL Schedule 3 (Call for Competition Procedure).
   2. The Service Provider shall comply with the relevant provisions in APL Schedule 3 (Call for Competition Procedure).
4. **Representations and Warranties**
   1. The Service Provider represents and warrants that:
      1. it has full capacity and authority to enter into and to perform this APL Agreement and any Call Off Agreement and all Necessary Consents have been obtained and are in full force;
      2. there are no actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it (or any of its Affiliates) that might affect its ability to perform its obligations under this APL Agreement;
      3. its obligations under this APL Agreement constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar Laws affecting creditors’ rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or law);
      4. it has obtained and will maintain all licences, authorisations, permits, and regulatory approvals to enter into and perform its obligations under this APL Agreement and/or any Call Off Agreement;
      5. it has not committed or agreed to commit a Prohibited Act and has no knowledge that an agreement has been reached involving the committal by it or any of its Affiliates of a Prohibited Act, save where details of any such arrangement have been disclosed in writing to the Council before the APL Commencement Date;
      6. its execution, delivery and performance of its obligations under this APL Agreement does not and will not constitute a breach of any Law or obligation applicable to it and does not and will not cause or result in a breach of any agreement by which it is bound;
      7. as at the APL Commencement Date, all written statements and representations in any written submissions made by the Service Provider as part of the procurement process, its Request to Participate, and any other documents submitted remain true and accurate except to the extent that such statements and representations have been superseded or varied by this APL Agreement;
      8. it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under this APL Agreement and/or any Call Off Agreement;
      9. it is not affected by an Insolvency Event and no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, have been or are threatened) for the winding up of the Service 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 Service Provider’s assets or revenue;
   2. Each of the representations and warranties set out in Clause 5.1 shall be construed as a separate representation and warranty and shall not be limited or restricted by reference to, or inference from, the terms of any other representation, warranty or any undertaking in this APL Agreement.
   3. If at any time the Service Provider becomes aware that a representation or warranty given by it under Clause 5.1 has been breached, is untrue or is misleading, it shall immediately notify the Council of the relevant occurrence in sufficient detail to enable the Council to make an accurate assessment of the situation.
   4. For the avoidance of doubt, the fact that any provision within this APL Agreement is expressed as a warranty shall not preclude any right of termination the Council may have in respect of the breach of that provision by the Service Provider which constitutes a material Default of this APL Agreement.
   5. Each time that a Call Off Agreement is entered into, the warranties and representations in Clause 5.1 shall be deemed to be repeated by the Service Provider with reference to the circumstances existing at the time.
5. **Service Provider Obligations**
   1. The Service Provider shall perform its obligations under this Approved Provider Agreement in accordance with:
      1. the requirements of this APL Agreement, including each of the APL Schedules;
      2. the terms and conditions of the respective Call Off Agreements;
      3. Good Industry Practice;
      4. Best Practice;
      5. Guidance;
      6. all Necessary Consents;
      7. in compliance with all applicable Law;
   2. The Service Provider shall perform all its obligations under all Call Off Agreements entered into with the Council:
      1. in accordance with the requirements of this APL Agreement; and
      2. in accordance with the terms and conditions of the respective Call Off Agreements.
   3. The Service Provider shall draw any conflict in the application of any of the requirements of Clauses 6.1 and 6.2 to the attention of the Council and shall comply with the Council’s decision on the resolution of any such conflict.
6. **Performance Monitoring and Review**
   1. The Service Provider shall be responsible for the monitoring and accurate recording at all times of its own performance and delivery of the Services and of compliance with, or default under, the requirements of this APL Agreement and any Call Off Agreement.
   2. The Council shall also undertake its own performance monitoring of the operation of the APL Agreement and any Call Off Agreement and in order to assess the Service Provider's quality and performance in respect of the delivery of the Services. The Service Provider shall use all reasonable endeavours to assist the Council in such an exercise. The Council shall notify the Service Provider of the outcome of any performance monitoring exercise and the Service Provider shall have due regard to the Council’s comments in relation to the future provision of the Services.
   3. Regular performance review meetings will take place as agreed between the Parties throughout the APL Period (“Review Meetings”).
   4. The exact timings and frequencies of such Review Meetings will be determined by the Council upon commencement of this APL Agreement. It is anticipated that the frequency of the Review Meetings will be annually but more frequent meetings may be held where deemed necessary by the Council. The Parties shall be flexible about the timings of these meetings. The Parties acknowledge and agree that if the Service Provider fails to attend two consecutive Review Meetings, such failure shall amount to a material Default and the Council shall be entitled to terminate this APL Agreement by issuing a Termination Notice to the Service Provider.
   5. The purpose of the Review Meetings will be to review the Service Provider’s performance under this APL Agreement. The agenda for each Review Meeting shall be set by the Council and communicated to the Service Provider in advance of that meeting.
   6. The Review Meetings shall be attended, as a minimum, by the Council Representative(s) and the Service Provider Representative.
7. **Records and Audit Access** 
   1. The Service Provider shall keep and maintain, until the later of:
      1. seven (7) years after the date of termination or expiry of this APL Agreement; or
      2. seven (7) years after the date of termination or expiry of the last Call Off Agreement to expire or terminate; or
      3. such other date as may be agreed between the Parties, full and accurate records and accounts of the operation of this APL Agreement, including Call Off Agreements entered into with the Council, the Services provided pursuant to the Call Off Agreements and the amounts paid by the Council under the Call Off Agreements.
   2. The Service Provider shall keep the records and accounts referred to in Clause 8.1 in accordance with Good Industry Practice and Law.
   3. The Service Provider shall afford any auditor access to the records and accounts referred to in Clause 8.1 at the Service Provider's premises and/or provide such records and accounts or copies of the same, as may be required and agreed with any of the auditors from time to time, in order that the auditor may carry out an inspection to assess compliance by the Service Provider and/or its sub-contractors of any of the Service Provider’s obligations under this APL Agreement, including for the following purposes to:
      1. verify the accuracy of the Call Off Agreement Fees and any other amounts payable by the Council under a Call Off Agreement (including proposed or actual variations to them in accordance with this APL Agreement);
      2. verify the costs of the Service Provider (including the costs of all sub- contractors and any third party suppliers) in connection with the provision of the Services;
      3. identify or investigate actual or suspected Prohibited Acts, impropriety or accounting mistakes or any breach or threatened breach of security and in these circumstances the Council shall have no obligation to inform the Service Provider of the purpose or objective of its investigations;
      4. identify or investigate any circumstances which may impact upon the financial stability of the Service Provider or their ability to perform the Services; and/or
      5. review any Performance Information reports and/or other records relating to the Service Provider’s performance of the Services and to verify that these reflect the Service Provider’s own internal reports and records.
   4. The Council shall use reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Service Provider or delay the provision of the Services pursuant to the Call Off Agreements, save insofar as the Service Provider accepts and acknowledges that control over the conduct of audits carried out by auditors that are not the Council is outside of the control of the Council.
   5. Subject to the Council’s obligations of confidentiality, the Service Provider shall on demand provide the auditors with all reasonable co-operation and assistance in relation to each audit, including by providing:
      1. all information within the scope of the audit requested by the auditor;
      2. reasonable access to any sites controlled by the Service Provider and to equipment used in the provision of the Services; and
      3. access to the Service Provider Staff.
   6. If an audit reveals that:
      1. the Service Provider has overcharged an amount equal to or greater than five per cent (5%) of the Call Off Agreement Fees due during any Invoicing Period of this APL Agreement and any Call Off Agreement; and/or
      2. a material Default has been committed by the Service Provider;

