



**Rushcliffe**  
Borough Council

FAO: [REDACTED]  
BDO LLP  
55 Baker Street  
London  
W1U 7EU

Legal Services  
Rushcliffe Arena, Rugby  
Road, West Bridgford,  
Nottingham, NG2 7YG

Email:  
Web:  
Direct  
Line:  
Contact  
Centre:

Our Ref:  
Your Ref:  
BDO/RBC/  
2020

Date: 4  
February  
2020

Dear Sir,

Re: Contract with Rushcliffe Borough Council for Internal Audit Services

Please find enclosed your part completed contract in respect of the above.

If you have a questions, please do not hesitate to contact me on the above number.

Yours sincerely,

On behalf of the Director of Finance and Corporate Services

Serving People Improving Lives

SF/CON001701/00091281

Contract for the provision of Internal Audit Services

between

RUSHCLIFFE BOROUGH COUNCIL

and

BDO LLP



**Audit Services Order Form**

Customer	Rushcliffe Borough Council	
Service Address	Rushcliffe Arena Rugby Road West Bridgford Nottingham NG2 7YG	
Customer Contact	Name: [REDACTED]	
	Phone: [REDACTED]	
	e-mail: [REDACTED]	
Invoice Address	Rushcliffe Borough Council, Rushcliffe Arena, Rugby Road West Bridgford, Nottingham, NG2 7YG	
Access Code	RBC	
Order Number		
Order Date	1 April 2020	
Service Provider	BDO LLP Company Number: OC305127 Registered Address: 55 Baker Street, London W1U 7EU	
PART 1. SERVICES REQUIREMENTS		
(1.1) Services and Deliverables Required (as confirmed in the Letter of Engagement at Annex A) The Services and Deliverables as set out in the Customer's ITT at Annex B.		
(1.2) Commencement Date: 1 April 2020		
[REDACTED]		
[REDACTED]		
	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]
[REDACTED]		
[REDACTED]		
(1.4) Acceptance prior to Payment: <b>N/A</b>		
(1.5) Milestones (including dates for Completion or dates/reasons for early termination): Satisfactory completion of annual audit plan(s)		
(1.6) Completion Date: 31 March 2024		

(1.7) Security Requirements: The security measures as set out in the Services Provider's tender at Annex C.
PART 2. PERFORMANCE OF THE SERVICES AND DELIVERABLES
(2.1) Account Manager /Personnel of the Service Provider to be involved in the Services and Deliverables: Senior Manager: Gurpreet Dulay
(2.2) Sub-Contractors to be involved in the Services and Deliverables: N/A
(2.3) Performance Location: Rushcliffe Borough Council premises
(2.4) Quality Standards and Quality Measures: The Quality Standards and Quality Measures as set out in the Service Provider's tender at Annex C, in particular the Service Provider's response to Questions 8 and 9.
PART 3. CONFIDENTIAL INFORMATION
(3.1) The following information shall be deemed Commercially Sensitive Information or Confidential Information: - The Service Provider's daily rates as detailed at Part 1.3 Information, data, documents or other materials supplied to the Service Provider by the Customer marked as 'Confidential'.

**BY SIGNING AND RETURNING THIS ORDER FORM THE SERVICE PROVIDER AND CUSTOMER AGREE** to enter a legally binding contract to provide the Services specified in the Service Order Requirements set out in this Order Form incorporating the rights and obligations in the Call-Off Terms and Conditions contained herewith in Appendix A and the Letter of Engagement Annex A.

For and on behalf of the Service Provider:

Name and Title	[REDACTED]
Signature	[REDACTED]
Date	04/02/2020

For and on behalf of the Customer: Rushcliffe Borough Council

Name and Title	[REDACTED] Director Finance and Corporate Services
Signature	[REDACTED]
Date	04/02/2020



## Schedule 1 of these Call-off terms and Conditions

### Key Provisions

#### 1 Application of the Key Provisions

- 1.1 The standard Key Provisions at Clauses 1 to 7 of this Schedule 1 of these Call-off Terms and Conditions shall apply to this Contract.
- 1.2 Extra Key Provisions shall only apply to this Contract where such provisions are set out as part of the Order Form.

#### 2 Term

- 2.1 This Contract commences on the Commencement Date.
- 2.2 The Term of this Contract shall be as set out in the Order Form.
- 2.3 The Term may be extended in accordance with Clause 15.2 of Schedule 2 of these Call-off Terms and Conditions provided that the duration of this Contract shall be no longer than any maximum duration applicable to the Contract if such maximum duration is set out in the Framework Agreement (including any options to extend).

#### 3 Contract Managers

- 3.1 The Contract Managers at the commencement of this Contract shall be as set out in the Order Form or as otherwise agreed between the Parties in writing.

#### 4 Names and addresses for notices

- 4.1 Unless otherwise agreed by the Parties in writing, notices served under this Contract are to be delivered to such persons at such addresses as referred to in the Order Form.

#### 5 Management levels for dispute resolution

- 5.1 Unless otherwise agreed by the Parties in writing, the management levels at which a dispute will be dealt with are as follows:

Level	Authority representative	Supplier representative
1	Contract Manager	Contract Manager
2	Assistant Director or equivalent	Assistant Director or equivalent
3	Director or equivalent	Director or equivalent

#### 6 Order of precedence

- 6.1 Subject always to Clause 35.10 of O of these Call-off Terms and Conditions, should there be a conflict between any other parts of this Contract the order of priority for construction purposes shall be:



- 6.1.1 provisions of clause 8 of this Schedule 1 and the Letter of Engagement forming part of the Order Form (Annex A).
- 6.1.2 the provisions of the Order Form other than referred to above at clause 6.1.1;
- 6.1.3 the applicable provisions of the Framework Agreement other than the Specification and Tender Response Document;
- 6.1.4 the provisions on the front page of these Call-off Terms and Conditions for the Provision of Services;
- 6.1.5 Schedule 1 of these Call-off Terms and Conditions: Key Provisions;
- 6.1.6 the Specification and Tender Response Document (but only in respect of the requirements);
- 6.1.7 Schedule 2 of these Call-off Terms and Conditions: General Terms and Conditions;
- 6.1.8 0 of these Call-off Terms and Conditions: Information Governance Provisions; and
- 6.1.9 0 of these Call-off Terms and Conditions: Definitions and Interpretations.

## **7 Application of TUPE at the commencement of the provision of Services**

- 7.1 The Parties agree that at the commencement of the provision of Services by the Supplier TUPE and the Cabinet Office Statement shall not apply so as to transfer the employment of any employees of the Authority or a Third Party to the Supplier.
- 7.2 If any person who is an employee of the Authority or a Third-Party claim or it is determined that their contract of employment has been transferred from the Authority or Third Party to the Supplier or a subcontractor pursuant to TUPE, or claims that their employment would have so transferred had they not resigned, then:
  - 7.2.1 the Supplier will, within seven (7) days of becoming aware of that fact, give notice in writing to the Authority;
  - 7.2.2 the Authority or Third Party may offer employment to such person within twenty-eight (28) days of the notification by the Supplier;
  - 7.2.3 if such offer of employment is accepted, the Supplier or a subcontractor shall immediately release the person from their employment;
  - 7.2.4 if after that period specified in Clause 7.2.2 of this Schedule 1 of these Call-off Terms and Conditions has elapsed, no offer of employment has been made by the Authority or Third Party, or such offer has been made by the Authority or Third Party but not accepted within a reasonable time, the Supplier or subcontractor shall employ that person in accordance with its obligations and duties under TUPE and shall be responsible for all liabilities arising in respect of any such person.

## **8 Professional Obligations**

8.1 The Supplier shall comply with its professional obligations and any relevant audit standards in the Letter of Engagement forming part of the Order Form when providing the Services.

## **Schedule 2 of these Call-off Terms and Conditions**

### **General Terms and Conditions**

#### **Contents**

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**1 Provision of Service)**

- 1.1 The Authority appoints the Supplier and the Supplier agrees to provide the Services:
  - 1.1.1 promptly and in any event within any time limits as may be set out in this Contract;
  - 1.1.2 in accordance with all other provisions of this Contract;
  - 1.1.3 with reasonable skill and care and in accordance with the provisions of the Framework Agreement as applicable and/or the provisions of the Order Form;
  - 1.1.4 in accordance With the Law and with Guidance;
  - 1.1.5 in accordance with Good Industry Practice;
  - 1.1.6 in accordance with the Policies; and
  - 1.1.7 in a professional and courteous manner.
- 1.2 Immediately following the Commencement Date, the Supplier shall if specified in the Order Form implement the Services fully in accordance with the Implementation Plan. If the Implementation Plan is an outline plan, the Supplier shall, as part of implementation, develop the outline plan into a full plan and agree this with the Authority. Once this is agreed, the Supplier shall comply with the full Implementation Plan.
- 1.3 The Supplier shall commence delivery of the Services on the Services Commencement Date.
- 1.4 The Supplier shall comply fully with its obligations set out in the Specification and Tender Response Document and/or the Order Form, including without limitation the KPIs.
- 1.5 The Supplier shall ensure that all relevant consents, authorisations, licences and accreditations required to provide the Services are in place at the Actual Services Commencement Date and are maintained throughout the Term.
- 1.6 If the Services, or any part of them, are regulated by any regulatory body, the Supplier shall ensure that at the Actual Services Commencement Date it has in place all relevant registrations and shall maintain such registrations during the Term. The Supplier shall notify the Authority forthwith in writing of any changes to such registration or any other matter relating to its registration that would affect the delivery or the quality of Services.
- 1.7 The Supplier shall notify the Authority forthwith in writing:
  - 1.7.1 of any pending inspection of the Services, or any part of them, by a regulatory body immediately upon the Supplier becoming aware of such inspection; and
  - 1.7.2 of any failure of the Services, or any part of them, to meet the quality standards required by a regulatory body, promptly and in any event within two (2) Business Days of the Supplier becoming aware of any such failure. This shall include without limitation any informal feedback received during or following an inspection raising concerns of any nature regarding the provision of the Services.

- 1.8 Following any inspection of the Services, or any part of them, by a regulatory body, the Supplier shall provide the Authority with a copy of any report or other communication published or provided by the relevant regulatory body in relation to the provision of the Services.
- 1.9 Upon receipt of notice pursuant to Clause 1.7 of this Schedule 2 of these Call-off Terms and Conditions or any report or communication pursuant to Clause 1.8 of this Schedule 2 of these Call-off Terms and Conditions, the Authority shall be entitled to request further information from the Supplier and/or a meeting with the Supplier, and the Supplier shall cooperate fully with any such request.
- 1.10 Where applicable, the Supplier shall implement and comply with the Policies on reporting and responding to all incidents and accidents, including serious incidents requiring investigation, shall complete the Authority's incident and accident forms in accordance with the Policies and provide reasonable support and information as requested by the Authority to help the Authority deal with any incident or accident relevant to the Services. The Supplier shall ensure that its Contract Manager informs the Authority's Contract Manager in writing forthwith upon (a) becoming aware that any serious incidents requiring investigation and/or notifiable accidents have occurred or (b) the Supplier's Contract Manager having reasonable cause to believe any serious incidents and/or notifiable accidents requiring investigation have occurred. The Supplier shall ensure that its Contract Manager informs the Authority's Contract Manager in writing within forty-eight (48) hours of all other incidents and/or accidents that have or may have an impact on the Services.
- 1.11 The Supplier shall be relieved from its obligations under this Contract to the extent that it is prevented from complying with any such obligations due to any acts, omissions or defaults of the Authority. To qualify for such relief, the Supplier must notify the Authority promptly (and in any event within five (5) Business Days) in writing of the occurrence of such act, omission, or default of the Authority together with the potential impact on the Supplier's obligations.

## **2 Premises and Locations**

- 2.1 The Services shall be provided at such Authority premises and at such locations within those premises, as may be set out in the Order Form or as otherwise agreed by the Parties in writing ("**Premises and Locations**").
- 2.2 Subject to the Supplier and its Staff complying with all relevant Policies applicable to such Premises and Locations, the Authority shall grant reasonable access to the Supplier and its Staff to such Premises and Locations to enable the Supplier to provide the Services.
- 2.3 Subject to Clause 2.4 of this Schedule 2 of these Call-off Terms and Conditions, any access granted to the Supplier and its Staff under Clause 2.2 of this Schedule 2 of these Call-off Terms and Conditions shall be non-exclusive and revocable. Such access shall not be deemed to create any greater rights or interest than so granted (to include, without limitation, any relationship of landlord and tenant) in the Premises and Locations. The Supplier warrants that it shall carry out all such reasonable further acts to give effect to this Clause 2.3 of this Schedule 2 of these Call-off Terms and Conditions.
- 2.4 Where, in order to provide the Services, the Supplier requires any greater rights to use or occupy any specific Premises and Locations over and above such reasonable access rights granted in accordance with Clause 2.2 and Clause 2.3 of this Schedule 2 of these Call-off Terms

and Conditions, such further rights shall be limited to any rights granted to the Supplier by the Authority in accordance with any licence and/or lease entered into by the Supplier as referred to in any Order Form.

- 2.5 Where it is provided for by a specific mechanism set out in the Specification and Tender Response Document and/or the Order Form, the Authority may increase, reduce or otherwise vary the Premises and Locations in accordance with such mechanism subject to the provisions of any licence or lease entered into by the Parties as referred at Clause 2.4 of this Schedule 2 of these Call-off Terms and Conditions. Where there is no such specific mechanism set out in the Specification and Tender Response Document and/or the Order Form, any variations to the Premises and Locations where the Services are to be provided shall be agreed by the Parties in accordance with Clause 21 of this Schedule 2 of these Call-off Terms and Conditions. If agreement cannot be reached the matter shall be referred to, and resolved in accordance with, the dispute resolution process set out in Clause 22 of the Key Provisions and Clause 22.3 of this Schedule 2 of these Call-off Terms and Conditions.

### **3 Cooperation with third parties**

- 3.1 The Supplier shall, as reasonably required by the Authority, cooperate with any other service providers to the Authority and/or any other third parties as may be relevant in the provision of the Services.

### **4 Use of Authority equipment**

- 4.1 Unless otherwise set out in the Specification and Tender Response Document or otherwise agreed by the Parties in writing, any equipment or other items provided by the Authority for use by the Supplier:
- 4.1.1 shall be provided at the Authority's sole discretion;
  - 4.1.2 shall be inspected by the Supplier in order that the Supplier can confirm to its reasonable satisfaction that such equipment and/or item is fit for its intended use and shall not be used by the Supplier until it has satisfied itself of this;
  - 4.1.3 must be returned to the Authority within any agreed timescales for such return or otherwise upon the request of the Authority; and
  - 4.1.4 shall be used by the Supplier at the Supplier's risk and the Supplier shall upon written request by the Authority reimburse the Authority for any loss or damage relating to such equipment or other items caused by the Supplier (fair wear and tear exempted).

### **5 Staff**

- 5.1 Subject to the requirements of this Contract and any Law, the Supplier shall be entirely responsible for the employment and conditions of service of Staff. The Supplier shall ensure that such conditions of employment are consistent with its obligations under this Contract.
- 5.2 The Supplier will employ sufficient Staff to ensure that it complies with its obligations under this Contract. This will include, but not be limited to, the Supplier providing a sufficient reserve of trained and competent Staff to provide the Services during Staff holidays or absence.

- 5.3 The Supplier shall use reasonable endeavours to ensure the continuity of all Staff in the provision of the Services and, where any member of Staff is designated as key to the provision of the Services as set out in the Specification and Tender Response Document, the Order Form or as otherwise agreed between the Parties in writing, any redeployment and/or replacement of such member of Staff by the Supplier shall be subject to the prior written approval of the Authority, such approval not to be unreasonably withheld or delayed.
- 5.4 The Supplier shall ensure that all Staff are aware of, and at all times comply with, the Policies.
- 5.5 The Supplier shall:
- 5.5.1 employ only those Staff who are careful, skilled and experienced in the duties required of them;
  - 5.5.2 ensure that every member of Staff is properly and sufficiently trained and instructed;
  - 5.5.3 ensure all Staff have the qualifications to carry out their duties;
  - 5.5.4 maintain throughout the Term all appropriate licences and registrations with any relevant bodies (at the Supplier's expense) in respect of the Staff; and
  - 5.5.5 ensure all Staff comply with such registration, continuing professional development and training requirements or recommendations appropriate to their role including those from time to time issued by the Department of Health or any relevant regulatory body or any industry body in relation to such Staff.
- 5.6 The Supplier shall not deploy in the provision of the Services any person who has suffered from, has signs of, is under treatment for, or who is suffering from any medical condition which is known to, or does potentially, place the health and safety of the Authority's staff, service users or visitors at risk unless otherwise agreed in writing with the Authority.
- 5.7 The Supplier shall ensure that all potential Staff or persons performing any of the Services during the Term who may reasonably be expected in the course of performing any of the Services under this Contract to have access to or come into contact with children or other vulnerable persons:
- 5.7.1 are questioned concerning their Convictions; and
  - 5.7.2 obtain appropriate disclosures from the Disclosure and Barring Service (or other appropriate body) as required by Law and/or the Policies before the Supplier engages the potential staff or persons in the provision of the Services.
- 5.8 The Supplier shall take all necessary steps to ensure that such potential staff or persons obtain standard and enhanced disclosures from the Disclosure and Barring Service (or other appropriate body) and shall ensure all such disclosures are kept up to date. The obtaining of such disclosures shall be at the Supplier's cost and expense.
- 5.9 The Supplier shall ensure that no person is employed or otherwise engaged in the provision of the Services without the Authority's prior written consent if:

- 5.9.1 the person has disclosed any Convictions upon being questioned about their Convictions in accordance with Clause 5.7.1 of this Schedule 2 of these Call-off Terms and Conditions;
  - 5.9.2 the person is found to have any Convictions following receipt of standard and/or enhanced disclosures from the Disclosure and Barring Service (or other appropriate body) in accordance with Clause 5.7.2 of this Schedule 2 of these Call-off Terms and Conditions; or
  - 5.9.3 the person fails to obtain standard and/or enhanced disclosures from the Disclosure and Barring Service (or other appropriate body) upon request by the Supplier in accordance with Clause 5.7.2 of this Schedule 2 of these Call-off Terms and Conditions.
- 5.10 In addition to the requirements of Clause 5.7 to Clause 5.9 of this Schedule 2 of these Call-off Terms and Conditions, where the Services are or include regulated activities as defined by the Safeguarding Vulnerable Groups Act 2006 the Supplier:
- 5.10.1 warrants that it shall comply with all requirements placed on it by the Safeguarding Vulnerable Groups Act 2006;
  - 5.10.2 warrants that at all times it has and will have no reason to believe that any member of Staff is barred in accordance with the Safeguarding Vulnerable Groups Act 2006; and
  - 5.10.3 shall ensure that no person is employed or otherwise engaged in the provision of the Services if that person is barred from carrying out, or whose previous conduct or records indicate that they would not be suitable to carry out, any regulated activities as defined by the Safeguarding Vulnerable Groups Act 2006 or may present a risk to service users or any other person.
- 5.11 The Supplier shall ensure that the Authority is kept advised at all times of any member of Staff who, subsequent to their commencement of employment as a member of Staff receives a Conviction or whose previous Convictions become known to the Supplier or whose conduct or records indicate that they are not suitable to carry out any regulated activities as defined by the Safeguarding Vulnerable Groups Act 2006 or may present a risk to service users or any other person. The Supplier shall only be entitled to continue to engage or employ such member of Staff with the Authority's written consent and with such safeguards being put in place as the Authority may reasonably request. Should the Authority withhold consent the Supplier shall remove such member of Staff from the provision of the Services forthwith.
- 5.12 The Supplier shall immediately provide to the Authority any information that the Authority reasonably requests to enable the Authority to satisfy itself that the obligations set out in Clause 5.7 to Clause 5.11 of this Schedule 2 of these Call-off Terms and Conditions have been met.
- 5.13 The Authority may at any time request that the Supplier remove and replace any member of Staff from the provision of the Services, provided always that the Authority will act reasonably in making such a request. Prior to making any such request the Authority shall raise with the Supplier the Authority's concerns regarding the member of Staff in question with the aim of



seeking a mutually agreeable resolution. The Authority shall be under no obligation to have such prior discussion should the Authority have concerns regarding service user safety.

## **6 Business continuity**

6.1 Throughout the Term, the Supplier will ensure its Business Continuity Plan provides for continuity during a Business Continuity Event. The Supplier confirms and agrees such Business Continuity Plan details and will continue to detail robust arrangements that are reasonable and proportionate to:

6.1.1 the criticality of this Contract to the Authority; and

6.1.2 the size and scope of the Supplier's business operations,

regarding continuity of the provision of the Services during and following a Business Continuity Event.

