

London Borough of Southwark
Employer Support for Construction
Apprenticeship Creation and Improvement
Project

TENDER DOCUMENTS – INDEX OF CONTENTS

Guidance on the tendering process

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Section 1: Tender Information

1. Service Being Tendered

The London Borough of Southwark (“the Council”) requires the following service (“the Service”) to be carried out:

to support developers and contractors across all tiers of the construction sector to create and improve apprenticeship opportunities within Southwark, in line with the Southwark Apprenticeship Standard.

2. Contract Period

The term of the new contract will be 24 months, until August 2017 with provision to review at 12 months and continuation subject to review.

3. Background Information

Southwark Council invites your organisation to put forward a proposal, to deliver Apprenticeship Delivery and Support to contractors and sub-contractors within the construction sector within the budget envelope of £120,000 over a period of two years.

The Council is seeking provision that will build the capacity of employers within the construction industry to employ apprentices. The provider will work with contractors across all tiers of construction, training providers and delivery networks for industry or central government apprenticeship schemes such as the CITB and National Apprenticeship Service. Prospective bidders must have an excellent track record in delivering high quality support to apprenticeship employers within the construction industry and preferably have considerable experience of delivering these services in London.

This support service is to be an integral part of the Council’s work within the construction sector including the s.106 programme and a Construction Skills Centre at the Elephant & Castle which will open in late 2015.

4. The Aim of the Service

The aim of the service is to support employers across all tiers of the construction industry, and especially small and medium sized contractors, in creating and improving apprenticeships in their organisation.

5. Council’s Requirements

- 5.1. The Conditions of Contract (Section 3) apply to the appointment of the successful tenderer.
- 5.2. The successful tenderer will liaise and co-operate with the Council and any existing providers to ensure a smooth and continuous transition of the Service, where appropriate.

6. Tender Timetable

- 6.1. The indicative tender timetable is set out below. Tenderers should note the presentation dates. Individual presentation slots will be identified later in the process. Please note that the Council reserves the right to review and revise this timetable.

| Tender timetable | |
|------------------|-------------|
| Tenders out | 2 June 2015 |
| Tender return | 3 July 2015 |

| | |
|------------------------|-----------------|
| Clarification meetings | 23/24 July 2015 |
| Contract award | 5 August 2015 |
| Contract start date | 7 August 2015 |

- 6.2. The Service shall commence on the Contract start date or such other date as may be agreed.

7. Tender Documents

- 7.1. The Tender documents are listed in the Index of contents.
- 7.2. Enclosed with the Tender documents is a Tender return address label to be attached to the envelope containing the hard copy of the Tenderer's Tender submission.

8. Suitability Assessment Questions

- 8.1. Tenderers should include a statement of accounts and last year's audited accounts showing an auditor's opinion provided on a going concern basis.
- 8.2. If the organisation has been established for less than two years, please provide a business plan for the whole organisation, including audited/draft interim management accounts, cash flow forecast and projected balance sheets covering at least the period of the contract.
- 8.3. Tenderer organisations are required to provide details of any of the following that have occurred to your organisation in the last 3 years:
- Prosecutions or enforcement notices served by the HSE or local authority regarding health and safety legislation
 - Any finding of unlawful discrimination by any court or employment tribunal regarding equalities legislation
 - Prosecutions or improvement notice, enforcement notice or order by the Environment Agency or any other enforcement body responsible for protecting the environment regarding environmental legislation

9. TUPE

Tenderers should also note that the successful Tenderer will, at the end of the contract with the Council, be contractually required to supply details of its workforce engaged in the Construction Employer Support for Apprenticeship Creation and Improvement Project contract (and that of any relevant sub-contractors and any such information as the Council reasonably requires) so that this information can be passed to Tenderers bidding for any subsequent re-Tendering of the contracts.

10. Contract Award

Contracts will be awarded to the most economically advantageous Tenders, applying the criteria set out in Evaluation Methodology. A Price to Quality weighting Ratio of 10:90 will be used to assess Tenders. A further breakdown of the weighting process is available in Evaluation Methodology.

Section 2: Conditions of Tendering

1. Invitation to Tender

The council invites tenders for the provision of construction apprenticeship creation and improvement project. The project will support developers and contractors working across all tiers of the construction sector to create new apprenticeship opportunities within their businesses and to improve their current apprenticeship offer. The main service objective of this agreement is to increase the volume and quality of apprenticeship creation in Southwark.

2. Basis of Tenders

- 2.1. Tenders must be submitted for the whole of the Service. Tenders for part only of the Service will be rejected.
- 2.2. The Council considers that the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) will not apply on the commencement date of this Contract.

3. Award criteria

- 3.1. A contract will be awarded to the most economically advantageous tender, applying criteria set out in the Evaluation Information (Section 4).

4. Information, Costs and Expenses

- 4.1. Tenderers are responsible for obtaining all information necessary for preparing their Tender and shall bear all costs, expenses and liabilities incurred in connection with its preparation and delivery.
- 4.2. Tenderers shall ensure that they are fully familiar with the nature and extent of the obligations to be performed by them if their tender is accepted including, where relevant, the Council's Constitution (which may be inspected on the Council's website at www.southwark.gov.uk/YourCouncil/HowTheCouncilWorks/councilconstitution.html and the Council's Policies (which may be inspected on the Council's website or requested from the Council).
- 4.3. Tenderers may be required (at their own cost) to:
 - 4.3.1. Attend meetings with the Council to present, explain or amplify details of their Tender
 - 4.3.2. Provide any other information reasonably required by the Council to enable a detailed evaluation of their Tender.
- 4.4. Tenderers should where possible include whatever additional information they consider would help the Council evaluate its proposals

5. Research and Investigation

- 5.1. Tenderers are deemed for all purposes relating to their Tender to have read and understood the Tender documents, to have carried out all necessary researches, investigations and enquiries at their own expense and to have satisfied themselves as to the nature, extent and character of the Service, access to and use of any Location(s) (if applicable), the extent of the premises, employees, materials, equipment and machinery which may be required, and any other matter which may affect their Tender.
- 5.2. Tenderers shall have no claim against the Council in respect of the matters mentioned in **paragraph 5.1 (Research and Investigation)**. In particular (but without limitation) the Council shall make no payments to any Tenderer except as expressly provided for in the Contract, and no compensation or remuneration shall be payable by the Council because

the nature, extent or character of the Service is different from that envisaged by the Tenderer.

- 5.3. There will be no guarantee or assurance given as to the total volume or value of the Service to be awarded under the Contract.

6. Further Information and Queries

- 6.1. Prior to submission of a Tender, a Tenderer may submit clarification questions on the requirements of this invitation to tender if they so wish. Clarification questions should be sent by email to cara.pottinger@southwark.gov.uk.
- 6.2. All enquires must be in writing and sent to the email address specified above.
TELEPHONE ENQUIRIES WILL NOT BE ACCEPTED.
- 6.3. Clarification questions should be submitted to the Council as soon as practicable following receipt of the invitation to tender in order to ensure sufficient time during the tender process to take account of the Council's response.
- 6.4. In submitting a clarification question, Tenderers should take note of the following:
- The title of the tender should be entered in the subject box of the email
 - One of the following headings should be added to the subject box
 - Technical
 - Legal
 - Financial
 - Commercial
 - Other (which includes clarifications covering more than one subject)
- 6.5. The Council shall endeavour to reply to all reasonable requests and queries provided that they are received no later than 6 days before the date for the return of Tenders.
- 6.6. Generally the Council will make its responses to clarification questions available to all Tenderers on an anonymised basis, save where a question is commercially sensitive to a particular Tenderer. Tenderers must clearly identify any questions which they believe to be commercially sensitive at the point of submission of the question. If the Council does not agree that the question is of a commercially sensitive nature, it will offer the Tenderer the opportunity to withdraw the question, and if the question is not withdrawn within 2 working days provide the response to all Tenderers.
- 6.7. Except as set out above, no employee of the Council shall have the authority to make any representations, or give explanations to any matters or documents relating to this Tender.
- 6.8. If a Tenderer has difficulty in complying with any specific provision of the Conditions of Contract or the Specification or wishes to propose any amendment to them, they should provide all information and evidence concerning the same as the Council may require prior to the submission of the Tender. The Council may, at its discretion, consider the matter and may waive or amend the relevant provision without prejudice to all or any other provisions of the Conditions of Contract or Specification or any rights or powers of the Council. No such waiver or amendment shall bind the Council unless it is in writing and signed by a Strategic Director of the Council, or their nominee. Every Tender received by the Council shall be deemed to have been made subject to the terms of the Conditions of Contract. Any alternative terms or conditions offered on behalf of a Tenderer shall be deemed to have been rejected by the Council unless expressly accepted by it in writing in accordance with this condition.

7. Tenders

- 7.1. All entries in the tender submission must be in ink or type written and in English.

- 7.2. All sums in the Pricing Schedule shall be stated in pounds sterling.
- 7.3. Tenders for the Service must be made on the Form of Tender, signed and dated by the Tenderer and submitted in the manner and by the date and time stated in **paragraph 9 – Submission of Tender**, together with the completed Tender documents and Supporting documents listed below:

| Tender Documents to be completed and returned | | |
|--|---|---|
| 7.3.1 | Method statement questions | All documents in: "Attachment documents" to be completed and returned |
| 7.3.2 | Pricing schedule | |
| 7.3.3 | Form of tender | |
| 7.3.4 | Certificate of non-collusion, non-canvassing certificate and conflict of interest certificate | |
| 7.3.5 | Offences certificate | |

8. Signature of Tender

- 8.1. The Tender must be signed:
- 8.1.1. where the Tenderer is an individual, by that individual;
 - 8.1.2. where the Tenderer is a partnership, by 2 authorised partners;
 - 8.1.3. where the Tenderer is a company, by 2 directors, or by a director and the secretary of the company, such persons being authorised for that purpose.
- 8.2. Tenderers shall produce forthwith on the request of the Council documentary evidence of any authorisation referred to above.

9. Submission of Tender

- 9.1. The Tender must be submitted no later than **5pm 3 July 2015.**
- 9.2. Any Tender submitted after that date may not be considered.
- 9.3. The completed Tender documents and all supporting documents must be sealed in an envelope or package bearing the return label provided by the Council. If more than one envelope/package is used this should be marked 'Number [] of [] envelopes/packages'. The envelope(s) or package(s) must not bear any name or mark by which the Tenderer could be identified.
- 9.4. The envelope(s) or package(s) should be addressed as follows:
- TENDER Employer Support for Construction Apprenticeship Creation and Improvement Project
To Southwark Council
 Cara Pottinger
 Strategy and Partnerships Team (Local Economy)
 Chief Executive's Department
 5th floor, hub 4
 London Borough of Southwark, 160 Tooley Street, London, SE1 2QH.
- 9.5. Where Tenders are delivered by courier or any method other than by external mail, they must be delivered via the side entrance loading bay in Barnham Street during normal working hours and a receipt obtained. Tenders should not be handed to any other Council Officer or Member.
- 9.6. Tenderers are required to submit 4 bound hard copies of their tender, 1 unbound hard copy and 1 USB Memory Stick containing a further electronic copy. All Tenders should be clearly structured and properly indexed.

- 9.7. In the event of any discrepancy between the hard copy and any electronic copy, the hard copy shall prevail. The name of the Tenderer should be included on each page of the hard copy.
- 9.8. If Tenders are to be submitted in separate volumes, each page should be numbered consecutively with the volume using the following format – Volume [] page [] of [total page number]. Each volume shall contain a contents list for that volume bound immediately inside the cover. Any drawings or diagrams included within the Tender shall be numbered.
- 9.9. The Tenderer must keep its tender valid for acceptance for **90 days** from the tender return date set out in **paragraph 9.1 – Submission of Tender**. If the Council has not accepted a tender within this period it shall remain in force without variation. The Tenderer may at any time after this 90 day period however give notice in writing to the Council to accept their Tender. Such notice must be delivered by hand to **Cara Pottinger** at 160 Tooley Street, London, SE1 2QH or sent there by recorded delivery post. Following the service of such a notice, the Council will have 14 days, not including the day of service, within which it may accept the Tender. If it does not do so within that time then the Tender will be deemed to be withdrawn. The Tenderer shall not withdraw their Tender except in the manner provided in this paragraph.
- 9.10. Tenderers may decline to tender, and if they choose not to tender, they should alert the Council promptly, giving reasons, and return to the Council all copies of the Tender documents.
- 9.11. If at any time during the tender period there are any material changes to the information provided by Tenderers in their response they must advise the Council promptly in writing.

10. Non-consideration of Tender

- 10.1. The Council may, in its absolute discretion, refrain from considering any Tender if:
- 10.1.1. the whole of the Service is not tendered for or there are omissions in the Tender;
 - 10.1.2. it is not in accordance with these Conditions of Tendering;
 - 10.1.3. the Tenderer makes or attempts to make any variation or alteration to the contract except in accordance with **these paragraph 6 – Further Information and Queries** of these Conditions of Tendering.

11. Rejection of Tender

- 11.1. The Council shall reject a Tender, without prejudice to any other civil remedies available to the Council or any criminal liability the Tenderer may attract, if the Tenderer breaches the terms of:
- 11.1.1. the certificate of non-collusion, non-canvassing certificate and conflict of interest certificate; and/or;
 - 11.1.2. the offences certificate;

12. Acceptance of Tender

- 12.1. The Council is not bound to accept the lowest or any Tender and reserves to itself the right at its absolute discretion to accept or not accept any Tender.
- 12.2. An acceptance of a Tender by the Council shall be in writing and posted to the successful Tenderer and the Contract shall then be made and become binding. In addition the Tenderer shall at the request of the Council execute and deliver to the Council a formal contract, Performance bond and Parent company guarantee before the start of the contract term, and no sums shall be paid under the Contract until those documents have been executed.

12.3. Nothing contained in these Conditions of Tendering or in any other communication between the Council and the Tenderer shall be taken as constituting a contract, agreement or representation between the Council and the Tenderer.

12.4. The Council reserves the right:

- To cancel or withdraw from this procurement process at any time prior to the award of Contract;
- To amend the terms and conditions of this procurement process and to amend any of the documents issued with the invitation to tender, including without limitation, these Conditions of Tendering.

13. Confidentiality

13.1. The Tender documents and any other documentation issued by the Council relating to the Service shall be treated by the Tenderer as private and confidential for use only in connection with the Tender and any resulting contract and shall not be disclosed in whole or in part to any third party without the prior written consent of the Council.

13.2. The Contract and all copies are and shall remain the property of the Council and must not be copied or reproduced in whole or in part, save for the Contractor's own purposes in performing the Service, and must be returned to the Council on demand.

13.3. Tenderers may not make any public statements or promotional activity relating to the tender process without the prior agreement of the Council.

13.4. The Council may publish the amounts of all tenders and the name of the successful Tenderer and such other information regarding the Tenders as it may be required to publish in accordance with EU or other procurement rules or transparency requirements with which the Council must comply.

13.5. The Council may provide Tenderers with a list of the other Tenderers and the tender figures. On this list the Tenderers will not be associated with their respective tender figure.

14. Warranties

14.1. In delivering a Tender, the Tenderer warrants and represents to the Council (and the Council relies on such warranties and representations) that:

- 14.1.1. it has not done any of the acts or matters referred to in **paragraph 11.1 – Rejection of Tender** and has complied in all respects with these Conditions of Tendering;
- 14.1.2. all information, representations and other matters of fact communicated (whether in writing or otherwise) to the Council by the Tenderer or its employees or officers in connection with or arising out of the Tender are true, complete and accurate in all respects;
- 14.1.3. it has made its own investigations, research and due diligence and has satisfied itself in respect of all matters relating to the Tender documents and has not delivered their Tender and will not have entered into the Contract in reliance on any information, representations or assumptions (whether made orally, in writing or otherwise) which may have been made by the Council;
- 14.1.4. it has full power and authority to enter into the contract and perform the Service and will if requested produce evidence of that to the Council;
- 14.1.5. it is of sound financial standing and its officers and employees are not aware of any circumstances (other than as may be disclosed in the audited accounts or other financial statements) which may adversely affect its financial standing in the future;
- 14.1.6. it has and will have sufficient working capital, skilled employees, equipment, machinery and other resources available to it to perform the Service in accordance with the Contract and to the Contract Standard for the Contract

Period; and

- 14.1.7. it has obtained all necessary consents, licences and permissions to enable it to perform the Service and will throughout the Contract Period obtain and maintain all further and other necessary consents, licenses and permissions to enable it to perform the Service.

15. Information Requests

- 15.1. The Council is obliged to comply with information legislation including the Freedom of Information Act 2000 and Code of Practice, Environmental Information Regulations 2004, Aarhus Convention and Audit Commission Act 1998.
- 15.2. The Council is entitled to disclose information relating to this tender process or the Contract to anyone who makes a request unless it believes that the information is exempt or excluded under the legislation or the legislation does not apply.
- 15.3. If a Tenderer considers that any information provided in their Tender is exempt or excluded from disclosure, that information should be clearly marked "**Not for disclosure to third parties**" and be accompanied by detailed reasons.
- 15.4. The Council will decide, acting reasonably, whether information requested is to be disclosed or not and will endeavour to consult with Tenderers and have regard to submitted reasons for non-disclosure before information is disclosed. However, the Council is entitled to determine in its absolute discretion whether or not to disclose any information.
- 15.5. The Council shall not be liable for any loss or other detriment caused by the disclosure of any information.

16. London Living Wage

The Council has committed to including the London Living Wage (LLW) in new contracts for the provision of services which are to be performed either on Council premises or in the Greater London Area, and where best value can be demonstrated on a case by case basis. Providers of this Service will be required to pay Relevant Staff as a minimum the LLW. Tenderers should refer to clause 14A of the General Terms and Condition for further detail.

17. TUPE and Pensions

- 17.1 The Council makes no assurances about the effects of TUPE and tenderers are recommended to take their own legal advice.
- 17.2 The successful Tenderer shall be deemed to have satisfied itself as to the applicability of TUPE and shall indemnify the Council against any and all claims made by any employee in connection with TUPE or otherwise and shall not itself bring proceedings against the Council in connection with TUPE.
- 17.3 If TUPE does apply to the Contract, the successful Tenderer will be expected to comply with its obligations set out in TUPE, the Pensions Act 2004 and the Pensions Act 2008, as amended and any regulations made thereunder.
- 17.4 Tenderers are asked to complete and submit their Tenders with reference to any impact of TUPE on their prices or submissions (for the purposes of this clause the "Tendered Price").

18. Definitions

Words defined in the Conditions of Contract shall have the same meanings in these Conditions of Tendering.

19. Tenderers are advised that their Tender should take into account all costs relating to TUPE.

TUPE may apply at the end of the contract. The approved tenderer will, at the end of the contract be required to supply details of its workforce engaged on the services (and any such other information as the council requires) so that the information can then be passed to tenderers bidding for any subsequent retendering of the services. Tenderers are reserved to the terms and conditions in the contract.

