

VOLUME 6 – TERMS AND CONDITIONS OF CONTRACT

Contract title	THE PROVISION OF A MANAGEMENT INFORMATION SYSTEM & FINANCIAL ACCOUNTING SYSTEM FOR SCHOOLS & ACADEMIES
Contract ID	DN212852
Type of Supply/Service	Supply with Services elements
Type of contract	Framework
Contract start date	17 th January 2017
Contract end date	31 st March 2021
Possible extensions (<i>if applicable</i>)	31 st March 2023
Estimated total contract value	£2,000,000 - £30,000,000

FOR YOUR FILE AND RETENTION.

YOU DO NOT NEED TO RETURN AS PART OF YOUR SUBMISSION

SECTION 1 - THE CONTRACT

NB: This is the form of Contract the successful tenderer will be required to sign. It is included here for information and you do not need to complete it at this stage.

Date

The Council **NORTH YORKSHIRE COUNTY COUNCIL** of County Hall,
Northallerton, North Yorkshire, DL7 8AD

The Contractor

BACKGROUND

1. The Lead Council has invited tenders for the provision of a Management Information System and a Financial Accounting System for schools (the Supply/Service)

2. The Contractor has submitted a tender for the Supply/Service, which has been accepted by the Lead Council and/or Participating Organisations for the following Lot(s):
 - Lot One will be in respect of the Management Information System for all primary schools and academies nationally.
 - Lot Two will be in respect of the Management Information System for all secondary schools and academies nationally
 - Lot Three will be for a Financial Accounting System for Local Authority (LA) maintained primary schools nationally.
 - Lot Four will be for a Financial Accounting System for Local Authority (LA) maintained secondary schools nationally.
 - Lot Five will be for a Financial Accounting System for use by primary Academies and Multi Academy Trusts nationally.
 - Lot Six will be for a Financial Accounting System for use by secondary Academies and Multi Academy Trusts nationally.

THE CONTRACT

1. The following documents are incorporated into this Contract:
 - i) The Framework terms and conditions.
 - ii) The Specification.
 - iii) The Tender accepted by the Lead Council and/or Participating Organisations (including all the documents referred to in the Tender).
2. The documents in 1 are termed "the Contract Documents".
3. In consideration of the amounts to be paid for the Supply/Service by the Lead Council and/or Participating Organisations in accordance with the Contract Documents the Contractor agrees with the Lead Council and/or Participating Organisations to provide the Supply/Service to the Lead Council and/or Participating Organisations satisfaction in accordance with the Contract Documents.

SIGNED by duly authorised signatories of the Lead Council and/or Participating Organisations and the Contractor respectively.

.....

Sign name

.....

Sign name

.....

Print name

.....

Print name

.....

Sign name

.....

Sign name

.....

Print Name

.....

Print Name

for the Lead Council and/or Participating Organisations

for the Contractor

SECTION 2 - FRAMEWORK CONDITIONS

INDEX

1.	Definitions and Interpretation.....	6
2.	The Contract - General.....	8
3.	Authorised Officer	9
4.	The Contractor's Obligations	10
5.	Contract Manager	10
6.	The Supplies/Services	11
7.	Damage in Transit/ during Installation	11
8.	Labelling and Packaging	12
9.	Analysis and Tests	12
10.	Delivery and Risk.....	12
11.	Modifications	14
12.	Health and Safety, Protection and Other Statutory Requirements ...	14
13.	Agency	22
14.	Warranties and Liability	22
15.	Indemnity and Insurance	23
16.	Security	24
17.	Payment	25
18.	VAT	26
19.	Assignment and Sub-Contracting.....	26
20.	Legal Proceedings and Disclosure of Relevant Information	27
21.	Local Government Ombudsman	27
22.	Best Value, Price Reduction and Technological Improvements	27
23.	Dispute Resolution.....	28
24.	Termination.....	29
25.	Recovery of Sums Due to the Lead Council and/or Participating Organisations	31
26.	Notices	31
27.	Waiver.....	31
28.	Default	32
29.	Option to Extend.....	33
30.	Software	33
31.	Break Clause – Not Used	34
32.	Complaints Procedure	34
33.	DBS Checking.....	35
34.	Sustainability	35
35.	Civil Defence and Emergencies [Not Used]	35
36.	Monitoring of Contract Performance	35
37.	Satisfaction Surveys	37
38.	Award Procedures.....	37
40.	Licences	38

1. Definitions and Interpretation

1.1. The following terms have the following meanings in the Contract: -

Authorised Officer	the Authorised Officer referred to in clause 3
Commencement Date	17 th January 2017
Contract	this agreement for the Supply/Service made between the Lead Council and/or Participating Organisations and the Contractor
Contract Charges	the charges payable by the Lead Council and/or Participating Organisations to the Contractor for the Supply/Service
Contract Documents	the contract documents referred to in the Contract
Contract Manager	the Contract Manager referred to in clause 5
Contract Period	the period of 4 years from the Commencement Date subject to the terms of clause 29.
Contract Standards	i) the standards in the Contract; and ii) the KPI's iii) with all the skill, care and diligence to be expected of a competent provider of Supply/Service of a similar kind to the

Supply/Service; and

iv) generally to the Lead Council and/or Participating Organisations reasonable satisfaction

Employees	means any employees that may be eligible to transfer to the Contractor in accordance with TUPE on or before the Commencement Date
Key Performance Indicators (KPIs)	the standards to which the Supply/Service and Services must be performed as set out in the Specification
Lead Council	North Yorkshire County Council
Order	the Lead Council and/or Participating Organisations order for the Supplies/Services/ Supply/Service from the Contractor
Participating Organisations	the Lead Council and/or Participating Organisations referred to in 1.3.7 and 1.3.8 below.
Services	the services to be provided under the Order as described in the contract documents
Supply/Supplies	the Supplies to be provided under the Order. These two phrases are interchangeable
Specification	the Specification forming part of the Contract
Tender	the Contractor's Tender for the Supplies/Services

1.2. The Contract shall be governed by English Law.

1.3. References to: -

- 1.3.1. any Act, Order, Regulation, Statutory Instrument, etc. include any amendment or re-enactment.
- 1.3.2. one gender include any other gender
- 1.3.3. persons include corporations
- 1.3.4. singular includes the plural
- 1.3.5. clauses are to clauses in the Contract
- 1.3.6. the Contractor's staff include the Contractor's partners, directors, employees, agents and sub-contractors
- 1.3.7. the Lead Council and/or Participating Organisations include any and all schools included on the Department for Education website, Edubase, <http://www.education.gov.uk/edubase/home.xhtml>. This includes Local Authority maintained schools, Free schools, Faith schools, Academies, Multi Academy Trusts, Special Schools, and Pupil Referral Units.
- 1.3.8. The Participating Organisations include all Local Authorities (LAs) throughout England and Wales. A list of all the relevant English LAs may be found at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/491463/List_of_councils_in_England.pdf

A list of all the relevant Welsh LAs may be found at:

<http://www.wlqa.gov.uk/authorities>

1.4. The Contract represents the entire agreement between the Lead Council and/or Participating Organisations and the Contractor and supersedes all other undertakings, statements and agreements relating to the Supply/Service.