6.2 The Supplier shall test its Business Continuity Plan at reasonable intervals, and in any event no less than once every twelve (12) months or such other period as may be agreed between the Parties taking into account the criticality of this Contract to the Authority and the size and scope of the Supplier's business operations. The Supplier shall promptly provide to the Authority, at the Authority's written request, copies of its Business Continuity Plan, reasonable and proportionate documentary evidence that the Supplier tests its Business Continuity Plan in accordance with the requirements of this Clause 6.2 of this Schedule 2 of these Call-off Terms and Conditions and reasonable and proportionate information regarding the outcome of such tests. The Supplier shall provide to the Authority a copy of any updated or revised Business Continuity Plan within fourteen (14) Business Days of any material update or revision to the Business Continuity Plan.

6.3 Should a Business Continuity Event occur at anytime, the Supplier shall implement and comply with its Business Continuity Plan and provide regular written reports to the Authority on such implementation.

6.4 During and following a Business Continuity Event, the Supplier shall use reasonable endeavours to continue to provide the Services in accordance with this Contract.

## **7 The Authority's obligations**

7.1 Subject to the Supplier providing the Services in accordance with this Contract, the Authority will pay the Supplier for the Services in accordance with Clause 9 of this Schedule 2 of these Call-off Terms and Conditions.

7.2 The Authority shall, as appropriate, provide copies of or give the Supplier access to such of the Policies that are relevant to the provision of the Services.

7.3 The Authority shall comply with the Authority's Obligations.

## **8 Contract management**

8.1 Each Party shall appoint and retain a Contract Manager who shall be the primary point of contact for the other Party in relation to matters arising from this Contract. Should the Contract Manager be replaced, the Party replacing the Contract Manager shall promptly

inform the other Party in writing of the name and contact details for the new Contract Manager. Any Contract Manager appointed shall be of sufficient seniority and experience to be able to make decisions on the day to day operation of the Contract. The Supplier confirms and agrees that it will be expected to work closely and cooperate fully with the Authority's Contract Manager.

- 8.2 Each Party shall ensure that its representatives (to include, without limitation, its Contract Manager) shall attend review meetings on a regular basis to review the performance of the Supplier under this Contract and to discuss matters arising generally under this Contract. Each Party shall ensure that those attending such meetings have the authority to make decisions regarding the day to day operation of the Contract. Review meetings shall take place at the frequency specified in the Specification and Tender Response Document. Should the Specification and Tender Response Document not state the frequency, then the first such meeting shall take place on a date to be agreed on or around the end of the first month after the Commencement Date. Subsequent meetings shall take place at monthly intervals or as may otherwise be agreed in writing between the Parties.
- 8.3 Two weeks prior to each review meeting (or at such time and frequency as may be specified in the Specification and Tender Response Document) the Supplier shall provide a written contract management report to the Authority regarding the provision of the Services and the operation of this Contract. Unless otherwise agreed by the Parties in writing, such contract management report shall contain:
- 8.3.1 details of the performance of the Supplier when assessed in accordance with the KPIs since the last such performance report;
  - 8.3.2 the information specified in the Specification and Tender Response Document;
  - 8.3.3 a status report in relation to the implementation of any current Remedial Proposals by either Party; and
  - 8.3.4 such other information as reasonably required by the Authority.
- 8.4 Unless specified otherwise in the Specification and Tender Response Document, the Authority shall take minutes of each review meeting and shall circulate draft minutes to the Supplier within a reasonable time following such review meeting. The Supplier shall inform the Authority in writing of any suggested amendments to the minutes within five (5) Business Days of receipt of the draft minutes. If the Supplier does not respond to the Authority within such five (5) Business Days, the minutes will be deemed to be approved. Where there are any differences in interpretation of the minutes, the Parties will use their reasonable endeavours to reach agreement. If agreement cannot be reached the matter shall be referred to, and resolved in accordance with, the dispute resolution process set out in Clause of the Key Provisions and Clause 22.3 of this Schedule 2 of these Call-off Terms and Conditions.
- 8.5 The Supplier shall provide such management information as the Authority may request from time to time within seven (7) Business Days of the date of the request. The Supplier shall supply the management information to the Authority in such form as may be specified by the Authority and, where requested to do so, the Supplier shall also provide such management information to another Contracting Authority whose role it is to: (a) analyse such management information in accordance with UK government policy (to include, without limitation, for the

purposes of analysing public sector expenditure and planning future procurement activities); or (b) manage the Framework Agreement with the Supplier ("Third Party Body"). The Supplier confirms and agrees that the Authority may itself provide the Third-Party Body with management information relating to the Services purchased, any payments made under this Contract, and any other information relevant to the operation of this Contract.

8.6 Upon receipt of management information supplied by the Supplier to the Authority and/or the Third-Party Body, or by the Authority to the Third-Party Body, the Parties hereby consent to the Third-Party Body and the Authority:

8.6.1 storing and analysing the management information and producing statistics; and

8.6.2 sharing the management information or any statistics produced using the management information with any other Contracting Authority.

8.7 If the Third Party Body and/or the Authority shares the management information or any other information provided under Clause 8.6 of this Schedule 2 of these Call-off Terms and Conditions, any Contracting Authority receiving the management information shall, where such management information is subject to obligations of confidence under this Contract and such management information is provided direct by the Authority to such Contracting Authority, be informed of the confidential nature of that information by the Authority and shall be requested by the Authority not to disclose it to any body that is not a Contracting Authority (unless required to do so by Law).

8.8 The Authority may make changes to the type of management information which the Supplier is required to supply and shall give the Supplier at least one (1) month's written notice of any changes.

## 9 **Price and payment**

9.1 The Contract Price shall be calculated in accordance with the provisions of the Framework Agreement, as confirmed in the Order Form.

9.2 Unless otherwise stated in the Framework Agreement and/or the Order Form, the Contract Price:

9.2.1 shall be payable from the Actual Services Commencement Date;

9.2.2 shall remain fixed during the Term; and

9.2.3 is the entire price payable by the Authority to the Supplier in respect of the Services and includes, without limitation, any royalties, licence fees, supplies and all consumables used by the Supplier, travel costs, accommodation expenses and the cost of Staff.

9.3 Unless stated otherwise in the Framework Agreement and/or the Order Form:

9.3.1 where the Framework Agreement and/or the Order Form confirms that the payment profile for this Contract is monthly in arrears, the Supplier shall invoice the Authority, within fourteen (14) days of the end of each calendar month, the Contract Price in respect of the Services provided in compliance with this Contract in the preceding calendar month; or

9.3.2 where Clause 9.3.1 of this Schedule 2 of these Call-off Terms and Conditions does not apply, the Supplier shall invoice the Authority for Services at any time following completion of the provision of the Services in compliance with this Contract.

Each invoice shall contain such information and be addressed to such individual as the Authority may inform the Supplier from time to time.

9.4 The Contract Price is exclusive of VAT, which, if properly chargeable, the Authority shall pay at the prevailing rate subject to receipt from the Supplier of a valid and accurate VAT invoice. Such VAT invoices shall show the VAT calculations as a separate line item.

9.5 The Authority shall pay each undisputed invoice received in accordance with Clause 9.3 of this Schedule 2 of these Call-off Terms and Conditions within thirty (30) days of receipt of such invoice at the latest. However, the Authority shall use its reasonable endeavours to pay such undisputed invoices sooner in accordance with any applicable government prompt payment targets.

9.6 The Supplier shall pay to the Authority any service credits that may become due in accordance with the provisions of the Specification and Tender Response Document and/or the Order Form.

9.7 The Authority reserves the right to deduct any monies due to the Supplier from the Authority from any monies due to the Authority from the Supplier under this Contract.

## **10 Warranties**

10.1 The Supplier warrants and undertakes that:

10.1.1 it shall comply with the Framework Agreement;

10.1.2 it has, and shall ensure its Staff shall have, and shall maintain throughout the Term all appropriate licences and registrations with the relevant bodies to fulfil its obligations under this Contract;

10.1.3 it has all rights, consents, authorisations, licences and accreditations required to provide the Services and shall maintain such consents, authorisations, licences and accreditations throughout the Term;

10.1.4 it has and shall maintain a properly documented system of quality processes covering all aspects of its obligations under this Contract and/or under law and/or Guidance and shall at all times comply with such quality processes;

10.1.5 it shall not make any significant changes to its system of quality processes in relation to the Services without notifying the Authority in writing at least twenty-one (21) days in advance of such change (such notice to include the details of the consequences which follow such change being implemented);

10.1.6 where any act of the Supplier requires the notification to and/or approval by any regulatory or other competent body in accordance with any law and Guidance, the Supplier shall comply fully with such notification and/or approval requirements;

- 10.1.7 receipt of the Services by or on behalf of the Authority and use of the deliverables or of any other item or information supplied or made available to the Authority as part of the Services will not infringe any third-party rights, to include without limitation any Intellectual Property Rights;
- 10.1.8 it will comply with all Law and Guidance in so far as it is relevant to the provision of the Services;
- 10.1.9 it will provide the Services using reasonable skill and care and in accordance with Good Industry Practice and shall fulfil all requirements of this Contract using appropriately skilled, trained and experienced staff;
- 10.1.10 unless otherwise set out in the Specification and Tender Response Document and/or as otherwise agreed in writing by the Parties, it has and/or shall procure all resources, equipment, consumables and other items and facilities required to provide the Services;
- 10.1.11 without limitation to the generality of Clause 10.1.8 of this Schedule 2 of these Call-off Terms and Conditions, it shall comply with all health and safety processes, requirements safeguards, controls, and training obligations in accordance with its own operational procedures, Law, Guidance, Policies, Good Industry Practice, the requirements of the Specification and Tender Response Document and any notices or instructions given to the Supplier by the Authority and/or any competent body, as relevant to the provision of the Services and the Supplier's access to the Premises and Locations in accordance with this Contract;
- 10.1.12 without prejudice to any specific notification requirements set out in this Contract, it will promptly notify the Authority of any health and safety hazard which has arisen, or the Supplier is aware may arise, in connection with the performance of the Services and take such steps as are reasonably necessary to ensure the health and safety of persons likely to be affected by such hazards;
- 10.1.13 any equipment it uses in the provision of the Services shall comply with all relevant Law and Guidance, be fit for its intended purpose and maintained fully in accordance with the manufacturer's specification;
- 10.1.14 it shall use Good Industry Practice to ensure that any information and communications technology systems and/or related hardware and/or software it uses are free from corrupt data, viruses, worms and any other computer programs or code which might cause harm or disruption to the Authority's information and communications technology systems;
- 10.1.15 it will promptly respond to all requests for information regarding the Contract and the provision of the Services at the frequency and in the format that the Authority may reasonably require;
- 10.1.16 all information included within the Supplier's responses in the Specification and Tender Response Document and all accompanying materials is accurate;
- 10.1.17 it has the right and authority to enter into this Contract and that it has the capability and capacity to fulfil its obligations under this Contract;

- 10.1.18 it is a properly constituted entity and it is fully empowered by the terms of its constitutional documents to enter into and to carry out its obligations under this Contract and the documents referred to in this Contract;
- 10.1.19 all necessary actions to authorise the execution of and performance of its obligations under this Contract have been taken before such execution;
- 10.1.20 there are no pending or threatened actions or proceedings before any court or administrative agency which would materially adversely affect the financial condition, business or operations of the Supplier;
- 10.1.21 there are no material agreements existing to which the Supplier is a party which prevent the Supplier from entering into or complying with this Contract;
- 10.1.22 it has and will continue to have the capacity, funding and cash flow to meet all its obligations under this Contract; and
- 10.1.23 it has satisfied itself as to the nature and extent of the risks assumed by it under the Contract and has gathered all information necessary to perform its obligations under the Contract and all other obligations assumed by it.
- 10.2 The Supplier warrants that all information, data and other records and documents required by the Authority as set out in the Specification and Tender Response Document shall be submitted to the Authority in the format and in accordance with any timescales set out in the Specification and Tender Response Document.
- 10.3 Without prejudice to the generality of Clause 10.2 of this Schedule 2 of these Call-off Terms and Conditions, the Supplier acknowledges that a failure by the Supplier following the Actual Services Commencement Date to submit accurate invoices and other information on time to the Authority may result in the commissioner of health services, or other entity responsible for reimbursing costs to the Authority, delaying or failing to make relevant payments to the Authority. Accordingly, the Supplier warrants that, from the Actual Services Commencement Date, it shall submit accurate invoices and other information on time to the Authority.
- 10.4 The Supplier further warrants and undertakes to the Authority that it will inform the Authority in writing immediately upon becoming aware that any of the warranties set out in Clause 10 of this Schedule 2 of these Call-off Terms and Conditions have been breached or there is a risk that any warranties may be breached.
- 10.5 Any warranties provided under this Contract are both independent and cumulative and may be enforced independently or collectively at the sole discretion of the enforcing Party.

## **11 Intellectual property**

- 11.1 The Supplier warrants and undertakes to the Authority that either it owns or is entitled to use and will continue to own or be entitled to use all Intellectual Property Rights used in the development and provision of the Services and/or necessary to give effect to the Services and/or to use any deliverables, matter or any other output supplied to the Authority as part of the Services.
- 11.2 The Supplier hereby grants to the Authority, for the life of the use by the Authority of any deliverables, material or any other output supplied to the Authority in any format as part of

the Services, an irrevocable, royalty-free, non-exclusive licence to use, modify, adapt or enhance such items in the course of the Authority's normal business operations. For the avoidance of doubt, unless specified otherwise in any Key Provisions and/or in the Specification and Tender Response Document, the Authority shall have no rights to commercially exploit (e.g. by selling to third parties) any deliverables, matter or any other output supplied to the Authority in any format as part of the Services.

## 12 Indemnity

12.1 The Supplier shall be liable to the Authority for, and shall indemnify and keep the Authority indemnified against, any loss, damages, costs, expenses (including without limitation legal costs and expenses), claims or proceedings in respect of:

12.1.1 any injury or allegation of injury to any person, including injury resulting in death;

12.1.2 any loss of or damage to property (whether real or personal); and/or

12.1.3 any breach of Clause 10.1.7 and/or Clause 11 of this Schedule 2 of these Call-off Terms and Conditions; and/or

12.1.4 any failure by the Supplier to commence the delivery of the Services by the Services Commencement Date;

that arise or result from the Supplier's negligent acts or omissions or breach of contract in connection with the performance of this Contract including the provision of the Services, except to the extent that such loss, damages, costs, expenses (including without limitation legal costs and expenses), claims or proceedings have been caused by any act or omission by, or on behalf of, or in accordance with the instructions of, the Authority.

12.2 Liability under Clauses 12.1.1, 12.1.3 and 17.13 of this Schedule 2 of these Call-off Terms and Conditions and Clause 32.6 of O of these Call-off Terms and Conditions shall be unlimited. Liability under Clauses 12.1.2 and 12.1.4 of this Schedule 2 of these Call-off Terms and Conditions shall be subject to the limitation of liability set out in Clause 13 of this Schedule 2 of these Call-off Terms and Conditions.

12.3 In relation to all third-party claims against the Authority, which are the subject of any indemnity given by the Supplier under this Contract, the Authority shall use its reasonable endeavours, upon a written request from the Supplier, to transfer the conduct of such claims to the Supplier unless restricted from doing so. Such restrictions may include, without limitation, any restrictions:

12.3.1 relating to any legal, regulatory, governance, information governance, or confidentiality obligations on the Authority; and/or

12.3.2 relating to the Authority's membership of any indemnity and/or risk pooling arrangements.

Such transfer shall be subject to the Parties agreeing appropriate terms for such conduct of the third party claim by the Supplier (to include, without limitation, the right of the Authority to be informed and consulted on the ongoing conduct of the claim following such transfer and any reasonable cooperation required by the Supplier from the Authority).

## 13 Limitation of liability

13.1 Nothing in this Contract shall exclude or restrict the liability of either Party:

13.1.1 for death or personal injury resulting from its negligence;

13.1.2 for fraud or fraudulent misrepresentation; or

13.1.3 in any other circumstances where liability may not be limited or excluded under any applicable law.

13.2 Subject to Clauses 12.2, 13.1, 13.3, and 13.5 of this Schedule 2 of these Call-off Terms and Conditions, the total liability of each Party to the other under or in connection with this Contract whether arising in contract, tort, negligence, breach of statutory duty or otherwise shall be limited in aggregate to the greater of: (a) five million GBP (£5,000,000); or (b) one hundred and twenty five percent (125%) of the total Contract Price paid or payable by the Authority to the Supplier for the Services.

13.3 There shall be no right to claim losses, damages and/or other costs and expenses under or in connection with this Contract whether arising in contract (to include, without limitation, under any relevant indemnity), tort, negligence, breach of statutory duty or otherwise to the extent that any losses, damages and/or other costs and expenses claimed are in respect of loss of production, loss of business opportunity or are in respect of indirect loss of any nature suffered or alleged. For the avoidance of doubt, without limitation, the Parties agree that for the purposes of this Contract the following costs, expenses and/or loss of income shall be direct recoverable losses (to include under any relevant indemnity) provided such costs, expenses and/or loss of income are properly evidenced by the claiming Party:

13.3.1 extra costs incurred purchasing replacement or alternative services;

13.3.2 the costs of extra management time; and/or

13.3.3 loss of income due to an inability to provide health care services,

in each case to the extent to which such costs, expenses and/or loss of income arise or result from the other Party's breach of contract, negligent act or omission, breach of statutory duty, and/or other liability under or in connection with this Contract.

13.4 Each Party shall at all times take all reasonable steps to minimise and mitigate any loss for which one Party is entitled to bring a claim against the other pursuant to this Contract.

13.5 If the total Contract Price paid or payable by the Authority to the Supplier over the Term:

13.5.1 is less than or equal to one million pounds (£1,000,000), then the figure of five million pounds (£5,000,000) at Clause 13.2 of this Schedule 2 of these Call-off Terms and Conditions shall be replaced with one million pounds (£1,000,000);

13.5.2 is less than or equal to three million pounds (£3,000,000) but greater than one million pounds (£1,000,000), then the figure of five million pounds (£5,000,000) at Clause 13.2 of this Schedule 2 of these Call-off Terms and Conditions shall be replaced with three million pounds (£3,000,000);



- 13.5.3 is equal to, exceeds or will exceed ten million pounds (£10,000,000), but is less than fifty million pounds (£50,000,000), then the figure of five million pounds (£5,000,000) at Clause 13.2 of this Schedule 2 of these Call-off Terms and Conditions shall be replaced with ten million pounds (£10,000,000) and the figure of one hundred and twenty five percent (125%) at Clause 13.2 of this Schedule 2 of these Call-off Terms and Conditions shall be deemed to have been deleted and replaced with one hundred and fifteen percent (115%); and
- 13.5.4 is equal to, exceeds or will exceed fifty million pounds (£50,000,000), then the figure of five million pounds (£5,000,000) at Clause 13.2 of this Schedule 2 of these Call-off Terms and Conditions shall be replaced with fifty million pounds (£50,000,000) and the figure of one hundred and twenty five percent (125%) at Clause 13.2 of this Schedule 2 of these Call-off Terms and Conditions shall be deemed to have been deleted and replaced with one hundred and five percent (105%).
- 13.6 Clause 13 of this Schedule 2 of these Call-off Terms and Conditions shall survive the expiry of or earlier termination of this Contract for any reason.

## **14 Insurance**

- 14.1 Subject to Clauses 14.2 and 14.3 of this Schedule 2 of these Call-off Terms and Conditions and unless otherwise confirmed in writing by the Authority, as a minimum level of protection, the Supplier shall put in place and/or maintain in force at its own cost with a reputable commercial insurer, insurance arrangements in respect of employer's liability, public liability and professional indemnity in accordance with Good Industry Practice with the minimum cover per claim of the greater of five million pounds (£5,000,000) or any sum as required by Law unless otherwise agreed with the Authority in writing.
- 14.2 Without limitation to any insurance arrangements as required by Law, the Supplier shall put in place and/or maintain the different types and/or levels of indemnity arrangements specified in the Framework Agreement, if any.
- 14.3 Provided that the Supplier maintains all indemnity arrangements required by Law, the Supplier may self-insure in order to meet other relevant requirements referred to at Clauses 14.1 and 14.2 of this Schedule 2 of these Call-off Terms and Conditions on condition that such self-insurance arrangements offer the appropriate levels of protection and are approved by the Authority in writing prior to the Commencement Date.
- 14.4 The amount of any indemnity cover and/or self-insurance arrangements shall not relieve the Supplier of any liabilities under this Contract. It shall be the responsibility of the Supplier to determine the amount of indemnity and/or self-insurance cover that will be adequate to enable it to satisfy its potential liabilities under this Contract. Accordingly, the Supplier shall be liable to make good any deficiency if the proceeds of any indemnity cover and/or self-insurance arrangement is insufficient to cover the settlement of any claim.
- 14.5 The Supplier warrants that it shall not take any action or fail to take any reasonable action or (in so far as it is reasonable and within its power) permit or allow others to take or fail to take any action, as a result of which its insurance cover may be rendered void, voidable, unenforceable, or be suspended or impaired in whole or in part, or which may otherwise render any sum paid out under such insurances repayable in whole or in part.