Section 3: Service specification

1. Introduction

1.1. The service will provide employer engagement and support activities for the creation and improvement of apprenticeship schemes within the construction sector. This service is an integral part of promoting the council's Southwark Apprenticeship Standard. The Southwark Apprenticeship Standard is the new standard for quality apprenticeships established by Southwark Council in 2015. The Standard is comprised of four criteria which give businesses and apprentices the best chance for a great apprenticeship:

- Minimum contract of 12 months
- Payment of the London Living Wage
- Quality training provision
- Mentoring and support

Full details can be found at southwark.gov.uk/apprenticeships.

1.2. The Standard has been established to help raise awareness of apprenticeships across local businesses. Under the Standard, the council will celebrate and promote good practice in apprenticeships, set aspirational levels of quality in apprenticeships for employers to aim for, and sell the benefits of high quality apprenticeships to employers and potential apprentices. A key part of delivering the Southwark Apprenticeship Standard is to engage and support employers who are unfamiliar with apprenticeships and provide them with the tools and resources to create good quality apprenticeship schemes. Employers who are delivering schemes that do not reach the standard will also be supported to improve their offer and reap the business benefits of better quality apprenticeships.

1.3. The Southwark Apprenticeship Standard provides the benchmark to which all construction contractors who are either based or working in Southwark should be working toward. However, in recognition of the transient nature of the construction industry and that trade sub-contractors are not necessarily on site for a sustained twelve month period, the service is expected to generate apprenticeships and apprenticeship placements. Apprenticeship placements will last for a minimum of three months and maximum of 11 months. Where apprenticeship placements are created, the service will support and encourage contractors to share placement opportunities and best practice to create a consistent and valuable learning opportunity that enables the apprentice to complete their framework.

1.4. The provider shall have the specialist skills in business engagement and apprenticeship support within the construction sector, to widen the range and volume of contractors engaged, and support contractors across all tiers of the construction sector working in Southwark to create significant numbers of new apprenticeship opportunities over the next two years.

2. Background

2.1. *Southwark Council's Fairer Future Vision:* The Council is creating a fairer future for all in Southwark by protecting the most vulnerable; by looking after every penny as if it was our own; by working with local people, communities and businesses to innovate, improve and transform public services; and standing up for everyone's rights.

2.2. As a central London borough, our mission is to enhance the things that make Southwark special - its immense diversity and vast depths of untapped potential; helping to unlock those talents, with nobody left behind.

2.3. People in the borough should be able to enjoy the enormous benefits and seize the opportunities that living in central London offers. The Council has its part to play as one of many working to deliver a fairer future.

2.4. Full information on the Council's Fairer Future ambitions, including its promises and delivery plans, can be accessed at:

http://www.southwark.gov.uk/info/200342/council_plan/2959/fairer_future_for_all_vision

2.5. *Economic Wellbeing Strategy*: In late 2012, the council adopted a new Economic Wellbeing Strategy. The strategy establishes four key priorities through which the Council, in partnership with other local organisations, will improve the economic well-being of Southwark residents. These are:

Ambition 1: Employment – narrowing the gap with the London employment rate

Ambition 2: Southwark – the place of choice to start and grow a business

Ambition 3: Thriving town centres and high streets

Ambition 4: Promoting financial wellbeing and independence

2.6. The Economic Wellbeing Strategy can be accessed at:

http://www.southwark.gov.uk/info/347/economic_wellbeing/2024/economic_wellbeing_strategy

2.7. London's labour market continues to generate a wealth of opportunities both at entry level and for more highly skilled applicants. We therefore aim to make better use of London's opportunities, and close the employment gap by supporting Southwark residents into sustainable employment, enabling people to stay in jobs and progress beyond entry level low-paid work.

2.8. The council has committed to create 2,000 new apprenticeships by 2017/18. This commitment aligns with two other commitments under the Fairer Future Vision: to guarantee education, employment or training for every school leaver and to support 5,000 more local people into jobs.

2.9. The following project has been designed to deliver direct engagement and support work to engage employers and drive demand for apprenticeships in the construction sector across the Borough. This support will be open to all developers and contractors currently working in the borough but will specifically target small and medium enterprises (SMEs) and employers new to apprenticeships. Note, that this project will specifically target employers in the construction industry. Businesses in other sectors will be covered by a separate contract.

2.12 The Construction Sector in Southwark There is a consistent pipeline of construction work for at least the next fifteen years. This pipeline spans large scale regeneration projects at the Elephant & Castle and Aylesbury Estates, infrastructure projects such as the Thames Tideway Tunnel and Northern Line Extension, as well as the development of residential and commercial developments across the borough. This scale of development brings a wealth of opportunities and we aim to maximise jobs and training opportunities from this growth of the construction and built environment sector within the borough.

2.13 Southwark Council currently operate a successful Work Place Co-ordinator scheme in which developers are obliged to employ an on site work place co-ordinator in order to fulfil s.106 obligations in relation construction employment and training. Given the level of opportunity within the construction sector, Southwark Council will open a Construction Skills Centre in late 2015 on the Elephant & Castle regeneration site. The skills centre will offer pre-employment and specialist construction training for local residents matched to employer's needs, with the aim of helping to create a consistent supply of residents who are ready to work or start apprenticeships within the construction industry.

The Skills Centre will be modular in design and will consist of two class rooms, a workshop and a learning zone classroom dedicated to schools and promotion of the range of opportunities available within the construction sector. The Skills Centre will also include an administrative office, which will contain desk space available for local job brokerage services, employer engagement services and the construction apprenticeship creation and support service.

3. Links to other services

3.1. While this project will have distinct contract management arrangements, it is expected that linkages and synergies will occur with existing employment support contracts such as the Southwark Works Programme, Southwark Employment and Enterprise Development Scheme (SEEDS) and future commissioned services such as the Construction Skills Centre. The service will target construction employers across all tiers, including developers and SME sub-contractors. It is expected that the contractor will utilise and expand upon the pre-existing employer networks generated by Work Place Co-ordinators and the Southwark Works Construction Forum.

3.2. The service will target contractors and developers new to apprenticeships which may also access support through the National Apprenticeship Service, CITB and other agencies; it is expected that the provider will develop links with these services to ensure this service compliments other forms of support and funding the contractors may be able to access.

4. Service Objectives

4.1. The service will support construction and built environment contractors and sub-contractors either based in Southwark or who are currently working on sites within Southwark to create and improve apprenticeships.

4.2. Providers are required to work closely with local employers, existing employer networks (including the Business Improvement Districts), local employer organisations, sector skills councils, training providers, other providers and core Council services in delivering the service objectives.

4.3. The service objectives for this contract are:

| | |
|----|---|
| A) | To promote apprenticeships and the Southwark Apprenticeship Standard to employers and residents |
| B) | To provide a range of resources and tools in support of apprenticeship creation and improvement, in line with the Southwark Apprenticeship Standard |
| C) | To provide direct group and one-to-one support for construction businesses in the Borough seeking to create or improve apprenticeships. |
| D) | Work with employers and training providers to address skills shortages, including, where appropriate, adapting old frameworks for new methods of construction |
| E) | Support and facilitate contractors and sub-contractors working across the borough to co-ordinate work placement opportunities across different sites to ensure that apprentices are able to successfully complete their framework |

4.4. The core service model for providing apprenticeship creation and improvement support through this project is:

- **Employer engagement:** promoting apprenticeships under the brand of the Southwark Apprenticeship Standard and promoting the Standard as the new standard for quality apprenticeships in Southwark
- **Information, advice and guidance:** developing and sharing IAG documents, toolkits and other resources to be accessed online free of charge
- **Direct support (groups):** workshops and other group sessions to facilitate group learning, network-building and to enable peer-mentoring
- **Direct support (one-to-one):** face-to-face, telephone and email support tailored to individual employer needs

5. Target Groups

- 5.1. Providers should develop proposals that engage employers across all tiers of the construction industry, including large developers who have not previously delivered apprenticeships and SME sub-contractors. Targeted employers should either be currently working within the borough or be based in the borough. Providers should target employers across all trades within the construction industry, including employers in the repairs and maintenance and facilities maintenance sectors who have not previously delivered apprenticeships or are not currently receiving support from another Council service (e.g. the Southwark Apprenticeship Scheme)
- 5.2. This service is exclusively for construction employers (including employers within the built environment, repairs, and facilities maintenance), employers within other sectors will be addressed in a separate contract.
- 5.3. Apprenticeship placements will last for a minimum of three months and maximum of 11 months. The apprenticeship placements may include candidates previously enrolled in a framework and who require additional work experience to complete their apprenticeship (sustained apprenticeships), though focus should be placed on generating new apprentices.

6. Outputs and Milestones

- 6.1. The core outputs listed in table 1 below must be delivered by the provider. In addition to this, Providers must deliver any additional outputs or targets specified through the Tender process.

Table 1: project outputs

| Outputs | Year 1 minimum | Total |
|--|----------------|-------|
| Output 1: Percentage of developers and tier one contractors working within the borough directly engaged | 100% | 100% |
| Output 2: Number of sub-contractors working within the borough directly engaged | 96 | 240 |
| Output 3: Number of apprenticeship (min. 12 months) vacancies created | 36 | 90 |
| Output 4: Number of apprenticeship placements created (lasting min. 3 months and max. 11 months) within the borough | 44 | 110 |

6.2. The milestones outlined below constitute the minimum requirements under this specification. Providers must deliver both the following core milestones plus any additional milestones specified through the Tender process.

Table 2: project milestones

| Project Quarter | Dates | Milestones |
|-----------------|-----------------|---|
| 1 | Aug-Sept 2015 | <ul style="list-style-type: none"> • Contract award • Recruitment of new staff where necessary • Preliminary meetings and identification of first contractors to engage in Q3 2015 |
| 2 | Oct-Dec 2015 | <ul style="list-style-type: none"> • Production and implementation of marketing strategy to engage contractors • Development of project documentation and processes • Direct support – group and individual (targets to be agreed) |
| 3 | Jan-Mar 2016 | <ul style="list-style-type: none"> • Submit Quarterly Monitoring Reports to the Council • Quarterly review meeting with Council attended • Direct support – group and individual (targets to be agreed) |
| 4 | Apr-Jun 2016 | <ul style="list-style-type: none"> • Submit Quarterly Monitoring Reports to the Council • Quarterly review meeting with Council attended • Direct support – group and individual (targets to be agreed) |
| 5 | July- Sept 2016 | <ul style="list-style-type: none"> • Submit Quarterly Monitoring Reports to the Council • Submit end of Y1 report to the Council • End of year meeting with Council attended • Direct support – group and individual (targets to be agreed) |
| 6 | Oct-Dec 2016 | <ul style="list-style-type: none"> • Submit Quarterly Monitoring Reports to the Council • Quarterly review meeting with Council attended • Direct support – group and individual (targets to be agreed) |
| 7 | Jan- Mar 2017 | <ul style="list-style-type: none"> • Submit Quarterly Monitoring Reports to the Council • Quarterly review meeting with Council attended • Direct support – group and individual (targets to be agreed) |
| 8 | Apr-June 2017 | <ul style="list-style-type: none"> • Submit Quarterly Monitoring Reports to the Council • Quarterly review meeting with Council attended • Direct support – group and individual (targets to be agreed) |
| 9 | June - Aug 2017 | <ul style="list-style-type: none"> • Submit final report and evaluation to the Council • End of contract meeting with Council attended • Direct support – group and individual (targets to be agreed) |

7. Performance monitoring

7.1. The provider shall submit a quarterly performance report which will include details of the performance measures and project milestones set out in tables 1 and 2 respectively as well as those set out in the tender response. The report forms will be provided by the council along with a monitoring guidance document.

7.2. Quarterly reports must be submitted to the council. The council will carry out quarterly monitoring visits to the Contractor to verify claims before payments are processed. Additionally, the provider shall submit an end of year review report and attend an end of year review meeting with the council. Continuation to year two of the contract will be subject to satisfactory performance against targets outlined within this specification and as provided within the provider's tender submission.

7.3. The final reporting template, which will include the mandatory outputs above, will be developed by the council during the contracting stage.

7.4. The provider is required to inform the council if there is a risk of significant underperformance in order to trigger a service review and the development of remedial action plan.

7.5. The provider is required to inform employers benefitting from the service that the council will have access to their contact details post service delivery in order to fulfil project monitoring requirements, make them aware of other support programmes, and/or any on-going evaluation of this service.

8. On-going service review

During and following the programme an evaluation will be undertaken to gather learning from the delivery of the programme. Providers are required to collate employer feedback, submit case studies and share this information with the council.

9. Premises

Business and engagement and support staff will be based in premises (provided by the provider) that are accessible to Southwark businesses. Premises need to provide adequate space to conduct meetings with clients. It is anticipated that the Southwark Construction Skills Centre at the Elephant & Castle will open in late 2015. Once this is open, the provider will be expected to deliver services from the centre at least one day a week. Advisors may be required to deliver outreach support in a range of council and partner services, or on-site with clients, located within the borough.

10. Staff skills and accreditation requirements

The provider is required to have a clear understanding of challenges faced by construction employers and the needs of employers and apprentices. It will also have recent experience of the delivery of these services. The provider must provide skilled staff, preferably with direct experience of delivering business support relating to creating apprentices in the construction sector. Staff shall provide a high standard of service to customers and have a proven track record of helping businesses create and sustain apprenticeships.

Section 4: Evaluation information

1. Evaluation Methodology

- 1.1. This document provides information on how the Council will assess tenders submitted by tenderers in relation to the Employer Support for Construction Apprenticeship Creation and Improvement Project.
- 1.2. This information includes a step-by-step description of the method the Council will use to make this assessment. It is therefore recommended that tenderers read this information carefully and respond to each criterion accordingly. Tenderers must use the Tender Template attached to construct their tenders.
- 1.3. A tender evaluation panel (TEP) will be formed consisting of officers from the Council's Corporate Strategy Division.
- 1.4. Assessment of tenders will follow a three-stage approach. These stages are:

Stage one: Validity and completeness check

Stage two: Quality evaluation

Stage three: Pricing schedule and breakdown of costs

- 1.5. Following stage one of the assessment, the council will evaluate the Tender submissions using a weighted model of 90:10 in favour of quality.
- 1.6. The award recommendations will be made on the basis of most economically advantageous tenders (MEAT) evaluated as described in this methodology
- 1.7. Full details of the evaluation methodology that will be used at each stage to assess tenders are given below.

2. Stage One – VALIDITY AND COMPLETENESS CHECK

- 2.1. Validity: A valid tender is one that is received in accordance with the instructions to tenderers. Validity will involve checking against the various requirements set out in the instructions.
- 2.2. Completeness: A complete tender will include all documents and information required in accordance with the instructions. Completeness will be established by checking against a checklist of all the financial and non-financial submissions required to be included in the tender.
- 2.3. Whilst the Council shall be entitled to seek clarification from Tenderers in order to determine if a Tender is valid and/or complete, Tenderers should note that the council reserves the right to reject Tenders that are not valid and/or complete. Tenderers are referred to 'Checklist of Documents to be returned' in section 2 of the Tender Documents.

3. Stage Two – QUALITY EVALUATION (90% of overall score)

- 3.1. Tendering organisations will be required to submit responses to the method statement questions contained in section 5 of the tender documents. Each question response will be used to assess the criteria that has been identified and weighted according to its importance to the council's requirements in delivering the services. Responses will comprise of a number of method statements that will describe how the service will be delivered. These method statements, once approved by the council, will be incorporated into the contract as the provider's planned way of working/operating throughout the contract period.
- 3.2. The 90 marks available for quality has been sub-weighted across 5 elements as follows:

Table 3: quality evaluation categories

| Criteria | Sub Criteria | Sub-criteria weighting | Criteria Weighting |
|---|---|------------------------|--------------------|
| Overall approach | 1. Delivery mechanism | 12 | 30 |
| | 2. Strength of partnership arrangements | 6 | |
| | 3. Marketing and ability to engage with employers | 12 | |
| Responsiveness to target client group needs | 4. Structure of activities and evidence | 7 | 20 |
| | 5. Ability to identify and respond to needs (Action Plan) | 8 | |
| | 6. Equal opportunities | 5 | |
| Feasibility of approach | 7. Staff roles and capacity | 7 | 15 |
| | 8. Level of resources | 3 | |
| | 9. Risk management | 5 | |
| Quality assurance | 10. Monitoring/tracking systems | 5 | 10 |
| | 11. Client feedback mechanisms | 5 | |
| Track record and added value | 12. Previous experience | 5 | 15 |
| | 13. Value for money | 5 | |
| | 14. Equal opportunities and health & safety | 5 | |
| TOTAL | | | 90 |

3.3. Quality Scoring Methodology

3.3.1. The following scoring system will be used generally for the evaluation of all method statement questions.

Table 4: quality scoring system

| Score | Descriptions |
|----------|--|
| 0 | Cannot be scored No information provided or incapable of being taken forward either because the tenderer does not demonstrate an understanding of the Council's requirements or because the solution is incapable of meeting the council's requirements. |
| 1 | Unsatisfactory Although the tenderer does demonstrate an understanding of the Council's requirements there are some major risks or omissions in relation to the proposed solution to deliver the service and the Council would not be confident of its requirements being met. |
| 2 | Satisfactory A response which is capable of meeting the Council's requirements but is unlikely to go beyond this. |
| 3 | Good A response which shows that the tenderer demonstrates an understanding of the council's requirements has a credible methodology to deliver the service which could evolve into improving outcomes further. |
| 4 | Very Good A response which shows that the tenderer demonstrates an understanding of the Council's requirements, has a credible methodology to deliver the service alongside clear process and plan to deliver additional benefits and deliver value or where relevant has a proven approach for delivering strong outcomes for the target client groups . |
| 5 | Excellent A response which meets all the criteria in 4 above plus shows how the service can comprehensively be taken to the next level in terms of exceeding the Council's requirements and/or offering significant added value to the local economy and meeting the Council's overall strategic requirements and objectives. |

3.4. Quality Scoring Threshold

3.4.1. All tenderers must achieve a minimum score of two for each sub-criteria question otherwise it may be rejected. All submissions satisfying the quality threshold shall progress to Stage Three: Price Evaluation.

3.4.2. Each question will be scored and then the sub-weighting applied to give a weighted score for quality.

3.4.3. For example, question 1 has a weighting of 12, if the provider achieves a score of 3 for this question the weighted score would be $3/5 \times 12 = 7.2$.

3.4.4. The weighted scores are then added together to give a total weighted score for quality.

3.5. Verification Process

3.5.1. A tenderer's evaluation score will be based on the Tenderer's written submission, but this may be clarified (and its veracity and accuracy verified) by the following methods:

- Clarification meetings/ clarification presentations
- Responses to clarifications questions
- Written feedback from referees

3.5.2. Tenderers will not be able to address any omissions in their Tender Submission during any clarification process.

3.5.3. The initial score will be based on the evaluators' review of the tenderer's tender submission and be updated based on further clarification. The final scores may differ from the initial scores to reflect the full evaluation process undertaken by the panel. Overall scores will be calculated to ascertain the Tenderer's overall percentage score

3.5.4. The evaluation panel shall conduct a 'consensus scoring process' where moderation of the scores awarded during the exercise will take place. The moderation process shall give regard to any variance in scores between the evaluators. A consensus score will be agreed by the evaluators for each of the evaluation criteria.