2. The Contract - General

- 2.1. The Contractor shall be deemed to have ensured the accuracy of the rates and prices in the Tender which shall cover all the Contractor's obligations under the Contract.
- 2.2. The Contract Documents are mutually explanatory of one another but if there is any inconsistency between these clauses and any provision in any other Contract Document, these clauses shall prevail.
- 2.3. No deletion from, addition to, or variation of the Contract Documents shall be valid unless agreed in writing and signed by the Lead Council and the Contractor.
- 2.4. These clauses apply to all Orders for the purchase of Supplies/Services by the Participating Organisations from the Contractor and they shall govern the Contract to the entire exclusion of all other terms and conditions. All other terms and conditions are excluded including any terms and conditions which the Contractor may attempt to apply under any sales offer, quotation, acknowledgement or acceptance of the Order, specification or other documents.
- 2.5. In the absence of express acceptance of an Order by the Contractor, performance of Supplies/Services by the Contractor for the Participating Organisation shall be deemed to be conclusive evidence of the Contractor's acceptance of these terms and conditions.
- 2.6. The Lead Council may at its absolute discretion and from time to time order Supplies/Services from the Contractor by placing an Order with the Contractor during the Term.
- 2.7. The Contractor acknowledges that there is no obligation for the Participating Organisations to purchase any Supplies/Services from the Contractor during the Term.
- 2.8. No undertaking or any form of statement, promise, representation or obligation shall be deemed to have been made by the Lead Council in respect of the total quantities or values of the Supplies/Services to be ordered by them or any of the Participating Organisations pursuant to this Contract and the Contractor acknowledges and agrees that it has not entered into this Contract on the basis of any such undertaking, statement, promise or representation.

3. Authorised Officer

- 3.1. The Authorised Officer is the person nominated by the Lead Council to act on its behalf for the purposes of the Contract and may:

- 3.1.1. issue instructions to the Contractor on any matter relating to the Contract; and
- 3.1.2. appoint representatives to act upon his behalf and shall notify the Contractor of such appointment(s).

4. The Contractor's Obligations

- 4.1. The Contractor shall provide the Supplies/Services in accordance with the Contract for the Contract Period to the Contract Standards.
- 4.2. The Contractor shall perform all Orders in accordance with the Contract for the period specified in the Order to the Contract Standards.
- 4.3. The Contractor shall inform the Authorised Officer immediately if it is unable to provide the Supply/Service or if the Contractor is aware of anything which may prevent the Contractor from complying with the Contract.
- 4.4. To enable the Authorised Officer to monitor the provision of the Supply/Service the Contractor shall provide relevant records and documents held by the Contractor in connection with the Supply/Service, and shall provide or procure the provision of any oral or written explanation relating to the same.
- 4.5. Without prejudice to the Lead Council's and/or Participating Organisation's other powers under the Contract, if the Contractor fails to provide the Supply/Service in accordance with Clause 4, the Lead Council shall inform the Contractor of the issue and the Contractor shall be given thirty (30) days to remedy the issue. If the Contractor does not remedy the issue within this period, the Lead Council and/or Participating Organisations may pay another firm to provide part or all of the Supply/Service and the costs incurred may be deducted from the Contract Charges or shall be recoverable as a debt.
- 4.6. If requested by the Authorised Officer the Contractor shall provide a copy of its audited accounts within six months of the relevant accounting reference date subsequent to those provided in accordance with the Tender.

5. Contract Manager

- 5.1. The Contractor shall appoint a Contract Manager who shall possess all the requisite skills and experience to fulfil this role. Any notice, instruction or other information given to the Contract Manager shall be deemed to have been given to the Contractor.

- 5.2. The Contractor shall notify the Authorised Officer in writing of the name, address and contact numbers of the Contract Manager and any deputy.
- 5.3. The Contractor shall provide and shall ensure that its staff wear at all times, when engaged in the provision of the Supply/Service on Council premises such identification as the Lead Council and/or Participating Organisations may require.

6. The Supplies/Services

- 6.1. The Supplies/Services must be of the type and quality specified in the Tender, and where relevant must comply with samples or trials previously approved by the Lead Council and/or Participating Organisations.
- 6.2. For the period of the contract , the Contractor warrants to the Lead Council and/or Participating Organisations that the Supplies/Services shall:
 - 6.2.1. be of satisfactory quality (within the meaning of the Consumer Rights Act 2015);
 - 6.2.2. be fit for any purpose stated by the Contractor or made known to the Contractor by the Lead Council and/or Participating Organisations at the time the order is placed;
 - 6.2.3. be free from material defects in design, functionality, material and workmanship which affects it's normal usage;
 - 6.2.4. be as described by the Contractor and correspond with any relevant specified trial or sample; and
 - 6.2.5. comply with all statutory requirements and regulations relating to the sale and supply of goods and services.
- 6.3. If required by the Lead Council and/or Participating Organisations, samples of Supplies/Services shall be submitted free of charge for evaluation and approval and all subsequent deliveries of the Supplies/Services shall be equal in quality to approved samples.

7. Damage in Transit/ during Installation

- 7.1. Where applicable, the Contractor shall free of charge and as quickly as possible either repair or replace (as the Lead Council and/or Participating Organisations shall elect) such of the Supplies/Services as may either be damaged in transit or whilst being installed or having been placed in transit fail to be delivered to the Lead Council and/or Participating Organisations provided that:
 - 7.1.1. in the case of damage to such Supplies/Services the Lead Council and/or Participating Organisations shall within thirty days of delivery give notice to the Contractor that the Supplies/Services have been damaged,

- 7.1.2. in the case of non-delivery the Lead Council and/or Participating Organisations shall (provided that the Lead Council and/or Participating Organisations has been advised of the dispatch of the Supplies/Services) within ten days of the notified date of delivery give notice to the Contractor that the Supplies/Services have not been delivered.

8. Labelling and Packaging

- 8.1. The Supplies/Services where applicable shall be packed and marked in a proper manner and in accordance with the Lead Council and/or Participating Organisations instructions and any statutory requirements and any requirements of the carriers. In particular the Supplies/Services shall be marked with the contract number, (or other reference number if appropriate), the name of the contents shall be clearly marked on each container and all containers of hazardous Goods (and all documents relating thereto) shall bear prominent and adequate warnings. Any parcel weighing more than 15kg shall have its weight clearly marked on it.
- 8.2. Where applicable, the Contractor should give, without additional cost to the Lead Council and/or Participating Organisations, a preference for the use of recycled materials in the manufacture of crates, pallets, boxes, cartons, cushioning and other forms of packaging, where these fulfil other packaging specifications. Packaging must be capable of recovery for re-use or recycling. The Contractor should revise packaging specifications periodically to ensure that no unnecessary limitations on the use of recycled materials exist.

9. Analysis and Tests

- 9.1. At any time the Lead Council and/or Participating Organisations may analyse or test the Supplies/Services or materials forming the subject matter of the Contract, and where such tests indicate that the Supplies/Services or materials do not match the samples previously provided by the Contractor the Lead Council and/or Participating Organisations may reject any Supplies/Services or materials at the Contractors risk and expense.

10. Delivery and Risk

- 10.1. Supplies/Services shall be delivered and installed by the Contractor to the Lead Council and/or Participating Organisations in accordance with orders placed by the Lead Council and/or Participating Organisations within the timescales agreed in the Call-Off Contract to an address specified by the Lead Council and/or Participating Organisations.
- 10.2. Supplies/Services shall be delivered at the Contractor's risk, and shall be free of all charges for carriage and packing, except where such charges have been specifically agreed in advance of the delivery. The Contractor shall be responsible for off-loading the Supplies/Services on delivery.