then the Council shall be entitled to terminate this APL Agreement for material Default.

* 1. The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause, save as specified in Clause 8.6.

1. **Variation**
   1. Any variations to the APL Agreement must be made in writing and agreed by the Parties.
   2. Any variation to the APL Agreement must not amount to a material change in the APL or the Services.
   3. The Service Provider shall not be relieved of its obligations under this APL Agreement as the result of a Change in Law.
2. **Conflicts of Interest**
   1. The Service Provider shall take appropriate steps to ensure that neither the Service Provider nor any Service Provider Related Party are placed in a position where (in the reasonable opinion of the Council) there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Service Provider or a Service Provider Related Party in the duties owed to the Council under the provisions of this APL Agreement or any Call Off Agreement(s).
   2. The Service Provider shall promptly notify in writing and provide full particulars to the Council if such conflict referred to in Clause 10.1 above arises or may reasonably be foreseen as arising and shall confirm in such notice the steps the Service Provider proposes to take in order to rectify the relevant conflict of interest.
3. **Service Provider Staff**
   1. The Service Provider will at all times ensure that Services are performed by appropriately qualified and trained Service Provider Staff.
   2. The Service Provider shall and shall procure that its sub-contractors shall:
      1. provide a sufficient number of supervisory staff to ensure that any Service Provider Staff engaged in the provision of the Services are at all times adequately supervised and trained and properly perform their duties to the standards set out in this APL Agreement and any Call Off Agreement(s);
      2. employ at all times an adequate number of sufficiently qualified and experienced Service Provider Staff to provide the Services as set out in the Specification and Service Request in order to ensure adequate support for the Learners;
      3. ensure that all Service Provider Staff are paid no less than the Living Wage Foundation’s real living wage;
      4. be responsible for all remuneration, benefits, entitlements and outgoings in respect of all Service Provider Staff, including (without limitation) all wages, holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions, pension contributions and otherwise;
      5. ensure that its Service Provider Staff perform their duties in as orderly, caring and sensitive a manner as may reasonably be practicable having regard to the nature of the duties being performed by them and shall ensure that its Staff and other employees (as applicable) are aware of and comply with the contents of this APL Agreement, any Call Off Agreement(s) and specific instructions issued to them from time to time by the Council;
      6. employ or cause to be employed in the performance of the Services only such persons who are medically fit as appropriate for their specific responsibilities and duties, careful and competent in the execution of their duties and either appropriately-trained, skilled and experienced in their professions and vocations, or, in the case of trainees, properly supervised;
      7. where the nature or the place of any duties upon which the Service Provider Staff shall be engaged in the provision of the Services make the wearing of any special or protective clothing and footwear necessary or appropriate, provide, and shall require its Staff wear, such clothing or footwear; and
      8. provide a means of photographic identification to all Service Provider Staff (such ID shall include name of Service Provider Staff, current passport style photo, job role, Service Provider name and/or logo and Service Provider contact details) and require all Service Provider Staff to wear and keep visible such identification at all times whilst providing the Services (and make it available for inspection on request by any officer(s) of the Council who shall similarly disclose their identity).
4. **Provision and Protection of Information**
   1. Sharing of Information with the Council
      1. The Service Provider acknowledges and agrees that all information associated with this APL Agreement that is received by the Council from, or relating to, the Service Provider may be shared with other public bodies.
   2. Provision of Performance Information
      1. The Service Provider shall, at no charge to the Council, submit to the Council such information, evidence and data as may be reasonably requested by the Council from time to time.
      2. The Service Provider grants the Council a non-exclusive, transferable, perpetual, irrevocable, royalty free licence to:
         1. use and to share with any Relevant Person; and/or
         2. publish (subject to any information that is exempt from disclosure in accordance with the provisions of FOIA being redacted), any Performance Information supplied to the Council for the Council’s normal operational activities including but not limited to administering this Approved Provider Agreement and/or all Call Off Agreements, monitoring public sector expenditure, identifying savings or potential savings and planning future procurement activity.
      3. The Council shall in their absolute and sole discretion determine whether any Performance Information is exempt from disclosure in accordance with the provisions of the FOIA.
      4. The Council may consult with the Service Provider to help with its decision regarding any exemptions under Clause 12.2.3 but, for the purpose of this APL Agreement, the Council shall have the final decision in their absolute and sole discretion.
   3. Confidentiality
      1. For the purposes of this Clause 12.3, the term “Disclosing Party” shall mean a Party which discloses or makes available directly or indirectly its Confidential Information and “Recipient” shall mean the Party which receives or obtains directly or indirectly Confidential Information.
      2. Except to the extent set out in this Clause 12.3 or where disclosure is expressly permitted elsewhere in this APL Agreement, the Recipient shall:
         1. treat the Disclosing Party's Confidential Information as confidential and keep it in secure custody (which is appropriate depending upon the form in which such materials are stored and the nature of the Confidential Information contained in those materials); and
         2. not disclose the Disclosing Party's Confidential Information to any other person except as expressly set out in this APL Agreement or without obtaining the Disclosing Party's prior written consent;