- 14.6 The Supplier shall from time to time and in any event within five (5) Business Days of written demand provide documentary evidence to the Authority that insurance arrangements taken out by the Supplier pursuant to Clause 14 of this Schedule 2 of these Call-off Terms and Conditions and/or the provisions of the Framework Agreement are fully maintained and that any premiums on them and/or contributions in respect of them (if any) are fully paid.
- 14.7 Upon the expiry or earlier termination of this Contract, the Supplier shall ensure that any ongoing liability it has or may have arising out of this Contract shall continue to be the subject of appropriate indemnity arrangements for the period of twenty one (21) years from termination or expiry of this Contract or until such earlier date as that liability may reasonably be considered to have ceased to exist.

## 15 **Term and termination**

15.1 This Contract shall commence on the Commencement Date and unless terminated earlier in accordance with the terms of this Contract or the general law, shall continue until the end of the Term.

15.2 The Authority:

15.2.1 subject to Clause 15.2.2 of this Schedule 2 of these Call-off Terms and Conditions, shall be entitled to extend the Term on one or more occasions by giving the Supplier written notice no less than three (3) months prior to the date on which this Contract would otherwise have expired, provided that the duration of this Contract shall be no longer than the total term specified in the Key Provisions; or

15.2.2 where the Term or any extension of the Term expires at a date the same as or after expiry of the Framework Agreement (including any extensions of the Framework Agreement in accordance with its terms), shall only be entitled to extend the Term with the prior written agreement of the Supplier, such agreement not to be unreasonably withheld or delayed.

15.3 In the case of a breach of any of the terms of this Contract by either Party that is capable of remedy (including, without limitation any breach of any KPI and any failure to pay any sums due under this Contract), the non-breaching Party shall, without prejudice to its other rights and remedies under this Contract, issue notice of the breach and allow the Party in breach the opportunity to remedy such breach in the first instance *via* a remedial proposal put forward by the Party in breach ("**Remedial Proposal**") before exercising any right to terminate this Contract in accordance with Clause 15.4.I(ii) of this Schedule 2 of these Call-off Terms and Conditions. Such Remedial Proposal must be agreed with the non-breaching Party (such agreement not to be unreasonably withheld or delayed) and must be implemented by the Party in breach in accordance with the timescales referred to in the agreed Remedial Proposal. Once agreed, any changes to a Remedial Proposal must be approved by the Parties in writing. Any failure by the Party in breach to:

15.3.1 put forward and agree a Remedial Proposal with the non-breaching Party in relation to the relevant default or breach within a period of ten (10) Business Days (or such other period as the non-breaching Party may agree in writing) from written notification of the relevant default or breach from the non-breaching Party;

15.3.2 comply with such Remedial Proposal (including, without limitation, as to its timescales for implementation, which shall be thirty (30) days unless otherwise agreed between the Parties); and/or

15.3.3 remedy the default or breach notwithstanding the implementation of such Remedial Proposal in accordance with the agreed timescales for implementation,

shall be deemed, for the purposes of Clause 15.4.1(ii) of this Schedule 2 of these Call-off Terms and Conditions, a material breach of this Contract by the Party in breach not remedied in accordance with an agreed Remedial Proposal.

15.4 Either Party may terminate this Contract forthwith by notice in writing to the other Party if such other Party:

15.4.1 commits a material breach of any of the terms of this Contract which is:

(i) not capable of remedy; or

(ii) in the case of a breach capable of remedy, which is not remedied in accordance with a Remedial Proposal; or

15.4.2 has been served with at least two (2) previous breach notices as a result of any material breaches which are capable of remedy within any twelve (12) month rolling period whether or not the Party in breach has remedied the breach in accordance with a Remedial Proposal. The twelve (12) months rolling period is the twelve (12) months immediately preceding the date of the third breach notice.

15.5 The Authority may terminate this Contract forthwith by notice in writing to the Supplier if:

15.5.1 the Supplier does not commence delivery of the Services by any Long Stop Date;

15.5.2 the Supplier, or any third party guaranteeing the obligations of the Supplier under this Contract, ceases or threatens to cease carrying on its business; suspends making payments on any of its debts or announces an intention to do so; is, or is deemed for the purposes of any Law to be, unable to pay its debts as they fall due or insolvent; enters into or proposes any composition, assignment or arrangement with its creditors generally; takes any step or suffers any step to be taken in relation to its winding-up, dissolution, administration (whether out of court or otherwise) or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) otherwise than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation; has a liquidator, trustee in bankruptcy, judicial custodian, compulsory manager, receiver, administrative receiver, administrator or similar officer appointed (in each case, whether out of court or otherwise) in respect of it or any of its assets; has any security over any of its assets enforced; or any analogous procedure or step is taken in any jurisdiction;

15.5.3 the Supplier undergoes a change of control within the meaning of sections 450 and 451 of the Corporation Tax Act 2010 (other than for an intra-group change of control) without the prior written consent of the Authority and the Authority shall be entitled to withhold such consent if, in the reasonable opinion of the Authority, the proposed change of control will have a material impact on the performance of this Contract or the reputation of the Authority;

- 15.5.4 the Supplier purports to assign, subcontract, novate, create a trust in or otherwise transfer or dispose of this Contract in breach of Clause 28.1 of this Schedule 2 of these Call-off Terms and Conditions; or
  - 15.5.5 pursuant to and in accordance with any termination rights set out in any Key Provisions and Clauses 15.6, 23.8; 25.2; 25.4 and 29.2 of this Schedule 2 of these Call-off Terms and Conditions.
- 15.6 If the Authority, acting reasonably, has good cause to believe that there has been a material deterioration in the financial circumstances of the Supplier and/or any third party guaranteeing the obligations of the Supplier under this Contract and/or any material subcontractor of the Supplier when compared to any information provided to and/or assessed by the Authority as part of any procurement process or other due diligence leading to the award of this Contract to the Supplier or the entering into a subcontract by the Supplier, the following process shall apply:
- 15.6.1 the Authority may (but shall not be obliged to) give notice to the Supplier requesting adequate financial or other security and/or assurances for due performance of its material obligations under this Contract on such reasonable and proportionate terms as the Authority may require within a reasonable time period as specified in such notice;
  - 15.6.2 a failure or refusal by the Supplier to provide the financial or other security and/or assurances requested in accordance with Clause 15.6 of this Schedule 2 of these Call-off Terms and Conditions in accordance with any reasonable timescales specified in any such notice issued by the Authority shall be deemed a breach of this Contract by the Supplier and shall be referred to and resolved in accordance with the Dispute Resolution Procedure; and
  - 15.6.3 a failure to resolve such breach in accordance with such Dispute Resolution Procedure by the end of the escalation stage of such process (as set out in Clause 22.3 of this Schedule 2 of these Call-off Terms and Conditions) shall entitle, but shall not compel, the Authority to terminate this Contract in accordance with Clause 15.4.1(i) of this Schedule 2 of these Call-off Terms and Conditions.

In order that the Authority may act reasonably in exercising its discretion in accordance with Clause 15.6 of this Schedule 2 of these Call-off Terms and Conditions, the Supplier shall provide the Authority with such reasonable and proportionate up-to-date financial or other information relating to the Supplier or any relevant third party entity upon request.

- 15.7 If the Authority novates this Contract to anybody that is not a Contracting Authority, from the effective date of such novation, the rights of the Authority to terminate this Contract in accordance with Clause 15.5.2 to Clause 15.5.4 of this Schedule 2 of these Call-off Terms and Conditions shall be deemed mutual termination rights and the Supplier may terminate this Contract forthwith by notice in writing to the entity assuming the position of the Authority if any of the circumstances referred to in such Clauses apply to the entity assuming the position of the Authority.
- 15.8 Within six (6) months of the Commencement Date the Parties shall develop and agree an exit plan which shall ensure continuity of the services on expiry or earlier termination of this Contract. The Supplier shall provide the Authority with the first draft of an exit plan within

four (4) months of the Commencement Date. The Parties shall review and, as appropriate, update the exit plan on each anniversary of the Commencement Date of this Contract.

**16 Consequences of expiry or earlier termination of this Contract**

- 16.1 Upon expiry or earlier termination of this Contract, the Authority agrees to pay the Supplier for the Services which have been completed by the Supplier in accordance with this Contract prior to expiry or earlier termination of this Contract.
- 16.2 Immediately following expiry or earlier termination of this Contract:
- 16.2.1 the Supplier shall comply with its obligations under any agreed exit plan; and
- 16.2.2 all data, including without limitation Personal Data, documents and records (whether stored electronically or otherwise) relating in whole or in part to the Services, including without limitation relating to service users, and all other items provided on loan or otherwise to the Supplier by the Authority shall be delivered by the Supplier to the Authority provided that the Supplier shall be entitled to keep copies to the extent that (a) the content does not relate solely to the Services; (b) the Supplier is required by Law and/or Guidance to keep copies; or (c) the Supplier was in possession of such data, documents and records prior to the Commencement Date.
- 16.3 The Supplier shall retain all data relating to the provision of the Services that are not transferred pursuant to Clause 16.2 of this Schedule 2 of these Call-off Terms and Conditions for the period set out in Clause 24.1 of this Schedule 2 of these Call-off Terms and Conditions.
- 16.4 The Supplier shall cooperate fully with the Authority or, as the case may be, any replacement supplier during any re-procurement and handover period prior to and following the expiry or earlier termination of this Contract. This cooperation shall extend to providing access to all information relevant to the operation of this Contract as reasonably required by the Authority to achieve a fair and transparent re-procurement and/or an effective transition without disruption to routine operational requirements.
- 16.5 Immediately upon expiry or earlier termination of this Contract any licence or lease entered into in accordance with any Order Form shall automatically terminate.
- 16.6 The expiry or earlier termination of this Contract for whatever reason shall not affect any rights or obligations of either Party which accrued prior to such expiry or earlier termination.
- 16.7 The expiry or earlier termination of this Contract shall not affect any obligations which expressly or by implication are intended to come into or continue in force on or after such expiry or earlier termination.
- 16.8 The expiry or earlier termination of the Framework Agreement shall not affect this Contract. For the avoidance of doubt, any obligations set out in the Framework Agreement that form part of this Contract shall continue to apply for the purposes of this Contract notwithstanding any termination of the Framework Agreement.

## **17 Staff information and the application of TUPE at the end of the Contract**

- 17.1 Upon the day which is no greater than nine (9) months before the expiry of this Contract or as soon as the Supplier is aware of the proposed termination of the Contract, the Supplier shall, within twenty eight (28) days of receiving a written request from the Authority and to the extent permitted by law, supply to the Authority and keep updated all information required by the Authority as to the terms and conditions of employment and employment history of any Supplier Personnel (including all employee liability information identified in regulation 11 of TUPE) and the Supplier shall warrant such information is full, complete and accurate.
- 17.2 No later than twenty eight (28) days prior to the Subsequent Transfer Date, the Supplier shall or shall procure that any subcontractor shall provide a final list to the Successor and/or the Authority, as appropriate, containing the names of all the Subsequent Transferring Employees whom the Supplier or subcontractor expects will transfer to the Successor or the Authority and all employee liability information identified in regulation 11 of TUPE in relation to the Subsequent Transferring Employees.
- 17.3 If the Supplier shall, in the reasonable opinion of the Authority, deliberately not comply with its obligations under Clauses 17.1 and 17.2 of this Schedule 2 of these Call-off Terms and Conditions, the Authority may withhold payment under Clause 9 of this Schedule 2 of these Call-off Terms and Conditions.
- 17.4 The Supplier shall be liable to the Authority for, and shall indemnify and keep the Authority indemnified against, any loss, damages, costs, expenses (including without limitation legal costs and expenses), claims or proceedings that arise or result from any deficiency or inaccuracy in the information which the Supplier is required to provide under Clauses 17.1 and 17.2 of this Schedule 2 of these Call-off Terms and Conditions.
- 17.5 Subject to Clauses 17.6 and 17.7 of this Schedule 2 of these Call-off Terms and Conditions, during the period of nine (9) months preceding the expiry of this Contract or after notice of termination of this Contract has been served by either Party, the Supplier shall not, and shall procure that any subcontractor shall not, without the prior written consent of the Authority, such consent not to be unreasonably withheld or delayed:
- 17.5.1 make, propose or permit any material changes to the terms and conditions of employment or other arrangements of any of the Supplier Personnel;
  - 17.5.2 increase or seek to increase the emoluments (excluding cost of living increases awarded in the ordinary course of business) payable to any of the Supplier Personnel;
  - 17.5.3 replace any of the Supplier Personnel or increase the total number of employees providing the Services;
  - 17.5.4 deploy any person other than the Supplier Personnel to perform the Services;
  - 17.5.5 terminate or give notice to terminate the employment or arrangements of any of the Supplier Personnel;
  - 17.5.6 increase the proportion of working time spent on the Services by any of the Supplier Personnel; or

- 17.5.7 introduce any new contractual term or customary practice concerning the making of any lump sum payment on the termination of employment of any of the Supplier Personnel.
- 17.6 Clause 17.5 of this Schedule 2 of these Call-off Terms and Conditions shall not prevent the Supplier or any subcontractor from taking any of the steps prohibited in that Clause in circumstances where the Supplier or subcontractor is required to take such a step pursuant to any changes in legislation or pursuant to a collective agreement in force at that time.
- 17.7 Where the obligations on the Supplier under Clause 17 of this Schedule 2 of these Call-off Terms and Conditions are subject to the Data Protection Legislation, the Supplier will, and shall procure that any subcontractor will, use its best endeavours to seek the consent of the Supplier Personnel to disclose any information covered under the Data Protection Legislation and utilise any other exemption or provision within the Data Protection Legislation which would allow such disclosure.
- 17.8 Having as appropriate gained permission from any subcontractor, the Supplier hereby permits the Authority to disclose information about the Supplier Personnel to any Interested Party provided that the Authority informs the Interested Party in writing of the confidential nature of the information.
- 17.9 The Parties agree that where a Successor or the Authority provides the Services or services of the same or similar nature to the Services in immediate or subsequent succession to the Supplier or subcontractor (in whole or in part) on expiry or early termination of this Contract (howsoever arising) TUPE and the Cabinet Office Statement may apply in respect of the subsequent provision of the Services or services of the same or similar nature to the Services. If TUPE and/or the Cabinet Office Statement apply then Clause 17.11 to Clause 17.14 of this Schedule 2 of these Call-off Terms and Conditions shall apply.
- 17.10 If on the termination or at the end of the Contract TUPE does not apply, then all Employment Liabilities and any other liabilities in relation to the Supplier Personnel shall remain with the Supplier or subcontractor as appropriate. The Supplier will, and shall procure that any subcontractor shall, indemnify and keep indemnified the Authority in relation to any Employment Liabilities arising out of or in connection with any allegation or claim raised by any Supplier Personnel.
- 17.11 In accordance with TUPE, and any other policy or arrangement applicable, the Supplier shall, and shall procure that any subcontractor shall, comply with its obligations to inform and consult with the appropriate representatives of any of its employees affected by the subsequent transfer of the Services or services of the same or similar nature to the Services.
- 17.12 The Supplier will and shall procure that any subcontractor will on or before any Subsequent Transfer Date:
- 17.12.1 pay all wages, salaries and other benefits of the Subsequent Transferring Employees and discharge all other financial obligations (including reimbursement of any expenses and any contributions to retirement benefit schemes) in respect of the period between the Transfer Date and the Subsequent Transfer Date;
- 17.12.2 account to the proper authority for all PAYE, tax deductions and national insurance contributions payable in respect of the Subsequent Transferring

Employees in the period between the Transfer Date and the Subsequent Transfer Date;

- 17.12.3 pay any Successor or the Authority, as appropriate, the amount which would be payable to each of the Subsequent Transferring Employees in lieu of accrued but untaken holiday entitlement as at the Subsequent Transfer Date;
  - 17.12.4 pay any Successor or the Authority, as appropriate, the amount which fairly reflects the progress of each of the Subsequent Transferring Employees towards achieving any commission, bonus, profit share or other incentive payment payable after the Subsequent Transfer Date wholly or partly in respect of a period prior to the Subsequent Transfer Date; and
  - 17.12.5 subject to any legal requirement, provide to the Successor or the Authority, as appropriate, all personnel records relating to the Subsequent Transferring Employees including, without prejudice to the generality of the foregoing, all records relating to national insurance, PAYE and income tax. The Supplier shall for itself and any subcontractor warrant that such records are accurate and up to date.
- 17.13 The Supplier will and shall procure that any subcontractor will indemnify and keep indemnified the Authority and/or a Successor in relation to any Employment Liabilities arising out of or in connection with any claim arising from:
- 17.13.1 the Supplier's or subcontractor's failure to perform and discharge its obligations under Clause 17.12 of this Schedule 2 of these Call-off Terms and Conditions;
  - 17.13.2 any act or omission by the Supplier or subcontractor in respect of the Subsequent Transferring Employees occurring on or before the Subsequent Transfer Date;
  - 17.13.3 any allegation or claim by any person who is not a Subsequent Transferring Employee but who alleges that their employment should transfer or has transferred to the Successor or the Authority, as appropriate;
  - 17.13.4 any emoluments payable to a person employed or engaged by the Supplier or subcontractor (including without limitation all wages, accrued holiday pay, bonuses, commissions, PAYE, national insurance contributions, pension contributions and other contributions) payable in respect of any period on or before the Subsequent Transfer Date; and
  - 17.13.5 any allegation or claim by any of the Subsequent Transferring Employees on the grounds that the Successor or Authority, as appropriate, has failed to continue a benefit provided by the Supplier or subcontractor as a term of such Subsequent Transferring Employee's contract as at the Subsequent Transfer Date where it was not reasonably practicable for the Successor or Authority, as appropriate, to provide an identical benefit but where the Successor or Authority, as appropriate, has provided (or offered to provide where such benefit is not accepted by the Subsequent Transferring Employee) an alternative benefit which, taken as a whole, is no less favourable to such Subsequent Transferring Employee; and



- 17.13.6 any act or omission of the Supplier or any subcontractor in relation to its obligations under regulation 13 of TUPE, or in respect of an award of compensation under regulation 15 of TUPE except to the extent that the liability arises from the Successor's or Authority's failure to comply with regulation 13(4) of TUPE.
- 17.14 The Supplier will, or shall procure that any subcontractor will, on request by the Authority provide a written and legally binding indemnity in the same terms as set out in Clause 17.13 of this Schedule 2 of these Call-off Terms and Conditions to any Successor in relation to any Employment Liabilities arising up to and including the Subsequent Transfer Date.
- 17.15 The Supplier will indemnify and keep indemnified the Authority and/or any Successor in respect of any Employment Liabilities arising from any act or omission of the Supplier or subcontractor in relation to any other Supplier Personnel who is not a Subsequent Transferring Employee arising during any period whether before, on or after the Subsequent Transfer Date.
- 17.16 If any person who is not a Subsequent Transferring Employee claims or it is determined that their contract of employment has been transferred from the Supplier or any subcontractor to the Authority or Successor pursuant to TUPE or claims that their employment would have so transferred had they not resigned, then:
- 17.16.1 the Authority or Successor will within seven (7) days of becoming aware of that fact, give notice in writing to the Supplier;
- 17.16.2 the Supplier may offer (or may procure that a subcontractor may offer) employment to such person within twenty-eight (28) days of the notification by the Authority or Successor;
- 17.16.3 if such offer of employment is accepted, the Authority or the Successor shall immediately release the person from their employment; and
- 17.16.4 if after the period in Clause 17.16.2 of this Schedule 2 of these Call-off Terms and Conditions has elapsed, no such offer of employment has been made or such offer has been made but not accepted, the Authority or the Successor, whichever is the provider of the Services or services of the same or similar nature to the Services, shall employ that person in accordance with its obligations and duties under TUPE and shall be responsible for all liabilities arising in respect of any such person after the Subsequent Transfer Date.