- 10.3. Where applicable, the Contractor shall provide a delivery note quoting the order number and giving details of the Supplies/Services delivered. The Lead Council and/or Participating Organisations order number must also be quoted on the invoice.
- 10.4. Time for delivery shall be of the essence.
- 10.5. The Supplies/Services are provided under a limited license. Therefore, the Contractor shall retain all rights, title and interest in any intellectual property rights in the Supplies/Services (together with associated software and services) supplied to the Customer under the Contract or created in the course of providing the Supplies/Services. Title shall remain vested in the Contractor.
- 10.6. All Intellectual Property Rights in the supplies and services will remain with the Contractor but the data produced when using them will belong to the Council or Participating Organisations which will have free access to all such data after the contract has ended. Attention is drawn to the exit management provisions in the Specification on page 10 in this respect.
- 10.7. If the Supplies/Services delivered are not of the specified quality, quantity or type or if they do not comply with any sample previously supplied then the Lead Council and/or Participating Organisations may refuse to accept the Supplies/Services in whole or in part. Acceptance of the delivery will not infer acceptance of the Supplies/Services.
- 10.8. If any Supplies/Services rejected under clause 10.6 by the Lead Council and/or Participating Organisations are not removed by the Contractor within seven days of the Lead Council and/or Participating Organisations notifying the Contractor that the Supplies/Services have been rejected, the Lead Council and/or Participating Organisations may remove the Supplies/Services at the Contractor's cost.
- 10.9. If the Contractor does not deliver/install the Supplies/Services within the time specified in 10.1 then without prejudice to any other rights which it may have, the Lead Council and/or Participating Organisations reserve the right to:
 - 10.9.1. cancel the Order in whole or in part;
 - 10.9.2. refuse to accept any subsequent delivery of the Supplies/Services which the Contractor attempts to make;
 - 10.9.3. recover from the Contractor any expenditure reasonably incurred by the Lead Council and/or Participating Organisations in obtaining the Supplies/Services in substitution from another supplier; and
 - 10.9.4. claim damages for any additional costs, loss or expenses incurred by the Lead Council and/or Participating Organisations which are in any way attributable to the Contractor's failure to deliver the Supplies/Services within the time specified

11. Modifications

11.1. The Authorised Officer may require the Contractor in writing to:-

11.1.1. provide additional Supplies/Services of a similar nature to the Supplies/Services;

11.1.2. increase or decrease the scope of the Supplies/Services or any part of them where this is reasonably viable for the contractor.

11.2. The valuation of modifications made under this clause shall be calculated with the agreement of both parties working together as follows:-

11.2.1. wherever appropriate the valuation shall be ascertained in accordance with the principles used and the rates and prices contained in the Tender;

11.2.2. if the rates and prices in the Tender are not relevant to the modification then the ascertainment of the valuation shall be on a fair and reasonable basis agreed by the parties and if agreement is not possible the matter shall be referred for dispute resolution under clause 23.

12. Health and Safety, Protection and Other Statutory Requirements

12.1. *Health and Safety*

12.1.1. The Contractor shall comply with the requirements of the Health and Safety at Work Act 1974 so far as they apply to the provision of the Supply/Service and throughout the Contract Period the Contractor shall have in place a health and safety policy which complies with all statutory requirements.

12.1.2. The Contractor shall promptly notify Council of any health and safety hazards which may arise in connection with the performance of the Contract.

12.1.3. The Lead Council and/or Participating Organisations shall promptly notify the Contractor of any health and safety hazards which may exist or arise at the Lead Council and/or Participating Organisations's premises and which may affect the Contractor in the performance of the Contract.

12.1.4. While on the Lead Council and/or Participating Organisations premises, the Contractor shall comply with any health and safety measures

implemented by the Lead Council and/or Participating Organisations in respect of personnel and other persons working on those premises.

- 12.1.5. The Contractor shall notify the Lead Council and/or Participating Organisations immediately in the event of any incident or “near miss” occurring in the performance of the Contract on the Lead Council and/or Participating Organisations premises where that incident or “near miss” causes, or may cause, any personal injury or damage to property which could give rise to personal injury.
- 12.1.6. The Contractor shall take all necessary measures to comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other Acts, orders, regulations and Codes of Practice relating to Health and Safety which may apply to staff in the performance of the Contract.
- 12.1.7. The Contractor shall ensure that his health and safety policy statement and health and safety management arrangements (as required by the Health and Safety at Work etc. Act 1974) are made available to the Lead Council and/or Participating Organisations on request.

12.2. *Data Protection*

- 12.2.1. The Contractor’s attention is drawn to the Data Protection Act 1998 (‘DPA’).
- 12.2.2. The Contractor shall comply with the Data Protection principles contained within DPA and shall observe any other obligation under DPA which arises in connection with this Contract.
- 12.2.3. In this Condition “DPA” means the Data Protection Act 1998 and “Personal Data” means information defined as such in DPA which is supplied and/or processed by the Contractor on behalf of the Lead Council and/or Participating Organisations.
- 12.2.4. The Lead Council and/or Participating Organisations is the Data Controller and the Contractor is the Data Processor under DPA.
- 12.2.5. The Contractor shall maintain appropriate confidentiality and security arrangements in respect of Personal Data and must comply with the principles of DPA when processing that Personal Data.
- 12.2.6. The Contractor shall ensure that Personal Data will: -
 - 12.2.6.1. be processed fairly and lawfully in accordance with the requirements of the first principle of DPA;

12.2.6.2. be processed only for the purpose of the provision of the Supply/Service and will not be processed for any other purpose without the Lead Council and/or Participating Organisations approval;

12.2.6.3. be adequate, relevant and not excessive in relation to the purpose specified;

12.2.6.4. be accurate and, where necessary, kept up to date;

12.2.6.5. be secured to prevent unauthorised or unlawful processing and to protect against loss, destruction or damage;

12.2.6.6. be held for only as long as necessary to meet the purpose which will be for a period of 6 years from the end of the contract period in accordance with the Lead Council and/or Participating Organisations retention and destruction policy;

12.2.6.7. be transferred to any country outside the European Economic Area in accordance with the following:

12.2.6.7.1. the parties acknowledge that the Contractor's provision of the Supplies/Services under the Contract may require the transfer of Data to the Contractor's sub-contractors ("Recipients") outside the European Economic Area in countries which have not been approved by the European Commission as having adequate protections in place for the purpose of the transfer of personal data. The Contractor will be permitted to transfer Data to such Recipients provided that the Contractor shall have entered into an agreement with the relevant Recipient based upon standard contractual clauses approved by the European Commission for transfers of personal data to processors outside of the European Economic Area and which agreement shall include security obligations on the Recipient which are no less onerous than those contained in the Agreement. The parties also acknowledge that the Contractor may also use services and/or products from other third parties in order to provide the services under the Contract and that, in doing so, the Contractor may transfer Data to such third parties. This may include (by way of example only) third parties that provide online storage and other facilities.

12.2.6.8. be processed in accordance with the rights afforded to individuals under DPA

12.2.7. The Contractor shall ensure that its staff, agents or sub-contractors who have access to the Lead Council and/or Participating Organisations data comply with the requirements in this Condition and shall ensure that such employees, agents or sub-contractors receive appropriate data protection training and

understand the responsibilities under the DPA in respect of Personal Data.

- 12.2.8. If the Contractor receives any subject request for Personal Data such request will be referred to the Lead Council and/or Participating Organisations Data Protection Officer as soon as practicable after receipt.
 - 12.2.9. Upon completion of an authority form, the Contractor will enable a link between the educational establishment and the applicable third party (e.g. parents). Data security of such third parties is the responsibility of the educational establishment. The Contractor will not be responsible for satisfying itself that the other party has robust data security mechanisms in place.
- 12.3. If the Contractor sub-contracts any part of the Supply/Service then the Contractor shall ensure that any sub-contractor or other arrangement with any such sub-contractor shall include a binding legal obligation upon the sub-contractor to comply with the obligations set out in this Condition. For the avoidance of doubt such sub-contracting shall not relieve the Contractor of its obligation to comply with this Condition.
- 12.3.1. The Contractor shall be liable for and shall indemnify the Lead Council and/or Participating Organisations against all claims, demands, actions, costs, proceedings and liabilities of any sort which the Lead Council and/or Participating Organisations incurs due to the Contractor's or any sub-contractors breach of this Condition except where such breach is the cause of the Lead Council and/or Participating Organisations or as a result of the Contractor following the Lead Council and/or Participating Organisations direct instructions.
 - 12.3.2. The Contractor shall provide to the Lead Council and/or Participating Organisations on request evidence of its compliance with this Condition to the Lead Council and/or Participating Organisations reasonable satisfaction.
 - 12.3.3. The Lead Council and/or Participating Organisations shall monitor compliance with the Condition and non-compliance may constitute a ground for termination of the Contract.
 - 12.3.4. The obligations set out in this Condition shall remain in force notwithstanding termination of the Contract.
 - 12.3.5. By entering into a call-off agreement/order under this framework, each School or Academy and the Contractor acknowledge that the agreement or order is one to which Schedule 1 paragraph 12 of the DPA 1998 applies and that the data processor (Contractor) will only act under the specific instructions of the data controller (School/Academy) in any matters of data processing.