4. Stage Three: Price Evaluation (10% of overall score)

4.1. The 10 marks available for price has been sub weighted across three elements as follows:

4.2. Price Evaluation

| | Work Element | Weighting % |
|---|------------------------------------|-------------|
| 1 | Tender Price | 6 |
| 2 | Sustainability of Tender Price | 2 |
| 3 | Efficiency of client group support | 2 |
| | Total | 10 |

4.3. Tender Price

4.3.1. The tender price shall be an all-inclusive fee for the provision of the Services.

4.3.2. The tender price will first be scored using the process detailed below.

$$\text{Score out of 6} = \frac{\text{Lowest Price}}{\text{Tendered Price}} \times 6$$

4.3.3. The lowest priced tender will receive a score of 6 under the above calculation.

4.3.4. For example, suppose a range of tenders have been submitted and the lowest quoted price across all tenders is £80 000. If one of the tenderers had quoted a price of £100 000, that tenderer would receive a price evaluation score of:

$$\frac{\text{Lowest Price}}{\text{Tendered Price}} \times 6 = \frac{£80\,000}{£100\,000} \times 6 = 4.8$$

4.4 Sustainability of price

4.4.1 The Council will score the sustainability of prices by assessing the breakdown of costs completed in the pricing schedule. This will be scored in the following way:

Table 6: sustainability of price scoring

| Score | Definition |
|-------|---|
| 0 | Failure to provide any breakdown. |
| 1 | Medium level of confidence in the breakdown provided through reviewing the cost breakdown, benchmarking this with other tenders |
| 2 | High level of confidence in the breakdown provided through reviewing the cost breakdown, benchmarking this with other tenders. |

4.4.2 When assessing confidence the Panel will consider the viability of costs set out in the pricing schedule which forms part of the application form (see attachments).

4.5 Efficiency of client group support

4.5.1 This seeks to determine what proportion of the proposed budget will be invested in the direct support for the target client group. This calculation will be made by determining the proportion of the budget invested in advisor and beneficiary costs taken from Table 1 in the pricing schedule in the Tender Template (part 4).

$$\text{Calculation: } \frac{\text{Total advisor and beneficiary costs}}{\text{Total cost (tender price)}} \times 2 = X$$

$$\text{For example: } \frac{£50\,000}{£100\,000} \times 2 = 1$$

5. Abnormally low tenders

The council will scrutinise very carefully any Tender that contains a price which appears very low (having regard, amongst other things, to the prices submitted in the other Tender Submissions received). The Employer reserves the right to reject any Tender Submission that is abnormally low.

6. Award Decision

The tenderer achieving the highest total score for quality and price shall be recommended for award of contract.

7. Tie Break

In the event of a Tie Break (where two or more top scoring Tenderers have the same total weighted score including both quality and price), the Council shall select from amongst those Tenderers the submission with the highest weighted score for quality.

Section 5: Method Statement

Tenderers should read this guidance, complete all the relevant sections of the Tender Application and provide the requested documentation.

1. Method Statement Sections (Section A Tender Template)

- 1.1. Tenderers are required to respond to each of the questions below using font 11 Arial. Tenderers should ensure that the overall limit of 20 pages for the complete method statement section of the application is adhered to. Any material submitted that exceeds the page limit will not be circulated to the evaluation panel for assessment.
- 1.2. Please note the page limit does not include policy documents, staff structure charts, example action plans and audited accounts.
- 1.3. Core outputs to be delivered are detailed in Table 1 of the Service Specification (Section 3). In answering the following questions, the tenderer should set out how they will provide a high quality service in line with the Service Specification.
- 1.4. The questions are divided into 5 sections showing how a high quality of delivery will be ensured across all aspects of the service including:
 - Overall approach to service delivery and suitability of the tenderer's organisation to provide the service
 - Responsiveness to target client group's needs and effectiveness of partnership approach
 - Feasibility of approach
 - Quality assurance
 - Track record and added value

2. Method Statement Questions (90%)

2.1. Overall approach (30%)

Question 1 - Describe the delivery mechanism for the project, clearly detailing how you will ensure contractors across all tiers of the construction sector working or based in Southwark are engaged, facilitated and supported to create and/or improve apprenticeships in their organisation. Explain how this approach will address the needs of contractors new to apprenticeships. (12%)

Describe how the project will be delivered including details of where you will be delivering the service, resources that will be available, and who will be delivering the service. Describe the support you will provide to contractors and developers in Southwark, explaining your understanding of the local employment market, the support needs of contractors and developers in terms of apprenticeship creation/improvement, the skills shortages within the sector and how your approach will ensure all apprenticeships created match the needs of industry and are of the highest quality possible as determined by the Southwark Apprenticeship Standard. Explain how you plan to engage with the aims of the Construction Skills Centre once it is open and operate within its aims to create a consistent supply chain of work ready Southwark residents interested in the construction industry.

Explain how you will identify and engage with SME construction sub-contractors and large developers/tier one contractors to identify and unlock potential apprenticeship opportunities, identify alternative recruitment mechanisms that might better suit organisational need and provide support in managing the implementation of apprenticeships. Describe how you would identify and address skills needs and deliver in-work support for employers and to secure sustainable apprenticeship outcomes that are suited to industry needs. Describe how you would support and facilitate contractors to share apprenticeship opportunities.

Question 2 - Explain the partnership arrangements, marketing and promotion systems for the project, including links to employers, council and VCS support services available in the borough. Describe the added value your existing network will bring to the delivery of this contract. (6%)

Provide details of any existing partnership arrangements that you have with relevant bodies such as the National Apprenticeship Service and CITB, as well as with employers, training providers and brokers in the Borough.

Explain how your support will ensure every construction contractor is able to make the most of the opportunity represented by apprenticeships.

Provide details of your relationship with any business support, recruitment or apprenticeship services a contractor may access and how you would work with these services to ensure coordination. Explain how these services align with the Southwark Apprenticeship Standard.

Provide details of what other resources you can provide including access to key partners, employers and external funding sources. Although not a pre-requisite, any match funding or additional resources that can be brought to the project will be seen in a positive light.

Question 3 – Demonstrate your ability to prospect, engage and support employers across all tiers of the construction industry. Describe your approach, list employers you have worked/ are working with in the context of apprenticeship creation and improvement within the construction sector and explain how you plan to engage new employers. (12%)

Explain how you will be targeting contractors and sub-contractors without apprentices. Demonstrate your ability to successfully identify and engage contractors, and particularly small sub-contractors, including possible pitches and proposals making the case for apprenticeships according to the different tiers of contractors.

Demonstrate your understanding of supply-side challenges around apprenticeships and how you will work with employers to overcome these.

Explain how you will engage with employers to negotiate maximum volume and quantity of apprenticeship creation and establish a pipeline for improved quality over time by building apprenticeships in to the wider growth strategy.

Give details of any marketing techniques that would be utilised and where you would seek to promote the service

2.2. Responsiveness to target client group needs (20%)

Question 4 – Describe the structured activity which would be delivered to meet the service specification including key milestones and achievement of outputs. Please provide a comprehensive list of the types of documents that would be produced as evidence of the achievement of all the outputs your service aims to deliver. Please also complete Section Ab (Method Statement – Tender template) in the attachments as part of your response to this question. (7%)

Outline how the project will structure its delivery and what activities will be planned to deliver outputs and outcomes.

Provide a list of milestones that will be achieved in each quarter using Section B of the tender template provided; these are significant phases and/or key activities to mark progress of the project outlined in the project description. A repetition of project outputs should be avoided. Specify any additional milestones you will achieve in order meet the key milestones detailed in Section 3: Service Specification.

Use the outputs schedule in Section Ab of the attachments to set out the distribution of outputs across the 9 quarters (which make up the 24 month contract period). Specify any additional outputs, targets and activities you will deliver in order to meet the core outputs detailed in Section 3: Service Specification.

Question 5 – Provide evidence of your understanding of contractors across all tiers of the construction industry, including any existing or future skills shortages within the sector and how these might be addressed through apprenticeships. Describe the typical barriers to apprenticeship creation. Provide a sample apprenticeship and apprenticeship placement creation template mapping planned activity following securing a commitment to create an apprenticeship including recommended actions and timeframes. (8%)

Identify the key presenting issues and provide a sample action plan used to support apprenticeship creation including recommended actions, timescales for review and delivery and explain why you think your approach will be effective in delivering positive outcomes.

Question 6 – How would you implement equal opportunity within the context of the specification? (5%)

Describe how your approach will be tailored to the needs of businesses that will be supported through this tender. While this service is focused on engaging organisations rather than individuals you should demonstrate how the services you offer will respond to the specific issues of particular groups, without assuming they all have the same needs.

Also take in to consideration how this applies to any apprenticeships created. While legal responsibility for compliance with Equal Opportunities legislation rests with the employing organisation, you should also demonstrate how you will work with organisations to ensure their recruitment and employment practices are consistent with good practice in this area.

Explain how this policy affects the project design and delivery. Also, describe any marketing and publicity tools you will use to reflect the project's commitment to equal opportunities. The Equal Opportunities or diversity policy you submit with your application will be assessed for compliance with The Equality Act 2010. Further

information on the Equality Act 2010 can be accessed from:
<http://www.homeoffice.gov.uk/publications/equalities/equality-act-publications/equality-act-guidance/>.

2.3. Feasibility of approach (15%)

Question 7 – Name the key staffing roles that will deliver the project and describe the minimum level of skills and experience, and the number and quality of advisers and general staffing capacity. (7%)

Provide details of the staffing roles involved in the delivery of the project and what their responsibilities are, whether the role is full or part time, their salaries and number of hours and days worked per week on the project); when these activities will be carried out, timetabling (i.e. length of time on programme, hours per week etc.).

Question 8 – Demonstrate how the resources you have allocated (or have access to) for the delivery of your service will meet the service objectives. (3%)

Show how the resources you have allocated to your service will meet the needs of the target businesses and demonstrate how your networks will provide additional resources.

Question 9 – Describe the risks which may adversely affect the successful delivery of the services and achievement of outputs. Describe the contingency plans which will be implemented to reduce these risks. (5%)

Show that you have considered and understood what significant risks there are to successful delivery of the service, including their likelihood and impact on achievement of project outputs. Explain the actions you will take to reduce these risks to ensure that outputs are delivered to time and within the budget for the work.

2.4. Quality assurance (10%)

Question 10 – How will you ensure that the management and monitoring of the service is effective and meets the requirements set out in the specification? (5%)

Explain how the project will be managed and monitored and how quality will be delivered. Outline the reporting structures and who will be responsible for project management and monitoring. Detail the relevant experience of the project manager and any key project staff. Also mention how financial management will be carried out. Include a management structure of the organisation. If you work in partnership with other organisations you should describe the roles and responsibilities of each organisation, the reporting procedures and monitoring systems.

Question 11 – How will you monitor and evaluate feedback from project beneficiaries and partners including employers, providers and apprentices, to ensure you capture the wider outcomes delivered through this service? (5%)

Describe the process that will be used to collect feedback from employers and other stakeholders, how often feedback will be collected and whether or not employers will be able to provide this anonymously. What mechanisms will you use to capture the wider outcomes achieved through engagement in your service? How will the feedback be used and who will be responsible for this process?

2.5. Track record and added value (15%)

Question 12 – Provide details of your organisation’s experience of providing externally-funded apprenticeship creation and improvement support for contractors working within the construction industry (5%)

Provide details of similar projects that the organisation has undertaken in the last 12 months and the success. Please include output figures – total engaged in the programme, apprenticeship outcomes and % achieved against targets of these projects. The organisation’s track record should include the total contract value and provide details of the funders’ names.

Question 13 – Demonstrate how your approach will offer value for money. (5%)

Explain the key reasons why the project offers value for money. Your response should not only refer to the cost of the service, but should also take account of the mix of quality, cost, resource use, fitness for purpose, and convenience. Achieving value for money may be described in terms of economy, efficiency and effectiveness.

Question 14 – Equal Opportunities and Health and Safety. (5%)

Provide copies of your organisation’s Equal Opportunities (Diversity) and Health and Safety policies as an attachment.

The Equal Opportunities or diversity policy you submit with your application will be assessed for compliance with the Equality Act 2010 and observation of the Equality Human Rights Commission’s Code of Practice on Employment. For further information and advice that may help you please see the following link: <http://www.equalityhumanrights.com/advice-and-guidance/service-providers-guidance/>.

3. Milestones and Outputs (Section Ab – attachments: Method statement and tender template)

3.1. The core milestones and outputs you are required to deliver are listed in unit 4 of the Service Specification (Section 3). These are non negotiable. When completing the tender template please provide details of any additional milestones you will aim to achieve as part of your service delivery.

3.2. When completing the outputs table please list the targets you will aim to achieve against the core outputs listed. Please also list any additional outputs and targets you will deliver in order to deliver apprenticeship creation and improvement.

4. Costs (Section B – attachments: Pricing Schedule and Breakdown of costs, 10%)

4.1. Table 1: Provide a detailed breakdown of all the estimated annual project costs.

4.2. Under Advisor and Management Staff Costs salaries should be clearly linked to posts with pro-rata values shown and on-costs set out separately.

4.3. Please note delivery costs should not exceed 10% of the total project budget.

4.4. Additionality costs refer to any service delivery costs outside of the bid price (i.e., costs that will be funded through sources of match funding).

- 4.5. Table 2: Use this table to show how much of the annual costs will be spent during each quarter.
- 4.6. Table 3: Total project expenditure (Table 1) and total project funding (Table 3) must be equal (i.e., same figure).
- 4.7. Costs may only be recovered if expenditure occurs within the contract period. Any expenditure outside this period will not be accepted.

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Section 6: Contract Particulars and Conditions of Contract

CONTRACT PARTICULARS

| | |
|------------------------------------|---|
| Commencement Date: | |
| Contract Year: | a period of 12 months commencing on the Commencement Date |
| Term: | the period 20 months commencing on the Commencement Date |
| Specific Consents: | Shall include without limitation the following specific consents - NONE |
| The following clauses DO NOT APPLY | |
| Clause 19.2 & Schedule 8 | Benchmarking |
| Clause 10 & Schedule 6 | Disaster Recovery |
| Schedule 9 | Exit |
| Schedule 11 | Commercially Sensitive Information |
| Schedule 12 | Council and Provider's Premises and Assets |

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1. Definitions and Interpretation

- 1.1 The definitions and rules of interpretation in this clause apply in this agreement.

Achieved Service Levels: in respect of any Service in any measurement period, the standard of performance actually achieved by the Provider in the provision of that Service in the measurement period in question (calculated and expressed in the same way as the Service Level for that Service is calculated and expressed in schedule 2).

Apprenticeship: For the purpose of this project an apprenticeship is a training program that follows a government approved framework provided through a Skills Funding Agency approved provider for a contract of no less than 12 months.

Apprenticeship Placement: For the purpose of this project an apprenticeship placement is a training program that follows a government approved framework provided through a Skills Funding Agency approved provider for a placement of between three and eleven months provided to either create or sustain an apprenticeship that would not have otherwise been created

Asbo: an anti-social behaviour order as defined in the Crime and Disorder Act 1998.

Associated Company: any holding company from time to time of the Provider and any subsidiary from time to time of the Provider, or any subsidiary of any such holding company.

Authorised Representatives: the persons respectively designated as such by the Council and the Provider from time to time, the first such persons being set out in schedule 5.

Barred List: the barred lists provided for under the Safeguarding Vulnerable Groups Act 2006 as amended by the Protection of Freedoms Act 2012.

Best Industry Practice: the standards which fall within the upper quartile in the relevant industry for the provision of comparable services which are substantially similar to the Services or the relevant part of them, having regard to factors such as the nature and size of the parties, the service levels, the term, the pricing structure and any other relevant factors.

Bribery Act: the Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning the legislation.

Change: any change to this agreement including to any of the Services.

Change Control Procedure: the procedure for changing this agreement, as set out in schedule 7.

Charges: the charges which shall become due and payable by the Council to the Provider in respect of the Services in accordance with the provisions of this agreement, as such charges are set out in schedule 4.

Commencement Date: the date included in the Contract Particulars.

Commercially Sensitive Information: the information listed in schedule 11 comprising the information of a commercially sensitive nature relating to the Provider, its intellectual

property rights or its business or which the Provider has indicated to the Council that, if disclosed by the Council, would cause the Provider significant commercial disadvantage or material financial loss.

Contract Year: as set out in the Contract Particulars.

Convictions: other than in relation to any minor road traffic offences, any previous or pending prosecutions, convictions, cautions and binding overs (including any spent convictions as contemplated by section 1(1) of the Rehabilitation of Offenders Act 1974 by virtue of the exemptions specified in Part II of Schedule 1 of the Rehabilitation of Offenders Act 1974 (Exemptions) Order 1975 (SI 1975/1023) or any replacement or amendment to that Order.

Data Processor: shall have the same meaning as set out in the Data Protection Act 1998.

Data Protection Legislation: the Data Protection Act 1998 (**DPA**), the EU Data Protection Directive 95/46/EC, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000, the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner.

Data Subject: shall have the same meaning as set out in the Data Protection Act 1998.

Default Notice: is defined in clause 5.2.

Disclosure and Barring Scheme: the disclosure and barring scheme operated by the Disclosure and Barring Service.

Dispute Resolution Procedure: the procedure set out in clause 20.

Equalities Legislation: all legislation which makes unlawful discrimination, harassment and/or victimisation on grounds of age, disability, sex, marital or civil partnership status, sexual orientation, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation, temporary or part-time status in employment or otherwise including, without limitation, the Equality Act 2010, the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000, the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002, or any preceding, successor or amending Legislation concerning the same.

Force Majeure: any cause affecting the performance by a party of its obligations under this agreement arising from acts, events, omissions or non-events beyond its reasonable control, including acts of God, riots, war, acts of terrorism, fire, flood, storm or earthquake and any disaster, but excluding any industrial dispute relating to the Provider, the Provider's Personnel or any other failure in the Provider's supply chain.

General Change in Law: any change in law which impacts on the performance of the Services and comes into force after the Commencement Date, where the change is of a general legislative nature (including taxation or duties of any sort affecting the Provider) or which affects or relates to the supply of services to another customer of the Provider that are the same or similar to the Services.

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

Information Legislation: the Freedom of Information Act 2000 ("FOIA"), the Environmental Information Regulations 2004, the Aarhus Convention and Audit Commission Act 1998 and all applicable laws and regulations relating to Requests for Information and any subordinate legislation from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.

Initial Term: the period set out in the Contract Particulars.