## **18 Complaints**

- 18.1 To the extent relevant to the Services, the Supplier shall have in place and operate a complaints procedure which complies with the requirements of the Local Authority Social Services and National Health Service Complaints (England) Regulations 2009.
- 18.2 Each Party shall inform the other of all complaints from or on behalf of service users arising out of or in connection with the provision of the Services within twenty-four (24) hours of receipt of each complaint and shall keep the other Party updated on the manner of resolution of any such complaints.

## **19 Sustainable development**

- 19.1 The Supplier shall comply in all material respects with applicable environmental and social Law requirements in force from time to time in relation to the Services. Where the provisions of any such Law are implemented by the use of voluntary agreements, the Supplier shall comply with such agreements as if they were incorporated into English law subject to those voluntary agreements being cited in the Specification and Tender Response Document. Without prejudice to the generality of the foregoing, the Supplier shall:
- 19.1.1 comply with all Policies and/or procedures and requirements set out in the Specification and Tender Response Document in relation to any stated environmental and social requirements, characteristics and impacts of the Services and the Supplier's supply chain;
  - 19.1.2 maintain relevant policy statements documenting the Supplier's significant social and environmental aspects as relevant to the Services being provided and as proportionate to the nature and scale of the Supplier's business operations; and
  - 19.1.3 maintain plans and procedures that support the commitments made as part of the Supplier's significant social and environmental policies, as referred at Clause 19.1.2 of this Schedule 2 of these Call-off Terms and Conditions.
- 19.2 The Supplier shall meet reasonable requests by the Authority for information evidencing the Supplier's compliance with the provisions of Clause 19 of this Schedule 2 of these Call-off Terms and Conditions.

## **20 Electronic services information**

- 20.1 Where requested by the Authority, the Supplier shall provide the Authority the Services Information in such manner and upon such media as agreed between the Supplier and the Authority from time to time for the sole use by the Authority.
- 20.2 The Supplier warrants that the Services Information is complete and accurate as at the date upon which it is delivered to the Authority and that the Services Information shall not contain any data or statement which gives rise to any liability on the part of the Authority following publication of the same in accordance with Clause 20 of this Schedule 2 of these Call-off Terms and Conditions
- 20.3 If the Services Information ceases to be complete and accurate, the Supplier shall promptly notify the Authority in writing of any modification or addition to or any inaccuracy or omission in the Services Information.
- 20.4 The Supplier grants the Authority a perpetual, non-exclusive, royalty free licence to use and exploit the Services Information and any Intellectual Property Rights in the Services Information for the purpose of illustrating the range of goods and services (including, without limitation, the Services) available pursuant to the Authority's contracts from time to time. Subject to Clause 20.5 of this Schedule 2 of these Call-off Terms and Conditions, no right to illustrate or advertise the Services Information is granted to the Supplier by the Authority, as a consequence of the licence conferred by this Clause 20.4 of this Schedule 2 of these Call-off Terms and Conditions.

- 20.5 The Authority may reproduce for its sole use the Services Information provided by the Supplier which may be made available on the Authority's external website and/or made available on other digital media from time to time.
- 20.6 Before any publication of the Services Information (electronic or otherwise) is made by the Authority, the Authority will submit a copy of the relevant sections of the Authority's services catalogue to the Supplier for approval, such approval not to be unreasonably withheld or delayed. For the avoidance of doubt the Supplier shall have no right to compel the Authority to exhibit the Services Information in any services catalogue as a result of the approval given by it pursuant to this Clause 20.6 of this Schedule 2 of these Call-off Terms and Conditions or otherwise under the terms of this Contract.
- 20.7 If requested in writing by the Authority, and to the extent not already agreed as part of the Specification and Tender Response Document, the Supplier and the Authority shall discuss and seek to agree in good faith arrangements to use any Electronic Trading System.

## **21 Change management**

- 21.1 The Supplier acknowledges to the Authority that the Authority's requirements for the Services may change during the Term and the Supplier shall not unreasonably withhold or delay its consent to any reasonable variation or addition to the Specification and Tender Response Document, as may be requested by the Authority from time to time.
- 21.2 Any change to the Services or other variation to this Contract shall only be binding once it has been agreed either: (a) in accordance with any Change Control Process if any Key Provisions specify that changes are subject to a formal change control process; or (b) if the Key Provisions make no such reference, in writing and signed by an authorised representative of both Parties.

## **22 Dispute resolution**

- 22.1 During any dispute, including a dispute as to the validity of this Contract, it is agreed that the Supplier shall continue its performance of the provisions of the Contract (unless the Authority requests in writing that the Supplier does not do so).
- 22.2 In the case of a dispute arising out of or in connection with this Contract the Supplier and the Authority shall make every reasonable effort to communicate and cooperate with each other with a view to resolving the dispute and follow the procedure set out in Clause 22.3 of this Schedule 2 of these Call-off Terms and Conditions before commencing court proceedings.
- 22.3 If any dispute arises out of the Contract either Party may serve a notice on the other Party to commence formal resolution of the dispute. Level 1 of the management levels of the dispute as set out in Clause of the Key Provisions will commence on the date of service of the dispute notice. Respective representatives, as set out in Clause of the Key Provisions, shall have five (5) Business Days at each level to resolve the dispute before escalating the matter to the next level as appropriate.
- 22.4 If the procedure set out in Clause 22.3 of this Schedule 2 of these Call-off Terms and Conditions above fails to resolve such dispute the Parties will attempt to settle it by mediation either: (a) with the Centre for Effective Dispute Resolution ("**CEDR**"); or (b) if agreed in writing by the Parties, with any other alternative mediation organisation, using the respective model procedures of CEDR or such other mediation organisation.

- 22.5 To initiate mediation a Party shall:
- 22.5.1 give notice in writing ("**Mediation Notice**") to the other Party requesting mediation of the dispute; and
  - 22.5.2 send a copy of the Mediation Notice to CEDR or an equivalent mediation organisation as agreed by the Parties asking them to nominate a mediator if the Parties are not able to agree such appointment by negotiation.
- 22.6 Neither Party may issue a Mediation Notice until the process set out in Clause 22.3 of this Schedule 2 of these Call-off Terms and Conditions has been exhausted.
- 22.7 The mediation shall commence within twenty-eight (28) days of the Mediation Notice being served. Neither Party will terminate such mediation until each Party has made its opening presentation and the mediator has met each Party separately for at least one hour or one Party has failed to participate in the mediation process. Neither Party will commence legal proceedings against the other until thirty (30) days after such mediation of the dispute in question has failed to resolve the dispute. The Authority and the Supplier will cooperate with any person appointed as mediator providing them with such information and other assistance as they shall require and will pay their costs, as they shall determine or in the absence of such determination such costs will be shared equally.
- 22.8 Nothing in this Contract shall prevent:
- 22.8.1 the Authority taking action in any court in relation to any death or personal injury arising or allegedly arising in connection with the provision of the Services; or
  - 22.8.2 either Party seeking from any court any interim or provisional relief that may be necessary to protect the rights or property of that Party or that relates to the safety service users or the security of Confidential Information, pending resolution of the relevant dispute in accordance with the CEDR or other mediation organisation procedure.
- 22.9 Clause 22 of this Schedule 2 of these Call-off Terms and Conditions shall survive the expiry of or earlier termination of this Contract for any reason.

## **23 Force majeure**

- 23.1 Subject to Clause 23.2 of this Schedule 2 of these Call-off Terms and Conditions neither Party shall be liable to the other for any failure to perform all or any of its obligations under this Contract nor liable to the other Party for any loss or damage arising out of the failure to perform its obligations to the extent only that such performance is rendered impossible by a Force Majeure Event.
- 23.2 The Supplier shall only be entitled to rely on a Force Majeure Event and the relief set out in Clause 23 of this Schedule 2 of these Call-off Terms and Conditions and will not be considered to be in default or liable for breach of any obligations under this Contract if:
- 23.2.1 the Supplier has fulfilled its obligations pursuant to Clause 6 of this Schedule 2 of these Call-off Terms and Conditions;

- 23.2.2 the Force Majeure Event does not arise directly or indirectly as a result of any wilful or negligent act or default of the Supplier; and
- 23.2.3 the Supplier has complied with the procedural requirements set out in Clause **Error! Reference source not found.** of this Schedule 2 of these Call-off Terms and Conditions.
- 23.3 Where a Party is (or claims to be) affected by a Force Majeure Event it shall use reasonable endeavours to mitigate the consequences of such a Force Majeure Event upon the performance of its obligations under this Contract, and to resume the performance of its obligations affected by the Force Majeure Event as soon as practicable.
- 23.4 Where the Force Majeure Event affects the Supplier's ability to perform part of its obligations under the Contract the Supplier shall fulfil all such contractual obligations that are not so affected and shall not be relieved from its liability to do so.
- 23.5 If either Party is prevented or delayed in the performance of its obligations under this Contract by a Force Majeure Event, that Party shall as soon as reasonably practicable serve notice in writing on the other Party specifying the nature and extent of the circumstances giving rise to its failure to perform or any anticipated delay in performance of its obligations.
- 23.6 Subject to service of such notice, the Party affected by such circumstances shall have no liability for its failure to perform or for any delay in performance of its obligations affected by the Force Majeure Event only for so long as such circumstances continue and for such time after they cease as is necessary for that Party, using its best endeavours, to recommence its affected operations in order for it to perform its obligations.
- 23.7 The Party claiming relief shall notify the other in writing as soon as the consequences of the Force Majeure Event have ceased and of when performance of its affected obligations can be resumed.
- 23.8 If the Supplier is prevented from performance of its obligations as a result of a Force Majeure Event, the Authority may at any time if the Force Majeure Event subsists for thirty (30) days or more, terminate this Contract on service of written notice on the Supplier.
- 23.9 Following such termination in accordance with Clause 23.8 of this Schedule 2 of these Call-off Terms and Conditions and subject to Clause 23.10 of this Schedule 2 of these Call-off Terms and Conditions, neither Party shall have any liability to the other.
- 23.10 Any rights and liabilities of either Party which accrued prior to such termination in accordance with Clause 23.8 of this Schedule 2 of these Call-off Terms and Conditions shall continue in full force and effect unless otherwise specified in this Contract.

## **24 Records retention and right of audit**

- 24.1 Subject to any statutory requirement and Clause 24.2 of this Schedule 2 of these Call-off Terms and Conditions, the Supplier shall keep secure and maintain for the Term and six (6) years afterwards, or such longer period as may be agreed between the Parties, full and accurate records of all matters relating to this Contract.

- 24.2 Where any records could be relevant to a claim for personal injury such records shall be kept secure and maintained for a period of twenty-one (21) years from the date of expiry or earlier termination of this Contract.
- 24.3 The Authority shall have the right to audit the Supplier's compliance with this Contract. The Supplier shall permit or procure permission for the Authority or its authorised representative during normal business hours having given advance written notice of no less than five (5) Business Days, access to any premises and facilities, books and records reasonably required to audit the Supplier's compliance with its obligations under this Contract.
- 24.4 Should the Supplier subcontract any of its obligations under this Contract, the Authority shall have the right to audit and inspect such third party. The Supplier shall procure permission for the Authority or its authorised representative during normal business hours no more than once in any twelve (12) months, having given advance written notice of no less than five (5) Business Days, access to any premises and facilities, books and records used in the performance of the Supplier's obligations under this Contract that are subcontracted to such third party. The Supplier shall cooperate with such audit and inspection and accompany the Authority or its authorised representative if requested.
- 24.5 The Supplier shall grant to the Authority or its authorised representative, such access to those records as they may reasonably require in order to check the Supplier's compliance with this Contract for the purposes of:
- 24.5.1 the examination and certification of the Authority's accounts; or
- 24.5.2 any examination pursuant to section 6(1) of the National Audit Act 1983 of the economic efficiency and effectiveness with which the Authority has used its resources.
- 24.6 The Comptroller and Auditor General may examine such documents as they may reasonably require which are owned, held or otherwise within the control of the Supplier and may require the Supplier to provide such oral and/or written explanations as they consider necessary. Clause 24 of this Schedule 2 of these Call-off Terms and Conditions does not constitute a requirement or agreement for the examination, certification or inspection of the accounts of the Supplier under sections 6(3)(d) and 6(5) of the National Audit Act 1983.
- 24.7 The Supplier shall provide reasonable cooperation to the Authority, its representatives and any regulatory body in relation to any audit, review, investigation or enquiry carried out in relation to the subject matter of this Contract.
- 24.8 The Supplier shall provide all reasonable information as may be reasonably requested by the Authority to evidence the Supplier's compliance with the requirements of this Contract.

## **25 Conflicts of interest and the prevention of fraud**

- 25.1 The Supplier shall take appropriate steps to ensure that neither the Supplier nor any Staff are placed in a position where, in the reasonable opinion of the Authority, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier and the duties owed to the Authority under the provisions of this Contract. The Supplier will disclose to the Authority full particulars of any such conflict of interest which may arise.

- 25.2 The Authority reserves the right to terminate this Contract immediately by notice in writing and/or to take such other steps it deems necessary where, in the reasonable opinion of the Authority, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier and the duties owed to the Authority under the provisions of this Contract. The actions of the Authority pursuant to this Clause 25.2 of this Schedule 2 of these Call-off Terms and Conditions shall not prejudice or affect any right of action or remedy which shall have accrued or shall subsequently accrue to the Authority.
- 25.3 The Supplier shall take all reasonable steps to prevent Fraud by Staff and the Supplier (including its owners, members and directors). The Supplier shall notify the Authority immediately if it has reason to suspect that any Fraud has occurred or is occurring or is likely to occur.
- 25.4 If the Supplier or its Staff commits Fraud the Authority may terminate this Contract and recover from the Supplier, the amount of any direct loss suffered by the Authority resulting from the termination.

## **26 Equality and human rights**

- 26.1 The Supplier shall:
- 26.1.1 ensure that (a) it does not, whether as employer or as provider of the Services, engage in any act or omission that would contravene the Equality Legislation, and (b) it complies with all its obligations as an employer or provider of the Services as set out in the Equality Legislation and take reasonable endeavours to ensure its Staff do not unlawfully discriminate within the meaning of the Equality Legislation;
  - 26.1.2 in the management of its affairs and the development of its equality and diversity policies, cooperate with the Authority in light of the Authority's obligations to comply with its statutory equality duties whether under the Equality Act 2010 or otherwise. The Supplier shall take such reasonable and proportionate steps as the Authority considers appropriate to promote equality and diversity, including race equality, equality of opportunity for disabled people, gender equality, and equality relating to religion and belief, sexual orientation and age; and
  - 26.1.3 the Supplier shall impose on all its subcontractors and suppliers, obligations substantially similar to those imposed on the Supplier by Clause 26 of this Schedule 2 of these Call-off Terms and Conditions.
- 26.2 The Supplier shall meet reasonable requests by the Authority for information evidencing the Supplier's compliance with the provisions of Clause 26 of this Schedule 2 of these Call-off Terms and Conditions.

## **27 Notice**

- 27.1 Any notice required to be given by either Party under this Contract shall be in writing quoting the date of the Contract and shall be delivered by hand or sent by prepaid first class recorded delivery or by email to the person referred to in the Order Form or such other person as one Party may inform the other Party in writing from time to time or to a director of the relevant Party at the head office, main UK office or registered office of such Party.

- 27.2 A notice shall be treated as having been received:
- 27.2.1 if delivered by hand within normal business hours when so delivered or, if delivered by hand outside normal business hours, at the next start of normal business hours; or
  - 27.2.2 if sent by first class recorded delivery mail on a normal Business Day, at 9.00 am on the second Business Day subsequent to the day of posting, or, if the notice was not posted on a Business Day, at 9.00 am on the third Business Day subsequent to the day of posting; or
  - 27.2.3 if sent by email, if sent within normal business hours when so sent or, if sent outside normal business hours, at the next start of normal business hours provided the sender has either received an electronic confirmation of delivery or has telephoned the recipient to inform the recipient that the email has been sent.

## **28 Assignment, novation and subcontracting**

- 28.1 The Supplier shall not, except where Clause 28.2 of this Schedule 2 of these Call-off Terms and Conditions applies, assign, subcontract, novate, create a trust in, or in any other way dispose of the whole or any part of this Contract without the prior consent in writing of the Authority such consent not to be unreasonably withheld or delayed. If the Supplier subcontracts any of its obligations under this Contract, every act or omission of the subcontractor shall for the purposes of this Contract be deemed to be the act or omission of the Supplier and the Supplier shall be liable to the Authority as if such act or omission had been committed or omitted by the Supplier itself.
- 28.2 Notwithstanding Clause 28.1 of this Schedule 2 of these Call-off Terms and Conditions, the Supplier may assign to a third party ("**Assignee**") the right to receive payment of any sums due and owing to the Supplier under this Contract for which an invoice has been issued. Any assignment under this Clause 28.2 of this Schedule 2 of these Call-off Terms and Conditions shall be subject to:
- 28.2.1 the deduction of any sums in respect of which the Authority exercises its right of recovery under Clause 9.7 of this Schedule 2 of these Call-off Terms and Conditions;
  - 28.2.2 all related rights of the Authority in relation to the recovery of sums due but unpaid;
  - 28.2.3 the Authority receiving notification of the assignment and the date upon which the assignment becomes effective together with the Assignee's contact information and bank account details to which the Authority shall make payment;
  - 28.2.4 the provisions of Clause 9 of this Schedule 2 of these Call-off Terms and Conditions continuing to apply in all other respects after the assignment which shall not be amended without the prior written approval of the Authority; and
  - 28.2.5 payment to the Assignee being full and complete satisfaction of the Authority's obligation to pay the relevant sums in accordance with this Contract.



- 28.3 Any authority given by the Authority for the Supplier to subcontract any of its obligations under this Contract shall not impose any duty on the Authority to enquire as to the competency of any authorised subcontractor. The Supplier shall ensure that any authorised subcontractor has the appropriate capability and capacity to perform the relevant obligations and that the obligations carried out by such subcontractor are fully in accordance with this Contract.
- 28.4 Where the Supplier enters into a subcontract in respect of any of its obligations under this Contract relating to the provision of the Services, the Supplier shall include provisions in each such subcontract, unless otherwise agreed with the Authority in writing, which:
- 28.4.1 contain at least equivalent obligations as set out in this Contract in relation to the performance of the Services to the extent relevant to such subcontracting;
  - 28.4.2 contain at least equivalent obligations as set out in this Contract in respect of confidentiality, information security, data protection, Intellectual Property Rights, compliance with Law and Guidance and record keeping;
  - 28.4.3 contain a prohibition on the subcontractor subcontracting, assigning or novating any of its rights or obligations under such subcontract without the prior written approval of the Authority (such approval not to be unreasonably withheld or delayed);
  - 28.4.4 contain a right for the Authority to take an assignment or novation of the subcontract (or part of it) upon expiry or earlier termination of this Contract; and
  - 28.4.5 require payment to be made of all sums due to the subcontractor from the Supplier within a specified period not exceeding thirty {30} days from receipt by the Supplier of a valid invoice.
- 28.5 Where the Authority pays the Supplier's undisputed invoices earlier than thirty {30} days from receipt in accordance with any applicable government prompt payment targets, the Supplier shall use its reasonable endeavours to pay its relevant subcontractors within a comparable timeframe from receipt by the Supplier of such undisputed invoices from its subcontractors.
- 28.6 The Authority shall upon written request have the right to review any subcontract entered into by the Supplier in respect of the provision of the Services and the Supplier shall provide a certified copy of any subcontract within five (5) Business Days of the date of a written request from the Authority. For the avoidance of doubt, the Supplier shall have the right to redact any confidential pricing information in relation to such copies of subcontracts.
- 28.7 The Authority may at any time transfer, assign, novate, subcontract or otherwise dispose of its rights and obligations under this Contract or any part of this Contract and the Supplier warrants that it will carry out all such reasonable further acts required to effect such transfer, assignment, novation, subcontracting or disposal. If the Authority novates this Contract to any body that is not a Contracting Authority, from the effective date of such novation, the party assuming the position of the Authority shall not further transfer, assign, novate, subcontract or otherwise dispose of its rights and obligations under this Contract or any part of this Contract without the prior written consent of the Supplier, such consent not to be unreasonably withheld or delayed by the Supplier.

## 29 **Prohibited Acts**

29.1 The Supplier warrants and represents that:

29.1.1 it has not committed any offence under the Bribery Act 2010 or done any of the following ("**Prohibited Acts**"):

- (i) offered, given or agreed to give any officer or employee of the Authority any gift or consideration of any kind as an inducement or reward for doing or not doing or for having done or not having done any act in relation to the obtaining or performance of this or any other agreement with the Authority or for showing or not showing favour or disfavour to any person in relation to this or any other agreement with the Authority; or
- (ii) in connection with this Contract paid or agreed to pay any commission other than a payment, particulars of which (including the terms and conditions of the agreement for its payment) have been disclosed in writing to the Authority; and

29.1.2 it has in place adequate procedures to prevent bribery and corruption, as contemplated by section 7 of the Bribery Act 2010.