12.4. *Other Legislation*

12.4.1. The Contractor shall comply with all relevant statutory and other provisions relating to the Services.

12.5. *New Legislation*

12.5.1. Without prejudice to clause 12.1 – 12.3, where new legislation is enacted during the Contract Period which has the effect of changing the manner in which the Supplies/Services or any part of them are to be provided the Contractor shall ensure that:

12.5.1.1. the Authorised Officer is informed of the nature and effect of such legislation and the changes necessitated by it in the Services;

12.5.1.2. the Supplies/Services are provided in accordance with such legislation.

12.6. *Rights of Third Parties*

12.6.1. A person who is not a party to this Contract has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or to enjoy the benefit of any term of this Contract.

12.7. *Equal Opportunities*

12.7.1. The Contractors attention is drawn to the Equality Act 2010

12.7.2. The Contractor and any Sub-contractor employed by the Contractor shall adopt a policy to comply with the Act and any subsequent legislation in respect of equalities which may be enacted during the Contract Period ("the Equalities Legislation"). Accordingly, the Contractor and any employee or Sub-contractor employed by the Contractor shall not discriminate directly or indirectly against any person because of their age, sex, disability, religious beliefs, sexual orientation, gender reassignment, pregnancy, maternity or race.

12.7.3. The Contractor and any Sub-contractor employed by it shall observe as far as possible, all statutory codes relating to the Equalities Legislation. This gives practical guidance to employers and others on the elimination of racial discrimination and the promotion of equality of opportunity in

employment, including monitoring of workforce matters and steps that can be taken to encourage people from minority groups to apply for jobs or take up training opportunities.

12.7.4. Not used.

12.7.5. The Contractor shall comply with the Equalities Legislation and shall satisfy the Lead Council and/or Participating Organisations that:-

12.7.5.1. its working practices do not involve the treatment of one group or individual less favourably than any others because of their age, sex, colour, race, nationality, ethnic origin, disability, religious beliefs or sexual orientation on any decision relating to their recruitment or employment with the Contractor and in relation to the delivery of the Supplies/Services under this Contract;

12.7.5.2. policies on discrimination are set out:-

- (i) in instructions to those concerned with recruitment, training and promotion;
- (ii) in documents available to employees, recognised trade unions or other representative groups of employees;
- (iii) in recruitment advertisements or other literature
- (iv) in instructions to those concerned with the delivery of the Services.

12.7.6. The Contractor shall provide such information as the Lead Council and/or Participating Organisations may reasonably request for the purpose of assessing the Contractor's compliance with this clause 12.7 including, if requested, examples of any instructions or other documents, recruitment advertisements or other literature containing details of monitoring of recruitment and employees.

12.8. *Freedom of Information*

- 12.8.1. "FOI" means the Freedom of Information Act 2000, "Exempt Information" means information falling into the exemptions set out in the FOI, "Confidential Information" means information to which the confidentiality or commercial interests exemptions within the FOI may apply and "Working Day" means Monday to Friday inclusive except bank holidays.
- 12.8.2. The Lead Council and/or Participating Organisations is bound by the provisions of the FOI and information relating to this Contract and to the Supplies/Services may need to be disclosed to third parties in order for the Lead Council and/or Participating Organisations to meet its obligations under the FOI.
- 12.8.3. The Contractor shall make all reasonable efforts to assist the Lead Council and/or Participating Organisations in meeting its obligations under the FOI. If the Lead Council and/or Participating Organisations receives an access request under the FOI, the Contractor shall upon request provide:
- 12.8.3.1. to the Lead Council and/or Participating Organisations a copy of information requested which is held by the Contractor on behalf of the Lead Council and/or Participating Organisations within a period of 5 Working Days;
- 12.8.3.2. access to an authorised officer of the Lead Council and/or Participating Organisations, within a period of 5 Working Days, to inspect information held by the Contractor on behalf of the Lead Council and/or Participating Organisations.
- 12.8.4. Where it is necessary for the Contractor to provide information to the Lead Council and/or Participating Organisations which it believes to be Exempt Information it shall state in writing to the Lead Council and/or Participating Organisations the nature of the information and the relevant exemption. The Lead Council and/or Participating Organisations will use reasonable endeavours to consult with the Contractor before disclosing such information under the FOI. The Contractor acknowledges that the final decision whether to disclose such information will rest with the Lead Council and/or Participating Organisations and not with the Contractor. Nothing contained in this Contract or any documents or negotiations relating to this Contract shall prevent the Lead Council and/or Participating Organisations from disclosing any information which (in the Lead Council and/or Participating Organisations reasonable opinion or in accordance with any recommendation, notice or decision of a competent authority) it is required to disclose under the FOI.
- 12.8.5. The Contractor shall observe the Lead Council and/or Participating Organisations Retention and Destruction Policy (details of which shall be provided by the Lead Council and/or Participating Organisations to the Contractor upon request) and shall not destroy information other than in accordance with this policy. If the Lead Council and/or Participating

Organisations notifies the Contractor of a request for information held by the Contractor which is due for destruction the Contractor shall immediately suspend destruction of that information to allow disclosure to take place. Upon the termination of this Contract the parties shall agree which party has the control of the retained information. Should the Contractor retain control of the information this clause shall remain in force beyond the termination of this Contract.

12.8.6. The Contractor shall maintain an adequate records management system which will enable it to access the information within the time limits prescribed.

12.8.7. The Contractor shall indemnify the Lead Council and/or Participating Organisations against any fines imposed by the ICO and that the Lead Council and/or Participating Organisations directly incurs due to the contractor's or any sub-contractor's breach of this clause 12.8 or any part of it.

12.9. *Confidentiality*

12.9.1. The Contractor shall keep confidential all information obtained from the Lead Council and/or Participating Organisations or through its provision of the Supply/Service which is Confidential Information whether or not the Lead Council and/or Participating Organisations designates or marks that Confidential Information as confidential.

12.9.2. Subject to clause 12.8 the Lead Council and/or Participating Organisations shall keep confidential all Confidential Information provided to it by the Contractor.

12.9.3. The provisions of clauses 12.9.1 and 12.9.2 shall not apply to any information which:

12.9.3.1. is or becomes public knowledge (otherwise than by a breach of this clause 12.9);

12.9.3.2. was in the possession of the party concerned without restriction as to its disclosure before receiving it from the other party; or

12.9.3.3. is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure.

12.9.4. Nothing in this clause shall prevent the Lead Council and/or Participating Organisations or the Contractor from disclosing information under or in

accordance with any legal requirement, or in accordance with any lawful requirements made by the Courts or by any regulatory body or inspectorate established by law.

12.9.5. The Contractor shall ensure that all employees engaged in the provision of the Supplies/Services or otherwise with access to information relating to the Supplies/Services will abide by this confidentiality clause.

12.9.6. The Contractor shall ensure that the terms of any sub-contract fully reflect the provisions of this clause 12.9.

13. Agency

13.1. The Contractor shall not represent itself as being: -

13.1.1. the servant or agent of the Lead Council and/or Participating Organisations (except as may be authorised under the Contract);

13.1.2. authorised to enter into any contract or other obligation on the Lead Council and/or Participating Organisations behalf except as may be authorised under the Contract

14. Warranties and Liability

14.1. The Contractor warrants that the Supplies/Services will correspond with their specification and will be free from material defects in functionality material and workmanship for the period of the contract as per clause 6 above.

14.2. The above warranty is given by the Contractor subject to the following conditions:

14.2.1. The Contractor shall be under no liability in respect of any defect arising from fault within the specification supplied by the Lead Council except where the expertise of the Contractor would lead to the reasonable expectation that such fault would have been rectified by the Contractor.