Intellectual Property Rights or IPR : any and all intellectual property rights of any nature anywhere in the world whether registered, registerable or otherwise, including patents, utility models, trade marks, registered designs and domain names, applications for any of the foregoing, trade or business names, goodwill, copyright and rights in the nature of copyright, design rights, rights in databases, moral rights, know-how and any other intellectual property rights which subsist in computer software, computer programs, websites, documents, information, techniques, business methods, drawings, logos, instruction manuals, lists and procedures and particulars of customers, marketing methods and procedures and advertising literature, including the "look and feel" of any websites.

Key Personnel: those personnel identified in schedule 5 for the roles attributed to such personnel, as modified pursuant to clause 13.

Management Reports: the reports to be prepared and presented by the Provider in accordance with clause 17 and schedule 5 to include a comparison of Achieved Service Levels with the Service Levels in the measurement period in question and measures to be taken to remedy any deficiency in Achieved Service Levels.

Necessary Consents: all approvals, certificates, authorisations, permissions, licences, permits, regulations and consents necessary from time to time for the performance of the Service including without limitation all specific consents set out in the Contract Particulars.

Payment Plan: the plan for payment of the Charges as set out in schedule 4.

Personal Data: shall have the same meaning as set out in the Data Protection Act 1998.

Process: has the meaning given to it under the Data Protection Legislation but, for the purposes of this agreement, it shall include both manual and automatic processing and "Processing" and "Processed" shall be construed accordingly.

Prohibited Act: the following constitute Prohibited Acts:

- (a) to directly or indirectly offer, promise or give any person working for or engaged by the Council a financial or other advantage to:
 - (i) *induce that person to perform improperly a relevant function or activity;*
or
 - (ii) *reward that person for improper performance of a relevant function or activity;*

- (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this agreement;
- (c) committing any offence:
 - (i) *under the Bribery Act;*
 - (ii) *under legislation creating offences concerning fraudulent acts;*
 - (iii) *at common law concerning fraudulent acts relating to this agreement or any other contract with the Council; or*
 - (iv) *defrauding, attempting to defraud or conspiring to defraud the Council.*

Provider Party: the Provider's agents and contractors, including each Sub-Contractor.

Provider's Personnel: all employees, staff, other workers, agents and consultants of the Provider and of any Sub-Contractors who are engaged in the provision of the Services from time to time.

Provider's Tender: the tender submitted by the Provider and other associated documentation set out in schedule 3.

Quarter Days: 01 April, 01 June, 01 October and 01 January in every year and 'Quarter' and 'Quarterly' shall be interpreted accordingly.

Regulated Activity: in relation to children shall have the same meaning as set out in Part 1 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006 and in relation to vulnerable adults shall have the same meaning as set out in Part 2 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006.

Regulated Activity Provider: shall have the same meaning as set out in section 6 of the Safeguarding Vulnerable Groups Act 2006.

Relevant Transfer: a relevant transfer for the purposes of TUPE.

Remediation Notice: a notice served by the Council in accordance with clause 30.1(b).

Replacement Services: any services that are identical or substantially similar to any of the Services and which the Council receives in substitution for any of the Services following the termination or partial termination or expiry of this agreement, whether those services are provided by the Council internally or by any Replacement Provider.

Replacement Provider: any third party supplier of Replacement Services appointed by the Council from time to time (or where the Council is providing Replacement Services for its own account, the Council).

Request for Information: a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the Information Legislation.

Service Credits: the sums attributable to a Service Failure as specified in Schedule 2.

Service Failure: a failure by the Provider to provide the Services in accordance with any individual Service Level measured on a monthly basis.

Service Levels: the service levels to which the Services are to be provided, as set out in schedule 2 part 1.

Services: the services to be delivered by or on behalf of the Provider under this agreement supporting the Construction Employer Support for Apprentice Creation and Improvement project, as more particularly described in schedule 1 (Specification).

Service Users: Construction contractors and built environment employers which do not have an apprenticeship scheme in place, who are supported through the Construction Employer Support for Apprentice Creation and Improvement project.

Specific Change in Law: a change in law which impacts on the performance of the Services which comes into force after the Commencement Date that relates specifically to the business of the Council and would not affect the supply of services to another customer of the Provider that are the same or similar to the Services.

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

Sub-Contractor: the contractors or Providers that enter into a Sub-Contract with the Provider.

Term: the period of the Initial Term as may be varied by:

- (a) any extensions to this agreement which are agreed pursuant to clause 3; or
- (b) the earlier termination of this agreement in accordance with its terms.

Termination Date: the date of expiry or termination of this agreement.

Termination Payment Default: is defined in schedule 4.

TUPE: the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced or other regulations implementing the Acquired Rights Directive.

Working Day: Monday to Friday, excluding any public holidays in England and Wales.

- 1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this agreement.
- 1.3 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors and permitted assigns.
- 1.4 The schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement and any reference to this agreement includes the schedules.
- 1.5 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.6 Words in the singular shall include the plural and vice versa.
- 1.7 A reference to one gender shall include a reference to the other genders.
- 1.8 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.

- 1.9 A reference to writing or written includes faxes and e-mail.
- 1.10 Any obligation in this agreement on a person not to do something includes an obligation not to agree or allow that thing to be done.
- 1.11 A reference to a document is a reference to that document as varied or novated (in each case, other than in breach of the provisions of this agreement) at any time.
- 1.12 References to clauses and schedules are to the clauses and schedules of this agreement; references to paragraphs are to paragraphs of the relevant schedule.
- 1.13 No review, comment or approval by the Council under the provisions of the agreement shall operate to exclude or limit the Provider's obligations or liabilities under the agreement or the Council's rights under the agreement.
- 1.14 Where any statement is qualified by the expression so far as [PARTY] is aware or to [PARTY]'s knowledge or any similar expression, that statement shall be deemed to include an additional statement that it has been made after due and careful enquiry.
- 1.15 Where there is any conflict or inconsistency between the provisions of the agreement, such conflict or inconsistency shall be resolved according to the following order of priority:
- (a) the clauses of the agreement;
 - (b) schedule 1 to this agreement;
 - (c) the remaining schedules to this agreement other than schedule 3;
 - (d) schedule 3 to this agreement.

Commencement and duration

2. Term

This agreement shall take effect on the Commencement Date and shall continue for the Term unless terminated in accordance with clause 30.

3. Extending the initial term

- 3.1 The Council may extend this agreement beyond the Initial Term by a further period or periods of up to the maximum period set out in the Contract Particulars (Extension Period). If the Council wishes to extend this agreement, it shall give the Provider at least 3 months' written notice of such intention before the expiry of the Initial Term or Extension Period.
- 3.2 If the Council gives such notice then the Term shall be extended by the period set out in the notice.

- 3.3 If the Council does not wish to extend this agreement beyond the Initial Term this agreement shall expire on the expiry of the Initial Term and the provisions of clause 34 shall apply.

4. Consents, bonds, guarantees, Provider's warranty and due diligence

- 4.1 The Provider shall ensure that all Necessary Consents are in place to provide the Services and the Council shall not (unless otherwise agreed) incur any additional costs associated with obtaining, maintaining or complying with the same.
- 4.2 Where there is any conflict or inconsistency between the provisions of the agreement and the requirements of a Necessary Consent, then the latter shall prevail, provided that the Provider has made all reasonable attempts to obtain a Necessary Consent in line with the requirements of the Services.
- 4.3 The Provider acknowledges and confirms that:
- (a) it has had an opportunity to carry out a thorough due diligence exercise in relation to the Services and has asked the Council all the questions it considers to be relevant for the purpose of establishing whether it is able to provide the Services in accordance with the terms of this agreement;
 - (b) it has received all information requested by it from the Council pursuant to clause 4.3(a) to enable it to determine whether it is able to provide the Services in accordance with the terms of this agreement;
 - (c) it has made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of the Council pursuant to clause 4.3(b);
 - (d) it has raised all relevant due diligence questions with the Council before the Commencement Date; and
 - (e) it has entered into this agreement in reliance on its own due diligence.
- 4.4 Save as provided in this agreement, no representations, warranties or conditions are given or assumed by the Council in respect of any information which is provided to the Provider by the Council and any such representations, warranties or conditions are excluded, save to the extent that such exclusion is prohibited by law.
- 4.5 The Provider:
- (a) as at the Commencement Date, warrants and represents that all information contained in the Provider's Tender remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Council prior to execution of the agreement; and
 - (b) shall promptly notify the Council in writing if it becomes aware during the performance of this agreement of any inaccuracies in any information provided to it by the Council during such due diligence which materially and adversely affects its ability to perform the Services or meet any Service Levels.

- (c) warrants and represents to and undertakes with the Council in the terms set out in the conditions of tendering.
- 4.6 The Provider shall not be entitled to recover any additional costs from the Council which arise from, or be relieved from any of its obligations as a result of, any matters or inaccuracies notified to the Council by the Provider in accordance with clause 4.5(b) save where such additional costs or adverse effect on performance have been caused by the Provider having been provided with fundamentally misleading information by or on behalf of the Council and the Provider could not reasonably have known that the information was incorrect or misleading at the time such information was provided. If this exception applies, the Provider shall be entitled to recover such reasonable additional costs from the Council or shall be relieved from performance of certain obligations as shall be determined by the Change Control Procedure.
- 4.7 If applicable, as soon as reasonably practical after a request by the Council, and in any event not later than fifteen (15) Working Days after such request or prior to the Commencement Date (whichever shall be the earliest), the Provider shall procure that the Provider's holding company (as described in the Companies Act 2006) which has executed the guarantee undertaking will execute and deliver to the Council the parent company guarantee in the form included in the tender documents; and/or
- 4.8 The Council shall be entitled to pay 20% less than any payment due to the Provider under clause 11 until the Provider has complied with clause 4.7.
- 4.9 Nothing in this clause 4 shall limit or exclude the liability of the Council for fraud or fraudulent misrepresentation.

The Services

5. Supply of services

- 5.1 The Provider shall provide the Services to the Council with effect from the Commencement Date and for the duration of this agreement in accordance with the provisions of this agreement.
- 5.2 In the event that the Provider does not comply with the provisions of clause 5.1 in any way, the Council may serve the Provider with a notice in writing setting out the details of the Provider's default (a Default Notice) as detailed in Schedule 2 Part 3.
- 5.3 For the avoidance of doubt this agreement shall not be exclusive. The Council shall be entitled at any time from the Commencement Date and thereafter throughout the Term to carry out any part of the Services or services of a similar nature itself or to procure a third party to do so.

6. Service levels

- 6.1 Where any Service is stated in schedule 2 to be subject to a specific Service Level, the Provider shall provide that Service in such a manner as will ensure that the Achieved

Service Level in respect of that Service is equal to or higher than such specific Service Level.

- 6.2 As existing Services are varied and new Services are added, Service Levels for the same will be determined and included within schedule 2.
- 6.3 The Provider shall provide records of and Management Reports summarising the Achieved Service Levels as provided for in clause 17.
- 6.4 In the event that any Achieved Service Level falls short of the relevant Service Level, without prejudice to any other rights the Council may have:-
 - (a) the Council may serve a suspension notice upon the Provider in accordance with the provisions of clause 30A; and
 - (b) the provisions of clause 12 (service credits) shall apply.

7. Service standards

- 7.1 Without prejudice to clause 6, the Provider shall provide the Services, or procure that they are provided:
 - (a) in accordance with this agreement including the Specification, any method statements and programme;
 - (b) in a good, safe and competent manner and free from dishonesty and corruption;
 - (c) with reasonable skill and care and in accordance with the Best Industry Practice applicable from time to time;
 - (d) in a manner which is not, and is not likely to become injurious to health or detrimental to the environment or to any property in the area where the Services are being performed;
 - (e) in a manner which shall promote and enhance the image and reputation of the Council;
 - (f) in all respects in accordance with all the Council's relevant rules, codes, policies, procedures and standards notified from time to time during the Term by the Council to the Provider, including in particular the Council's financial regulations and standing orders;
 - (g) in accordance with all relevant Acts of Parliament, statutory regulations, orders and codes of practice; and
 - (h) in a spirit of co-operation with the Council and its other contractors to deliver a high quality service.
- 7.2 Without limiting the general obligation set out in clause 7.1, the Provider shall (and shall procure that the Provider's Personnel shall):
 - (a) at all times comply with the provisions of the Human Rights Act 1998 in the performance of this agreement. The Provider shall also undertake, or refrain from undertaking, such acts as the Council requests so as to enable the Council to comply with its obligations under the Human Rights Act 1998; and

- (b) not unlawfully discriminate within the meaning and scope of any Equalities Legislation and will ensure that all Provider's Personnel and Sub-Contractors do not unlawfully discriminate, and will comply with all relevant codes of practice issued by the Equalities and Human Rights Commission or any comparable body and so far as practicable operate an equal opportunities policy which complies with the practical guidance and recommendations contained in such codes of practice; and
- (c) comply with the requirements of the Employment Relations Act 1999 (Blacklists) Regulations 2010 ("the Blacklists Regulations) and shall ensure that it will not during the Term be a party to or concur in any discriminatory employment practice which could be construed as blacklisting or boycotting any person who has sought employment with the Provider in breach of the Blacklists Regulations.

8. Health and Safety

- 8.1 The Provider shall promptly notify the Council of any health and safety hazards, which may arise in connection with the performance of the agreement. The Council shall promptly notify the Provider of any health and safety hazards that may exist or arise at the Council's Premises and that may affect the Provider in the performance of the agreement.
- 8.2 While on the Council's Premises, the Provider shall comply with any health and safety measures implemented by the Council in respect of staff and other persons working on the Council's Premises.
- 8.3 The Provider shall notify the Council immediately in the event of any incident occurring in the performance of the agreement on the Council's Premises where that incident causes any personal injury or damage to property that could give rise to personal injury.
- 8.4 The Provider shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to staff and other persons in the performance of the agreement.
- 8.5 The Provider shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc Act 1974) is made available to the Council on request.

9. Premises and Assets – Not Used

10. Disaster recovery/ disaster recovery - not used

Charges and payment

11. Payment

- 11.1 In consideration of the provision of the Services by the Provider in accordance with the terms and conditions of this agreement, the Council shall pay the Charges to the Provider in accordance with the Payment Plan.
- 11.2 The Provider shall invoice the Council for payment of the Charges at the time the Charges are expressed to be payable in accordance with the Payment Plan. All invoices shall be directed to the Council's Authorised Representative and shall be in a format agreed with the Council, identifying the amount payable. Any such invoices shall take into account any Service Credits which have been accrued in the previous period, identify any additions or deductions and the Services provided.
- 11.3 The Council shall pay the Charges which have become payable in accordance with the Payment Plan within thirty (30) days of receipt of an undisputed invoice from the Provider.
- 11.4 Where any party disputes any sum to be paid by it then a payment equal to the sum not in dispute shall be paid and the dispute as to the sum that remains unpaid shall be determined in accordance with clause 20. Provided that the sum has been disputed in good faith, interest due on any sums in dispute shall not accrue until the earlier of thirty (30) days after resolution of the dispute between the parties.
- 11.5 Subject to clause 11.4, interest may be payable on the late payment of any undisputed Charges properly invoiced under this agreement at four (4)% above the base rate of the National Westminster Bank plc in force at that time from the day following the end of the specified payment period until payment is made. The Provider shall not suspend the supply of the Services if any payment is overdue unless it is entitled to terminate this agreement under clause 30.4 for failure to pay undisputed charges.
- 11.6 The Charges are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Council following delivery of a valid VAT invoice. The Provider shall indemnify the Council against any liability (including any interest, penalties or costs incurred) which is levied, demanded or assessed on the Council at any time in respect of the Provider's failure to account for, or to pay, any VAT relating to payments made to the Provider under this agreement.
- 11.7 The Provider shall maintain complete and accurate records of, and supporting documentation for, all amounts which may be chargeable to the Council pursuant to this agreement. Such records shall be retained for inspection by the Council for twelve (12) years from the end of the Contract Year to which the records relate.

- 11.8 Where the Provider enters into a Sub-Contract with a supplier or contractor for the purpose of performing the agreement, it shall cause a term to be included in such a Sub-Contract that requires payment to be made of undisputed sums by the Provider to the Sub-Contractor within a specified period not exceeding 30 days from the receipt of a valid invoice, as defined by the Sub-Contract requirements.
- 11.9 The Council may retain or set off any sums owed to it by the Provider which have fallen due and payable against any sums due to the Provider under this agreement or any other agreement pursuant to which the Provider or any Associated Company of the Provider provides goods or services to the Council.

12. Service credits/service credits

- 12.1 If the Provider fails to provide the Services in accordance with any individual Service Level measured on a quarterly basis, the Provider shall pay to the Council the Service Credit set out in schedule 2.
- 12.2 The parties agree that any such Service Credit has been calculated as, and is, a genuine pre-estimate of the loss likely to be suffered by the Council. The Provider has taken the Service Credit into account in setting the level of the Charges.

Staff

13. Key personnel

- 13.1 Each party shall appoint the persons named as such in schedule 5 as the individuals who shall be responsible for the matters allocated to such Key Personnel. The Key Personnel shall be those people who are identified by each party as being key to the success of the implementation and/or operation of the Services and who shall be retained on the implementation and/or operation of the Services for such time as a person is required to perform the role which has been allocated to the applicable Key Personnel. The Key Personnel shall have the authority to act on behalf of their respective party on the matters for which they are expressed to be responsible.
- 13.2 The Provider shall not remove or replace any of the Key Personnel unless:
- (a) requested to do so by the Council;
 - (b) the person is on long-term sick leave;
 - (c) the element of the Services in respect of which the individual was engaged has been completed to the Council's satisfaction;
 - (d) the person resigns from their employment with the Provider; or
 - (e) the Provider obtains the prior written consent of the Council.
- 13.3 The Provider shall inform the Council of the identity and background of any replacements for any of the Key Personnel as soon as a suitable replacement has been identified. The Council shall be entitled to interview any such person and may object to any such proposed appointment within 5 Working Days of being informed of or meeting

any such replacement if, in its reasonable opinion, it considers the proposed replacement to be unsuitable for any reason.

- 13.4 The Provider shall ensure that the role of each of its Key Personnel is not vacant (in terms of a permanent representative) for more than 30 Working Days. Any replacement shall be as, or more, qualified and experienced as the previous incumbent and fully competent to carry out the tasks assigned to the Key Personnel whom they have replaced. A temporary replacement shall be identified with immediate effect from the Provider or the Council becoming aware of the role becoming vacant.
- 13.5 The Council may require the Provider to remove, or procure the removal of, any of its Key Personnel whom it considers, in its reasonable opinion, to be unsatisfactory for any reason which has a material impact on such person's responsibilities.
- 13.6 If the Provider replaces the Key Personnel as a consequence of this clause 13, the cost of effecting such replacement shall be borne by the Provider.