29.2 If the Supplier or its Staff (or anyone acting on its or their behalf) has done or does any of the Prohibited Acts or has committed or commits any offence under the Bribery Act 2010 with or without the knowledge of the Supplier in relation to this or any other agreement with the Authority:

29.2.1 the Authority shall be entitled:

- (i) to terminate this Contract and recover from the Supplier the amount of any loss resulting from the termination;
- (ii) to recover from the Supplier the amount or value of any gift, consideration or commission concerned; and
- (iii) to recover from the Supplier any other loss or expense sustained in consequence of the carrying out of the Prohibited Act or the commission of the offence under the Bribery Act 2010;

29.2.2 any termination under Clause 29.2.1 of this Schedule 2 of these Call-off Terms and Conditions shall be without prejudice to any right or remedy that has already accrued, or subsequently accrues, to the Authority; and

29.2.3 notwithstanding Clause 22 of this Schedule 2 of these Call-off Terms and Conditions, any dispute relating to:

- (i) the interpretation of Clause 29 of this Schedule 2 of these Call-off Terms and Conditions; or
- (ii) the amount or value of any gift, consideration or commission,

shall be determined by the Authority, acting reasonably, and the decision shall be final and conclusive.

### **30 General**

- 30.1 Each of the Parties is independent of the other and nothing contained in this Contract shall be construed to imply that there is any relationship between the Parties of partnership or of principal/agent or of employer/employee nor are the Parties hereby engaging in a joint venture and accordingly neither of the Parties shall have any right or authority to act on behalf of the other nor to bind the other by agreement or otherwise, unless expressly permitted by the terms of this Contract.
- 30.2 Failure or delay by either Party to exercise an option or right conferred by this Contract shall not of itself constitute a waiver of such option or right.
- 30.3 The delay or failure by either Party to insist upon the strict performance of any provision, term or condition of this Contract or to exercise any right or remedy consequent upon such breach shall not constitute a waiver of any such breach or any subsequent breach of such provision, term or condition.
- 30.4 Any provision of this Contract which is held to be invalid or unenforceable in any jurisdiction shall be ineffective to the extent of such invalidity or unenforceability without invalidating or rendering unenforceable the remaining provisions of this Contract and any such invalidity or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provisions in any other jurisdiction.
- 30.5 Each Party acknowledges and agrees that it has not relied on any representation, warranty or undertaking (whether written or oral) in relation to the subject matter of this Contract and therefore irrevocably and unconditionally waives any rights it may have to claim damages against the other Party for any misrepresentation or undertaking (whether made carelessly or not) or for breach of any warranty unless the representation, undertaking or warranty relied upon is set out in this Contract or unless such representation, undertaking or warranty was made fraudulently.
- 30.6 Each Party shall bear its own expenses in relation to the preparation and execution of this Contract including all costs, legal fees and other expenses so incurred.
- 30.7 The rights and remedies provided in this Contract are cumulative and not exclusive of any rights or remedies provided by general law, or by any other contract or document. In this Clause 30.7 of this Schedule 2 of these Call-off Terms and Conditions, right includes any power, privilege, remedy, or proprietary or security interest.
- 30.8 A person who is not a party to this Contract shall have no right to enforce any terms of it which confer a benefit on such person except that a Successor and/or a Third Party may directly enforce any indemnities or other rights provided to it under this Contract. No such person shall be entitled to object to or be required to consent to any amendment to the provisions of this Contract.
- 30.9 This Contract, any variation in writing signed by an authorised representative of each Party and any document referred to (explicitly or by implication) in this Contract or any variation to this Contract, contain the entire understanding between the Supplier and the Authority

relating to the Services to the exclusion of all previous agreements, confirmations and understandings and there are no promises, terms, conditions or obligations whether oral or written, express or implied other than those contained or referred to in this Contract. Nothing in this Contract seeks to exclude either Party's liability for Fraud.

- 30.10 This Contract, and any dispute or claim arising out of or in connection with it or its subject matter (including any non-contractual claims), shall be governed by, and construed in accordance with, the laws of England and Wales.
- 30.11 Subject to Clause 22 of this Schedule 2 of these Call-off Terms and Conditions, the Parties irrevocably agree that the courts of England and Wales shall have non-exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Contract or its subject matter.
- 30.12 All written and oral communications and all written material referred to under this Contract shall be in English.

## Schedule 3 of these Call-off Terms and Conditions

### Information and Data Provisions

#### 31 Confidentiality

- 31.1 In respect of any Confidential Information it may receive directly or indirectly from the other Party ("**Discloser**") and subject always to the remainder of Clause of these Call-off Terms and Conditions, each Party ("**Recipient**") undertakes to keep secret and strictly confidential and shall not disclose any such Confidential Information to any third party without the Discloser's prior written consent provided that:
- 31.1.1 the Recipient shall not be prevented from using any general knowledge, experience or skills which were in its possession prior to the Commencement Date;
- 31.1.2 the provisions of Clause of this 0 of these Call- off Terms and Conditions shall not apply to any Confidential Information:
- (i) which is in or enters the public domain other than by breach of this Contract or other act or omissions of the Recipient;
  - (ii) which is obtained from a third party who is lawfully authorised to disclose such information without any obligation of confidentiality;
  - (iii) which is authorised for disclosure by the prior written consent of the Discloser;
  - (iv) which the Recipient can demonstrate was in its possession without any obligation of confidentiality prior to receipt of the Confidential Information from the Discloser; or
  - (v) which the Recipient is required to disclose purely to the extent to comply with the requirements of any relevant stock exchange.
- 31.2 Nothing in Clause 31 of this 0 of these Call-off Terms and Conditions shall prevent the Recipient from disclosing Confidential Information where it is required to do so by judicial, administrative, governmental or regulatory process in connection with any action, suit, proceedings or claim or otherwise by applicable Law, including the Freedom of Information Act 2000 ("**FOIA**"), Codes of Practice on Access to Government Information, on the Discharge of Public Authorities' Functions or on the Management of Records ("**Codes of Practice**") or the Environmental Information Regulations 2004 ("**Environmental Regulations**").
- 31.3 The Authority may disclose the Supplier's Confidential Information:
- 31.3.1 on a confidential basis, to any Contracting Authority (the Parties agree that all Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Contracting Authority);

- 31.3.2 on a confidential basis, to any consultant, contractor or other person engaged by the Authority and/or the Contracting Authority receiving such information;
- 31.3.3 to any relevant party for the purpose of the examination and certification of the Authority's accounts;
- 31.3.4 to any relevant party for any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources;
- 31.3.5 to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirements; or
- 31.3.6 on a confidential basis, to a proposed successor body in connection with any proposed or actual, assignment, novation or other disposal of rights, obligations, liabilities or property in connection with this Contract;

and for the purposes of this Contract, references to disclosure "on a confidential basis" shall mean the Authority making clear the confidential nature of such information and that it must not be further disclosed except in accordance with Law or this Clause 31.3 of this O of these Call-off Terms and Conditions..

- 31.4 The Supplier may only disclose the Authority's Confidential Information, and any other information provided to the Supplier by the Authority in relation to this Contract, to the Supplier's Staff or professional advisors who are directly involved in the performance of or advising on the Supplier's obligations under this Contract. The Supplier shall ensure that such Staff or professional advisors are aware of and shall comply with the obligations in Clause **Error! Reference source not found.** of this O of these Call-off Terms and Conditions as to confidentiality and that all information, including Confidential Information, is held securely, protected against unauthorised use or loss and, at the Authority's written discretion, destroyed securely or returned to the Authority when it is no longer required. The Supplier shall not, and shall ensure that the Staff do not, use any of the Authority's Confidential Information received otherwise than for the purposes of performing the Supplier's obligations in this Contract.
- 31.5 For the avoidance of doubt, save as required by Law or as otherwise set out in this O of these Call-off Terms and Conditions, the Supplier shall not, without the prior written consent of the Authority (such consent not to be unreasonably withheld or delayed), announce that it has entered into this Contract and/or that it has been appointed as a Supplier to the Authority and/or make any other announcements about this Contract.
- 31.6 Clause **Error! Reference source not found.** of this O of these Call-off Terms and Conditions shall remain in force:
  - 31.6.1 without limit in time in respect of Confidential Information which comprises Personal Data or which relates to national security; and
  - 31.6.2 for all other Confidential Information for a period of three (3) years after the expiry or earlier termination of this Contract unless otherwise agreed in writing by the Parties.

## 32 **Data protection**

- 32.1 The Parties acknowledge their respective duties under Data Protection Legislation and shall give each other all reasonable assistance as appropriate or necessary to enable each other to comply with those duties. For the avoidance of doubt, the Supplier shall take reasonable steps to ensure it is familiar with the Data Protection Legislation and any obligations it may have under such Data Protection Legislation and shall comply with such obligations.
- 32.2 Where the Supplier is Processing Personal Data under or in connection with this Contract, the Parties shall comply with the Data Protection Protocol.
- 32.3 The Supplier and the Authority shall ensure that Personal Data is safeguarded at all times in accordance with the Law, and this obligation will include (if transferred electronically) only transferring Personal Data (a) if essential, having regard to the purpose for which the transfer is conducted; and (b) that is encrypted in accordance with any international data encryption standards for healthcare, and as otherwise required by those standards applicable to the Authority under any Law and Guidance (this includes, data transferred over wireless or wired networks, held on laptops, CDs, memory sticks and tapes).
- 32.4 Where, as a requirement of this Contract, the Supplier is Processing Personal Data relating to service users as part of the Services, the Supplier shall:
- 32.4.1 nominate an information governance lead able to communicate with the Supplier's board of directors or equivalent governance body, who will be responsible for information governance and from whom the Supplier's board of directors or equivalent governance body will receive regular reports on information governance matters including, but not limited to, details of all incidents of data loss and breach of confidence;
  - 32.4.2 report all incidents of data loss and breach of confidence to the Authority as soon as reasonably practicable and in any event within twenty four hours of becoming of the loss or breach;
  - 32.4.3 put in place and maintain policies that describe individual personal responsibilities for handling Personal Data and apply those policies vigorously;
  - 32.4.4 where appropriate, have a system in place and a policy for the recording of any telephone calls in relation to the Services, including the retention and disposal of those recordings;
  - 32.4.5 at all times comply with any information governance requirements and/or processes as may be set out in the Specification and Tender Response Document; and
  - 32.4.6 comply with any new and/or updated requirements, Guidance and/or Policies notified to the Supplier by the Authority from time to time (acting reasonably) relating to the Processing and/or protection of Personal Data.
- 32.5 Where any Personal Data is Processed by any Sub-contractor of the Supplier in connection with this Contract, the Supplier shall procure that such Sub-contractor shall comply with the

relevant obligations set out in Clause 32 of this 0 of these Call-off Terms and Conditions, as if such Sub-contractor were the Supplier.

- 32.6 The Supplier shall indemnify and keep the Authority indemnified against, any loss, damages, costs, expenses (including without limitation legal costs and expenses), claims or proceedings whatsoever or howsoever arising from the Supplier's unlawful or unauthorised Processing, destruction and/or damage to Personal Data in connection with this Contract.

### **33 Freedom of Information and Transparency**

- 33.1 The Parties acknowledge the duties of Contracting Authorities under the FOIA, Codes of Practice and Environmental Regulations and shall give each other all reasonable assistance as appropriate or necessary to enable compliance with those duties.

- 33.2 The Supplier shall assist and cooperate with the Authority to enable it to comply with its disclosure obligations under the FOIA, Codes of Practice and Environmental Regulations. The Supplier agrees:

33.2.1 that this Contract and any recorded information held by the Supplier on the Authority's behalf for the purposes of this Contract are subject to the obligations and commitments of the Authority under the FOIA, Codes of Practice and Environmental Regulations;

33.2.2 that the decision on whether any exemption to the general obligations of public access to information applies to any request for information received under the FOIA, Codes of Practice and Environmental Regulations is a decision solely for the Authority;

33.2.3 that where the Supplier receives a request for information under the FOIA, Codes of Practice and Environmental Regulations and the Supplier itself is subject to the FOIA, Codes of Practice and Environmental Regulations it will liaise with the Authority as to the contents of any response before a response to a request is issued and will promptly (and in any *event* within two (2) Business Days) provide a copy of the request and any response to the Authority;

33.2.4 that where the Supplier receives a request for information under the FOIA, Codes of Practice and Environmental Regulations and the Supplier is not itself subject to the FOIA, Codes of Practice and Environmental Regulations, it will not respond to that request (unless directed to do so by the Authority) and will promptly (and in any event within two (2) Business Days) transfer the request to the Authority;

33.2.5 that the Authority, acting in accordance with the Codes of Practice issued and revised from time to time under both section 45 of FOIA, and regulation 16 of the Environmental Regulations, may disclose information concerning the Supplier and this Contract; and

33.2.6 to assist the Authority in responding to a request for information, by processing information or environmental information (as the same are defined in FOIA and the Environmental Regulations) in accordance with a records management system that complies with all applicable records management recommendations and codes of conduct issued under section 46 of FOIA, and providing copies of all



information requested by the Authority within five (5) Business Days of that request and without charge.

- 33.3 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, Codes of Practice and Environmental Regulations, the content of this Contract is not Confidential Information.
- 33.4 Notwithstanding any other term of this Contract, the Supplier consents to the publication of this Contract in its entirety (including variations), subject only to the redaction of information that is exempt from disclosure in accordance with the provisions of the FOIA, Codes of Practice and Environmental Regulations.
- 33.5 In preparing a copy of this Contract for publication under Clause **Error! Reference source not found.** of this O of these Call-off Terms and Conditions, the Authority may consult with the Supplier to inform decision making regarding any redactions but the final decision in relation to the redaction of information will be at the Authority's absolute discretion.
- 33.6 The Supplier shall assist and cooperate with the Authority to enable the Authority to publish this Contract.
- 33.7 Where any information is held by any Sub-contractor of the Supplier in connection with this Contract, the Supplier shall procure that such Sub-contractor shall comply with the relevant obligations set out in Clause 33 of this O of these Call-off Terms and Conditions, as if such Sub-contractor were the Supplier.

#### **34 Information Security**

- 34.1 Without limitation to any other information governance requirements set out in this O of these Call-off Terms and Conditions, the Supplier shall:
- 34.1.1 notify the Authority forthwith of any information security breaches or near misses (including without limitation any potential or actual breaches of confidentiality or actual information security breaches) in line with the Authority's information governance Policies; and
- 34.1.2 fully cooperate with any audits or investigations relating to information security and any privacy impact assessments undertaken by the Authority and shall provide full information as may be reasonably requested by the Authority in relation to such audits, investigations and assessments.
- 34.2 Where required in accordance with the Specification and Tender Response Document, the Supplier will ensure that it puts in place and maintains an information security management plan appropriate to this Contract, the type of Services being provided, and the obligations placed on the Supplier. The Supplier shall ensure that such plan is consistent with any relevant Policies, Guidance, Good Industry Practice and with any relevant quality standards as may be set out in the Key Provisions and/or the Specification and Tender Response Document.
- 34.3 Where required in accordance with the Specification and Tender Response Document, the Supplier shall obtain and maintain certification under the HM Government Cyber Essentials Scheme at the level set out in the Specification and Tender Response Document.

**Schedule 4 of these Call-off terms and Conditions\_11s**

**Definitions and Interpretations**

**35 Definitions**

In this Contract the following words shall have the following meanings unless the context requires otherwise:

<b>"Actual Services Commencement Date"</b>	35.1 means the date the Supplier actually commences delivery of all of the Services;
<b>"Authority"</b>	35.2 means the authority named on the Order Form;
<b>"Authority's Obligations"</b>	35.3 means the Authority's further obligations, if any, referred to in the Specification and Tender Response Document and/or the Order Form;
<b>"Breach Notice"</b>	35.4 means a written notice of breach given by one Party to the other, notifying the Party receiving the notice of its breach of this Contract;
<b>"Business Continuity Event"</b>	35.5 means any event or issue that could impact on the operations of the Supplier and its ability to provide the Services including an influenza pandemic and any Force Majeure Event;
<b>"Business Continuity Plan"</b>	35.6 means the Supplier's business continuity plan which includes its plans for continuity of the Services during a Business Continuity Event;
<b>"Business Day"</b>	35.7 means any day other than Saturday, Sunday, Christmas Day, Good Friday or a statutory bank holiday in England and Wales;
<b>"Cabinet Office Statement"</b>	35.8 the Cabinet Office Statement of Practice - Staff Transfers in the Public Sector 2000 (as revised 2013) as may be amended or replaced;
<b>"Call-off Terms and Conditions"</b>	35.9 means these Call-off Terms and Conditions for the Provision of Services;
<b>"Change Control Process"</b>	35.10 means the change control process, if any, referred to in any Key Provisions;
<b>"Codes of Practice"</b>	35.11 shall have the meaning given to the term in Clause 31.2 of 0 of these Call-off Terms and Conditions;
<b>"Commencement Date"</b>	35.12 means the date of the Order Form;
<b>"Confidential Information"</b>	35.13 means information, data and material of any nature, which either Party may receive or obtain in connection with the

	<p>conclusion and/or operation of the Contract including any procurement process which is:</p> <p>(a) Personal Data including without limitation which relates to any other service</p> <p>(b) designated as confidential by either party or that ought reasonably to be considered as confidential (however it is conveyed or on whatever media it is stored); and/or</p> <p>(c) Policies and such other documents which the Supplier may obtain or have access to through the Authority's intranet;</p>
<b>"Contract"</b>	35.14 means the Order Form, the provisions on the front page and all Schedules of these Call-off Terms and Conditions, the Specification and Tender Response Document and the applicable provisions of the Framework Agreement;
<b>"Contracting Authority"</b>	means any contracting authority as defined in Regulation 3 of the Public Contracts Regulations 2015 (SI 2015/102) (as amended), other than the Authority;
<b>"Contract Manager"</b>	35.15 means for the Authority and for the Supplier the individuals specified in the Order Form or as otherwise agreed between the Parties in writing or such other person notified by a Party to the other Party from time to time in accordance with Clause 8.1 of Schedule 2 of these Call-off Terms and Conditions;
<b>"Contract Price"</b>	35.16 means the price exclusive of VAT that is payable to the Supplier by the Authority under the Contract for the full and proper performance by the Supplier of its obligations under the Contract calculated in accordance with the provisions of the Framework Agreement and as confirmed in the Order Form;
<b>"Controller"</b>	35.17 shall have the same meaning as set out in the GDPR;
<b>"Convictions"</b>	35.18 means, other than in relation to minor road traffic offences, any previous or pending prosecutions, convictions, cautions and binding-over orders (including any spent convictions as contemplated by Section 1(1) of the Rehabilitation of Offenders Act 1974 or any replacement or amendment to that Act);
<b>"Data Protection Legislation"</b>	35.19 means (i) the Data Protection Act 1998 or, from the date it comes into force, the Data Protection Act 2018 to the extent that it relates to processing of personal data and privacy; (ii) the GDPR, the Law Enforcement Directive (Directive (EU) 2016/680) and any applicable national implementing Law as amended from time to time; and (iii) all applicable Law about the processing of personal data and privacy;
<b>"Data Protection Protocol"</b>	35.20 means any document of that name as provided to the Supplier by the Authority (as amended from time to time in accordance

		with its terms) which shall include, without limitation, any such document appended to the Order Form;
<b>"Dispute(s)"</b>	35.21	means any dispute, difference or question of interpretation or construction arising out of or in connection with this Contract, including any dispute, difference or question of interpretation relating to the Services, any matters of contractual construction and interpretation relating to the Contract, or any matter where this Contract directs the Parties to resolve an issue by reference to the Dispute Resolution Procedure;
<b>"Dispute Notice"</b>	35.22	means a written notice served by one Party to the other stating that the Party serving the notice believes there is a Dispute;
<b>"Dispute Resolution Procedure"</b>	35.23	means the process for resolving Disputes as set out in Clause 22 of Schedule 2 of these Call-off Terms and Conditions;
<b>"DOTAS"</b>	35.24	means the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HM Revenue and Customs of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to National Insurance Contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868 made under s.132A Social Security Administration Act 1992;
<b>"Electronic Trading System(s)"</b>	35.25	means such electronic data interchange system and/or world wide web application and/or other application with such message standards and protocols as the Authority may specify from time to time;
<b>"Employment Liabilities"</b>	35.26	means all claims, demands, actions, proceedings, damages, compensation, tribunal awards, fines, costs (including but not limited to reasonable legal costs), expenses and all other liabilities whatsoever;
<b>"Environmental Regulations"</b>	35.27	shall have the meaning given to the term in Clause 31.2 of 0 of these Call-off Terms and Conditions;
<b>"eProcurement Guidance"</b>	35.28	means the NHS eProcurement Strategy available via:
	35.29	<u><a href="http://www.gov.uk/government/collections/nhs-11procurement">http://www.gov.uk/government/collections/nhs-11procurement</a></u>
	35.30	together with any further Guidance issued by the Department of Health in connection with it;
<b>"Equality Legislation"</b>	35.31	means any and all legislation, applicable guidance and statutory codes of practice relating to equality, diversity, non-discrimination and human rights as may be in force in England

	and Wales from time to time including, but not limited to, the Equality Act 2010, the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000 and the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002 (SI 2002/2034) and the Human Rights Act 1998;
<b>"Exit Requirements"</b>	35.32 means the Authority's exit requirements, as set out in the Specification and Tender Response Document and/or otherwise as part of this Contract, which the Supplier must comply with during the Term and/or in relation to any expiry or early termination of this Contract;
<b>"Fair Deal for Staff Pensions"</b>	35.33 means guidance issued by HM Treasury entitled "Fair Deal for staff pensions: staff transfer from central government" issued in October 2013 (as amended, supplemented or replaced);
<b>"FOIA"</b>	35.34 shall have the meaning given to the term in Clause 31.2 of O of these Call-off Terms and Conditions;
<b>"Force Majeure Event"</b>	<p>35.35 means any event beyond the reasonable control of the Party in question to include, without limitation:</p> <ul style="list-style-type: none"> <li>(d) war including civil war (whether declared or undeclared), riot, civil commotion or armed conflict materially affecting either Party's ability to perform its obligations under this Contract;</li> <li>(e) acts of terrorism;</li> <li>(f) flood, storm or other natural disasters;</li> <li>(g) fire;</li> <li>(h) unavailability of public utilities and/or access to transport networks to the extent no diligent supplier could reasonably have planned for such unavailability as part of its business continuity planning;</li> <li>(i) government requisition or impoundment to the extent such requisition or impoundment does not result from any failure by the Supplier to comply with any relevant regulations, laws or procedures (including such laws or regulations relating to the payment of any duties or taxes) and subject to the Supplier having used all reasonable legal means to resist such requisition or impoundment;</li> <li>U) compliance with any local law or governmental order, rule, regulation or direction applicable outside of England and Wales that could not have been reasonably foreseen;</li> <li>(k) industrial action which affects the ability of the Supplier to provide the Services, but which is not confined to the workforce of the Supplier or the workforce of any Sub-contractor of the Supplier; and</li> <li>(l) a failure in the Supplier's and/or Authority's supply chain to the extent that such failure is due to any event suffered by a member of such supply chain, which would also qualify as a</li> </ul>