14.2.2. The Contractor shall be under no liability in respect of any defect which is caused by use of the Supplies by the Lead Council or a Participating Organisation contrary to the Contractor's instructions or modification or alteration of the Supplies by any party other than the Contractor or the Contractor's duly authorised contractors or agents without the Contractor's approval (such approval not to be unreasonably withheld).

15. Indemnity and Insurance

- 15.1 Nothing in the Agreement excludes the liability of either party:
- 15.1.1 for death or personal injury caused by their negligence;
 - 15.1.2 for fraud or fraudulent misrepresentation;
 - 15.1.3 for breach of clause 12.2 (Data Protection);
 - 15.1.4 for breach of clause 12.9. (Confidentiality);
 - 15.1.5 or any other matter which may not be excluded or limited by law.
- 15.2 Neither party shall in any circumstances be liable whether in tort (including for negligence or breach of statutory duty howsoever arising), contract, and misrepresentation (whether innocent or negligent) or otherwise for:
- 15.2.1 loss of profits; or
 - 15.2.2 loss of business; or
 - 15.2.3 depletion of goodwill or similar losses; or
 - 15.2.4 loss of anticipated savings; or
 - 15.2.5 loss of goods
- 15.3 Where digital content supplied by the Contractor is proven to have caused damage to the Lead Council and/or Participating Organisations device or other digital content, the Contractor may choose to either repair the device or digital content, or offer the Lead Council and/or Participating Organisations compensation. Any compensation shall be reasonable in all the circumstances.
- 15.4 Subject to clauses 15.1 to 15.3, the Contractor's liability for all claims, losses or damages arising out of or in connection with each Order (whether arising under tort (including negligence), breach of contract or otherwise) including under any indemnities shall be limited to a maximum aggregate liability of one hundred and fifty percent (150%) of the total Contract Charges paid or payable under the relevant Order.
- 15.6 Both parties shall use their reasonable endeavours to mitigate any losses that they incur and which are covered by this clause 15. Where there is an instance of losses occurring and potential claims arising the Authority will consider all available options and select the one which offers the best value for money at that time.

15.7 The Contractor:

- 15.7.1 shall maintain the insurances set out below (the “Insurances”) (and any other insurances required by Law) in full force and effect at all times from the Commencement Date until the date which is six (6) years following the end of the Contract Period, provided that such insurances are generally available in the market to businesses similar to the Contractor;
- 15.7.2 shall provide to the Lead Council and/or Participating Organisations on request copies of cover notes necessary to establish placement of the Insurances;
- 15.7.3 shall not cancel the Insurances or make any material change thereto which would affect the ability of the Contractor to offer the cover required under the Contract; and
- 15.7.4 shall maintain the insurances on terms that are as favourable to those generally available to a prudent contractor in respect of risks insured in the United Kingdom commercial insurance market but in any event shall include the following classes of insurances together with cover to at least the corresponding minimum sum insured:
- (a) loss of or damage to tangible property of the Lead Council and/or Participating Organisations caused by the Contractor’s negligence in the sum of £5,000,000 for any one occurrence or series of occurrences arising out of any single event;
 - (b) public liability in the sum of £5,000,000 for any one occurrence or series of occurrences arising out of any single event and in the aggregate;
 - (c) professional indemnity in the sum of £2,000,000 for any one occurrence or series of occurrences arising out of a single event; and
 - (d) employer’s liability in the sum of £10,000,000 for any one occurrence or series of occurrences arising out of a single event.

16. Security

- 16.1. The Contractor shall comply with the Lead Council and/or Participating Organisations security procedures at Council premises used or occupied by the Contractor in connection with provision of the Services.
- 16.2. The Contractor shall use its best endeavours to ensure that access to any such premises is restricted to its staff and essential visitors.
- 16.3. The Contractor shall issue to its staff who have access to any relevant premises security passes in such form as the Lead Council and/or Participating Organisations may require.

- 16.4. The Contractor shall be responsible for the safekeeping of any keys, passes, passwords and other means of access provided by the Lead Council and/or Participating Organisations and shall only permit them to be given to the staff whose names and addresses have been supplied to the Lead Council and/or Participating Organisations and then only to the extent required for the purposes of providing the Services. The Contractor shall ensure that the Authorised Officer is informed immediately of the loss of any keys, passes and other means of access and shall pay the cost of replacement and/or any reasonable security measures implemented as a result of such loss.
- 16.5 The Contractor shall, throughout the Contract Period, implement the following sufficient security measures to prevent unauthorised access: use anti-virus definitions and software available from an industry accepted anti-virus software vendor to check for, contain the spread of, and minimise the impact of malicious software.
- 16.6 The Lead Council /Participating Organisations will have an option to host the software associated with the provision of the Services at its own premises. In this case they will be responsible for providing and maintaining the physical environment necessary as reasonably required by the Contractor .Any other terms of such a hosting will be mutually agreed between the Parties based on industry norms.

17. Payment

- 17.1. The Lead Council and/or Participating Organisations will pay the Contract Charges in respect of an Order on receipt of an invoice. Such payments shall be made by BACS wherever possible.
- 17.2. Invoices shall be in such a form as may be agreed between the Lead Council and/or Participating Organisations and the Contractor and the Lead Council and/or Participating Organisations will pay the invoices within 30 days of receipt of an undisputed invoice.
- 17.3. The Lead Council and/or Participating Organisations reserves the right to vary its invoicing policy at any time and to require electronic invoices to be directly submitted by the Contractor. Any expenses of the Contractor involved in the submission of electronic invoices shall be met by the Contractor.
- 17.4. Where the Contractor enters into a sub-contract with a supplier or contractor for the purpose of performing its obligations under the Contact, it shall ensure that a provision is included in such a sub-contract which requires payment to be made of all sums due by the Contractor to the sub-contractor within a specified period not exceeding 30 days from the receipt of a valid invoice.

- 17.5. For the avoidance of doubt the price paid will include the provision of upgrades and updates during the term of any particular Order

18. VAT

- 18.1. The Lead Council and/or Participating Organisations shall be liable to pay to the Contractor such Value Added Tax as may be properly chargeable on the Contractor in respect of the Supply/Service of the Supplies/Services to the Lead Council and/or Participating Organisations (except to the extent that any such Value Added Tax or related penalties are chargeable because of the breach by the Contractor of the relevant statutory provisions).

19. Assignment and Sub-Contracting

- 19.1. The Lead Council and/or Participating Organisations shall only assign the Contract when required by operation of law including, but without limitation, by reason of the reorganisation of Local Government.

- 19.2. The Contractor shall not:

19.2.1. assign the Contract in whole or in part without the consent of the Lead Council and/or Participating Organisations;

19.2.2. The Lead Council and/or Participating Organisations understands and agrees that the Contractor may use the services of third parties in order to provide the Supplies/Services. The Contractor shall be responsible for the acts, defaults or neglect of any sub-contractors, as if they were the acts, defaults or neglect of the Contractor.

- 19.3. Where the Lead Council and/or Participating Organisations has agreed that the provision of the Supplies/Services may be sub contracted in whole or in part then the Contractor shall ensure that a provision is included in such a sub-contract which requires payment to be made of all sums due by the Contractor to the sub-contractor within a specified period not exceeding 30 days from the receipt of a valid invoice. In addition, any contract between the Contractor and any sub contractor, conditions of contract shall be included which replicate conditions 19.1 and 19.2 above together with such other conditions which the Lead Council and/or Participating Organisations may from time to time specify shall be included in any such sub contract.