14. Other personnel used to provide the services

- 14.1 At all times, the Provider shall ensure that:
 - (a) each of the Provider's Personnel is suitably qualified, adequately trained and capable of providing the applicable Services in respect of which they are engaged;
 - (b) there is an adequate number of Provider's Personnel to provide the Services properly;
 - (c) only those people who are authorised by the Provider (under the authorisation procedure to be agreed between the parties) are involved in providing the Services; and
 - (d) all of the Provider's Personnel comply with all of the Council's policies including those that apply to persons who are allowed access to the applicable Council's Premises.
- 14.2 The Council may refuse to grant access to, and remove from the Council's Premises, any of the Provider's Personnel who do not comply with any such policies, or if they otherwise present a security threat.
- 14.3 The Provider shall replace any of the Provider's Personnel who the Council reasonably decides have failed to carry out their duties with reasonable skill and care. Following the removal of any of the Provider's Personnel for any reason, the Provider shall ensure such person is replaced promptly with another person with the necessary training and skills to meet the requirements of the Services.
- 14.4 The Provider shall maintain up-to-date personnel records on the Provider's Personnel engaged in the provision of the Services and, on request, provide reasonable information to the Council on the Provider's Personnel. The Provider shall ensure at all times that it has the right to provide these records in compliance with the applicable Data Protection Legislation.

- 14.5 The Provider shall use its best endeavours to ensure continuity of personnel and to ensure that the turnover rate of its staff engaged in the provision or management of the Services is at least as good as the prevailing industry norm for similar services, locations and environments.
- 14.6 The Provider confirms that their Authorised Representative is authorised as a person to whom the Provider's staff may make a qualifying disclosure under the Public Interest Disclosure Act 1998 and declares that any of the Provider's Personnel making a protected disclosure (as defined by the said Act) shall not be subject to any detriment. The Provider further declares that any provision in any agreement purporting to preclude a member of its staff from making a protected disclosure is void.

14A London living wage

- 14A.1 For the purposes of this clause:

Relevant Staff: shall mean all employees and other staff (including without limitation temporary and casual workers and agency staff as defined by Regulation 3 of the Agency Workers Regulations 2010 as amended by the Agency Workers (Amendment) Regulations 2011, and whether such staff are engaged or employed on a full or part time basis, but not including unpaid volunteers, interns or apprentices), who are employed or engaged on the Services for 2 or more hours of work in any given day in a week, for 8 or more consecutive weeks in a year.

Equivalent Hourly Wage: shall mean the hourly wage paid to an employee and calculated using the same method as prescribed by the National Minimum Wage Act 1998 and related applicable law to assess whether an employee is at any time receiving the national minimum wage (as identified in that Act).

The London Living Wage: shall mean the most recently identified London Living Wage hourly figure (or equivalent set figure(s)) published from time to time by the Greater London Authority or any successor body with responsibility for setting this figure.

- 14A.2 The Provider shall:

- (a) ensure that all Relevant Staff employed or engaged by the Provider are paid an Equivalent Hourly Wage which is equal to or exceeds the London Living Wage;
- (b) ensure that all Relevant Staff employed or engaged by its Subcontractors (if any) pay an Equivalent Hourly Wage which is equal to or exceeds the London Living Wage;
- (c) provide to the Council such information concerning the London Living Wage and the performance of its obligations under this clause 14A as the Council may reasonably require and within the deadlines it reasonably imposes;
- (d) co-operate and provide all reasonable assistance to the Council in monitoring the effects of the London Living Wage including without limitation assisting the Council in conducting surveys and assembling data in respect of the affect of payment of London Living Wage to Relevant Staff.

14A.3 For the avoidance of doubt, any breach by the Provider of this clause 14A will be a breach of a material obligation in relation to which the Council is entitled to rely upon its termination rights under clause 30.1 of this agreement.

15. Safeguarding children and vulnerable adults – disclosure and barring

15.1 The parties acknowledge that the Provider is a Regulated Activity Provider with ultimate responsibility for the management and control of the Regulated Activity provided under this agreement and for the purposes of the Safeguarding Vulnerable Groups Act 2006.

15.2 The Provider shall procure that prior to carrying out any Regulated Activity any Provider's Personnel or potential Personnel will be questioned as to whether he or she has any Convictions or Asbos and will be subject to a valid enhanced disclosure check under taken through the Disclosure and Barring Service ("DBS") including a check against the adult Barred List or the children's Barred List, as appropriate.

15.3 to the extent permitted by legislation, a copy of the results of the DBS checks shall be notified to the Council.

15.4 The Provider shall procure that:

- (a) no person who appears on a Barred List following the results of a DBS check shall be employed or engaged in the performance of Regulated Activity; and
- (b) it shall and shall procure that all sub-contractors shall comply with all reporting requirements to the DBS.
- (c) no person who discloses any Convictions, or Asbos, or who is found to have any Convictions following the results of a DBS check, is employed or engaged in carrying out any part of any Regulated Activity without the Council's prior written consent (such consent not to be unreasonably withheld or delayed).
- (d) In so far as permitted by law, the Provider shall procure that the Council is kept advised at all times of any Provider's Personnel involved in the provision of the Regulated Activity who:
 - (i) *is engaged in the carrying out of any Regulated Activity, and*
 - (ii) *subsequent to his/her commencement of employment, receives a Conviction or Asbo which becomes known to the Provider or whose previous Convictions or Asbos become known to the Provider, or*
 - (iii) *in respect of which information is referred to the DBS by the Provider pursuant to the Disclosure and Barring Scheme, or*
 - (iv) *is placed on a Barred List pursuant to the Disclosure and Barring Scheme which become known to the Provider.*
- (e) In the event that any Provider's Personnel involved in the provision of a Regulated Activity is added to a Barred List, the Provider shall procure that such Provider's Personnel shall cease to be engaged in the Regulated Activity.
- (f) Save to the extent prescribed otherwise pursuant to the Disclosure and Barring Scheme, this clause 15 shall not apply to those individuals who shall be required by the Provider to provide emergency reactive services. In the case of

such individuals, the Provider shall ensure that such individuals are accompanied at all times by Provider's Personnel who have been properly employed or engaged in accordance with clause 15.

- 15.5 The Provider shall also comply with the Council's Safeguarding policies attached in Schedule 13.

16. TUPE

The parties agree that the provisions of schedule 10 shall apply generally and specifically to any Relevant Transfer of staff under this agreement.

Contract management

17. Reporting and meetings

- 17.1 The Provider shall provide the management reports in the form and at the intervals set out in schedule 5.
- 17.2 The Provider shall implement such systems as shall be necessary to eliminate, so far as practicable, and protect the Council from fraud, corruption, error and mistake by the Provider or its staff. The Provider shall notify the Council immediately if fraud, corruption or substantial errors are suspected, and shall permit the Council to audit such systems and shall provide the Council with all necessary access and facilities for that purpose.
- 17.3 The Authorised Representatives and relevant Key Personnel shall meet in accordance with the details set out in schedule 5 and the Provider shall, at each meeting, present its previously circulated Management Reports and Financial Reports (if required) in the format set out in that Schedule.

18. Monitoring

- 18.1 The Council may monitor the performance of the Services by the Provider in accordance with the provisions in these Conditions of Contract, in particular, schedules 1 and 5.
- 18.2 The Provider shall co-operate, and shall procure that its Sub-Contractors co-operate, with the Council in carrying out the monitoring referred to in clause 18.1 at no additional charge to the Council.

19. Change control, benchmarking , continuous improvement and change in the law

- 19.1 Any requirement for a Change shall be subject to the Change Control Procedure.
- 19.2 NOT USED.
- 19.3 The Provider shall have an ongoing obligation throughout the Term to identify new or potential improvements to the Services. As part of this obligation the Provider shall

identify and report to the Council's Authorised Representative quarterly in the first Contract Year and once every six months for the remainder of the Term on:

- (a) the emergence of new and evolving relevant technologies which could improve the Services;
- (b) new or potential improvements to the Services including the quality, responsiveness, procedures, benchmarking methods, performance mechanisms and customer support services in relation to the Services;
- (c) new or potential improvements to the interfaces or integration of the Services with other services provided by third parties or the Council which might result in efficiency or productivity gains or in reduction of operational risk; and
- (d) changes in ways of working that would enable the Services to be delivered at lower costs and/or at greater benefits to the Council.

19.4 Any potential Changes highlighted as a result of the Provider's reporting in accordance with clause 19.3 shall be addressed by the parties using the Change Control Procedure.

19.5 The Provider is neither relieved of its obligations to supply the Services in accordance with the terms of this agreement nor entitled to an increase in the Charges as the result of a General Change in Law or a Specific Change in Law where the effect of that Specific Change in Law on the Services is known at the Commencement Date.

19.6 If a Specific Change in Law occurs or will occur during the Term (other than those where the effect on the Services is known at the Commencement Date) the Provider shall notify the Council of the likely effects of that change, including:

- (a) whether any Change is required to the Services, the Charges or this agreement; and
- (b) whether any relief from compliance with the Provider's obligations is required, including any obligation to meet the Service Levels at any time.

19.7 As soon as practicable after any notification in accordance with clause 19.6 the parties shall discuss and agree the matters referred to in that clause and any ways in which the Provider can mitigate the effect of the Specific Change in Law including:

- (a) providing evidence that the Provider has minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of its Sub-Contractors;
- (b) demonstrating that a foreseeable Specific Change, had been taken into account by the Provider before it occurred;
- (c) giving evidence as to how the Specific Change in Law has affected the cost of providing the Services; and
- (d) demonstrating that any expenditure that has been avoided, for example which would have been required under the provisions of clause 19.3: Continuous Improvement, has been taken into account in amending the Charges.

19.8 Any increase in the Charges or relief from the Provider's obligations agreed by the parties pursuant to clause 19.6 and 19.7 shall be implemented in accordance with the Change Control Procedure.

20. Dispute resolution

- 20.1 Either party may call an extraordinary meeting of the parties by service of not less than five (5 days') written notice and each party agrees to procure that its Authorised Representative together with any other member of Key Personnel requested to attend by the Council (if any) shall attend all extraordinary meetings called in accordance with this clause.
- 20.2 The members of the relevant meeting shall use their best endeavours to resolve disputes arising out of this agreement. If any dispute referred to a meeting is not resolved at that meeting then either party, by notice in writing to the other, may refer the dispute to the relevant Strategic Director of the Council and a senior partner or director of the Provider who shall co-operate in good faith to resolve the dispute as amicably as possible within fourteen (14) days of service of such notice. If the senior officers fail to resolve the dispute in the allotted time, then the parties will enter into an alternative Dispute Resolution Procedure with the assistance of a mediator appointed by the Centre for Dispute Resolution.
- 20.3 The parties shall then submit to the supervision of the mediation by the Centre for Dispute Resolution for the exchange of relevant information and for setting the date for negotiations to begin.
- 20.4 Recourse to this Dispute Resolution Procedure shall be binding on the parties as to submission to the mediation but not as to its outcome. Accordingly all negotiations connected with the dispute shall be conducted in strict confidence and without prejudice to the rights of the parties in any future legal proceedings. Except for any party's right to seek interlocutory relief in the courts, no party may commence other legal proceedings under the jurisdiction of the courts until 21 days after the parties have failed to reach a binding settlement by mediation (at which point the Dispute Resolution Procedure shall be deemed to be exhausted).
- 20.5 If, with the assistance of the mediator, the parties reach a settlement, such settlement shall be reduced to writing and, once signed by the duly Authorised Representative of each of the parties, shall remain binding on the parties.
- 20.6 The parties shall bear their own legal costs of this Dispute Resolution Procedure, but the costs and expenses of mediation shall be borne by the parties equally unless the mediator determines otherwise.
- 20.7 While the Dispute Resolution Procedure referred to in this clause 20 is in progress and any party has an obligation to make a payment to another party or to allow a credit in respect of such payment, the sum relating to the matter in dispute shall be paid into an interest bearing deposit account to be held in the names of the relevant parties at a clearing bank and such payment shall be a good discharge of the parties' payment obligations under this agreement. Following resolution of the dispute, whether by mediation or legal proceedings, the sum held in such account shall be payable as determined in accordance with the mediation or legal proceedings, and the interest accrued shall be allocated between the parties pro rata according to the split of the principal sum as between the parties.

21. Sub-Contracting and assignment

- 21.1 Subject to clause 21.4 neither party shall be entitled to assign, novate or otherwise dispose of any or all of its rights and obligations under this agreement.
- 21.2 The Provider may not sub-contract the whole or any part of its obligations under this agreement except with the express prior written consent of the Council.
- 21.3 In the event that the Provider enters into any Sub-Contract in connection with this agreement it shall:
- (a) remain responsible to the Council for the performance of its obligations under the agreement notwithstanding the appointment of any Sub-Contractor and be responsible for the acts omissions and neglects of its Sub-Contractors;
 - (b) impose obligations on its Sub-Contractor in the same terms as those imposed on it pursuant to this agreement and shall procure that the Sub-Contractor complies with such terms; and
 - (c) provide a copy, at no charge to the Council, of any such Sub-Contract on receipt of a request for such by the Council's Authorised Representative.
 - (d) Provide, at no charge to the Council, of any collateral warranty required by the Council in the form included in the tender documents.
- 21.4 The Council shall be entitled to novate the agreement to any other body which substantially performs any of the functions that previously had been performed by the Council.

Liability

22. Indemnities

The Provider shall indemnify and keep indemnified the Council against all actions, proceedings, costs, claims, demands, liabilities, losses and expenses whatsoever whether arising in tort (including negligence) default or breach of this agreement, to the extent that any such loss or claim is due to the breach of contract, negligence, wilful default or fraud of itself or of its employees or of any of its representatives or Sub-Contractors save to the extent that the same is directly caused by or directly arises from the negligence, breach of this agreement or applicable law by the Council or its representatives (excluding any Provider's Personnel).

23. Limitation of liability

- 23.1 Subject to clause 23.3 and clause 23.4, neither party shall be liable to the other party (as far as permitted by law) for indirect special or consequential loss or damage in connection with the agreement which shall include, without limitation, any loss of or damage to profit, revenue, contracts, anticipated savings, goodwill or business opportunities whether direct or indirect.

- 23.2 Each party shall at all times take all reasonable steps to minimise and mitigate any loss or damage for which the relevant party is entitled to bring a claim against the other party pursuant to this agreement.
- 23.3 Any clause limiting the Provider's liability does not apply in relation to the breach of clause 25 Information Requests, clauses 26 Data Protection and clause 27 Confidentiality.
- 23.4 Notwithstanding any other provision of this agreement neither party limits or excludes its liability for:
- (a) fraud or fraudulent misrepresentation;
 - (b) death or personal injury caused by its negligence;
 - (c) breach of any obligation as to title implied by statute; or
 - (d) any other act or omission, liability for which may not be limited under any applicable law.

24. Insurance

- 24.1 The Provider shall at its own cost effect and maintain with a reputable insurance company a policy or policies of insurance providing as a minimum the following levels of cover:
- (a) public liability insurance with a limit of indemnity of not less than £10,000,000 in relation to any one claim or series of claims;
 - (b) employer's liability insurance with a limit of indemnity of not less than £10,000,000 in relation to any one claim or series of claims;]
 - (c) professional indemnity insurance with a limit of indemnity of not less than £5,000,000 in relation to any one claim or series of claims and shall ensure that all professional consultants or Sub-Contractors involved in the provision of the Services hold and maintain appropriate cover;
- (the Required Insurances) The cover shall be in respect of all risks which may be incurred by the Provider, arising out of the Provider's performance of the agreement, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Provider.
- 24.2 The Provider shall give the Council, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the Required Insurances are in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
- 24.3 If, for whatever reason, the Provider fails to give effect to and maintain the Required Insurances, the Council may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Provider.

- 24.4 The terms of any insurance or the amount of cover shall not relieve the Provider of any liabilities under the agreement.
- 24.5 The Provider shall hold and maintain the Required Insurances for a minimum of six years following the expiration or earlier termination of the agreement.

Information

25. Information Requests

- 25.1 The Provider acknowledges that the Council is subject to the requirements of the Information Legislation and shall assist and co-operate with the Council (at the Provider's expense) to enable the Council to comply with its information disclosure obligations.
- 25.2 The Provider shall and shall procure that its Sub-Contractors shall:
- (a) transfer all Requests for Information that it receives to the Council as soon as practicable after receipt and in any event within two Working Days of receiving a Request for Information;
 - (b) provide the Council with a copy of all Information in its possession or power in the form that the Council requires within five Working Days (or such other period as the Council may specify) of the Council requesting that Information; and
 - (c) provide all necessary assistance as reasonably requested by the Council to enable the Council to respond to the Request for Information within the time for compliance set out in the Information Legislation.
- 25.3 The Council shall be responsible for determining at its absolute discretion, and notwithstanding any other provision in this agreement or any other agreement, whether the Commercially Sensitive Information and/or any other Information:
- (a) is exempt from disclosure in accordance with the provisions of the Information Legislation; and/or
 - (b) is to be disclosed in response to a Request for Information.
- 25.4 In no event shall the Provider respond directly to a Request for Information unless expressly authorised to do so by the Council.
- 25.5 The Provider acknowledges that the Council may, acting in accordance with the Department of Constitutional Affairs' Code of Practice on the discharge of public authorities' functions under Part 1 of FOIA (issued under section 45 of the FOIA, November 2004), be obliged under the Information Legislation to disclose Information concerning the Provider or the Services:
- (a) In certain circumstances without consulting with the Provider; or

- (b) following consultation with the Provider and having taken their views into account,

provided always that where clause 25.5(b) applies the Council shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Provider advanced notice, or failing that, to draw the disclosure to the Provider's attention after any such disclosure.

- 25.6 The Provider shall ensure that all Information acquired or produced in the course of the agreement or relating to the agreement is safely retained and available for disclosure during the Term and for six (6) years afterwards and shall permit the Council, its internal auditors and the District Auditor to inspect such records as requested from time to time. In default of compliance, the Council may recover possession of such materials and the Provider shall permit the Council or its approved agents to enter for those purposes any premises of the Provider where any such materials may be held.
- 25.7 The Provider acknowledges that any lists or Schedules provided by it outlining Commercially Sensitive Information is of indicative value only and that the Council may nevertheless be obliged to disclose it in accordance with clause 25.5.
- 25.8 Where the Council requires any Information from the Provider relating to any potential or actual claim by a third party against the Council, the Provider shall ensure that any Information requested by the Council is supplied to the Council in sufficient time to enable the Council to comply with any relevant procedural rules.