	<p>Force Majeure Event in accordance with this definition had it been suffered by one of the Parties;</p> <p>but excluding, for the avoidance of doubt, the withdrawal of the United Kingdom from the European Union and any related circumstances, events, changes or requirements;</p>
<b>"Framework Agreement"</b>	means the Framework Agreement referred to in the Order Form;
<b>"Fraud"</b>	means any offence under any law in respect of fraud in relation to this Contract or defrauding or attempting to defraud or conspiring to defraud the government, parliament or any Contracting Authority;
<b>GDPR</b>	means the General Data Protection Regulation (Regulation (EU) 2016/679);
<b>"General Anti-Abuse Rule"</b>	<p>means</p> <p>(m) the legislation in Part 5 of the Finance Act 2013; and</p> <p>(n) any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions;</p>
<b>"Good Industry Practice"</b>	35.36 means the exercise of that degree of skill, diligence, prudence, risk management, quality management and foresight which would reasonably and ordinarily be expected from a skilled and experienced service provider engaged in the provision of services similar to the Services under the same or similar circumstances as those applicable to this Contract, including in accordance with any codes of practice published by relevant trade associations;
<b>"Guidance"</b>	35.37 means any applicable guidance, direction or determination and any policies, advice or industry alerts which apply to the Services, to the extent that the same are published and publicly available or the existence or contents of them have been notified to the Supplier by the Authority and/or have been published and/or notified to the Supplier by the Department of Health, Monitor, NHS England, the Medicines and Healthcare Products Regulatory Agency, the European Medicine Agency, the European Commission, the Care Quality Commission and/or any other regulator or competent body;
<b>"Halifax Abuse Principle"</b>	35.38 means the principle explained in the CJEU Case C-255/02 Halifax and others;
<b>"HM Government Cyber Essentials Scheme"</b>	<p>means the HM Government Cyber Essentials Scheme as further defined in the documents relating to this scheme published at:</p> <p><a href="https://www.gov.uk/government/publications/cyber-essentials-scheme-overview">https://www.gov.uk/government/publications/cyber-essentials-scheme-overview</a></p>



<b>"Implementation Plan"</b>	35.39 means the implementation plan, if any, referred to in any Key Provisions;
<b>"Implementation Requirements"</b>	35.40 means the Authority's implementation and mobilisation requirements (if any), as may be set out in the Specification and Tender Response Document and/or otherwise as part of this Contract, which the Supplier must comply with as part of implementing the Services;
<b>"Intellectual Property Rights"</b>	means all patents, copyright, design rights, registered designs, trademarks, know-how, database rights, confidential formulae and any other intellectual property rights and the rights to apply for patents and trademarks and registered designs;
<b>"Interested Party"</b>	35.41 means any organisation which has a legitimate interest in providing services of the same or similar nature to the Services in immediate or proximate succession to the Supplier or any Sub-contractor and who had confirmed such interest in writing to the Authority;
<b>"Key Provisions"</b>	35.42 means the key provisions set out in Schedule 1 of these Call-off Terms and Conditions and/or as part of the Order Form;
<b>"KPI"</b>	35.43 means the key performance indicators as set out in the Specification and Tender Response Document and/or the Order Form, if any;
<b>"Law"</b>	<p>35.44 means any applicable legal requirements including, without limitation:</p> <ul style="list-style-type: none"> <li>(a) any applicable statute or proclamation, delegated or subordinate legislation, bye-law, order, regulation or instrument as applicable in England and Wales;</li> <li>(b) any applicable European Union obligation, directive, regulation, decision, law or right (including any such obligations, directives, regulations, decisions, laws or rights that are incorporated into the law of England and Wales or given effect in England and Wales by any applicable statute, proclamation, delegated or subordinate legislation, bye-law, order, regulation or instrument);</li> <li>(c) any enforceable community right within the meaning of section 2(1) European Communities Act 1972;</li> <li>(d) any applicable judgment of a relevant court of law which is a binding precedent in England and Wales;</li> <li>(e) requirements set by any regulatory body as applicable in England and Wales;</li> <li>(f) any relevant code of practice as applicable in England and Wales; and</li> </ul>



	(g) any relevant collective agreement and/or international law provisions (to include, without limitation, as referred to in (a) to (f) above);
<b>"Long Stop Date"</b>	means the date, if any, specified in the Order Form;
<b>"Occasion of Tax Non-Compliance"</b>	means: (a) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 is found on or after 1 April 2013 to be incorrect as a result of: (i) a Relevant Tax Authority successfully challenging the Supplier under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle; (ii) the failure of an avoidance scheme which the Supplier was involved in, and which was, or should have been, notified to a Relevant Tax Authority under the DOTAS or any equivalent or similar regime; and/or (b) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 gives rise, on or after 1 April 2013, to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Effective Date or to a civil penalty for fraud or evasion;
<b>"Order Form"</b>	means the order form for the Services issued by the Authority in accordance with the Framework Agreement;
<b>"Party"</b>	means the Authority or the Supplier as appropriate and Parties means both the Authority and the Supplier;
<b>"Personal Data"</b>	shall have the same meaning as set out in the GDPR;
<b>"Policies"</b>	means the policies, rules and procedures of the Authority as notified to the Supplier from time to time;
<b>"Premises and Locations"</b>	has the meaning given under Clause 2.1 of Schedule 2 of these Call-off Terms and Conditions;
<b>"Process"</b>	shall have the same meaning as set out in the GDPR. Processing and Processed shall be construed accordingly;
<b>"Processor"</b>	35.45 shall have the same meaning as set out in the GDPR;
<b>"Relevant Tax Authority"</b>	means HM Revenue and Customs, or, if applicable, a tax authority in the jurisdiction in which the Supplier is established;
<b>"Remedial Proposal"</b>	has the meaning given under Clause 15.3 of Schedule 2 of these Call-off Terms and Conditions;
<b>"Services"</b>	means the services set out in this Contract;



<b>"Services Commencement Date"</b>	means the date delivery of the Services shall commence as specified in the Order Form. If no date is specified in the Order Form, the services commencement date shall be the Commencement Date;
<b>"Services Information"</b>	means information concerning the Services as may be reasonably requested by the Authority and supplied by the Supplier to the Authority in accordance with Clause 20 of Schedule 2 of these Call-off Terms and Conditions for inclusion in the Authority's services catalogue from time to time;
<b>"Specification and Tender Response Document"</b>	means the Specification and Tender Response Document set out in the Framework Agreement as supplemented by any further information set out and/or referred to in the Order Form and as amended and/or updated in accordance with this Contract;
<b>"Staff"</b>	means all persons employed or engaged by the Supplier to perform its obligations under this Contract including any Sub-contractors and person employed or engaged by such Sub-contractors;
<b>"Sub-contract"</b>	means a contract between two or more suppliers, at any stage of remoteness from the Supplier in a sub-contracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of the whole or any part of this Contract;
<b>"Sub-contractor"</b>	means a party to a Sub-contract other than the Supplier;
<b>"Subsequent Transfer Date"</b>	means the point in time, if any, at which services which are fundamentally the same as the Services (either in whole or in part) are first provided by a Successor or the Authority, as appropriate, giving rise to a relevant transfer under TUPE;
<b>"Subsequent Transferring Employees"</b>	means any employee, agent, consultant and/or contractor who, immediately prior to the Subsequent Transfer Date, is wholly or mainly engaged in the performance of services fundamentally the same as the Services (either in whole or in part) which are to be undertaken by the Successor or Authority, as appropriate;
<b>"Successor"</b>	means any third party who provides services fundamentally the same as the Services (either in whole or in part) in immediate or subsequent succession to the Supplier upon the expiry or earlier termination of this Contract;
<b>"Supplier"</b>	35.46 means the supplier named on the Order Form;
<b>"Supplier Code of Conduct"</b>	35.47 means the code of that name published by the Government Commercial Function originally dated September 2017, as may be amended, restated, updated, re-issued or re-named from time to time;
<b>"Supplier Personnel"</b>	means any employee, agent, consultant and/or contractor of the Supplier or Sub-contractor who is either partially or fully engaged in the performance of the Services;

<b>"Term"</b>	means the term as referred to in the Key Provisions;
<b>"Termination Notice"</b>	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 Contract on a specified date and setting out the grounds for termination;
<b>"Third Party"</b>	means any supplier of services fundamentally the same as the Services (either in whole or in part) immediately before the Transfer Date;
<b>"Third Party Body"</b>	has the meaning given under Clause 8.5 of Schedule 2 of these Call-off Terms and Conditions;
<b>"Transfer Date"</b>	means the Actual Services Commencement Date;
<b>"TUPE"</b>	means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (2006/246) and/or any other regulations or other legislation enacted for the purpose of implementing or transposing the Acquired Rights Directive (77/187/EEC, as amended by Directive 98/50 EC and consolidated in 2001/23/EC) into English law; and
<b>"VAT"</b>	means value added tax chargeable under the Value Added Tax Act 1994 or any similar, replacement or extra tax.

- 35.2 References to any Law shall be deemed to include a reference to that Law as amended, extended, consolidated, re-enacted, restated, implemented or transposed from time to time.
- 35.3 References to any legal entity shall include any body that takes over responsibility for the functions of such entity.
- 35.4 References in this Contract to a "Schedule", "Appendix", "Paragraph" or to a "Clause" are to schedules, appendices, paragraphs and clauses of, this Contract.
- 35.5 References in this Contract to a day or to the calculation of time frames are references to a calendar day unless expressly specified as a Business Day.
- 35.6 Unless set out in the Contract as a chargeable item and subject to Clause 30.6 of Schedule 2 of these Call-off Terms and Conditions, the Supplier shall bear the cost of complying with its obligations under this Contract.
- 35.7 The headings are for convenience only and shall not affect the interpretation of this Contract.
- 35.8 Words denoting the singular shall include the plural and vice versa.
- 35.9 Where a term of this Contract provides for a list of one or more items following the word "including" or "includes" then such list is not to be interpreted as an exhaustive list. Any such list shall not be treated as excluding any item that might have been included in such list having regard to the context of the contractual term in question. General words are not to be given a restrictive meaning where they are followed by examples intended to be included within the general words.

- 35.10 Where there is a conflict between the Supplier's responses to the requirements set out in the Specification and Tender Response Document and any other part of this Contract, such other part of this Contract shall prevail.
- 35.11 Where a document is required under this Contract, the Parties may agree in writing that this shall be in electronic format only.
- 35.12 Where there is an obligation on the Authority to procure any course of action from any third party, this shall mean that the Authority shall use its reasonable endeavours to procure such course of action from that third party.
- 35.13 Any Breach Notice issued by a Party in connection with this Contract shall not be invalid due to it containing insufficient information. A Party receiving a Breach Notice ("**Receiving Party**") may ask the Party that issued the Breach Notice ("**Issuing Party**") to provide any further information in relation to the subject matter of the Breach Notice that it may reasonably require to enable it to understand the Breach Notice and/or to remedy the breach. The Issuing Party shall not unreasonably withhold or delay the provision of such further information as referred to above as may be requested by the Receiving Party, but no such withholding or delay shall invalidate the Breach Notice.
- Any terms defined as part of a Schedule or other document forming part of this Contract shall have the meaning as defined in such Schedule or document

## **Annex A**

Letter of Engagement: to confirm the scope of the audit and any relevant auditing standards and processes. Additional commercial terms not mandated in accordance with any relevant audit standards and/or professional obligations must not be included as part of any Letter of Engagement for the purposes of this Order Form.



Financial Services Manager  
Rushcliffe Borough Council,  
Rushcliffe Arena  
Rugby Road  
West Bridgford  
Nottingham  
NG2 7YG

Our ref:

Dear

## **1 Introduction**

- 1.1 This letter sets out the basis on which we are to provide professional services for the fully outsourced Internal Audit Service of Rushcliffe Borough Council ("the Council").

## **2 Scope of Professional Services**

- 2.1 Our role is to provide the professional services detailed in the tender document submitted 29 October 2019 (reference GBC/000043/2019). Our duties and responsibilities shall be limited to the matters expressly referred to in the tender documents, the proposal we submitted on 29 October 2019 and any contracts/agreements in the submission. Together these form the scope of the Engagement. In the event of any conflict between the letter of engagement and the contract, the contract will take precedence, however both parties agree that internal audit is a data controller under GDPR legislation.

- (a) providing legal or other advice outside the scope of the Engagement;
- (b) reviewing (or otherwise being responsible for) the services provided by any other professional advisers retained by you;
- (c) providing any other services beyond the scope of the Engagement.

- 2.2 We are not responsible for the appropriateness of any commercial or strategic decisions taken by you (including any decision to proceed or not to proceed with a particular transaction).

## **3 Personnel**

- 3.1 , a Partner, **will** lead the assignment and provide overall quality assurance. , a Senior Manager, will lead the day to day operation of the service.





## **4 Fees**

### **4.1**

[REDACTED]

4.2 Any work completed outside of the above will be agreed with the Financial Services Manager via a Terms of Reference agreed via email.

4.3 Invoices will be issued quarterly in arrears based on the total value of annual Internal Audit Plan agreed by the Financial Services Manager. In the final invoice of each year we will amend for any unders/overs.

## **5 Use of our advice or opinions**

5.1 Any opinions and advice will be provided in writing and addressed to you. Our reports, letters, information, opinions and advice should not be used for any purpose other than that for which they were prepared, nor should they be reproduced, referred to in any other document or made available to any third party without our prior written consent.

## **6 Liability**

6.1 We will perform the Services with reasonable skill and care and acknowledge that we will be liable to you for Loss caused by our negligence, breach of contract, fraud or wilful default, subject to the liability provisions that follow.

6.2 We will not be liable if such Loss is due to the provision of false, misleading or incomplete information or documentation or due to the acts or omissions of any person(s) other than us.

6.3 Where any Loss is suffered by you for which we would otherwise be jointly and severally liable with any third parties, the extent to which such Loss shall be recoverable by you from us, as opposed to the third party, shall be limited so as to be in proportion to our contribution to the overall fault for such damage or Loss, as agreed between the parties, or in the absence of agreement, as finally determined by an English Court.

6.4 Nothing in this section shall exclude or restrict our liability for fraud or dishonesty or otherwise to the extent that it cannot do so by law.

## **7 Liaison and ownership of working papers**

7.1 In the course of the professional work BDO LLP will acquire information which is confidential to the Council or to an individual member thereof. BDO LLP will not disclose this information to third parties except where prior written consent has been obtained from the owner of the confidential information or where there is a legal right or duty to make disclosure. We will disclose on request, our audit working papers and other relevant information to the external auditors and successor internal auditors subject to the provisions of paragraphs 7.2 and 7.3 below. BDO LLP acknowledges that certain confidential information of third parties (e.g. certain suppliers of the Council) may not be disclosed to BDO LLP until BDO LLP has entered into a separate confidentiality agreement with the relevant third party.

- 7.2 The internal audit working papers are the property of BDO LLP. The audit working papers are prepared solely for the purpose of BDO LLP and are not planned or conducted in contemplation, or for the purpose of, the work of the external auditors or successor internal auditors. We therefore do not warrant or represent the information in our working papers is sufficient or even appropriate for their purposes. It is their responsibility to make enquiries and arrive at a judgement as to whether they can reasonably take assurance from our work.
- 7.3 We shall provide the external auditors and successor internal auditors with access to our audit working papers, should they require it. In signing this engagement letter the Council acknowledges on its own behalf inter alia, that:
- it will accept the risk, and not hold BDO LLP responsible, if the external auditors/successor internal auditors misuse any confidential information obtained from a review of the working papers or by way of explanation from us, unless such information was provided to the external auditor / successor internal auditors otherwise than in accordance with this Agreement;
  - no responsibility or liability will be accepted or assumed by BDO LLP to any party (including any third party) for any loss, damage or expense arising from the grant of access to the working papers to the external auditors/successor internal auditors, in accordance with the provisions of this Agreement;
  - save as to any claims, actions or expenses arising from the negligence of BDO LLP, its servants, agents or employees and/or from any disclosure made otherwise than in accordance with the provisions of this Agreement and provided always that BDO LLP shall have taken all reasonable steps to mitigate its loss, it shall indemnify and hold harmless BDO LLP against all finally adjudicated actions, proceedings and claims brought against BDO LLP by any third party, and all loss, damage and expense (including legal expenses) relating thereto, directly arising out of or in connection with the grant of access of the working papers to the external auditors/successor internal auditors;
  - BDO LLP neither owes nor accepts any duty to the external auditors/successor internal auditors, whether in contract or in tort and shall not be liable, in respect of any loss, damage or expense which is caused by their reliance on the working papers or representations made in relation thereto arising from their access to the working papers;
  - the external auditors/successor internal auditors shall not use the working papers and reports for any purpose other than as evidence for the external audit/review of internal audit arrangements;
  - the external auditors/successor internal auditors will keep the audit working papers and reports confidential;
  - the external auditors are solely responsible for the opinion they are required to express on the Council's financial statements;
  - the successor internal auditors are solely responsible for the opinions they are required to express on the Council's internal financial control systems.

## **8 Liaison with the External Auditors**

- 8.1 There will be liaison, as required, with the external audit function to enable the external auditors to determine the extent of their reliance on the work of the internal audit function.

## **9 Terms**

- 9.1 BDO are the data controller and not the data processor in line with the General Data Protections Regulation 2018.
- 9.2 The Engagement Letter will remain in place and fully effective until varied or replaced by written agreement between us.
- 9.3 Please confirm your agreement to the terms in this Engagement Letter by signing and returning to us the enclosed copy. In any event, your continuing instructions will amount to an acceptance of those terms.

Yours sincerely

Partner  
For and on behalf of BDO LLP

To BDO LLP:

I hereby confirm that BDO LLP is appointed to carry out the Engagement in accordance with the terms set out in this Engagement Letter.