20. Legal Proceedings and Disclosure of Relevant Information

- 20.1. The Contractor shall notify the Authorised Officer of any accident, damage, claim or breach of any statutory provision relating to the Supplies/Services as soon as reasonably possible after becoming aware of such matter.
- 20.2. If required by the Authorised Officer, the Contractor shall provide relevant information and assistance in connection with any legal inquiry, arbitration, court proceedings or internal disciplinary proceedings relating to the Supplies/Services and if required shall give evidence in such inquiries or proceedings or hearings.
- 20.3. If at any time during the Contract Period the Contractor is convicted of any offence referred to in Regulation 57(1) of the Public Contracts Regulations 2015 (in this clause 'the Regulations') or if an event occurs which would have entitled the Lead Council and/or Participating Organisations to treat the Contractor as ineligible for selection under Regulation 57(3), 57(4) or 57(8) of the Regulations then the Contractor shall immediately inform the Lead Council and/or Participating Organisations of this fact and shall provide such further information as the Lead Council and/or Participating Organisations may require.

21. Local Government Ombudsman

- 21.1. The Contractor should note that if a complaint is made to the Lead Council and/or Participating Organisations by a third party relating to the Supplies/Services the Local Government Ombudsman has the power to investigate such complaint and the Lead Council and/or Participating Organisations requires the Contractor fully to co-operate in such investigation. If the Lead Council and/or Participating Organisations is found guilty of maladministration or injustice by the Local Government Ombudsman because of the act or default of the Contractor the Contractor shall indemnify the Lead Council and/or Participating Organisations in respect of the costs arising from such maladministration or injustice.

22. Best Value, Price Reduction and Technological Improvements

- 22.1. In accordance with Part 1 of the Local Government Act 1999 the Lead Council and/or Participating Organisations may from time to time review the provision of the Supply/Service in pursuance of the Lead Council and/or Participating Organisations wide commitment to continuing Supply/Service improvement, having regard to a combination of economy, efficiency and effectiveness and the Contractor shall: -
 - 22.1.1. Participate in and fully co-operate with such reviews; and
 - 22.1.2. Provide such assistance and information including, but without limitation, accounting and other record books, business plans, quality assurance, Supply/Service records and Supply/Service plans as may be reasonably

required by the Lead Council and/or Participating Organisations in relation to the provision of the Service.

- 22.2. The Contractor shall at all times during the Contract Period use all reasonable endeavours to ensure that the Lead Council and/or Participating Organisations receives the benefit of improvements in the available technology and reduced third party costs and charges relevant to the provision of the Supplies/Services (including, without limitation, endeavouring to source equipment and software from suppliers with competitive rates).
- 22.3. Where the Contractor identifies such a potential benefit, it shall promptly inform the Lead Council and/or Participating Organisations and shall advise the Lead Council and/or Participating Organisations whether, in the Contractor's professional opinion, the implementation of any change necessary to enable the Lead Council and/or Participating Organisations to enjoy that benefit is desirable (in view of quality, reliability and other relevant factors as well as price).
- 22.4. If the Lead Council and/or Participating Organisations shall conclude that the implementation of the necessary change is desirable, the Contractor shall implement the change.
- 22.5. Any benefits arising from any such change as is referred to in this clause 22 (including any consequent reductions in the Contract Charges) shall accrue solely to the Lead Council and/or Participating Organisations (subject to any costs reasonable incurred by the Contractor in implementing the necessary change being taken into account).

23. Dispute Resolution

- 23.1. Any dispute or difference (in this clause 'the dispute') which arises between the Lead Council and/or Participating Organisations and the Contractor as to the construction of this Contract, as to their respective rights, duties and obligations or as to any other matter arising out of or connected with the Contract shall be determined in accordance with the provisions of this clause.
- 23.2. The Lead Council and/or Participating Organisations and the Contractor shall submit the dispute to a neutral adviser appointed by agreement between them to assist them in resolving the dispute. Either party may give written notice to the other describing the nature of the dispute, requiring it to be submitted to such a neutral adviser and proposing the name of a suitable person to be appointed. If no such person is appointed by agreement within 14 days after such notice is given, or, if no such notice is given within 28 days after the dispute has arisen, either party may request the Centre for Dispute Resolution to appoint a neutral adviser acceptable to both parties.

23.3. The parties shall, with the assistance of the neutral adviser appointed in accordance with clause 23.2 above, seek to resolve the dispute by using an alternative dispute resolution (in this clause 'ADR') procedure agreed between the parties or, in default of such agreement established by a mutual adviser.

23.4. If the parties accept any recommendations made by the neutral adviser or otherwise reach agreement as to the resolution of the dispute, such agreement shall be recorded in writing and signed by the parties and, if applicable, the neutral adviser and it shall be binding upon both parties.

23.5. If: -

23.5.1. The dispute has not been resolved to the satisfaction of the parties within 60 days after the appointment of the neutral adviser; or

23.5.2. Either party fails or refuses to agree or participate in the ADR procedure; or

23.5.3. In any event the dispute is not resolved within 90 days after it has arisen

then the dispute shall be resolved under clause 23.6 below.

23.6. Any dispute which is to be resolved under this clause shall be resolved by the decision of an expert whose decision shall, save as to manifest error, be final and binding on the parties. The expert shall be appointed by agreement between the parties or, if within ten days after the dispute fails to be resolved, the parties have been unable to agree then on application of either of the parties to the President for the time being of the Chartered Institute of Arbitrators.

23.7. Any costs and fees incurred by the parties which are not met in accordance with an agreement reached through the ADR procedure or in accordance with a decision reached by the expert under clause 23.6 above shall be borne by the parties by whom they were incurred.

24. Termination

24.1. If the Contractor:-

24.1.1. has offered any gift or consideration of any kind as an inducement or disincentive for doing anything in respect of this contract or any other contract with the Lead Council and/or Participating Organisations; or

- 24.1.2. has committed an offence under the Prevention of Corruption Acts 1889 to 1916; or
- 24.1.3. becomes bankrupt; or
- 24.1.4. has a receiving order made against it; or
- 24.1.5. presents its petition in bankruptcy; or
- 24.1.6. is subject to a winding up order; or
- 24.1.7. has a receiver appointed; or
- 24.1.8. at any time during the contract period is convicted of any offence referred to in Regulation 57(1) of the Public Contracts Regulations 2015 or if an event occurs which would have entitled the Lead Council and/or Participating Organisations to treat the Contractor as ineligible for selection under Regulation 57(3), 57(4), or 57(8); or
- 24.1.9. is in persistent and/or material breach of contract (by failure to achieve the Contract Standards, the Supplies/Services being not fit for purpose or otherwise); or
- 24.1.10. changes its composition on staffing so as seriously to affect its ability to provide the Service;

the Lead Council and/or Participating Organisations may terminate the Contract and/or Order immediately and recover its losses resulting from such termination under clause 24.3 below.

- 24.2. The Lead Council and/or Participating Organisations has relied on the information provided by the Contractor contained in the Tender and any material misrepresentation contained in the Tender shall entitle the Lead Council and/or Participating Organisations to rescind or terminate this Contract at its option.
- 24.3. If the Contract is terminated or rescinded under clause 24.1 or 24.2, the Lead Council and/or Participating Organisations shall:
 - 24.3.1. cease to be under any obligation to pay the Contract Charges until the costs of the termination have been calculated and provided such calculation then shows an amount due to the Contractor;

- 24.3.2. be entitled to reoccupy any premises and any other resources licensed or leased to the Contractor in connection with the Contract;
- 24.3.3. be entitled to use an alternative contractor to provide the Supply/Service or to provide it itself;
- 24.3.4. be entitled, in respect of any costs directly resulting from the termination of the Contract, to deduct them from any amount which would have been due to the Contractor under this or any other contract with the Contractor or to recover them from the Contractor as a debt. Such costs shall include the reasonable costs of the Lead Council and/or Participating Organisations in terminating the Contract and making alternative arrangements for the Service;
- 24.3.5. when the total costs, resulting from the termination of the Contract have been calculated and after taking into account any deduction made by the Lead Council and/or Participating Organisations from any sum which would (but for (a) above) have been due to the Contractor, be entitled to any balance due to the Lead Council and/or Participating Organisations which shall be recoverable as a debt, or alternatively the Lead Council and/or Participating Organisations, subject to clause 25, shall pay to the Contractor any balance due.