26. Data protection

- 26.1 The Provider shall (and shall procure that any of its Provider's Personnel involved in the provision of the agreement shall) comply with any notification requirements under the DPA and both Parties shall duly observe all their obligations under the Data Protection Legislation which arise in connection with the agreement,
- 26.2 Notwithstanding the general obligation in clause 26.1, where the Provider is processing Personal Data as a Data Processor for the Council, the Provider shall:
 - (a) process the Personal Data only in accordance with instructions from the Council (which may be specific instructions or instructions of a general nature as set out in this agreement or as otherwise notified by the Council to the Provider during the Term);
 - (b) process the Personal Data only to the extent, and in such manner, as is necessary for the provision of the Services or as is required by law or any regulatory body;
 - (c) implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful Processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm and/or reputational damage which might result from any unauthorised or unlawful Processing, accidental loss, destruction or

damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected;

- (d) take all necessary steps to ensure the reliability of any Provider's Personnel who have access to the Personal Data;
- (e) obtain prior written consent from the Council in order to transfer the Personal Data to any Sub-contractors for the provision of the Services;
- (f) ensure that all of the Provider's Personnel required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the obligations set out in this clause 26.2;
- (g) ensure that none of the Provider's Personnel publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Council;
- (h) notify the Council (within two Working Days) if it receives:
 - (i) *a request from a Data Subject to have access to that person's Personal Data; or*
 - (ii) *a complaint or request relating to the Council's obligations under the Data Protection Legislation;*
- (i) provide the Council with full cooperation and assistance in relation to any complaint or request made, including by:
 - (i) *providing the Council with full details of the complaint or request;*
 - (ii) *complying with a data access request within the relevant timescales set out in the Data Protection Legislation and in accordance with the Council's instructions;*
 - (iii) *providing the Council with any Personal Data it holds in relation to a Data Subject (within the timescales required by the Council); and*
 - (iv) *providing the Council with any information requested by the Council;*
- (j) permit the Council or their Authorised Representative (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit the Provider's Data Processing activities (and/or those of its agents, subsidiaries and Sub-Contractors) and comply with all reasonable requests or directions by the Council to enable the Council to verify and/or procure that the Provider is in full compliance with its obligations under this agreement;
- (k) provide a written description of the technical and organisational methods employed by the Provider for processing Personal Data (within the timescales required by the Council);
- (l) not Process or otherwise transfer any Personal Data outside the European Economic Area. If, after the Commencement Date, the Provider (or any Sub-Contractor) wishes to Process and/or transfer any Personal Data outside the European Economic Area the Provider shall submit a request under the Change Control Procedure in Schedule 7;
- (m) promptly notify the Council of any breach of the security measures required to be put in place pursuant to clause 26.2;and

- (n) ensure it does not knowingly or negligently do or omit to do anything which places the Council in breach of the Council's obligations under the DPA.
- 26.3 The provisions of this clause shall apply during the continuance of the agreement and indefinitely after its expiry or termination.
- 27. Confidentiality**
- 27.1 Subject to clause 27.2, the parties shall keep confidential all matters relating to this agreement and shall use all reasonable endeavours to prevent their representatives and Personnel from making any disclosure to any person of any matters relating hereto.
- 27.2 Clause 27.1 shall not apply to any disclosure of information:
 - (a) required by any applicable law, provided that clause 25.1 shall apply to any disclosures required under the Information Legislation;
 - (b) that is reasonably required by persons engaged by a party in the performance of such party's obligations under this agreement;
 - (c) where a party can demonstrate that such information is already generally available and in the public domain otherwise than as a result of a breach of clause 27.1;
 - (d) by the Council of any document to which it is a party and which the parties to this agreement have agreed contains no Commercially Sensitive Information;
 - (e) to enable a determination to be made under clause 20;
 - (f) which is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party;
 - (g) by the Council to any other department, office or agency of the Government, including the District Auditor;
 - (h) by the Council in accordance with any Council or Government initiative or policy on open data, transparency and public accountability, including publishing a copy of the contract (redacting any Commercially Sensitive Information) following execution; and
 - (i) by the Council relating to this agreement and in respect of which the Provider has given its prior written consent to disclosure.
- 27.3 The Provider shall keep proper security arrangements against the destruction, loss or unauthorised use or alteration of Information. Such arrangements shall ensure that access to Information is only obtained by such officers of the Council as are specifically designated by the Council. The Provider shall restore at its own expense Information which is destroyed or in respect of which an unauthorised alteration is made.
- 27.4 On or before the Termination Date the Provider shall ensure that all documents and/or computer records in its possession, custody or control which relate to personal information of the Council's employees, rate-payers or service users, are delivered up to the Council or securely destroyed.

28. Audit, enquiry or investigation

- 28.1 During the Term and for a period of six (6) years after the Termination Date, the Council may conduct or be subject to an audit for the following purposes:
- (a) to verify the accuracy of Charges (and proposed or actual variations to them in accordance with this agreement) and/or the costs of all suppliers (including Sub-Contractors) of the Services at the level of detail agreed in schedule 4 (Payment), or as otherwise required by the Council;
 - (b) to review the integrity, confidentiality and security of any data relating to the Council or any service users;
 - (c) to review the Provider's compliance with the Information Legislation, in accordance with clause 26 (Data Protection) and clause 25 (Information Requests) and any other legislation applicable to the Services;
 - (d) to review any records created during the provision of the Services;
 - (e) to review any books of account kept by the Provider in connection with the provision of the Services;
 - (f) to carry out the audit and certification of the Council's accounts;
 - (g) to carry out an examination pursuant to section 6(1) of the National Audit Act 1983 and/or sections 44 and 46 of the Audit Commission Act 1998 of the economy, efficiency and effectiveness with which the Council has used its resources;
 - (h) to verify the accuracy and completeness of the Management Reports delivered or required by this agreement.
- 28.2 The Council shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Provider or delay the provision of the Services.
- 28.3 Subject to the Council's obligations of confidentiality, the Provider shall on demand provide the Council and any relevant regulatory body (and/or their agents or representatives) with all reasonable co-operation and assistance in relation to each audit, including:
- (a) all information requested by the above persons within the permitted scope of the audit;
 - (b) reasonable access to any sites controlled by the Provider and to any equipment used (whether exclusively or non-exclusively) in the performance of the Services; and/or
 - (c) access to the Provider's Personnel.
- 28.4 The Council shall endeavour to (but is not obliged to) provide at least 15 days notice of its or, where possible, a regulatory body's, intention to conduct an audit.
- 28.5 The parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause, unless the audit identifies a material failure to perform its obligations under this agreement in any

material manner by the Provider in which case the Provider shall reimburse the Council for all the Council's reasonable costs incurred in the course of the audit.

28.6 If an audit identifies that:

- (a) the Provider has failed to perform its obligations under this agreement in any material manner, the parties shall agree and implement a remedial plan. If the Provider's failure relates to a failure to provide any information to the Council about the Charges, proposed Charges or the Provider's costs, then the remedial plan shall include a requirement for the provision of all such information;
- (b) the Council has overpaid any Charges, the Provider shall pay to the Council the amount overpaid within 20 days. The Council may deduct the relevant amount from the Charges if the Provider fails to make this payment; and
- (c) the Council has underpaid any Charges, the Council shall pay to the Provider the amount of the under-payment less the cost of audit incurred by the Council if this was due to a default by the Provider in relation to invoicing within 20 days.

28.7 The Provider shall at all times during the Term and for a period of six (6) years afterwards fully co-operate with any enquiry or investigation (whether routine or specific) which in any way concerns, affects or relates to the Services. Such enquiry or investigation may include, inter alia:-

- (a) the Council's Cabinet and the Council's Overview and Scrutiny Committee and scrutiny sub-committee undertaking their respective functions;
- (b) an investigation by the Council into a complaint about the acts or omissions of the Provider, the Provider's Personnel or agents made under the Equalities Legislation;
- (c) the Council's auditors (whether internal or external);
- (d) the Local Government Ombudsman.

28.8 Such co-operation shall include (but not be limited to the following):-

- (a) providing access to or copies of such files, documents, letters, emails, notes, minutes, records, accounts or any other information (whether held or stored electronically, in hard copy format or otherwise) which relates to the subject or service under investigation;
- (b) providing access to the Provider's premises, vehicles, plant, equipment (including IT hardware and software) or other assets used by the Provider in the performance of the Services;
- (c) providing access to the Provider's Personnel (of whatever seniority) involved in the agreement (including management or supervisory staff) or who may be the subject of, or be named in, any enquiry or investigation by the auditors or the ombudsman (including providing suitable facilities for interviewing such staff);
- (d) maintaining the confidentiality of the enquiry or investigation when required to do so;

- (e) making such explanations as may be necessary for the enquiry or investigation to be satisfied that the terms and conditions of the agreement, the Council's standing orders and financial regulations and statutory provisions relating to the agreement are being complied with.

29. Intellectual property

29.1 In the absence of prior written agreement by the Council to the contrary, all Intellectual Property created by the Provider or any employee, agent or subcontractor of the Provider;

- (a) in the course of performing the Services; or
- (b) exclusively for the purpose of performing the Services,

shall vest in the Council on creation.

29.2 The Provider shall indemnify the Council against all claims, demands, actions, costs, expenses (including legal costs and disbursements on a solicitor and client basis), losses and damages arising from or incurred by reason of any infringement or alleged infringement (including the defence of such alleged infringement) of any Intellectual Property Right by the availability of the Services, except to the extent that they have been caused by or contributed to by the Council's acts or omissions.

29A Complaints and correspondence

29A.1 The Provider shall deal promptly (no later than 10 working days) with any comments or complaints received in relation to the Service whether received direct or via the Council.

29A.2 The Provider shall maintain a register of any complaints and adverse comments received by the Provider about the performance of the Services.

29A.3 The Provider shall provide to the Council's Authorised Representative copies of all complaints and adverse comments relating to the performance of the Services by the Provider and provide such statistical information as the Council may from time to time reasonably require. Such information shall be provided within five (5) Working Days of receipt of the complaint or adverse comment.

29A.3 The Provider shall co-operate with the Council in connection with any investigations undertaken by the Council or a third party acting on its behalf.

Termination and suspension

30. Termination for breach

30.1 The Council may terminate this agreement in whole or part with immediate effect, or by such other period as the Council determines, by the service of written notice on the Provider in the following circumstances:

- (a) if the Provider is in breach of any material obligation under this agreement. It shall be considered a material breach if the Service is not provided in accordance with the specification set out in schedule 1;

- (b) if the Provider is in breach of any material obligation under this agreement and the breach is capable of remedy, the Council may only terminate this agreement under this clause 30.1 if the Council has served a Default Notice on the Provider and the Provider has failed to remedy the breach set out in the Default Notice within the time stated in the Default Notice (which shall be a period not less than 14 days);
- (c) if, in the reasonable opinion of the Council, there is a material detrimental change in the financial standing and/or the credit rating of the Provider which adversely impacts on the ability of the Provider to supply the Services under this agreement. This may be evidenced by, inter alia, a proposed compromise with creditors or a proposed voluntary arrangement within the Insolvency Act 1986, the consideration by shareholders or presentation of a winding up petition or the application for the appointment of a provisional liquidator;
- (d) if a resolution is passed or an order is made for the winding up of the Provider (otherwise than for the purpose of solvent amalgamation or reconstruction) or the Provider becomes subject to an administration order or a receiver or administrative receiver is appointed over or an encumbrancer takes possession of any of the Provider's property or equipment;
- (e) if the Provider ceases or threatens to cease to carry on business in the United Kingdom;
- (f) if there is a change of control (as defined in section 574 of the Capital Allowances Act 2001) of the Provider to which the Council reasonably objects.

30.2 The Council may terminate this agreement in accordance with the provisions of clause 32 (Force Majeure) and 33.6 (Prevention of Bribery).

30.3 If this agreement is terminated by the Council for cause such termination shall be at no loss or cost to the Council and the Provider hereby indemnifies the Council against any such losses or costs which the Council may suffer as a result of any such termination for cause.

30.4 The Provider may terminate this agreement in the event that the Council commits a Termination Payment Default by giving 30 days' written notice to the Council. In the event that the Council remedies the Termination Payment Default in the 30 day notice period, the Provider's notice to terminate this agreement shall be deemed to have been withdrawn.

30A Suspension

30A.1 Without prejudice to its right to terminate this agreement under clause 30, upon the occurrence of one or more of the events listed in clause 30.1, the Council may do any one or more of the following:

30A.2 Issue a suspension notice to the Provider stating that the Council will provide or procure the provision of the whole or any part of the Services until such time as the Provider's Authorised Representative shall demonstrate to the reasonable satisfaction of the Council's Authorised Representative that the Provider will be able to resume performance of such part of the Services to the Service Standards whereupon a

resumption notice will be issued. During such period, the Provider's performance of the whole or any part of the Services and the Council's payment to the Provider for such whole or part of the Services shall be suspended;

- 30A.3 The Council may charge the Provider any costs reasonably incurred by the Council and any reasonable administration costs in respect of the provision of any part of the Services by the Council or a third party in the circumstances set out in this clause 30A, to the extent that such costs exceed the payment which would otherwise have been payable to the Provider for such part of the Services;
- 30A.4 Suspend payment to the Provider of any payments due under this agreement, retain any amount due to the Provider from the Council or make such deduction from any payment to be made to the Provider under this agreement as may reasonably reflect sums paid or sums which would otherwise be payable in respect of such of the Services to which the Provider's breach relates.

31. Termination on notice

The Council may terminate this agreement at any time by giving three (3) months written notice to the Provider. For the avoidance of doubt, termination of this agreement by effluxion of time at the end of the Initial Term shall not require notice.

32. Force majeure

- 32.1 Subject to the remaining provisions of this clause 32, neither party to this agreement shall be liable to the other for any delay or non-performance of its obligations under this agreement to the extent that such non-performance is due to a Force Majeure Event.
- 32.2 In the event that either party is delayed or prevented from performing its obligations under this agreement by a Force Majeure Event, such party shall:
- (a) give notice in writing of such delay or prevention to the other party as soon as reasonably possible, stating the commencement date and extent of such delay or prevention, the cause thereof and its estimated duration;
 - (b) use all reasonable endeavours to mitigate the effects of such delay or prevention on the performance of its obligations under this agreement; and
 - (c) resume performance of its obligations as soon as reasonably possible after the removal of the cause of the delay or prevention.
- 32.3 A party cannot claim relief if the Force Majeure Event is attributable to that party's wilful act, neglect or failure to take reasonable precautions against the relevant Force Majeure Event.
- 32.4 The Provider cannot claim relief if the Force Majeure Event is one where a reasonable Provider should have foreseen and provided for the cause in question.
- 32.5 As soon as practicable following the affected party's notification, the parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and to facilitate the continued performance of this agreement. Where the Provider is the affected party, it shall take

and/or procure the taking of all steps to overcome or minimise the consequences of the Force Majeure Event in accordance with Best Industry Practice.

- 32.6 The affected party shall notify the other party as soon as practicable after the Force Majeure Event ceases or no longer causes the affected party to be unable to comply with its obligations under this agreement. Following such notification, this agreement shall continue to be performed on the terms existing immediately before the occurrence of the Force Majeure Event unless agreed otherwise by the parties.
- 32.7 The Council may, during the continuance of any Force Majeure Event, terminate this agreement by written notice to the Provider if a Force Majeure Event occurs that affects all or a substantial part of the Services and which continues for more than sixty (60) Working Days.

33. Prevention of bribery

- 33.1 The Provider:
- (a) shall not, and shall procure that any Provider Party and all Provider Personnel shall not, in connection with this Agreement commit a Prohibited Act;
 - (b) warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by the Council, or that an agreement has been reached to that effect, in connection with the execution of this Agreement, excluding any arrangement of which full details have been disclosed in writing to the Council before execution of this Agreement.
- 33.2 The Provider shall:
- (a) if requested, provide the Council with any reasonable assistance, at the Council's reasonable cost, to enable the Council to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act;
 - (b) within fifteen (15) Working Days of the Commencement Date, and annually thereafter, certify to the Council in writing (such certification to be signed by an officer of the Provider) compliance with this clause 33 by the Provider and all persons associated with it or other persons who are supplying goods or services in connection with this Agreement. The Provider shall provide such supporting evidence of compliance as the Council may reasonably request.
- 33.3 The Provider shall have an anti-bribery policy (which shall be disclosed to the Council) to prevent any Provider Party or Provider Personnel from committing a Prohibited Act and shall enforce it where appropriate.
- 33.4 If any breach of clause 33.1 is suspected or known, the Provider must notify the Council immediately.
- 33.5 If the Provider notifies the Council that it suspects or knows that there may be a breach of clause 33.1, the Provider must respond promptly to the Council's enquiries, co-

operate with any investigation, and allow the Council to audit books, records and any other relevant documentation. This obligation shall continue for six (6) years following the expiry or termination of this agreement.

- 33.6 The Council may terminate this agreement by written notice with immediate effect (or such other period as the Council determines) if the Provider, Provider Party or Provider Personnel (in all cases whether or not acting with the Provider's knowledge) breaches clause 33.1. In determining whether to exercise the right of termination under this clause 33.6, the Council shall give all due consideration, where appropriate, to action other than termination of this agreement unless the Prohibited Act is committed by the Provider or a senior officer of the Provider or by an employee, Sub-Contractor or supplier not acting independently of the Provider. The expression "not acting independently of" (when used in relation to the Provider or a Sub-Contractor) means and shall be construed as acting:

- (a) with the Council; or,
- (b) with the actual knowledge;

of any one or more of the directors of the Provider or the Sub-Contractor (as the case may be); or

- (c) in circumstances where any one or more of the directors of the Provider ought reasonably to have had knowledge.

- 33.7 Any notice of termination under clause 33.6 must specify:

- (a) the nature of the Prohibited Act;
- (b) the identity of the party whom the Council believes has committed the Prohibited Act; and
- (c) the date on which this agreement will terminate.

- 33.8 Despite clause 20 (Dispute resolution), any dispute relating to:

- (a) the interpretation of clause 33; or
- (b) the amount or value of any gift, consideration or commission,

shall be determined by the Council and its decision shall be final and conclusive.

- 33.9 Any termination under clause 33.6 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Council.

34. Consequences of termination

- 34.1 On the expiry of the Term or if this agreement is terminated in whole or in part for any reason:

- (a) the Council shall have the right to require the Provider to provide free of charge for three (3) months following the date of termination of the agreement such advice, assistance and co-operation as the Council may reasonably require to enable the Council to provide or procure the provision of the Services or part of them;

- (b) the Council shall have the right to require the Provider to use its best endeavours to assign to the Council or to any Replacement Provider any contract to which the Provider is a party and which relates to the Services or part of them.
- 34.2 On termination of this agreement the Provider shall procure that all data and other material belonging to the Council (and all media of any nature containing information and data belonging to the Council or relating to the Services), shall be delivered to the Council forthwith and the Provider's Authorised Representative shall certify full compliance with this clause.
- 34.3 The provisions of clause 6.3 (provision of records), clause 22 (Indemnities), clause 24 (Insurance), clause 25 (Freedom of Information), clause 26 (Data Protection), clause 28 (Audit, Enquiry or Investigation), clause 30 (Termination for Breach), clause 35 (non-solicitation) this clause 34 (Consequences of termination) and any other clause which by implication should continue, shall survive termination or expiry of this agreement.