Signed on behalf of Rushcliffe Borough Council

Name:

Date:









Invitation to Tender for the Provision of Internal Audit Services

Authority's reference number:

Deadline for Tenders to be received: 12:00 noon on 29<sup>th</sup> October 2019

Company Name	
Main Contact	
Company Registration Number	

SECTION A - INSTRUCTIONS AND INFORMATION



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# 1 INTRODUCTION AND BACKGROUND

Rushcliffe Borough Council ("**the Authority**") is issuing to the London Procurement Partnership Framework this invitation to tender ("**ITT**") in connection with the competitive procurement of The Provision of Audit Service.

This ITT Section A contains further information about the procurement process.

1.1 ITT Section B contains the questions that Bidders must complete. Each Bidder's response ("**Tender**") should be detailed enough to allow the Authority to make an informed award decision.

1.2 All Tenders must be returned no later than the deadline for receipt of Tenders specified on the front cover of this ITT.

The Authority is using the In-tend e-tendering portal to conduct the procurement process ("**the e-Tendering Portal**"). The e-Tendering Portal can be accessed:

All communications (including submission of Tenders) should be carried out via the e-Tendering Portal.

## Contents of the ITT

1.3 This ITT document consists of:

1	Introduction and background
2	Tender timetable
3	Instructions to Bidders
4	Tender evaluation methodology and criteria
Annex B1	Eligibility Questions and responses
Annex B2	Specification
Annex B3	Tender Response Document
Annex B4	Commercial Schedule
Annex B5	Confidential and commercially sensitive information
Annex B6	Administrative Instructions
Annex B7	Form of Tender

Introduction to the Procurement Rushcliffe Borough Council and Gedling Borough Council are seeking bids for the Provision of Internal Audit Services.

Rushcliffe is a small borough, covering 157 square miles and lying immediately to the south of the City of Nottingham and the River Trent; it extends across towards Newark in the north east and Loughborough in the south west. Although parts of the Borough lie close to Nottingham City, Rushcliffe has a strong identity of its own. The main centre of population is West Bridgford, where around 41,000 of the Borough's 111,129 population live. The remainder of the district is largely rural, with the centres of population split between small towns and villages. Rushcliffe's Corporate Strategy and audited Financial Statements for 2018/19 can be found at <https://www.rushcliffe.gov.tj.ki>

The Borough of Gedling is home to around 117,000 people living in just over 53,000 households. It covers 120 square kilometres on the outskirts of Nottingham and is a Borough of contrasts, with an urban commuter base centred on the towns of Carlton and Arnold, extending out to rural farmland and villages. The Gedling Plan which sets out our current priorities, services and financial position can be found on the Council's website along with the latest audited set of Financial Statements 2018/19 at: <https://www.gedling.gov.uk>

- 1.4 Internal Audit is an assurance function providing an independent and objective opinion to the Council(s) on the degree to which the internal control environment supports and promotes the achievement of its objectives through the effective management and mitigation of its key business risk exposures.
- 1.5 The role of the internal audit service is to assist management throughout the Council in the effective discharge of its responsibilities for:
  - Achieving the Council's objectives across the whole range of its activities;
  - Ensuring the proper administration of the financial affairs of the Council;
  - Working with the external auditors to enable them to place reliance on internal audit work undertaken.
- 1.6 Rushcliffe Borough Council require a general managed audit service.
- 1.7 Gedling Borough Council require a general managed audit service.
- 1.8 Auditing/accounting firms listed on the Framework that have or are currently providing internal audit service for similar organisations are encouraged to submit bids.
- 1.9 The successful provider will use an established methodology in the planning, conduct and reporting of internal audit work, and will be required to operate in full compliance with the standards laid down by professional bodies and in particular the UK Public Sector Internal Audit Standards and CIPFA application note applicable to these standards as a minimum requirement. .
- 1.10 Full details of the Authority requirements are set out in the Specification in Annex B2 of Section B.

#### **Purpose and scope**

- 1.8 This ITT:
  - 1.8.1 invites Bidders to submit their Tenders in accordance with the instructions set out in the remainder of this ITT;
  - 1.8.2 sets out the overall timetable and process for the procurement;
  - 1.8.3 provides Bidders with sufficient information to enable them to submit a compliant Tender;
  - 1.8.4 sets out the award criteria and Tender evaluation model that will be used to evaluate the Tenders; and

- 1.8.5 explains the administrative arrangements for the receipt of Tenders.
- 1.9 The link below to the Cabinet Office website provides information on the Government's Crown Representative for SMEs, a link to the definition of an SME and details on the SME initiative: <https://www.gov.uk/government/policies/buying-and-managing-government-goods-and-services-more-efficiently-and-effectively/supporting-pages/making-sure-government-gets-full-value-from-small-and-medium-sized-enterprises>.

**Questions about this ITT**

- 1.10 You may submit, by no later than 5:00 pm on 22<sup>nd</sup> October 2019 any queries that you have relating to this ITT. Please submit such queries via the e-Tendering Portal.
- 1.11 Any specific queries should clearly reference the appropriate paragraph in the ITT documentation and, to the extent possible, should be aggregated rather than sent individually. The Authority may decline to answer queries received after the above deadline.
- 1.12 Answers to the questions received by the Authority will be circulated to all Bidders via the e-Tendering Portal. Answers will not reveal the identity of the individual Bidder that asked a particular question. The Authority may decide not to disclose answers, or parts of answers, which would reveal confidential or commercially sensitive information in relation to a particular Bidder.

## 2 TENDER TIMETABLE

### Key dates

- 2.1 The procurement will follow a clear, structured and transparent process to ensure a fair and level playing field so that all Bidders are treated equally.
- 2.2 The key dates for this procurement are currently anticipated to be as follows:

Event	Date
ITT issued	1st October 2019
Deadline for the receipt of clarification questions	5:00 pm 22 <sup>nd</sup> October 2019
Deadline for receipt of Tenders	12:00 noon 29 <sup>th</sup> October 2019
Evaluation of Tenders (including clarification meetings)	30 October to 13 <sup>th</sup> November 2019
Notification of contract award decision	14 <sup>th</sup> November 2019
Voluntary waiting period	From 15 <sup>th</sup> November to midnight on 25 <sup>th</sup> November 2019
Contract award	26 <sup>th</sup> November 2019
Contract work starts	1 <sup>st</sup> April 2020
Contract end date	31 <sup>st</sup> March 2024
Contract Duration	4 years

- 2.3 Whilst the Authority does not intend to depart from the timetable, it reserves the right to do so at any stage.

### Deadline for receipt of Tenders

- 2.4 Bidders must submit their Tenders in the manner prescribed in section 3 below no later than the date and time specified on the front cover of this ITT.
- 2.5 Any Tender received after the deadline or by any method other than via the Tendering Portal may not be considered. The Authority may at its discretion extend the deadline and in such circumstances the Authority will notify all Bidders of any change.

### Clarification Meetings

- 2.6 Following the assessment of the Tender proposals, the Authority may invite Bidders to a clarification meeting. If required this will take place between receipt of Tenders and announcement of successful Tender.
- 2.7 Although not scored on a separate basis, the session will be used to confirm the technical/ quality score assessments of the Tender evaluation. As such, scores achieved during the written Tender evaluation may be adjusted (up or down) and the consolidated score of a Bidder amended.

## **Contract award**

- 2.8 Contract award is subject to the formal approval process of the Authority. Until all necessary approvals are obtained and the voluntary waiting period completed, no contract(s) will be entered into.
- 2.9 Once the Authority has reached a decision in respect of a contract award, it will notify all Bidders of that decision and may provide for a voluntary waiting period, in accordance with the Public Contracts Regulations 2015, before entering into any contract(s).

## **3 INSTRUCTIONS TO BIDDERS**

### **Formalities for submission of Tenders**

- 3.1 Bidders must submit their Tenders by completing the Annexes to Section B of the ITT. Completed Tenders must be submitted using the e-Tendering Portal. Bidders should ensure that they allow plenty of time to upload the Tender response, particularly where there are large documents. If Bidders have any problems with the e-Tendering Portal, they should contact the helpdesk on 0845 557 8079. The helpline is open **Monday to Friday between 10am and 4pm excluding public and bank holidays**. As noted above, any Tender received after the deadline may not be considered.
- 3.2 The maximum file size for uploading documents is 20 megabytes. You should split your Tender into small enough file sizes to upload. Note: the Authority does not guarantee that you will be able to upload files up to the maximum size, particularly at busy times. For this reason it is recommended that Bidders should ensure files are well below the maximum stated and allow plenty of time to upload, so they have enough time to resolve any technical difficulties before the deadline.
- 3.3 Bidders must adhere to the following standard requirements when submitting their Tenders:
- 3.3.1 Do not embed documents within other documents. Instead provide separate electronic copies of the documents, clearly labelled and referenced if necessary.
  - 3.3.2 The Tender must be in English and drafted in accordance with the drafting guidance set out in this ITT.
  - 3.3.3 The Tender must be fully cross-referenced and include a table of contents.
  - 3.3.4 The Tender must include a list of all supporting material.
  - 3.3.5 Electronic copies of the Tender shall be in PDF format only with the Commercial Schedule being sent as a separate Excel spreadsheet.
- 3.4 Where a word count limit is specified, Bidders should state how many words their response contains. The Authority reserves the right not to consider any part of a response exceeding the word limit. Words included within diagrams or other graphic representations will count towards the word limit.
- 3.5 The Tender must be clear, concise and complete. The Authority reserves the right to mark Bidders down or exclude them from the procurement if their Tenders are ambiguous or lack clarity. Bidders should submit only such information as is necessary to respond effectively to this ITT. Unless specifically requested, do not include extraneous presentation materials.
- 3.6 Tenders will be evaluated on the basis of information submitted by the deadline. Where information or documentation submitted appears to be incomplete or erroneous or specific documents are missing, the Authority reserves the right to request the Bidder to submit, supplement, clarify or complete the information or documentation.

- 3.7 The Tender must be signed by a duly authorised representative of the Bidder.

#### **Modification and withdrawal of Tenders**

- 3.8 Except as set out in paragraph 3.6, no Tender may be modified after the deadline for receipt of Tenders.
- 3.9 Tenders may be withdrawn at any time before the deadline for receipt of Tenders. Revised Tenders may be submitted up until the deadline for receipt of Tenders, provided such intention is notified to the Authority using the e-Tendering Portal.

#### **Terms and conditions**

- 3.10 The Terms and Conditions will be as per London Procurement Partnership framework for Audit and Consultancy Lot 2 Internal Audit (attached as separate document).

#### **Consortia and subcontractors**

- 3.11 If the Bidder is a consortium or will rely on sub-contractors to deliver the contract, it must explain in its Tender precisely which entities will be the supplier.
- 3.12 For the purposes of this ITT, the following terms apply:
- 3.12.1 **Consortium arrangement-** Groups of companies come together specifically for the purpose of bidding for appointment as the supplier and envisage that they will establish a special purpose vehicle as the prime contracting party with the Authority.
- 3.12.2 **Subcontracting arrangement** - Groups of companies come together specifically for the purpose of bidding for appointment as the supplier, but envisage that one of their number will be the supplier, the remaining members of that group will be subcontractors to the supplier.
- 3.13 If the Bidder intends to sub-contract any material parts of the contract, it must explain which parts will be sub-contracted, who the sub-contractor is, confirm the sub-contractor has agreed terms of supply and what contractual commitment it has from the sub-contractor to deliver.

#### **Apprenticeships**

- 3.14 Public procurement supports skills development and the commitment to apprenticeships. Bidders will compete on the basis of their contribution to apprenticeships and skills. This is applicable to all procurements advertised from September 2015, this action note builds on and replaces 'supporting sustainable skills development through major construction and infrastructure projects'

#### **Warnings and disclaimers**

- 3.15 While the information contained in this ITT is believed to be correct at the time of issue, neither the Authority, its advisors, nor any other awarding authorities will accept any liability for its accuracy, adequacy or completeness, nor will any express or implied warranty be given. This exclusion extends to liability in relation to any statement, opinion or conclusion contained in or any omission from, this ITT (including its annexes) and in respect of any other written or oral communication transmitted (or otherwise made available) to any Bidder. This exclusion does not extend to any fraudulent misrepresentation made by or on behalf of the Authority.
- 3.16 If a Bidder proposes to enter into a contract with the Authority, it must rely on its own enquiries and on the terms and conditions set out in the contract(s) (as and when finally executed), subject to the limitations and restrictions specified in it.

- 3.17 Neither the issue of this ITT, nor any of the information presented in it, should be regarded as a commitment or representation on the part of the Authority (or any other person) to enter into a contractual arrangement.

#### **Freedom of Information Act 2000 and Environmental Information Regulations 2004**

- 3.18 As a public body, the Authority is subject to, and must comply with, the Freedom of Information Act 2000 ("**FOIA**") and the Environmental Information Regulations 2004 ("**EIR**"). The Authority may therefore be required to disclose information submitted by the Bidder.
- 3.19 If a Bidder considers any part of its Tender to be confidential or commercially sensitive, it must complete Annex B5 to Section B of this ITT, with a statement of which exemptions are relevant under FOIA and/or the EIR.
- 3.20 In respect of any information submitted by a Bidder that it considers to be confidential or commercially sensitive the Bidder should:
- 3.20.1 clearly identify such information as confidential or commercially sensitive;
  - 3.20.2 explain its reasons why disclosure of such information would be likely to prejudice or would cause actual prejudice to its commercial interests; and
  - 3.20.3 provide a reasoned estimate of the period of time during which the Bidder believes that such information will remain commercially sensitive.
- 3.21 Where a Bidder identifies information as commercially sensitive, the Authority will take those views into account. Bidders should note, however, that, even where information is identified as commercially sensitive, the Authority may be required to disclose such information in accordance with FOIA or the EIR. Accordingly, the Authority cannot guarantee that it will withhold information marked 'confidential', 'commercially sensitive' or otherwise exempt.

#### **Publicity**

- 3.22 No publicity regarding the procurement or the award of any contract will be permitted unless and until the Authority has given express written consent to the relevant communication. For example, no statements may be made to the media regarding the nature of any Tender, its contents or any proposals relating to it without the prior written consent of the Authority.

#### **Bidder conduct and conflicts of interest**

- 3.23 Any attempt by Bidders or their advisors to influence the contract award process in any way may result in the Bidder being disqualified. Specifically, Bidders shall not directly or indirectly at any time:
- 3.23.1 devise or amend the content of their Tender in accordance with any agreement or arrangement with any other person, other than in good faith with a person who is a proposed partner, supplier, consortium member or provider of finance;
  - 3.23.2 enter into any agreement or arrangement with any other person as to the form or content of any other Tender, or offer to pay any sum of money or valuable consideration to any person to effect changes to the form or content of any other Tender;
  - 3.23.3 enter into any agreement or arrangement with any other person that has the effect of prohibiting or excluding that person from submitting a Tender;
  - 3.23.4 canvass the Authority or any employees or agents of the Authority in relation to this procurement; and/or



- 3.23.5 attempt to obtain information from any of the employees or agents of the Authority or their advisors concerning another bidder or Tender (except for debrief information requests made through the Tendering Portal).
- 3.24 Bidders are responsible for ensuring that no conflicts of interest exist between the Bidder and its advisers, and the Authority and its advisors. Bidders should notify the Authority promptly of any possible conflict and the proposed steps that the Bidder believes can be taken to avoid the conflict. Any Bidder who fails to comply with these requirements may be excluded from the procurement at the discretion of the Authority.

#### **Authority's rights**

- 3.25 Subject to its obligations to act in a transparent, proportionate and non-discriminatory manner, the Authority reserves the right to:
- 3.25.1 waive or change the requirements of this ITT from time to time;
  - 3.25.2 seek clarification or documents in respect of a Bidder's submission;
  - 3.25.3 disqualify any Bidder that does not submit a compliant Tender in accordance with the instructions in this ITT;
  - 3.25.4 disqualify any Bidder that is guilty of serious misrepresentation in relation to its Tender or the Tender process;
  - 3.25.5 withdraw this ITT at any time, or re-invite Tenders on the same or any alternative basis;
  - 3.25.6 choose not to award any contract as a result of the current procurement process; and
  - 3.25.7 make whatever changes it sees fit to the timetable, structure or content of the procurement process.

#### **Bid costs**

- 3.26 The Authority will not be liable for any bid costs, expenditure, work or effort incurred by a Bidder in proceeding with or participating in this procurement, including if the procurement process is terminated or amended by the Authority.

#### **Language**

- 3.27 Tenders, all documents and all correspondence relating to the Tender must be written in English.

#### **Transparency**

- 3.28 In accordance with the Public Contracts Regulations 2015 and the Government's policy on transparency, Bidders should be aware that the Authority intends to make the ITT and details of any subsequent contract publicly available, by publication on the Government's Contracts Finder portal.

#### **Governing Law and Jurisdiction**

- 3.29 This ITT and any dispute concerning it (including non-contractual disputes or claims) shall be governed by English law and subject to the jurisdiction of the English Courts.

#### **GDPR**

- 3.30 Information regarding the above can be requested via the In-tend portal.

## 4 TENDER EVALUATION METHODOLOGY AND CRITERIA

### Overview

- 4.1 This section of the ITT sets out the criteria that the Authority will use to evaluate Tenders.
- 4.2 Bidders are required to submit a Tender strictly in accordance with the requirements set out in this ITT, to ensure the Authority has the correct information to make the evaluation. If a Tender is equivocal or unclear, the Authority may deduct marks when scoring it, or it may treat the Tender as non-compliant and reject it.
- 4.3 The Authority will award the contract to the Tender that scores the highest marks, applying the methodology below. Scoring will be carried out as follows:
- 4.3.1 The Authority will mark Annex B3 of Section B (Tender Response Document) ("**Scored Questions**") for all Bidders.

### Criteria - Scored Questions

- 4.4 The tender will be evaluated on the following criteria:

Criteria	Weighting
Price	50%
Quality	50%
Quality will be assessed as follows:	
Understanding the Requirement	20%
Approach to Design and Delivery	10%
Quality Assurance and Measuring Outcomes	20%
"	
<b>Total</b>	<b>100%</b>

### Criteria - Scored Questions: Pricing Evaluation

- 4.5 Tender prices will be scored on a comparative basis, with the lowest compliant Tender (excluding any Tenders that the Authority rejects as being abnormally low or non-compliant) receiving 100% of the available marks. All other Tenders will be compared against that lowest Tender using the formula:

$$(A / B) \times 100$$

A = price of lowest compliant Tender

B = price of the Tender being scored

- 4.6 If it appears to the Authority that any Tender may be abnormally low then the Authority may ask the Bidder to explain its price or costs. If, following the Bidder's explanations, the Authority is not satisfied with the Bidder's account for the low level of price or cost in the Tender; the Authority may treat the Tender as non-compliant and reject it.

**Criteria - Scored Questions: Technical and Quality Evaluation**

- 4.7 The technical evaluation will be scored in accordance with the table below:

<b>Assessment</b>	<b>Scorli.</b>	<b>Interpretation</b>
Excellent	5	Exceeds the requirement. Exceptional demonstration by the Bidder of the relevant ability, understanding, skills, resource & quality measures required to provide the supplies / services. Response identifies factors that will offer potential added value, with evidence to support the response.
Good	4	Satisfies the requirement with minor additional benefits. Above average demonstration by the Bidder of the relevant ability, understanding, skills, resource & quality measures required to provide the supplies / services. Response identifies factors that will offer potential added value, with evidence to support the response.
Acceptable	3	Satisfies the requirement. Demonstration by the Bidder of the relevant ability, understanding, skills, resource & quality measures required to provide the supplies/ services, with evidence to support the response.
Minor Reservations	2	Satisfies the requirement with minor reservations. Some minor reservations of the Bidder's relevant ability, understanding, skills, resource & quality measures required to provide the supplies / services, with little or no evidence to support the response.
Serious Reservations	1	Satisfies the requirement with major reservations. Considerable reservations of the Bidder's relevant ability, understanding, skills, resource & quality measures required to provide the supplies / services, with little or no evidence to support the response.
Unacceptable	0	Does not meet the requirement. Does not comply and/or insufficient information provided to demonstrate that the Bidder has the ability, understanding, skills, resource & quality measures required to provide the supplies/ services, with little or no evidence to support the response.