         3. not use or exploit the Disclosing Party’s Confidential Information in any way except for the purposes anticipated under this APL; and
         4. immediately notify the Disclosing Party if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Disclosing Party’s Confidential Information.
      3. The Recipient shall be entitled to disclose the Confidential Information of the Disclosing Party where:
         1. the Recipient is required to disclose the Confidential Information by Law, provided that Clause 12.5 (Freedom of Information) shall apply to disclosures required under the FOIA or the EIRs;
         2. the need for such disclosure arises out of or in connection with:
            1. any legal challenge or potential legal challenge against the Council arising out of or in connection with this APL Agreement and/or any Call Off Agreement;
            2. the examination and certification of the Council’s accounts (provided that the disclosure is made on a confidential basis) or for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Council are making use of their resources; or
         3. the Recipient has reasonable grounds to believe that the Disclosing Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010 and the disclosure is being made to the Serious Fraud Office;
         4. such information was in the possession of the Disclosing Party without obligation of confidentiality prior to its disclosure by the information owner;
         5. such information was obtained from a third party without obligation of confidentiality;
         6. such information was already in the public domain at the time of disclosure otherwise than by a breach of this APL Agreement or breach of a duty of confidentiality; and
         7. the information is independently developed without access to the Disclosing Party's Confidential Information.
      4. If the Recipient is required by Law to make a disclosure of Confidential Information, the Recipient shall as soon as reasonably practicable and to the extent permitted by Law notify the Disclosing Party of the full circumstances of the required disclosure including the relevant Law and/or regulatory body requiring such disclosure and the Confidential Information to which such disclosure would apply.
      5. Subject to Clauses 12.3.2 and 12.3.3, the Service Provider may only disclose the Confidential Information of the Council on a confidential basis to:
         1. Service Provider Staff who are directly involved in the provision of the Services and need to know the Confidential Information to enable the performance of the Service Provider’s obligations under this APL Agreement; and
         2. its professional advisers for the purposes of obtaining advice in relation to this APL Agreement.
      6. Where the Service Provider discloses the Confidential Information of the Council pursuant to Clause 12.3.5, it shall remain responsible at all times for compliance with the confidentiality obligations set out in this APL Agreement by the persons to whom disclosure has been made.
      7. The Council may disclose the Confidential Information of the Service Provider:
         1. to the extent that the Council (acting reasonably) deem disclosure necessary or appropriate in the course of carrying out their public functions;
         2. on a confidential basis to a professional adviser, consultant, (including any benchmarking organisation) for any purpose relating to or connected with this APL Agreement;
         3. on a confidential basis for the purpose of the exercise of its rights under this APL Agreement;
         4. to a proposed transferee, assignee or novatee of, or successor in title to the Council; and
         5. for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Council under this Clause 12.3.7.
      8. For the avoidance of doubt, the Confidential Information that the Council may disclose under Clause 12.3.7 shall include information relating to Call Off Agreements, including service levels, pricing information (which includes information on prices tendered pursuant to any competition conducted in accordance with APL Schedule 3 (Call for Competition Procedure), even where such a competition does not result in the award of a Call Off Agreement).
      9. In the event that the Service Provider fails to comply with Clauses 12.3.2 to 12.3.5, the Council reserve the right to terminate this Approved Provider Agreement for material Default.
   4. Transparency
      1. The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this APL Agreement is not Confidential Information. The Council shall determine whether any of the content of this APL Agreement is exempt from disclosure in accordance with the provisions of the FOIA. The Council may consult with the Service Provider to inform its decision regarding any redactions but shall have the final decision in its absolute discretion.
   5. Freedom of Information
      1. The Service Provider acknowledges that the Council is subject to the requirements of the FOIA and the EIRs. The Service Provider shall:
         1. provide all necessary assistance and cooperation as reasonably requested by the Council to enable the Council to comply with its Information disclosure obligations under the FOIA and EIRs;
         2. transfer to the Council all Requests for Information relating to this APL Agreement and/or any Call Off Agreement that it receives as soon as practicable and in any event within two (2) Business Days of receipt;
         3. provide the Council with a copy of all Information belonging to the Council requested in the Request for Information which is in the Service Provider’s possession or control in the form that the Council requires within five (5) Business Days (or such other period as the Council may reasonably specify) of the Council’s request for such Information; and
         4. not respond directly to a Request for Information unless authorised in writing to do so by the Council.
      2. The Service Provider acknowledges that the Council may be required under the FOIA and EIRs to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from the Service Provider. The Council shall take reasonable steps to notify the Service 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 APL Agreement) for the purpose of this APL Agreement, the Council shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the FOIA and/or the EIRs.
   6. Protection of Personal Data
      1. The Parties must comply with Data Protection Laws and must assist each other as necessary to enable each other to comply with these obligations.
      2. The Service Provider must comply with and must demonstrate satisfactory compliance with clause 12.6.1 above.
      3. The Service Provider must:

(a) nominate an Information Governance Lead;

(b) nominate a Data Protection Officer if applicable; and

(c) ensure that the Council is kept informed at all times of the identities and contact details of the Information Governance Lead and the Data Protection Officer if applicable.

* + 1. If the Service Provider is required under Data Protection Laws to notify the Information Commissioner or a Data Subject of a Personal Data Breach then within forty eight (48) hours of the Personal Data Breach occurring the Service Provider must inform the Council of the Personal Data Breach, and if the Service Provider will report the breach to the Information Commissioner within seventy two (72) hours as is required within the Data Protection Laws.
    2. Both Parties will comply with all applicable requirements of the Data Protection Laws. This clause 12.6 is in addition to, and does not relieve, remove or replace, a Party's obligations under the Data Protection Laws.
    3. Whether or not a Party or sub-contractor is a Data Controller or Data Processor will be determined in accordance with Data Protection Laws and any further Data Guidance. The Parties acknowledge that a Party or sub-contractor may act as both a Data Controller and a Data Processor, or a Joint Data Controller.
    4. Without prejudice to the generality of clause 12.6, the Council will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Service Provider for the duration and purposes of this Contract.
    5. Where required under Data Protection Laws, the Service Provider shall ensure that it has a Privacy Notice or Consent Notice in place.
    6. Any failure by the Service Provider to inform individuals as required by Data Protection Laws about the uses of Personal Data that may take place under this APL Agreement cannot be relied on by the Service Provider as evidence that such use is unlawful and therefore not contractually required.
    7. Without prejudice to the generality of clause 12.6.1, the Service Provider must ensure that all Personal Data processed by or on behalf of the Service Provider in the course of delivering the Services is processed in accordance with the relevant Parties’ obligations under Data Protection Laws. The Service Provider shall:

(a) process Personal Data only on the written instructions of the Council, unless the Service Provider is required by the Laws applicable to the Service Provider to otherwise process the Personal Data. Where the Service Provider is so required, it shall promptly notify the Council before processing the Personal Data, unless prohibited by the Law;

(b) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Council, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);

(c) not transfer any Personal Data outside of the UK unless the prior written consent of the Council has been obtained and the following conditions are fulfilled:

(i) the Council or the Service Provider has provided appropriate safeguards in relation to the transfer;

(ii) the Data Subject has enforceable rights and effective remedies;

(iii) the Service Provider complies with its obligations under the Data Protection Laws by providing an adequate level of protection to any Personal Data that is transferred; and

(iv) the Service Provider complies with the reasonable instructions notified to it in advance by the Council with respect to the processing of the Personal Data;

(d) notify the Council as soon as reasonably practicable if it receives:

(i) a request from a Data Subject to have access to that individual’s Personal Data;

(ii) a Right of Access, Rectification or Erasure Request;

(iii) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Laws (including any communication from the Information Commissioner);

(e) at the Service Provider’s expense, assist the Council in responding to any request from a Data Subject and in ensuring compliance with the Council's obligations under the Data Protection Laws with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;

(f) at the written direction of the Council, delete or return Personal Data and copies thereof to the individual on termination or expiry of this Contract unless required by the Applicable Laws to store the Personal Data;

(g) maintain complete and accurate records and information to demonstrate its compliance with this clause 12.6 and allow for audits by the Council or the Council’s designated auditor.

* + 1. Where the Council requires information for the purposes of quality management, the Service Provider must consider whether the Council’s request can be met by providing anonymised or aggregated data which does not contain Personal Data. Where Personal Data must be shared in order to meet the requirements of the Council, the Service Provider must:

(a) provide such information in pseudonymised form where possible; and in any event

(b) ensure that there is a legal basis for the sharing of Personal Data.

* + 1. The Service Provider shall indemnify the Council against any Losses incurred by the Council arising from, or in connection with, any breach of the Service Provider’s obligations under this clause 12.6.
    2. Notwithstanding any other provision of this Contract, where the Service Provider commits a Personal Data Breach which under Data Protection Laws must be notified to the Information Commissioner and/or to an individual the Council may terminate this APL Agreement with immediate effect.

1. **Publicity and Branding**
   1. The Service Provider shall not:
      1. make any press announcements or publicise this APL Agreement in any way; or
      2. use the Council’s name or brand in any promotion or marketing or announcement of Call Off Agreement,

without Approval (the decision of the Council to Approve or not shall not be unreasonably withheld or delayed).

* 1. Each Party acknowledges to the other that no element of this APL Agreement either expressly or by implication constitutes an approval and/or endorsement of any products or services of the other Party (including the Services) and each Party agrees not to conduct itself in such a way as to imply or express any such approval and/or endorsement.
  2. The Service Provider shall not cause, generate, contribute to or otherwise be involved in material adverse publicity relating to or involving the Council , or otherwise bring the Council into disrepute by engaging in, enabling or allowing any act or omission which is reasonably likely to diminish the trust that the public places in the Council , regardless of whether or not such act or omission is related to the Service Provider’s obligations in relation to the Services or otherwise.

1. **Liability**
   1. Neither Party excludes or limits its liability for:
      1. death or personal injury caused by its negligence, or that of its employees, agents or sub-contractors (as applicable);
      2. bribery or Fraud by it or its employees; or
      3. any liability to the extent it cannot be excluded or limited by Law.
   2. Subject to Clause 14.1, neither Party shall be liable to the other Party for any:
      1. indirect, special or consequential Loss; or
      2. loss of profits, turnover, savings, business opportunities or damage to goodwill (in each case whether direct or indirect).
   3. The Service Provider acknowledges that the Council may, amongst other things, recover from the Service Provider the following Losses incurred by the Council to the extent that they arise as a result of a Default by the Service Provider:
      1. any reasonable additional operational and/or administrative costs and expenses incurred by the Council, including costs relating to time spent by or on behalf of the Council in dealing with the consequences of the Default;
      2. any wasted expenditure or charges;
      3. the reasonable additional cost of procuring replacement services for the remainder of the APL Period, which shall include any incremental costs associated with such replacement services above those which would have been payable under this APL Agreement;
      4. any compensation or interest paid to a third party by the Council;
      5. any fine, penalty or costs incurred by the Council pursuant to Law.
   4. Each Party shall use all reasonable endeavours to mitigate any loss or damage suffered arising out of or in connection with this APL Agreement.
   5. For the avoidance of doubt, the Parties acknowledge and agree that this Clause 14 shall not limit the Service Provider’s liability to a Council under any Call Off Agreement and the Service Provider’s liability under a Call Off Agreement shall be as provided for in that Call Off Agreement only.
2. **Insurance**
   1. Without prejudice to its obligations to the Council under this APL Agreement, including its indemnity obligations, the Service Provider shall take out and maintain, or procure the taking out and maintenance of the following insurances and any other insurances as may be required by applicable Law (together the “Insurances”);

15.1.1 public liability insurance with a limit of liability of not less than ten million pounds (£5,000,000); and

15.1.2 employers liability insurance with a limit of liability of not less than ten million pounds (£5,000,000),

15.1.3 professional indemnity insurance with a limit of liability of not less than five hundred thousand pounds (£500,000)

for any one occurrence or series of occurrences arising under any one event.