24.4. The rights of the Lead Council and/or Participating Organisations under clause 24 are in addition to and without prejudice to any other rights or remedies the Lead Council and/or Participating Organisations may have whether against the Contractor directly or pursuant to any guarantee or indemnity.

25. Recovery of Sums Due to the Lead Council and/or Participating Organisations

25.1. If any amount is payable by the Contractor to the Lead Council and/or Participating Organisations they may be deducted from the Contract Charges or any amount payable under any other contract with the Lead Council and/or Participating Organisations.

26. Notices

26.1. Notices under the Contract must be in writing and may be served by either fax personal delivery or recorded delivery to the addresses referred to in the Contract.

27. Waiver

- 27.1. Failure by the Lead Council and/or Participating Organisations to enforce the provisions of the Contract shall not be construed as a waiver of or as creating an estoppel in connection with any such provision and shall not affect the validity of the Contract or the right of the Lead Council and/or Participating Organisations to enforce any provision in the Contract.

28. Default

- 28.1. If the Contractor has defaulted in the provision of the Supplies/Services(whether through failure to adhere to the Contract Standards or otherwise) and the Lead Council and/or Participating Organisations has either suffered a direct loss in consequence and/or the reputation of the Lead Council and/or Participating Organisations has been, or is likely to be, adversely affected then the Lead Council and/or Participating Organisations may, without prejudice to any other remedy available to it, either:
- 28.1.1. In the case of direct loss, make such deduction from the Contract Charges (if payable) as the Lead Council and/or Participating Organisations may reasonably determine by way of compensation. Such compensation to equate to the value of the direct loss as evidenced by the Lead Council and/or Participating Organisations; or
 - 28.1.2. without terminating the Contract itself provide or arrange for the provision of the Supplies/Services or any part of it until such time as the Contractor has satisfied the Lead Council and/or Participating Organisations that the Contractor is able to provide the Supplies/Services or the relevant part of it to the Contract Standard and during such period the Contractor's provision of the Supplies/Services in whole or in part shall be suspended; or
 - 28.1.3. without terminating the whole of the Contract determine the Contract in respect of part of the Supplies/Services and provide or arrange to be provided such part of the Supplies/Services itself or by a third party; or
 - 28.1.4. determine the whole contract.
- 28.2. The Lead Council and/or Participating Organisations may charge the Contractor any cost reasonably incurred by it together with any reasonable administration costs in respect of the provision of the Supplies /Services in whole or in part by itself or by a third party subject to the thresholds in clause 15 above. The amount of the charges sought for the appointment of a new Contractor where the incumbent has had to be replaced shall not exceed the difference between the costs incurred to appoint the new Contractor less the costs that were being paid to the incumbent.
- 28.3. Where the failure to reach the Contract Standard is capable of remedy by the Contractor then the Lead Council and/or Participating Organisations may require

the Contractor at its own cost to remedy the failure and for the avoidance of doubt a failure to perform includes a failure to remedy.

- 28.4. The remedies in this clause may be exercised successively in respect of separate failures by the Contractor.

29. Option to Extend

- 29.1. At any time the Lead Council and/or Participating Organisations may require the Contractor to continue to provide the Supplies/Services for further terms of up to a maximum of 2 years commencing on 1st April 2021.

- 29.2. The Contractor shall continue to provide the Supplies/Services on the terms of the Contract (except for this option to extend) for the term(s) specified.

30. Software

- 30.1. The Contractor shall provide any Third Party Software to the Lead Council and/or Participating Organisations under the standard licence terms provided by such third parties (copies of which shall be provided to the Lead Council and/or Participating Organisations for approval prior to installation of the Third Party Software).

- 30.2. The Contractor shall provide the Contractor Standard Software under the standard licence terms provided by the Contractor as detailed at Schedule 2.

- 30.3. Before supplying or installing any item of the Software, the Contractor shall carry out reasonable tests to ensure that such item is in operable condition and is capable of meeting the requirements of the Specification once properly installed.

- 30.4. If any item of Software fails to pass the applicable tests then the Contractor shall forthwith remedy the deficiency and the relevant tests shall be repeated within a reasonable time.

- 30.5. The Contractor shall give as much notice as is reasonably practicable to the Lead Council and/or Participating Organisations prior to carrying out any emergency maintenance, being ad hoc and unplanned maintenance where the Contractor reasonably suspects the Supplies/Services has or may have developed a fault. Emergency maintenance may be carried out within the hours of 07:00-18:00 Monday – Friday.

- 30.6. If the Lead Council and/or Participating Organisations requires reporting and functionality requirements which are outside the current functionality of the Supplies/Services, this must be agreed in advance with the Contractor.
- 30.7. Where the Supplies become end-of-life or equivalent, the Contractor has the right to request educational establishments transfer to a different product, providing that similar functionality is present and a minimum of 12 months notice has been given to the educational establishments. In the event that an educational establishment declines the request to transfer to a different product, such educational establishment shall have the right to terminate the product within a timescale convenient to that education establishment at no cost to that educational establishment, the Participating Organisation or the Lead Council

31. Break Clause – Not Used

32. Complaints Procedure

32.1. The Contractor shall: -

32.1.1. draw up a complaints procedure.

32.1.2. operate it from the beginning of the Contract Period.

32.1.3. at the Lead Council and/or Participating Organisations request provide a copy to it.

32.2. The complaints procedure must either: -

32.2.1. be approved by the Lead Council and/or Participating Organisations (and the Lead Council and/or Participating Organisations will not be unreasonable or delay in giving its approval); or

32.2.2. comply with the requirements of any regulatory body to which the Contractor is subject including any change in such requirements.

32.3. At the Lead Council and/or Participating Organisations reasonable request the Contractor shall Supply/Service it with a copy of the Contractor's records relating to complaints made in relation to the Supplies/Services, under the Contract or associated Order, and the Contractor's response.

33. DBS Checking

- 33.1. The Contractor shall carry out all necessary checks with the Disclosure and Barring Service on all staff employed or (if any) volunteers engaged to provide or supervise the provision of the Supplies/Services if this is a statutory requirement.

34. Sustainability

- 34.1. In providing the Supplies/Services the Contractor shall meet the sustainability requirements set out in the Specification.
- 34.2. The Contractor shall comply with the provisions of its environmental policy in relation to the provisions of the Services.
- 34.3. The Lead Council and/or Participating Organisations shall monitor compliance with this clause and the provisions of clause 4.4 will apply.

35. Civil Defence and Emergencies [Not Used]

36. Monitoring of Contract Performance

- 36.1. The Contractor must comply with the monitoring arrangements set out in this clause 36 including, but not limited to, providing such data and information as the Contractor may be required to produce under this Contract. Any reports run by Participating Organisations will be accurate insofar as the data imputed by the Participating Organisations is accurate, and the Contractor shall not be responsible for any input errors (nor the subsequent incorrect reports) in this regard.
- 36.2. Within 20 Working Days of the Commencement Date the Contractor shall provide the Lead Council and/or Participating Organisations with details of the system that it will implement in order to monitor and report on KPI performance ("Performance Monitoring System") and the Parties will endeavour to agree such process as soon as reasonably possible. The Contractor agrees that, as a minimum the reports generated as part of the Performance Monitoring System ("Performance Monitoring Reports") shall contain, as a minimum, the following information in respect of the relevant period just ended:
- 36.2.1. for each KPI, the actual performance achieved over the KPI for the relevant period;
- 36.2.2. a summary of all failures to achieve KPI's that occurred during that period;