General provisions

35. Non-solicitation

Neither party shall (except with the prior written consent of the other) during the term of this agreement solicit the services of any senior staff of the other party who have been engaged in the provision of the Services or the management of this agreement or any significant part thereof either as principal, agent, employee, independent contractor or in any other form of employment or engagement other than by means of an open public recruitment and not specifically targeted at such staff of the other party.

36. Waiver

No forbearance or delay by either party in enforcing its respective rights will prejudice or restrict the rights of that party, and no waiver of any such rights or of any breach of any contractual terms will be deemed to be a waiver of any other right or of any later breach. In particular, but without limitation to the generality of the foregoing, any prior acceptance or approval communicated by the Council to the Provider in respect of the Services or any omission on the part of the Council to communicate such prior acceptance or approval shall not relieve the Provider of its obligations to deliver the Services in accordance with the provisions of this agreement.

37. Cumulation of remedies

Subject to the specific limitations set out in this agreement, no remedy conferred by any provision of this agreement is intended to be exclusive of any other remedy except as expressly provided for in this agreement and each and every remedy shall be cumulative and shall be in addition to every other remedy given thereunder or existing at law or in equity by statute or otherwise.

38. Severability

If any of the provisions of this agreement is judged to be illegal or unenforceable, the continuation in full force and effect of the remainder of them will not be prejudiced.

39. Partnership or agency

Nothing in this agreement shall be construed as constituting a partnership between the parties or as constituting either party as the agent of the other for any purpose whatsoever except as specified by the terms of this agreement.

40. Third party rights

- 40.1 No term of this agreement is intended to confer a benefit on, or to be enforceable by, any person who is not a party to this agreement.

41. Publicity

The Provider shall not:

- (a) make any press announcements or publicise this agreement or its contents in any way; or
- (b) use the Council's name or brand in any promotion or marketing or announcement of orders,

without the prior written consent of the Council[, which shall not be unreasonably withheld or delayed.

42. Notices

- 42.1 Any notice required to be given to the Council under this agreement shall be in writing and may be served:
- by delivering the notice by hand to the Council's Authorised Representative at 160 Tooley Street, London, SE1 2QH in which case the notice shall be deemed to have been served at the time it is so delivered provided a receipt is obtained; or
 - by posting the notice in a pre-paid enveloped sent recorded delivery addressed to the Council and marked clearly for the attention of the Cara Pottinger Corporate Strategy, Employer Support for Apprenticeship Creation and Improvement Project at London Borough of Southwark PO Box 64529, London, SE1P 5LX, in which case the notice shall be deemed to have been duly served when a signature acknowledging its receipt has been obtained;
 - By sending the notice by an e-mail to cara.pottinger@southwark.gov.uk or the Council's Authorised Representative from time to time in which case the notice shall be deemed to have been duly served on the date evidence of delivery is obtained.

42.2 Any notice required to be given to the Provider under this agreement shall be in writing and may be served:

- by delivering the notice by hand to the Provider at the Provider's last known place or abode or business or, if the Provider is a company, at the registered office of the company in which case the notice shall be deemed to have been duly served at the time it is so delivered; or
- by posting the notice in a pre-paid envelope sent recorded delivery addressed to the Provider at the Provider's last known place of abode or business or, if the Provider is a company, at the registered office of the company in which case the notice shall be deemed to have been duly served the day following posting.
- By sending the notice by an e-mail to the Provider's Authorised Representative from time to time in which case the notice shall be deemed to have been duly served on the date evidence of delivery is obtained.

43. Entire agreement

This agreement, the schedules and the documents annexed to it or otherwise referred to in it contain the whole agreement between the parties relating to the subject matter hereof and supersede all prior agreements, arrangements and understandings between the parties relating to that subject matter.

44. Counterparts

This agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original of this agreement, but all the counterparts shall together constitute the same agreement. No counterpart shall be effective until each party has executed at least one counterpart.

45. Governing law and jurisdiction

- 45.1 This agreement and any dispute or claim arising out of or in connection with it or its subject matter shall be governed by and construed in accordance with the law of England and Wales.
- 45.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement or its subject matter.

Schedule 1 – Specification

1. Introduction

- 1.1. The service will provide employer and engagement and support activities for the creation and improvement of apprenticeship schemes within the construction sector. This service is an integral part of promoting the council's Southwark Apprenticeship Standard. The Southwark Apprenticeship Standard is the new standard for quality apprenticeships established by Southwark Council in 2015. The Standard is comprised of four criteria which give businesses and apprentices the best chance for a great apprenticeship:

Minimum contract of 12 months
Payment of the London Living Wage
Quality training provision
Mentoring and support

Full details can be found at southwark.gov.uk/apprenticeships.

- 1.2. The Standard has been established to help raise awareness of apprenticeships across local businesses. Under the Standard, the council will celebrate and promote good practice in apprenticeships, set aspirational levels of quality in apprenticeships for employers to aim for, and sell the benefits of high quality apprenticeships to employers and potential apprentices. A key part of delivering the Southwark Apprenticeship Standard is to engage and support employers who are unfamiliar with apprenticeships and provide them with the tools and resources to create good quality apprenticeship schemes. Employers who are delivering schemes that do not reach the standard will also be supported to improve their offer and reap the business benefits of better quality apprenticeships.
- 1.3. The Southwark Apprenticeship Standard provides the benchmark to which all construction contractors who are either based or working in Southwark should be working toward. However, in recognition of the transient nature of the construction industry and that trade sub-contractors are not necessarily on site for a sustained twelve month period, the service is expected to generate apprenticeships and apprenticeship placements. Apprenticeship placements will last for a minimum of three months and maximum of 11 months. Where apprenticeship placements are created, the service will support and encourage contractors to share placement opportunities and best practice to create a consistent and valuable learning opportunity that enables the apprentice to complete their framework.
- 1.4. The provider shall have the specialist skills in business engagement and apprenticeship support within the construction sector, to widen the range and volume of contractors engaged, and support contractors across all tiers of the construction sector working in Southwark to create significant numbers of new apprenticeship opportunities over the next two years.

2. Background

- 2.1. *Southwark Council's Fairer Future Vision*: The Council is creating a fairer future for all in Southwark by protecting the most vulnerable; by looking after every penny as if it was our own; by working with local people, communities and businesses to innovate, improve and transform public services; and standing up for everyone's rights.
- 2.2. As a central London borough, our mission is to enhance the things that make Southwark special - its immense diversity and vast depths of untapped potential; helping to unlock those talents, with nobody left behind.

2.3. People in the borough should be able to enjoy the enormous benefits and seize the opportunities that living in central London offers. The Council has its part to play as one of many working to deliver a fairer future.

2.4. Full information on the Council's Fairer Future ambitions, including its promises and delivery plans, can be accessed at:

2.4.1.1.

http://www.southwark.gov.uk/info/200342/council_plan/2959/fairer_future_for_all_vision

2.5. Economic Wellbeing Strategy: In late 2012, the council adopted a new Economic Wellbeing Strategy. The strategy establishes four key priorities through which the Council, in partnership with other local organisations, will improve the economic well-being of Southwark residents. These are:

Ambition 1: Employment – narrowing the gap with the London employment rate

Ambition 2: Southwark – the place of choice to start and grow a business

Ambition 3: Thriving town centres and high streets

Ambition 4: Promoting financial wellbeing and independence

The Economic Wellbeing Strategy can be accessed at:
http://www.southwark.gov.uk/info/347/economic_wellbeing/2024/economic_wellbeing_strategy

2.6. London's labour market continues to generate a wealth of opportunities both at entry level and for more highly skilled applicants. We therefore aim to make better use of London's opportunities, and close the employment gap by supporting Southwark residents into sustainable employment, enabling people to stay in jobs and progress beyond entry level low-paid work.

2.7. The council has committed to create 2,000 new apprenticeships by 2017/18. This commitment aligns with two other commitments under the Fairer Future Vision: to guarantee education, employment or training for every school leaver and to support 5,000 more local people into jobs.

2.8. The following project has been designed to deliver direct engagement and support work to engage employers and drive demand for apprenticeships in the construction sector across the Borough. This support will be open to all developers and contractors currently working in the borough but will specifically target small and medium enterprises (SMEs) and employers new to apprenticeships. Note, that this project will specifically target employers in the construction industry. Businesses in other sectors will be covered by a separate contract.

2.9. The Construction Sector in Southwark There is a consistent pipeline of construction work for at least the next fifteen years. This pipeline spans large scale regeneration projects at the Elephant & Castle and Aylesbury Estates, infrastructure projects such as the Thames Tideway Tunnel and Northern Line Extension, as well as the development of residential and commercial developments across the borough. This scale of development brings a wealth of opportunities and we aim to maximise jobs and training opportunities from this growth of the construction sector within the borough.

2.10. Southwark Council currently operate a successful Work Place Co-ordinator scheme in which developers are obliged to employ an on site work place co-ordinator in order to fulfil s.106 obligations in relation construction employment and training. Given the level of opportunity within the construction sector, Southwark Council will open a Construction Skills Centre in late 2015 on the Elephant & Castle regeneration site. The skills centre will offer pre-employment and specialist construction training for local residents matched to employer's needs, with the aim of helping to create a consistent

supply of residents who are ready to work or start apprenticeships within the construction industry. The Skills Centre will be modular in design and will consist of two class rooms, a workshop and a learning zone classroom dedicated to schools and promotion of the range of opportunities available within the construction sector. The Skills Centre will also include an administrative office, which will contain desk space available for local job brokerage services, employer engagement services and the construction apprenticeship creation and support service.

3. Links to other services

- 3.1. While this project will have distinct contract management arrangements, it is expected that linkages and synergies will occur with existing employment support contracts such as the Southwark Works Programme, Southwark Employment and Enterprise Development Scheme (SEEDS) and future commissioned services such as the Construction Skills Centre. The service will target construction employers across all tiers, including developers and SME sub-contractors. It is expected that the contractor will utilise and expand upon the pre-existing employer networks generated by Work Place Co-ordinators and the Southwark Works Construction Forum.
- 3.2. The service will target contractors and developers new to apprenticeships which may also access support through the National Apprenticeship Service, CITB and other agencies; it is expected that the provider will develop links with these services to ensure this service compliments other forms of support and funding the contractors may be able to access.

4. Publicity

- 4.1. Subject to clause 41:
 - 4.1.1. The Provider shall use its best endeavours to produce and distribute to residents of the London Borough of Southwark approved publicity material promoting the Project.
 - 4.1.2. An acknowledgement that the Provider is working with the Council to deliver the Project shall be included in all publicity for the Project
 - 4.1.3. The Council's logo shall be included on all forms, literature and other written publicity for the Project.

5. Service Objectives

- 5.1. The service will support construction contractors and sub-contractors either based in Southwark or who are currently working on sites within Southwark to create and improve apprenticeships.
- 5.2. Providers are required to work closely with local employers, existing employer networks (including the Business Improvement Districts), local employer organisations, sector skills councils, training providers, other providers and core Council services in delivering the service objectives.
- 5.3. The service objectives for this contract are:

| | |
|----|---|
| A) | To promote apprenticeships and the Southwark Apprenticeship Standard to employers and residents |
| B) | To provide a range of resources and tools in support of apprenticeship creation and improvement, in line with the Southwark Apprenticeship Standard |
| C) | To provide direct group and one-to-one support for construction businesses in the Borough seeking to create or improve apprenticeships. |
| D) | Work with employers and training providers to address skills shortages, including, where appropriate, adapting old frameworks for new methods of construction |

| | |
|----|---|
| E) | Support and facilitate contractors and sub-contractors working across the borough to co-ordinate work placement opportunities across different sites to ensure that apprentices are able to successfully complete their framework |
|----|---|

5.4. The core service model for providing apprenticeship creation and improvement support through this project is:

- **Employer engagement:** promoting apprenticeships under the brand of the Southwark Apprenticeship Standard and promoting the Standard as the new standard for quality apprenticeships in Southwark
- **Information, advice and guidance:** developing and sharing IAG documents, toolkits and other resources to be accessed online free of charge
- **Direct support (groups):** workshops and other group sessions to facilitate group learning, network-building and to enable peer-mentoring
- **Direct support (one-to-one):** face-to-face, telephone and email support tailored to individual employer needs

6. Target Groups

6.1. Providers should develop proposals that engage employers across all tiers of the construction industry, including large developers who have not previously delivered apprenticeships and SME sub-contractors. Targeted employers should either be currently working within the borough or be based in the borough. Providers should target employers across all trades within the construction industry, including employers in the repairs and maintenance and facilities maintenance sectors who have not previously delivered apprenticeships or are not currently receiving support from another Council service (e.g. the Southwark Apprenticeship Scheme)

6.2. This service is exclusively for construction employers, employers within other sectors will be addressed in a separate contract.

6.3. Apprenticeship placements will last for a minimum of three months and maximum of 11 months. The apprenticeship placements may include candidates previously enrolled in a framework and who require additional work experience to complete their apprenticeship (sustained apprenticeships), though focus should be placed on generating new apprentices.

7. Outputs and Milestones

7.1. The core outputs listed in table 1 below must be delivered by the provider. In addition to this, Providers must deliver any additional outputs or targets specified through the Tender process.

Table 1: project outputs

| Outputs | Year 1 minimum | Total |
|--|----------------|-------|
| Output 1: Percentage of developers and tier one contractors working within the borough directly engaged | 100% | 100% |
| Output 2: Number of sub-contractors working within the borough directly engaged | 96 | 240 |
| Output 3: Number of apprenticeship (min. 12 months) vacancies created | 36 | 90 |

| | | |
|--|----|-----|
| Output 4: Number of apprenticeship placements created (lasting min. 3 months and max. 11 months) within the borough | 44 | 110 |
|--|----|-----|

7.2. The milestones outlined below constitute the minimum requirements under this specification. Providers must deliver both the following core milestones plus any additional milestones specified through the Tender process.

Table 2: project milestones

| Project Quarter | Dates | Milestones |
|-----------------|-----------------|---|
| 1 | Aug-Sept 2015 | <ul style="list-style-type: none"> Contract award Recruitment of new staff where necessary Preliminary meetings and identification of first contractors to engage in Q3 2015 |
| 2 | Oct-Dec 2015 | <ul style="list-style-type: none"> Production and implementation of marketing strategy to engage contractors Development of project documentation and processes Direct support – group and individual (targets to be agreed) |
| 3 | Jan-Mar 2016 | <ul style="list-style-type: none"> Submit Quarterly Monitoring Reports to the Council Quarterly review meeting with Council attended Direct support – group and individual (targets to be agreed) |
| 4 | Apr-Jun 2016 | <ul style="list-style-type: none"> Submit Quarterly Monitoring Reports to the Council Quarterly review meeting with Council attended Direct support – group and individual (targets to be agreed) |
| 5 | July- Sept 2016 | <ul style="list-style-type: none"> Submit Quarterly Monitoring Reports to the Council Submit end of Y1 report to the Council End of year meeting with Council attended Direct support – group and individual (targets to be agreed) |
| 6 | Oct-Dec 2016 | <ul style="list-style-type: none"> Submit Quarterly Monitoring Reports to the Council Quarterly review meeting with Council attended Direct support – group and individual (targets to be agreed) |
| 7 | Jan- Mar 2017 | <ul style="list-style-type: none"> Submit Quarterly Monitoring Reports to the Council Quarterly review meeting with Council attended Direct support – group and individual (targets to be agreed) |
| 8 | Apr-June 2017 | <ul style="list-style-type: none"> Submit Quarterly Monitoring Reports to the Council Quarterly review meeting with Council attended Direct support – group and individual (targets to be agreed) |
| 9 | June - Aug 2017 | <ul style="list-style-type: none"> Submit final report and evaluation to the Council End of contract meeting with Council attended Direct support – group and individual (targets to be agreed) |

8. On-going service review

During and following the programme an evaluation will be undertaken to gather learning from the delivery of the programme. Providers are required to collate employer feedback, submit case studies and share this information with the council.

9. Premises

Business and engagement and support staff will be based in premises (provided by the provider) that are accessible to Southwark businesses. Premises need to provide adequate space to conduct meetings with clients. . It is anticipated that the Southwark Construction Skills Centre at the Elephant & Castle will open in late 2015. Once this is open, the provider will be expected to deliver services from the centre at least one day a week. Advisors may be

required to deliver outreach support in a range of council and partner services, or on-site with clients, located within the borough.

10. Staff skills and accreditation requirements

The provider is required to have a clear understanding of challenges faced by employers and the needs of employers and apprentices. It will also have recent experience of the delivery of these services. The provider must provide skilled staff, preferably with direct experience of delivering business support relating to creating apprentices in SMEs. Staff shall provide a high standard of service to customers and have a proven track record of helping businesses create and sustain apprenticeships.

11. Financial Requirements

The Provider must provide accounts at the end of each financial year for all income and spending. These must be independently examined by a fully-qualified accountant or audited by a registered auditor and must conform to standard accounting practices and either the Charities Act 2011 or the Companies Act 2006 as appropriate.

12. Monitoring and Performance

- 12.1. The Provider shall submit to the Council a quarterly performance report containing the information set out in schedule 5.
- 12.2. The initial report forms and a monitoring guidance document are annexed to schedule 5. The Council may update the forms and guidance from time to time.
- 12.3. The Council will carry out quarterly monitoring visits usually within 5 working days of receipt of the Performance Report. The Council will consider the information/evidence of performance usually within a further 5 working days.
- 12.4. Payments which are approved will be processed following the monitoring visit and verification of evidence.
- 12.5. If the Council has a concern about performance it may serve a default notice and apply service credits pursuant to the terms of this Agreement.
- 12.6. The Provider will inform the Council if there is a significant risk it shall be unable to meet the performance measures and project milestones in order to trigger a service review and the development of remedial action plan.
- 12.7. The Provider must adopt a standard action plan for service users in order to set a baseline and monitor the progress of service users through individual meetings and focus groups, record any changes in service users' circumstances and log relevant documents.
- 12.8. The Provider will inform service users and employers benefitting from the Service that the Council will have access to their contact details post service delivery in order to fulfil project monitoring requirements, make them aware of other support programmes, and/or any ongoing evaluation of the Service.
- 12.9. The Provider may be required to attend the Council to make a presentation outlining progress made and expected on the Project at no additional cost to the Council upon request.
- 12.10. The Provider shall inform the Council's Authorised Representative as early as possible of any of the events listed in clause 30.1 (c) to (f) (inclusive). This shall not relieve the Provider from its obligations in this Agreement.

12.11. During the Term, the Provider will provide additional activities and performance measures based on its overall approach to achieving the service objectives set out in this document.

Schedule 2 - Service levels

Part 1.

Service Levels

The tables below are indicative service levels for both core and specialist services. The details, including the percentages and performance levels may be subject to change. These will be decided for each service at the call-off stage.

Table 1: project outputs

| Outputs | Year 1 minimum | Total |
|--|----------------|-------|
| Output 1: Percentage of developers and tier one contractors working within the borough directly engaged | 100% | 100% |
| Output 2: Number of sub-contractors working within the borough directly engaged | 96 | 240 |
| Output 3: Number of apprenticeship (min. 12 months) vacancies created | 36 | 90 |
| Output 4: Number of apprenticeship placements created (lasting min. 3 months and max. 11 months) within the borough | 44 | 110 |

Part 2.