**Rushcliffe**  
Borough Council

Invitation to Tender for Provision of Internal Audit Services

Authority's reference number:

Deadline for Tenders to be received: 12:00 noon on 29<sup>th</sup> October 2019

Company Name	BDO LLP
Main Contact	██████████
Company Registration Number	0(305127

SECTION B: TENDER SCHEDULES

TO BE COMPLETED AND RETURNED BY BIDDERS

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## ANNEX B1

### ELIGIBILITY QUESTIONS AND RESPONSES

#### Notes for completion

1. "Authority" means the public sector contracting authority, or anyone acting on behalf of the contracting authority, that is seeking to invite suitable suppliers to participate in this procurement process.
2. "You"/ "Your" or "Supplier" means the body completing these questions **i.e. the legal entity seeking to be invited to the next stage of the procurement process and responsible for the information provided**. The 'Supplier' is intended to cover any economic operator as defined by the Public Contract Regulations 2015 and could be a registered company; charitable organisation; Voluntary Community and Social Enterprise (VCSE); Special Purpose Vehicle; or other form of entity.
3. Please ensure that all questions are completed in full, and in the format requested. Failure to do so may result in your submission being disqualified. If the question does not apply to you, please state clearly 'N/A'.
4. Should you need to provide additional Appendices in response to the questions, these should be numbered clearly and listed as part of your declaration. A template for providing additional information is provided at Annex B1- Template for Appendices.
5. Please return a completed version of this document to the Authority in accordance with the Instructions to Bidders in Section A of this ITT.

#### Verification of Information Provided

6. Whilst reserving the right to request information at any time throughout the procurement process, the Authority may enable the Supplier to self-certify that there are no mandatory/ discretionary grounds for excluding their organisation. When requesting evidence that the Supplier can meet the specified requirements, the Authority may only obtain such evidence after the final tender evaluation decision i.e. from the winning Supplier only.

#### Sub-contracting arrangements

7. Where the Supplier proposes to use one or more sub-contractors to deliver some or all of the contract requirements, a separate Appendix should be used to provide details of the proposed bidding model that includes members of the supply chain, the percentage of work being delivered by each sub-contractor and the key contract deliverables each sub-contractor will be responsible for.
8. The Authority recognises that arrangements in relation to sub-contracting may be subject to future change, and may not be finalised until a later date. However, Suppliers should be aware that where information provided to the Authority indicates that sub-contractors are to play a significant role in delivering key contract requirements, any changes to those sub-contracting arrangements may affect the ability of the Supplier to proceed with the procurement process or to provide the supplies and/or services required. Suppliers should therefore notify the Authority immediately of any change in the proposed sub-contractor arrangements. The Authority reserves the right to deselect the Supplier prior to any award of contract, based on an assessment of the updated information.

#### Consortia arrangements:

9. If the Supplier completing this Annex B1 is doing so as part of a proposed consortium, the following information must be provided;



- names of all consortium members;
  - the lead member of the consortium who will be contractually responsible for delivery of the contract (if a separate legal entity is not being created); and
  - if the consortium is not proposing to form a legal entity, full details of proposed arrangements within a separate Appendix.
10. Please note that the Authority may require the consortium to assume a specific legal form if awarded the contract, to the extent that a specific legal form is deemed by the Authority as being necessary for the satisfactory performance of the contract.
  11. All members of the consortium will be required to provide the information required in all sections of this Annex B1 as part of a single composite response to the Authority i.e. each member of the consortium is required to complete the form.
  12. Where you are proposing to create a separate legal entity, such as a Special Purpose Vehicle (SPV), you should provide details of the actual or proposed percentage shareholding of the constituent members within the new legal entity in a separate Appendix.
  13. The Authority recognises that arrangements in relation to a consortium bid may be subject to future change. Suppliers should therefore respond on the basis of the arrangements as currently envisaged. Suppliers are reminded that the Authority must be immediately notified of any changes, or proposed changes, in relation to the bidding model so that a further assessment can be carried out by applying the selection criteria to the new information provided. The Authority reserves the right to deselect the Supplier prior to any award of contract, based on an assessment of the updated information.

## 1 - Supplier information

1.1 Supplier details	Answer	
Full name of the Supplier completing this Annex B1	BDO LLP	
Registered company address	██	
Registered company number	0(305127	
Registered charity number	N/A	
Registered VAT number	██████████	
Name of immediate parent company	N/A	
Name of ultimate parent company	N/A	
Please mark 'X' in the relevant box to indicate your trading status	i) a public limited company	<input type="checkbox"/> Yes
	ii) a limited company	<input type="checkbox"/> Yes
	iii) a limited liability partnership	<input checked="" type="checkbox"/> Yes
	iv) other partnership	<input type="checkbox"/> Yes
	v) sole trader	<input type="checkbox"/> Yes
	vi) other (please specify)	<input checked="" type="checkbox"/> Yes
Please mark 'X' in the relevant boxes to indicate whether any of the following classifications apply to you	i) Voluntary, Community and Social Enterprise (VCSE)	<input type="checkbox"/> Yes
	ii) Small or Medium Enterprise (SME) <sup>1</sup>	<input type="checkbox"/> Yes
	iii) Sheltered workshop	<input type="checkbox"/> Yes
	iv) Public service mutual	<input type="checkbox"/> Yes

<sup>1</sup> See EU definition of SME: <http://ec.europa.eu/enterprise/policies/sme/facts-figures-analysis/sme-definition/>

<b>1.2 Bidding model</b>	
<b>Please mark 'X' in the relevant box to indicate whether you are;</b>	
a) Bidding as a Prime Contractor and will deliver 100% of the key contract deliverables yourself	<input checked="" type="checkbox"/> IBI Yes
b) Bidding as a Prime Contractor and will use third parties to deliver <u>some</u> of the services  If yes, please provide details of your proposed bidding model that includes members of the supply chain, the percentage of work being delivered by each sub-contractor and the key contract deliverables each sub-contractor will be responsible for.	<input checked="" type="checkbox"/> D Yes
c) Bidding as Prime Contractor but will operate as a Managing Agent and will use third parties to deliver <u>all</u> of the services  If yes, please provide details of your proposed bidding model that includes members of the supply chain, the percentage of work being delivered by each sub-contractor and the key contract deliverables each sub-contractor will be responsible for.	<input type="checkbox"/> Yes
d) Bidding as a consortium but not proposing to create a new legal entity.  If yes, please include details of your consortium in the next column and use a separate Appendix to explain the alternative arrangements i.e. why a new legal entity is not being created.  Please note that the Authority may require the consortium to assume a specific legal form if awarded the contract, to the extent that it is necessary for the satisfactory performance of the contract.	<input type="checkbox"/> Yes  <u>Consortium members</u> <u>Lead member</u>
e) Bidding as a consortium and intend to create a Special Purpose Vehicle (SPV).  If yes, please include details of your consortium, current lead member and intended SPV in the next column and provide full details of the bidding model using a separate Appendix.	<input type="checkbox"/> Yes  <u>Consortium members</u> <u>Current lead member</u> <u>Name of Special Purpose Vehicle</u>

1.3 Contact details	
Supplier contact details for enquiries about this Annex B1	
Name	██████████
Postal address	████████████████████
Country	United Kingdom
Phone	██████████
Mobile	██████████
E-mail	██████████████████

1.4 Licensing and registration (please mark 'X' in the relevant box)		
1.4.1	<p>Registration with a professional body</p> <p>If applicable, is your business registered with the appropriate trade or professional register(s) in the EU member state where it is established (as set out in Annex XI of directive 2014/24/EU) under the conditions laid down by that member state).</p>	<p><input checked="" type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p> <p>If Yes, please provide the registration number in this box.</p> <ul style="list-style-type: none"> <li>The Institute of Chartered Accountants in England and Wales (ICAEW) (Registration no: 1055835)</li> <li>FCA - Financial Conduct Authority (Registration no: 229378)</li> </ul>
1.4.2	<p>Is it a legal requirement in the state where you are established for you to be licensed or a member of a relevant organisation in order to provide the requirement in this procurement?</p>	<p><input checked="" type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p> <p>If Yes, please provide additional details within this box of what is required and confirmation that you have complied with this.</p> <p>We are registered with ICAEW to provide audit and accountancy services.</p>

**Annex B1 - Template for Appendix**

**Appendix Number - see below**

**Annex B1 section - see below**

**Question number - see below**

Please note we have supplied numerous appendices to support our submission. These are referenced to numerous questions. These documents are as follows:

- Appendix 1 – Rushcliffe Borough Council 3 year Plan
- Appendix 2 - CVs
- Appendix 3 - Exit Plan
- Appendix 4 - Template Report
- Appendix 5 - Template Terms of Reference
- Appendix 6 - Certificate of Incorporation of an LLP
- Appendix 7 - Employers' Liability Certificate
- Appendix 8 - Environmental policy
- Appendix 9 - Health And Safety Certificate
- Appendix 10 - ISO14001 2015 Cert Jun 19
- Appendix 11 - List of members BOO LLP - 21 October 2019
- Appendix 12 - Public and Products and Employers Liability Insurance
- Appendix B1 - References
- BOO Submission Contractor Questionnaire

**ANNEX B2**  
**SPECIFICATION**

This Specification forms part of the Specification and Tender Response Document. It will form part of the Contract between the Authority and the Supplier.

Specification	Bidder's response
<b>1 General</b> 1.1 The Provision of Audit Services	See submission answers.
<b>2</b> Commencement Date: [01 April 2020]	1 April 2020
<b>3</b> Term: [4 Years]	4 Years
<b>4</b> Contract Manager for the Authority:	[authority to complete]
<b>5</b> Contract Manager for the Bidder:	[REDACTED] [REDACTED]
<b>6</b> Notices shall be served in writing on the Bidder by delivering them to the following person:	[REDACTED] [REDACTED] [REDACTED] Role: BDO Partner
<b>7</b> Notices shall be served in writing on the Authority by delivering them to the following person:	Name: [authority to complete] Address: [authority to complete] Role: [authority to complete]

**SPECIFICATION**

**Background**

Rushcliffe Borough Council and Gedling Borough Council are seeking bids for the Provision of Internal Audit Services.

Rushcliffe is a small borough, covering 157 square miles and lying immediately to the south of the City of Nottingham and the River Trent; it extends across towards Newark in the north east and Loughborough in the south west. Although parts of the Borough lie close to Nottingham City, Rushcliffe has a strong identity of its own. The main centre of population is West Bridgford, where around 41,000 of the Borough's 111,129 population live. The remainder of the district is largely

rural, with the centres of population split between small towns and villages. Rushcliffe's Corporate Strategy and audited Financial Statements for 2018/19 can be found at <https://www.rushcliffe.gov.uk/>

The Borough of Gedling is home to around 117,000 people living in just over 53,000 households. It covers 120 square kilometres on the outskirts of Nottingham and is a Borough of contrasts, with an urban commuter base centred on the towns of Carlton and Arnold, extending out to rural farmland and villages. The Gedling Plan which sets out our current priorities, services and financial position can be found on the Council's website along with the latest audited set of Financial Statements 2018/19 at: <https://www.gedling.gov.uk/>

Rushcliffe Borough Council and Gedling Borough Council require a managed comprehensive and efficient Internal Audit Service, which will assist the Authority in meeting its requirements, whilst maintaining the necessary level of professional independence.

Internal audit is an assurance function providing an independent and objective opinion to the Authority on the degree to which the internal control environment supports and promotes the achievement of its objectives through the effective management and mitigation of its key business risk exposures.

The role of the internal audit service is to assist management throughout the Council in the effective discharge of its responsibilities for:

- Achieving the Council's objectives across the whole range of its activities;
- Ensuring the proper administration of the financial affairs of the Council;
- Working with the external auditors to enable them to place reliance on internal audit work undertaken.

Auditing/accounting firms listed on the Framework that have or are currently providing internal audit services for similar organisations are encouraged to submit bids.

The successful service provider will use an established methodology in the planning, conduct and reporting of internal audit work, and will be required to operate in full compliance with the standards laid down by professional bodies and in particular the UK Public Sector Internal Audit Standards and CIPFA application note applicable to these standards as a minimum requirement.

The Lead Consultant responsible for the Internal Audit Services must be suitably qualified, in both areas to lead and direct the Services for the Contracting Authority.

### Contract

#### **Term:**

The contract will commence on 1<sup>st</sup> April 2020 and will expire on 31<sup>st</sup> March 2024.

#### **Areas of Service Delivery:**

All internal work will be carried out within each Council's offices. The provider will be required to provide a risk-based internal audit service delivery including:

- Financial audits;
- System and compliance audits;
- ICT infrastructure and application audits;

- Taxation audits;
- Investigative audits as and when required;
- Ad hoc projects;
- Risk based audits.



The Supplier should obtain sufficient, relevant, and reliable evidence on which to base conclusions and recommendations in line with International Auditing Standards.

**Service delivery outcomes:**

1. Providing independent, objective assurance and consulting services designed to add value and improve an organisation's operations; and
2. The internal audit activity will help the Authority as an organisation accomplish its objectives by bringing a systematic, disciplined approach to evaluate and improve the effectiveness of governance, risk management and control processes.

**Managing Audit Assignments:**

The Supplier should ensure that findings, conclusions, and recommendations arising from each audit are communicated promptly to the appropriate level of management and actively seek a response. They should ensure that arrangements are made to follow up audit recommendations and to monitor the effectiveness of action taken.

**Key Performance Indicators:**

The Supplier will be expected to be a self-monitoring function using a portfolio of key performance indicators. As part of the proposal process, we are seeking clarification from the Providers of their proposed KPIs.

**Training:**

The Supplier will be required to offer access to briefings, professional updates and where appropriate training sessions for Authority staff and Audit Committee Members. Details of what training will be provided and how this will be undertaken is to be provided as part of the ITQ submission.

**Authority Specific Requirements:**

- **Rushcliffe Borough Council**

The provider will be required to liaise with Rushcliffe Borough Council's external auditors, currently Mazars, and prepare and present progress and other reports to the Council's Audit Committee (at least quarterly).

The provider will be required to provide an annual opinion to the Client's Senior Leadership team and Audit Committee on the effectiveness of the Client's governance, risk and control framework.

The Council requires between 140 to 170 standard audit days per annum to include audit management days the number of which to be agreed annually in advance

There is no guarantee that the maximum level of activity will be required in future years, and the service levels *above* are indicative. Days will be agreed by the Council's Deputy Chief Executive and Director of Finance and the providers Audit Manager based upon the annual audit plan.

- **Rushcliffe Borough Council**

The provider will be required to liaise with Rushcliffe Borough Council's external auditors, currently Mazars, and prepare and present progress and other reports to the Council's Governance Scrutiny Group (at least quarterly).

The Council requires 150 standard audit days per annum to include audit management days the number of which to be agreed annually in advance

There is no guarantee that the maximum level of activity will be required, and the service levels above are indicative. Days will be agreed by the Councils Executive Manager - Finance and Commercial and the providers Audit Manager based upon the annual audit plan.



**ANNEX 84**

**COMMERCIAL SCHEDULE**

**1 GENERAL INSTRUCTIONS**

- 1.1 All pricing should be in pound sterling (£GBP). If applicable please convert your currency into UK sterling using the rate published by the European Central Bank on the date you submit your Tender.
- 1.2 Costs should be quoted exclusive of VAT. Please confirm this in your Commercial Schedule, and indicate if the project will attract VAT and at what rate.
- 1.3 If your proposal includes costs for sub-contractors these costs must be identified and shown inclusive of any VAT they will charge you.

**2 PRICING MODEL AND CONNECTED QUESTIONS**


[REDACTED]

[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

[REDACTED]

3. **ACHIEVING SAVINGS**

3.1

<b>Respos</b>


**ANNEXB5**

**CONFIDENTIAL AND COMMERCIAL SENSITIVE INFORMATION**

**1 INFORMATION SUPPLIED BY THE AUTHORITY**

1.1 All the information that the Authority supplies as part of this contract may be regarded as Confidential Information.

**2 INFORMATION THAT THE BIDDER CONSIDERS TO BE EXEMPT FROM DISCLOSURE**

2.1 The Bidder considers that the type of information listed below is exempt from disclosure under the Freedom of Information Act 2000 ("**FOIA**") and/or the Environmental Information Regulations 2004 ("**EIR**") for the reasons given below.

<b>Information considered exempt from disclosure (include page/paragraph reference)</b>	<b>Reason for FOIA/EIR exemption</b>	<b>Period exemption is sought</b>
Annex B4 – Commercial Schedule – Section 2	This information includes our daily rates and we consider this commercially sensitive	Indefinite

**ANNEX B6**

**ADMINISTRATIVE INSTRUCTIONS**

**1 CONTRACT MANAGERS**

1.1 For the Supplier, the Contract Manager at the commencement of the contract will be as follows:

<b>Nit@"</b>	[REDACTED]
<b>Contact details</b>	[REDACTED]
<b>Role</b>	Senior Manager, BDO

**2 NOTICES**

2.1 Any notices served on the Supplier under the contract are to be delivered to:

<b>Name</b>	[REDACTED]
<b>Address</b>	[REDACTED]
<b>Role</b>	Partner and National Head of Public Sector, BDO

**3 MANAGEMENT LEVELS FOR DISPUTE RESOLUTION**

3.1 The management levels at which a dispute will be dealt with are as follows:

<b>Level</b>	<b>Supplier representative</b>
■	[REDACTED]
■	[REDACTED]
■	[REDACTED]

## **ANNEX B7**

### **FORM OF TENDER**

#### **DECLARATIONS BY THE BIDDER (TO BE SIGNED AND RETURNED BY THE BIDDER) FORM OF TENDER, NON-COLLUSION, CONFLICTS OF INTEREST AND ANTI-CANVASSING**

##### **DECLARATIONS**

**TO: RUSHCLIFFE BOROUGH COUNCIL**

**PROPOSAL TO PROVIDE: Provision of Internal Audit Service**

**Authority's reference number: GBC/000043/2019**

##### **Form of Tender**

We have examined the invitation to tender ("**ITT**") dated [*insert date of ITT*] and all accompanying annexes and schedules. This Tender is made subject to the terms of the ITT, including but not limited to the instructions to Bidders.

We tender against the requirements, and offer to enter into a contract with the Authority comprising the following:

- the Terms and Conditions will be as per the London Procurement Partnership, Estates, Facilities, & Professional Services, Audit and Consultancy Audit framework
- the Specification (Annex B2 of the ITT); (including our response to the specification)
- our responses to the Tender Response Document (Annex B3 of the ITT); and
- our response to the Commercial Schedule (Annex B4 of the ITT).

Accordingly, this Tender is a contractual offer capable of acceptance by the Authority. If the Authority accepts this Tender, we will execute any agreement that the Authority produces to record in one place the offer and acceptance.

We undertake to keep the Tender open for acceptance by the Authority for a period of ninety days (90) days from the deadline for receipt of Tenders.

We understand that you are not bound to accept the lowest priced, or any, Tender.

##### **Non-collusive tendering**

In recognition of the principle that the essence of tendering is that the Authority shall receive bona fide competitive Tenders from all those tendering, we certify that this Tender is a bona fide Tender that is intended to be competitive.

We have not fixed or adjusted the amount of this Tender under, or in accordance with, any agreement or arrangement with any other person.

We have not done, and we undertake that, we will not do at any time before the hour specified for the return of the Tender any of the following acts:

- communicate to a person other than the Authority the amount or approximate amount of the proposed Tender (except where the disclosure, in confidence, of the approximate amount of the Tender was essential to obtain insurance premium quotations required for the preparation of the Tender);
- agree with any person that they shall refrain from tendering or as to the amount of any Tender to be submitted; and
- offer to pay or give any sum of money or valuable consideration directly or indirectly to any person for doing or having done or causing or having caused to be done in relation to any other Tender any act or thing of the sort described above.

##### **Conflicts of interest**

We acknowledge that we are responsible for ensuring that no conflicts of interest exist between us (and our advisers) and the Authority.

So far as any possible conflict of interest has arisen, we have notified the Authority promptly in writing of that potential conflict of interest and have taken any steps agreed with the Authority to avoid the conflict.

We acknowledge that if we fail to comply with this requirement, we may be disqualified from the procurement at the discretion of the Authority.



**Anti-canvassing confirmation**

We have not canvassed or solicited any member, officer or employee of the Authority, in connection with the proposed contract award and to the best of our knowledge and belief nor has any person employed by us or acting on our behalf done any such act.

We further undertake that we will not in the future canvass or solicit any member, officer or employee of the Authority, in connection with the proposed contract and that no person employed by us or acting on our behalf will do any such act.

Name of person duly authorised to sign tenders:

Date: 28 October 2019

Name: XXXXXXXXXX

in the capacity of: Partner

duly authorised to sign tenders for and on behalf of:

BOO LLP

**By completing this Form of Tender and submitting your Tender you have agreed that the statements in this Form of Tender are correct and that you have complied, and will continue to comply, with the Authority's policies on non-collusion, conflicts of interest and anti-canvassing.**