- 36.2.3. for any repeat failures, actions taken to resolve the underlying cause and prevent recurrence; and
- 36.2.4. such other details as the Lead Council and/or Participating Organisations may reasonably require from time to time.
- 36.3. Once agreed, the Contractor shall comply with the Performance Monitoring System.
- 36.4. Performance Monitoring Reports shall be submitted by the Contractor at such time and in such form as may be specified or as otherwise agreed between the Parties submission and receipt of the Performance Monitoring Reports shall not prejudice the rights of either Party under the Contract.
- 36.5. Parties shall attend meetings to discuss KPI reports ("Performance Review Meetings") on a quarterly basis throughout the Contract Period or at a frequency to be agreed between the Parties. The Performance Review Meetings will be the forum for the review by the Contractor and the Lead Council and/or Participating Organisations of the Performance Monitoring Reports. The Performance Review Meetings shall (unless otherwise agreed):
 - 36.5.1. take place within one (1) week of the Performance Monitoring Reports being issued by the Contractor;
 - 36.5.2. take place at such location and time (within normal business hours) as the Lead Council and/or Participating Organisations shall reasonably require unless otherwise agreed in advance;
 - 36.5.3. be attended by the Contract Manager and the Authorised Officer; and
- 36.6. All meetings shall be fully minuted by the Contractor. The prepared minutes will be circulated by the Contractor to all attendees at the relevant meeting and also to the Lead Council and/or Participating Organisations representative and any other recipients agreed at the relevant meeting. The minutes of the preceding month's Performance Review Meeting will be agreed and signed by both the Contract Manager and the Authorised Officer at each meeting the Lead Council and/or Participating Organisations shall be entitled to raise any additional questions and/or request any further information regarding any failure to achieve the KPI's.
- 36.7. The Contractor shall provide to the Lead Council and/or Participating Organisations such supporting documentation as the Lead Council and/or Participating Organisations may reasonably require in order to verify the level of the performance by the Contractor.
- 36.8. The Contractor shall meet with the Lead Council and/or Participating Organisations following completion of significant elements of the Supplies/Services(including, but

not limited to, specific projects) to discuss whether the Parties' objectives were met, whether anticipated benefits had been achieved and to identify any lessons learned for future projects.

37. Satisfaction Surveys

- 37.1. In order to assess the level of performance of the Contractor, the Lead Council and/or Participating Organisations may undertake satisfaction surveys on an annual basis in respect of the Contractor's provision of the Services
- 37.2. The Lead Council and/or Participating Organisations shall be entitled to notify the Contractor of any aspects of their performance of the Supplies/Services which the responses to the satisfaction surveys reasonably suggest are not in accordance with the Contract.
- 37.3. All other suggestions for improvements to the Supplies/Services shall be dealt with by the lead officer as required.

38. Award Procedures

- 38.1. When ordering the Services under the Framework Agreement a Council or Participating Organisation shall:-
 - 38.1.1. identify the relevant Services;
 - 38.1.2. refine and supplement the Call-Off Conditions with any special conditions only to the extent permitted by and in accordance with service requirements where applicable;
 - 38.1.3. (subject to 38.2 below) place an Order using the form in Schedule 1 with the Contractor which:-
 - (a) states the requirements;
 - (b) identifies the Services;
 - (c) states the price payable in accordance with the Tender submitted by the Contractor; and
 - (d) incorporates the Call-Off Conditions and, where applicable, any Special Conditions.
- 38.2. Notwithstanding the fact that a Council or Participating Organisation has followed

the procedure set out in Clause 38.1, it shall be entitled at all times to decline to make an award. Nothing in this Framework Agreement shall oblige the Council or any Participating Organisation to place any Order.

39. Form of Order

- 39.1. Subject to Clause 38 above, the Council or Participating Organisation may place an Order with the Contractor by serving an Order Form in writing in such form set out in Schedule 1 including systems of ordering involving facsimile, electronic mail or other on-line solutions.
- 39.2. The Order constitutes an offer by the Council/Participating Organisation to purchase the Services subject to the Call-Off Conditions.
- 39.3. The Contractor shall signal its acceptance of the offer by signing the Order Form. For the avoidance of doubt the Contractor shall be under no obligation to accept an Order.

40. Licences

- 40.1. The Contractor shall obtain all necessary licences, permissions and consents required to enable it to provide the Services and to enable the Council/Participating Organisation to use and operate the system and in particular all:
 - 40.1.1. licences of third party software
 - 40.1.2. licences required to use third party network infrastructure
 - 40.1.3. maintenance contracts
- 40.2. The Contractor will produce copies of such licences, permissions and consents if requested.

Schedule 1 – Call-Off Contract Order Form

This Order for a Call Off Contract is issued subject to the provisions of the original Framework Agreement entered into between the Lead Council and/or Participating Organisations and **[Contractor Name]** on **[insert date]** Contract Ref. DN212852.

The Contractor agrees to provide the Management Information System or Financial Accounting System **[amend as required]** specified below on and subject to the terms of the original Framework Agreement.

Date	##/##/20##	Order Reference No.	[Internal Service Area Ref]
-------------	-------------------	----------------------------	------------------------------------

FROM

[insert name and address of school]	
Invoice Address	[if different from school address above]
Contact Ref	Name: [insert name of contact] Phone: [insert contact details] Email: [insert details]

TO

Service Provider	[Contractor Name] “Contractor”
Service Provider's Address	[Contractor]
Account Manager	Name: Address: Phone: Email:

1. CALL-OFF CONTRACT PERIOD

(1.1) Commencement Date

[##/##/20-##]

(1.2) Expiry Date

The Call-Off contract will commence on the [#st day] of [Month] [Year] and shall continue until [#st day] of [Month] [Year].

1.3 Commencement date	[Insert Date of start of contract]
Break Point 1 – This will be the first opportunity to consider not renewing this arrangement for a further year and requires 6 months prior notice to be given to the Contractor.	[insert date of first break point e.g. after first 12 months] <i>NB: if you are considering not renewing this arrangement in year 2, you will need to inform the Contractor preferably no later than in month 5 of your intentions.</i>
Break Point 2 - This will be the second opportunity to consider not renewing this arrangement for a further year and requires 6 months prior notice to be given to the Contractor.	[Insert date of second break point e.g. after 24 months] <i>NB: if you are considering not renewing this arrangement in year 3, you will need to inform the Contractor preferably no later than in month 17 of your intentions.</i>
Break Point 3 - This will be the third opportunity to consider not renewing this arrangement for a further year and requires 6 months prior notice to be given to the Contractor.	[Insert date of third break point e.g. after 36 months] <i>NB: if you are considering not renewing this arrangement in year 4, you will need to inform the Contractor preferably no later than in month 29 of your intentions.</i>
Expiry Date of Call off Agreement	[insert date for the end of the contract]

2. CALL OFF SPECIFICATION

[Enter Call Off requirements]

[Enter Specification and any applicable supporting evidence here or as a separate Appendix]

The Contractor shall comply with the monitoring arrangements set out in the Framework Agreement and the Key Performance Indicators detailed in and Appendix below.

3. SERVICE PROVIDER

Key Personnel of the Service Provider to be involved in the provision of the services:

[Enter contact name]

4. PRICE AND PAYMENT

[Enter agreed pricing]

5. CONFIDENTIAL INFORMATION

The following information shall be deemed Commercially Sensitive Information or Confidential Information:

[Enter if applicable]

6. FORMAT OF CONTRACT

The school shall enter into a contract by completing and returning this document, executed by an authorised officer of the school, to the Contractor.

BY SIGNING AND RETURNING THIS CALL-OFF AGREEMENT THE CONTRACTOR AGREES TO ENTER INTO A LEGALLY BINDING CONTRACT WITH THE SCHOOL TO PROVIDE THE SUPPLIES/SERVICES

The Parties hereby acknowledge and agree that they have read the overarching Framework Agreement and by signing below agree to be bound by those terms contained in the Framework Agreement.

For and on behalf of the Service Provider:

Name

Title

Signature

Date

Name

Title

Signature

Date

For and on behalf of the Participating Organisation:

Name

Title

Signature

Date

Name

Title

Signature

Date

SCHEDULE 2 – CONTRACTOR’S STANDARD LICENCE TERMS

TO BE INSERTED