* 1. The Service Provider shall ensure that each of the Insurances is effective no later than the APL Commencement Date.
  2. The Insurances shall be maintained in accordance with Good Industry Practice and (so far as is reasonably practicable) on terms no less favourable than those generally available to a prudent contractor in respect of risks insured in the international insurance market from time to time.
  3. The terms of any Insurance or the amount of cover shall not relieve the Service Provider of any liabilities arising under this APL Agreement or any Call Off Agreements.

1. **Council Termination Rights**
   1. Termination on material Default
      1. The Council may terminate this APL Agreement for material Default by issuing a Termination Notice to the Service Provider where:
         1. the Service Provider by its act or omission will have committed a material Default as described anywhere in this APL Agreement; and/or
         2. the Council terminates a Call Off Agreement for the Service Provider’s breach of that Call Off Agreement; and/or
         3. the Service Provider is in persistent breach of any one of its obligations under the APL Agreement of a Call Off Contract; and/or
         4. in the case of a breach which is capable of remedy, the Service provider fails to remedy such a breach within ten (10) Business Days, or such other period as may be specified by the Council, after issue of a written notice specifying the default and requesting it to be remedied; and/or
   2. Termination in Relation to Financial Standing
      1. The Council may terminate this APL Agreement by issuing a Termination Notice to the Service Provider where in the reasonable opinion of the Council there is a material detrimental change in the financial standing and/or the credit rating of the Service Provider which:
         1. adversely impacts on the Service Provider's ability to supply the Services under this APL Agreement; or
         2. could reasonably be expected to have an adverse impact on the Service Providers ability to supply the Services under this APL Agreement.
   3. Termination on Insolvency
      1. The Council may terminate this APL Agreement by issuing a Termination Notice to the Service Provider where an Insolvency Event affecting the Service Provider occurs.
   4. Termination on Change of Control
      1. The Service Provider shall notify the Council immediately in writing and as soon as the Service Provider is aware (or ought reasonably to be aware) that it is anticipating, undergoing, undergoes or has undergone a Change of Control and provided such notification does not contravene any Law.
      2. The Service Provider shall ensure that any notification made pursuant to Clause 16.4.1 shall set out full details of the Change of Control including the circumstances suggesting and/or explaining the Change of Control.
      3. The Council may terminate this APL Agreement by issuing a Termination Notice to the Service Provider at any time:
         1. upon being notified in writing that a Change of Control is anticipated or is in contemplation or has occurred; or
         2. where no notification has been made, the date that the Council becomes aware that a Change of Control is anticipated or is in contemplation or has occurred,

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

* + 1. Where the Council are notified or becomes aware that the Service Provider is anticipating, undergoing, undergoes or has undergone a Change of Control, the Council will not unreasonably withhold Approval.
  1. Termination for Breach of Regulations
     1. The Council reserves the right to terminate the APL Agreement in the event that it has been subject to a substantial modification which would have required a new procurement procedure in accordance with regulation 72(9) of the Public Contract Regulations 2015.
  2. Termination Without Cause
     1. The Council shall have the right to terminate this APL Agreement at any time by giving at least six (6) Months written notice to the Service Provider.

1. **Suspension of Service Provider's Appointment**
   1. If the Council is entitled to terminate this APL Agreement pursuant to Clause 16 (Council Termination Rights), the Council may elect in its sole discretion to suspend the Service Provider's ability to participate in the Call for Competition Procedure under this APL Agreement by giving notice in writing to the Service Provider, and the Service Provider agrees that it shall not be entitled to participate in the Call for Competition Procedure or enter into any new Call Off Agreement during the period specified in the Council’s notice.
   2. Any suspension under Clause 17.1 shall be without prejudice to any right of termination which has already accrued, or subsequently accrues, to the Council.
   3. The Parties acknowledge that suspension shall not affect the Service Provider's obligation to perform any existing Call Off Agreements awarded prior to the suspension notice.
   4. If the Council provide notice to the Service Provider in accordance with this Clause17, the Service Provider's appointment under this APL Agreement shall be suspended for the period set out in the notice or such other period notified to the Service Provider by the Council in writing from time to time.
   5. For the avoidance of doubt, no period of suspension under this Clause 17 shall result in an extension of the APL Period.
2. **Consequences of Expiry or Termination**
   1. Notwithstanding the service of a notice to terminate this APL Agreement, the Service Provider shall continue to fulfil its obligations under this APL Agreement until the date of expiry or termination of this APL Agreement or such other date as required under this Clause18.
   2. Termination or expiry of this APL Agreement shall not cause any Call Off Agreements to terminate automatically. For the avoidance of doubt, all Call Off Agreements shall remain in force unless and until they are terminated or expire in accordance with the provisions of the Call Off Agreement, notwithstanding the termination or expiry of this APL Agreement.
   3. If the Council terminate this APL Agreement under Clause 16.1 (Termination on Material Default) and then make other arrangements for the supply of the Services to the Council, the Service Provider shall indemnify the Council in full upon demand for the cost of procuring, implementing and operating any alternative or replacement services to the Services and no further payments shall be payable by the Council until the Council has established and recovered from the Service Provider the full amount of such cost.
   4. Within thirty (30) Business Days of the date of termination or expiry of this APL Agreement, the Service Provider shall return to the Council any and all of the Council’s Confidential Information in the Service Provider's possession, power or control, either in its then current format or in a format nominated by the Council, and any other information and all copies thereof owned by the Council, save that it may keep one copy of any such data or information to the extent reasonably necessary to comply with its obligations under this APL Agreement or under any Law, for a period of up to twelve (12) Months (or such other period as Approved by the Council and is reasonably necessary for such compliance).
   5. Termination or expiry of this APL Agreement shall be without prejudice to any rights, remedies or obligations of either Party accrued under this APL Agreement prior to termination or expiry.
   6. Termination or expiry of this APL Agreement shall be without prejudice to the survival of any provision of this APL Agreement which expressly (or by implication) is to be performed or observed notwithstanding termination or expiry of this APL Agreement.
3. **Compliance**
   1. Compliance with Law
      1. The Parties shall comply with all applicable Law in connection with the performance of this APL Agreement.
      2. In the event that the Service Provider or the Service Provider Staff fails to comply with Clause 19.1.1, the Council shall be entitled to terminate this APL Agreement for material Default.
   2. Best Value
      1. The Service Provider shall, throughout the APL Period, but only to the extent of its obligations in this APL Agreement, make arrangements to secure continuous improvement in the way in which the Services are provided, having regard to a combination of economy, efficiency and effectiveness.
   3. Equality and Diversity
      1. The Service Provider shall:
         1. perform its obligations under this APL Agreement (including those in relation to the provision of the Services) in accordance with:
            1. all applicable equality Law (whether in relation to race, sex, gender reassignment, religion or belief, disability, sexual orientation, pregnancy, maternity, age, marital status or otherwise); and
            2. any other requirements and instructions which the Council reasonably impose in connection with any equality obligations imposed on the Council at any time under applicable equality Law; and
         2. take all necessary steps, and inform the Council of the steps taken, to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission or (any successor organisation).
4. **Assignment and Novation**
   1. The Service Provider shall not assign, novate, or otherwise dispose of or create any trust in relation to any or all of its rights, obligations or liabilities under this APL Agreement or any part of it without Approval.
   2. The Council may assign, novate or otherwise dispose of any or all of its rights, liabilities and obligations under this APL Agreement or any part thereof to any contracting authority, as defined in the Regulations or other body which substantially performs any of the functions that previously had been performed by the Council and the Service Provider shall, at the Council’s request, enter into a novation agreement in such form as the Council shall reasonably specify in order to enable the Council to exercise its rights pursuant to this Clause 20.2.
5. **Waiver and Cumulative Remedies**
   1. The rights and remedies under this APL Agreement may be waived only by notice in accordance with Clause 27 (Notices) and in a manner that expressly states that a waiver is intended. A failure or delay by a Party in ascertaining or exercising a right or remedy provided under this APL Agreement or by Law shall not constitute a waiver of that right or remedy, nor shall it prevent or restrict the further exercise thereof.
   2. Unless otherwise provided in this APL Agreement, rights and remedies under this APL Agreement are cumulative and do not exclude any rights or remedies provided by Law, in equity or otherwise.
6. **Relationship of the Council and the Service Provider**
   1. Except as expressly provided otherwise in this APL Agreement, no element of this APL Agreement, nor any actions taken by the Parties pursuant to this APL Agreement, shall create a partnership, joint venture or relationship of employer and employee or principal and agent between the Council and the Service Provider, or authorise the Council or the Service Provider to make representations or enter into any commitments for or on behalf of the Service Provider or the Council as the case may be.
7. **Prevention of Fraud and Bribery**
   1. The Service Provider represents and warrants that neither it, nor to the best of its knowledge any Service Provider Staff, have at any time prior to the APL Commencement Date:
      1. committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or
      2. been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.
   2. The Service Provider shall not during the APL Period:
      1. commit a Prohibited Act; and/or
      2. do or suffer anything to be done which would cause the Council or any of the Council’s employees, consultants, contractors, sub- contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.
   3. The Service Provider shall during the APL Period:
      1. establish, maintain and enforce policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act;
      2. keep appropriate records of its compliance with its obligations under Clause 23.3.1 and make such records available to the Council on request;
      3. if so required by the Council, within twenty (20) Business Days of the APL Commencement Date, and annually thereafter, certify in writing to the Council, the compliance with this Clause 23.3 of all persons associated with the Service Provider who are responsible for supplying the Services in connection with this APL Agreement. The Service Provider shall provide such supporting evidence of compliance as the Council may reasonably request; and
      4. have, maintain and where appropriate enforce an anti-bribery policy (which shall be disclosed to the Council on request) to prevent it and any Service Provider Staff or any person acting on the Service Provider's behalf from committing a Prohibited Act.
   4. If the Service Provider breaches Clause 23.1, the Council may by notice:
      1. require the Service Provider to remove from the performance of this APL Agreement any Service Provider Staff whose acts or omissions have caused the Service Provider’s breach; or
      2. immediately terminate this APL Agreement for material Default.
   5. Any notice served by the Council under Clause 4 shall specify the nature of the Prohibited Act, the identity of the Party who the Council believes has committed the Prohibited Act and the action that the Council has elected to take (including, where relevant, the date on which this Approved Provider Agreement shall terminate).
8. **Severance**
   1. If any provision of this APL Agreement (or part of any provision) is held to be void or otherwise unenforceable by any court of competent jurisdiction, such provision (or part) shall to the extent necessary to ensure that the remaining provisions of this APL Agreement are not void or unenforceable be deemed to be deleted and the validity and/or enforceability of the remaining provisions of this APL Agreement shall not be affected.
9. **Entire Agreement**
   1. This APL Agreement together with any Call Off Agreement constitutes the entire agreement between the Parties in respect of the subject matter and supersedes and extinguishes all prior negotiations, course of dealings or agreements made between the Parties in relation to its subject matter, whether written or oral.
   2. Neither Party has been given, nor entered into this APL Agreement in reliance on, any warranty, statement, promise or representation other than those expressly set out in this APL Agreement.
10. **Third Party Rights**
    1. Unless expressly stated otherwise within this APL Agreement, a person who is not Party to this APL Agreement has no right to enforce any term of this APL under the Contracts (Rights of Third Parties) Act 1999 but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to the Contracts (Rights of Third Parties) Act 1999.
11. **Notices**
    1. Except as otherwise expressly provided within this APL Agreement, any notices issued under this APL Agreement must be in writing.
    2. The following table sets out the method by which notices may be served under this APL Agreement and the respective deemed time and proof of service:

|  |  |  |
| --- | --- | --- |
| Manner of Delivery | Deemed time of delivery | Proof of service |
| Email | 09.00am on the first Working Day after sending | Dispatched as a pdf attachment to an e-mail to the correct e-mail address without any error message |

* 1. For the purposes of this Clause 27, the address of each Party shall be:
     1. For the Council:

**Cornwall Council**

New County Hall

Treyew Road

Truro

Cornwall

TR1 3AY

For the attention of: Commissioning Manager for [ ]

email: [ ]

* + 1. For the Service Provider:

As stated in the Service Provider’s ITT Response.

* 1. Either Party may change its address for service by serving a notice in accordance with this Clause 27.
  2. This Clause 27 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution (other than the service of a Dispute Notice).

1. **Dispute Resolution**
   1. If a dispute arises between the Council and the Service Provider in connection with the APL Agreement, the Parties shall each use reasonable endeavours to resolve such dispute by means of prompt discussion at an appropriate managerial level.
   2. If a dispute is not resolved within fourteen (14) days of referral under clause 28.1 then either Party may refer it to the Chief Executive or appropriate nominated officer of each Party for resolution who shall meet for discussion within fourteen (14) days or longer period as the Parties may agree.
   3. Provided that both Parties consent, a dispute not resolved in accordance with clauses 28.1 and 28.2, shall next be referred at the request of either Party to a mediator appointed by agreement between the Parties within fourteen (14) days of one Party requesting mediation with the costs of mediation determined by the mediator.
   4. Nothing in this clause shall preclude either Party from applying at any time to the English courts for such interim or conservatory measures as may be considered appropriate.
   5. The Service Provider shall continue to provide the Services in accordance with the terms of this APL Agreement until a dispute has been resolved.
2. **Governing Law and Jurisdiction**
   1. This APL Agreement and any issues, disputes or claims (whether contractual or non-contractual) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of England and Wales.
   2. The Parties agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (whether contractual or non-contractual) that arises out of or in connection with this APL Agreement or its subject matter or formation.

**IN WITNESS**  of which the parties have caused this Agreement to be executed and delivered as a deed on the date set out above

**EXECUTED AS A DEED** )

by the **CORNWALL COUNCIL** )

whose **COMMON SEAL** was hereunto )

affixed in the presence of )

Sign………………………………………………………………..…

Print name…………………………………………………………

Authorised Officer

|  |  |
| --- | --- |
|  |  |
| **EXECUTED** and **DELIVERED** as a **DEED** by **[SERVICE PROVIDER]** by:- | ) ) )  ) )  Print name:  Signature:  Print name:  Signature: |



Specification

|  |  |
| --- | --- |
|  |  |



**Service Conditions and Individual Placement Agreement**

**Schedule 2 Part 1**

**Service Conditions**

**Schedule 2 Part 2**

**Individual Placement Agreement Template**



Call for Competition Procedure

**Schedule 4**

**Service Provider’s Request To Participate**