Employer Support for Apprenticeship Creation and Improvement Project Service Credits

Application of Service Credits

- 1.1. Service credits shall be applied to core outputs only from Q2 of contract delivery
- 1.2. Service credits shall be applied on a quarterly basis to the maximum costs that may be claimed by the Provider i.e. a reduction in the available budget for that quarter.
- 1.3. Service credits shall be applied in any quarter where a core output falls below 75% of target in a quarter AND the cumulative output is below 75% of cumulative target

Calculation of Service Credits

- 1.4. Individual service credits will be calculated according to the following formula:

| Core Output | Service Credit calculation (£) |
|---|--|
| Percentage of developers and tier one contractors working within the borough directly engaged | $\frac{\text{Total project budget} \times 10\%}{\text{Annual output target}} = 1 \text{ service credit}$ |

| | |
|---|--|
| Number of sub-contractors working within the borough directly engaged | $\frac{\text{Total project budget} \times 25\%}{\text{Annual output target}} = 1 \text{ service credit}$ |
| Number of apprenticeship (min. 12 months) vacancies created | $\frac{\text{Total project budget} \times 40\%}{\text{Annual output target}} = 1 \text{ service credit}$ |
| Number of apprenticeship placements created (lasting min. 3 months and max. 11 months) within the borough | $\frac{\text{Total project budget} \times 25\%}{\text{Annual output target}} = 1 \text{ service credit}$ |

1.5. For each output measure where performance triggers a service credit, the output service credit will be calculated for the quarter according to the formula:

$$(\text{quarterly target} - \text{quarterly output}) \times 1 \text{ service credit} = \text{output service credit}$$

1.6. All output service credits incurred will be added together to give a total service credit that will be subtracted from the maximum charge available to the Provider for the quarter, detailed in the quarterly breakdown of costs (schedule 4).

Recovery of service credits

1.7. Where a core output is in deficit and service credits have been applied, over-achievement against targets in future quarters may earn back service credits up to a maximum 100% performance against cumulative targets at that quarter. Service credits that have been subtracted from the charge in previous quarters may in this way be earned back and added to the charge in subsequent quarters, up to this maximum level.

Part 3. Default and Remediation Notice Procedure

1.8. A Default Notice may be issued in accordance with clause 5.2 and/or clause 30.1 (b) of this agreement.

1.9. A Default Notice shall specify:

- (a) the failure or defect in performance;
- (b) the remedy required;
- (c) the time within which the failure or defect in performance shall be carried out; and
- (d) any Service Credits to be applied.

1.10. The Provider shall notify the Council's Authorised Representative when it considers it has complied with the Default Notice.

1.11. A further Default Notice may be issued by the Council in its discretion where the Provider has failed to comply with a Default Notice.

- 1.12. The Council shall be entitled to levy a £50.00 administration charge for each Default Notice issued.
- 1.13. If the Provider on receipt of a Default Notice from the Council disagrees with the contents of the notice the Provider will within 5 Working Days of receipt of the same advise the Council in writing of this fact by the issue of a counter notice;
- 1.14. In the event the Council and the Provider fail to agree the contents of the issued notice within 5 Working Days of issue of the counter notice, the matter will be referred by either party to the dispute resolution procedure detailed in Clause 20.

Schedule 3

Provider's Tender

Add

Schedule 4
Charges and payment
Pricing schedule

| Cost Breakdown | 8 months (August 2015 - March 16) | 12 months (April 2016 - March 2017) | 5 Months (April 2017 - August 2017) | Total Cost (August 2015 - March 17) |
|---|--|--|--|--|
| a) Advisor and Management Staff Costs (list individual positions and cost, show salaries and on-costs separately) | | | | |
| | £ | £ | | £ |
| | £ | £ | | £ |
| Sub Totals: | £ | £ | | £ |
| b) Delivery Costs (organisational costs of delivery) | | | | |
| | £ | £ | | £ |
| | £ | £ | | £ |
| Sub Totals: | £ | £ | | £ |
| c) Beneficiary Costs (direct costs of beneficiary support e.g. training and expenses) | | | | |
| | £ | £ | | £ |
| | £ | £ | | £ |
| Sub Totals: | £ | £ | | £ |
| TOTAL: | £ | £ | | £ |

| Additionality Cost Breakdown | 8 months (August 2015 - March 16) | 12 months (April 2016 - March 2017) | 5 Months April 2017 - August 2017) | Total Cost (August 2015 - March 17) |
|--|--|--|---|--|
| | £ | £ | £ | £ |
| Overall Totals (incl. any additionality): | £ | £ | £ | £ |

Quarterly breakdown of costs

| Headings | Q1 | Q2 | Q3 | Q4 | Q5 |
|----------------------------------|-----------|-----------|-----------|-----------|-----------|
| Total staff and management costs | | | | | |

| | | | | | |
|---------------------------|--|--|--|--|--|
| Total delivery costs | | | | | |
| Total service user costs | | | | | |
| Total project cost | | | | | |

| Headings | Q6 | Q7 | Q8 | Q9 | Total |
|----------------------------------|----|----|----|----|-------|
| Total staff and management costs | | | | | |
| Total delivery costs | | | | | |
| Total service user costs | | | | | |
| Total project cost | | | | | |

Intended project funding profile

| Funding Source | 8 months (August 2015 to March 16) | 12 months (April 2016- March 2017) | 5 Months April 2017 - August 2017) | TOTAL |
|---------------------------------|---------------------------------------|---------------------------------------|---------------------------------------|-------|
| Southwark Council | | | | |
| Match funding: (Please list) | | | | |

1. PAYMENT PLAN

- 1.1 The total Charge and any other expenditure for the Service during the Term shall not exceed £120,000 **exclusive of VAT** where applicable.
- 1.2 The Charge shall be paid to the Provider in quarterly instalments following receipt of a satisfactory Performance Report and Invoice from the Provider, the Council's monitoring visit and evidence of performance which is reasonably satisfactory to the Council.
- 1.3 The Provider shall submit an Invoice for the relevant reporting period on the dates specified in Schedule 5.
- 1.4 All invoices must state the goods and services that have been provided in the preceding quarter.

- 1.5 If targets or milestones are not met the Council may withhold the whole or part of the quarterly Charge through the application of Service Credits in accordance with the details in clause 12 of this Agreement.
- 1.6 The project costs and expenditure in the Performance Report must comply with the breakdown of cost figures set out in this schedule 4 unless agreed in writing in advance with the Council's Authorised Officer.

2. TERMINATION PAYMENT DEFAULT

In the event that at any time undisputed Charges of £30.000 have been overdue for payment for a period of 60 days or more, the Council will have committed a Termination Payment Default.

3. ANNUAL INDEXATION

Charges shall be fixed for the Term.

Schedule 5

Part 1 - Contract management

4. AUTHORISED REPRESENTATIVES

4.1 The Council's initial Authorised Representative: Cara Pottinger

4.2 The Provider's initial Authorised Representative: **INSERT DETAILS**

5. KEY PERSONNEL

INSERT DETAILS – include Supervisory Personnel

6. MEETINGS

6.1 Type: **Progress Meeting**

Quorum: To be advised by the Council's Authorised Representative

Frequency: In the absolute discretion of the Council's Authorised Representative.

Agenda: Provider to give a presentation on progress made and expected on the Project

6.2 Type: **Monitoring Visit**

Quorum: the Authorised Representatives or their nominees

Frequency: Quarterly (usually within 5 working days of receipt by the Council of the Performance Report)

Agenda: The Council's Authorised Representative or nominee to attend the premises where the Service is carried out to verify the contents of the Performance Report.

7. REPORTS

7.1 Type: **Performance Report**

Contents:

- (a) details of the performance measures set out in Table 1 of the Specification;
- (b) the project milestones set out in the Specification as well as those set out in the tender response (schedule 3);
- (c) the project expenditure and income against the pricing schedule in schedule 4.
- (d) Equal opportunities monitoring form

The Performance Report Forms and a monitoring guidance document are set out below.

Frequency: Table 1

| REPORTING PERIODS | | | | |
|----------------------|-------------------------|----------------------------|--|------------------------------|
| Progressive Quarters | Financial year Quarters | START DATE | END DATE | DATE REPORT DUE |
| Q1 | Q2 | 7th August 2015 | 30th September 2015 | 9 th October 2015 |
| Q2 | Q3 | 1st October 2015 | 31st December 2015 | 8 th January 2016 |
| Q3 | Q4 | 1st January 2016 | 31st March 2016 | 8 th April 2016 |
| Q4 | Q1 | 1st April 2016 | 30th June 2016 | tbc July 2016 |
| Q5 | Q2 | 1st July 2016 | 30th September 2016 | tbc October 2016 |
| Q6 | Q3 | 1st October 2016 | 31st December 2016 | tbc January 2017 |
| Q7 | Q4 | 1st January 2017 | 31st March 2017 | tbc April 2017 |
| Q8 | Q1 | 1 st April 2017 | 30th June 2017 | Tbc July 2017 |
| Q9 | Q2 | 1 st July 2017 | 7 th August 2017 (End of contract) | Tbc August 2017 |

1. Evidence

- 1.1. Evidence to be submitted for the purpose of this Agreement shall be based on the guidance Table 2. Further information and direction will be distributed by the Local Economy Team and guidance provided by Project Monitoring Officers.

Evidence requirements: Table 2

| Output Heading | Explanation and Evidence Required |
|---|--|
| Number of businesses receiving targeted promotion and information about the Southwark Apprenticeship Standard | <p>Number of employers receiving targeted promotion and/ or information about the Southwark Apprenticeship Standard.</p> <p>Evidence: A log noting the business name, address and the form of promotional material and/ or information they received (literature/ cold call etc.). Note, broad-spectrum promotion, for example advertisement in a publication; mass mail-outs or advertng online, will not count towards this output.</p> |
| Number of businesses engaged in direct support (group or one-to-one) | <p>Number of employers directly engaged through workshops, group sessions, or one to one support (via telephone, email or face to face) including all self-referrals.</p> <p>Evidence: A Registration Form, confirmation of attendance at a group event or workshop, evidence of correspondence for one to one support (emails, phone logs, meeting minutes).</p> <p>The Registration Form will include: businesses name, office location, sector or trade, details of main point of contact. This will be maintained as defined in the paragraphs above and further specified in Local Economy Team documentation, and Project Monitoring Officer advice.</p> <p>The Project Manager or delegated officer and each client must sign registration documents and clients must explicitly agree in writing that their details may be made available to the London Borough of Southwark or any authorised body for monitoring, audit purposes project review or evaluation purposes.</p> |
| Black and Minority Ethnic Groups | <p>Monitoring of ethnic minority groups should be undertaken in line with Local Economy Team's guidelines, using the categories specified by the Team. Copies of these guidelines can be obtained from your Project Monitoring Officer. All individuals should self-certify their ethnic group.</p> |
| Apprenticeship created | <p>For the purpose of this project an apprenticeship is a training program that follows a government approved framework provided through a Skills Funding Agency approved provider for a contract of no less than 12 months.</p> <p>Evidence Written letter of confirmation on headed paper or bearing a company stamp. Details must include employer details, start date, hours, level of apprenticeship, framework followed and training provider used.</p> |
| Apprenticeship placement created | <p>For the purpose of this project an apprenticeship placement is a training program that follows a government approved framework provided through a Skills Funding Agency approved provider for a placement of between three and</p> |

| | |
|-------------------------------------|--|
| | <p>eleven months provided to either create or sustain an apprenticeship that would not have otherwise been created.</p> <p>Evidence Written letter of confirmation on headed paper or bearing a company stamp. Details must include employer details, start date, hours, level of apprenticeship, framework followed and training provider used.</p> |
| Apprenticeship start | <p>New apprenticeships started this quarter. (Only one apprenticeship can be claimed per individual participant).</p> <p>Evidence The following data should be kept for each employment outcome:</p> <p>Written letter of confirmation on headed paper or bearing a company stamp or Contract of Employment from the employer. Details must include employer details, start date, hours and residency of the individual. Alternatively, copies of payslips provide sufficient evidence. In the rare eventuality that none of these forms of documentary proof are available, the client may provide a self-declaration providing the details specified above.</p> |
| Apprenticeship placement start | <p>New apprenticeship placements started this quarter. (Only one apprenticeship placement can be claimed per individual participant).</p> <p>Evidence The following data should be kept for each employment outcome - Written letter of confirmation on headed paper or bearing a company stamp or Contract of Employment from the employer. Details must include employer details, start date, hours and residency of the individual. Alternatively, copies of payslips provide sufficient evidence. In the rare eventuality that none of these forms of documentary proof are available, the client may provide a self-declaration providing the details specified above.</p> |
| Apprenticeship completion | <p>Apprenticeships completed this quarter.</p> <p>Evidence The evidence should be verified by the employer where possible or otherwise should be self-certified by the client.</p> |
| Apprenticeship placement completion | <p>Apprenticeships completed this quarter.</p> <p>Evidence The evidence should be verified by the employer where possible or otherwise should be self-certified by the client.</p> |
| Equal Opportunities | <p>The Provider must provide on request documentary evidence on its Equal Opportunity policy, which covers: recruitment, selection, training, promotion, discipline & dismissal;</p> |

| | |
|---------------|---|
| | victimization, discrimination & harassment; identification of a responsible person for the policy; communication of the policy to all the staff and clients. |
| Success rates | On Performance Reports submitted to the Council, the Provider must monitor activities by key target groups in the spaces provided. In particular and in addition to participation rates mentioned previously, the Provider will report outcomes both in total and separated by target groups. This will show success rates for particular groups of participants. |
| Expenditure | <p>Evidence that costs have been incurred during the delivery of this project. This should relate to costs outlined in Schedule 4.</p> <p>All clients claimed by the Project should have been previously registered as Participants and registration documents will be checked by the Project Monitoring Officer to ensure that equal opportunities monitoring data, including ethnic minority data, has been collected on all individuals and properly recorded on Monitoring Forms.</p> <p>Costs should be shown against the relevant budget headings on the monitoring forms; if an item of expenditure does not fit any available budget heading then it is likely that it is ineligible and cannot be claimed, although a final decision should be sought from the Project Monitoring Officer.</p> |
| Match Funding | The Contractor shall provide a statement of match funding contributions on a quarterly basis and maintain adequate records to support all claims of in-kind contributions (if applicable). |

Circulation list: The Provider to send to the Authorised Representative of the Council

7.2 Type: **service user report**

Contents: each to contain the name address of a service user, detailed information on his/her characteristics, completed service user feedback forms.

Frequency: Quarterly

Circulation list: The Provider to send to the Authorised Representative of the Council

Part 2 – Forms

Examples are:

clause 17.1 The Provider shall provide the management reports in the form and at the intervals set out in schedule 5.

Schedule 6

Disaster Recovery

Not used

Schedule 7 - Change control

1. GENERAL PRINCIPLES

- 1.1 Where the Council or the Provider sees a need to change this agreement, the Council may at any time request, and the Provider may at any time recommend, such Change only in accordance with the Change Control Procedure set out in paragraph 9 of this schedule 7.
- 1.2 Until such time as a Change is made in accordance with the Change Control Procedure, the Council and the Provider shall, unless otherwise agreed in writing, continue to perform this agreement in compliance with its terms before such Change.
- 1.3 Any discussions which may take place between the Council and the Provider in connection with a request or recommendation before the authorisation of a resultant Change shall be without prejudice to the rights of either party.
- 1.4 Any work undertaken by the Provider and the Provider's Personnel which has not been authorised in advance by a Change, and which has not been otherwise agreed in accordance with the provisions of this schedule 7, shall be undertaken entirely at the expense and liability of the Provider.

2. PROCEDURE

- 2.1 Discussion between the Council and the Provider concerning a Change shall result in any one of the following:
 - 2.2 no further action being taken; or
 - 2.3 a request to change this agreement by the Council; or
 - 2.4 a recommendation to change this agreement by the Provider.
- 2.5 Where a written request for an amendment is received from the Council, the Provider shall, unless otherwise agreed, submit two copies of a Change Control Note signed by the Provider to the Council within three weeks of the date of the request.
- 2.6 A recommendation to amend this agreement by the Provider shall be submitted directly to the Council in the form of two copies of a Change Control Note signed by the Provider at the time of such recommendation. The Council shall give its response to the Change Control Note within three weeks.
- 2.7 Each Change Control Note shall contain:
 - (a) the title of the Change;
 - (b) the originator and date of the request or recommendation for the Change;
 - (c) the reason for the Change;

- (d) full details of the Change, including any specifications;
- (e) the price, if any, of the Change;
- (f) a timetable for implementation, together with any proposals for acceptance of the Change;
- (g) a schedule of payments if appropriate;
- (h) details of the likely impact, if any, of the Change on other aspects of this agreement including:
 - (i) the timetable for the provision of the Change;
 - (ii) the personnel to be provided;
 - (iii) the Charges;
 - (iv) the Documentation to be provided;
 - (v) the training to be provided;
 - (vi) working arrangements;
 - (vii) other contractual issues;
- (i) the date of expiry of validity of the Change Control Note; and
- (j) provision for signature by the Council and the Provider.

2.8 For each Change Control Note submitted by the Provider the Council shall, within the period of the validity of the Change Control Note:

- (a) allocate a sequential number to the Change Control Note; and
- (b) evaluate the Change Control Note and, as appropriate:
 - (i) request further information;
 - (ii) arrange for two copies of the Change Control Note to be signed by or on behalf of the Council and return one of the copies to the Provider; or
 - (iii) notify the Provider of the rejection of the Change Control Note.

2.9 A Change Control Note signed by the Council and by the Provider shall constitute an amendment to this agreement.

Schedule 8 - Benchmarking

Not used

Schedule 9 – Exit

Not Used

Schedule 10 – TUPE

1. Definitions

The definitions in this paragraph apply in this schedule:

Effective Date: the date(s) on which the Services (or any part of the Services) transfer from the Council or any Former Provider to the Provider or Sub-Contractor..

Employee Liabilities: all claims, actions, proceedings, orders, demands, complaints, investigations (save for any claims for personal injury which are covered by insurance) and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs, expenses and legal costs reasonably incurred in connection with a claim or investigation related to employment including in relation to the following:

- (a) redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments;
- (b) unfair, wrongful or constructive dismissal compensation;
- (c) compensation for discrimination on grounds of sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation or claims for equal pay;
- (d) compensation for less favourable treatment of part-time workers or fixed term employees;
- (e) outstanding employment debts and unlawful deduction of wages including any PAYE and national insurance contributions;
- (f) employment claims whether in tort, contract or statute or otherwise;
- (g) any investigation relating to employment matters by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation;

Former Provider: a Provider supplying services to the Council before the Relevant Transfer Date that are the same as or substantially similar to the Services (or any part of the Services) and shall include any Sub-Contractor of such Provider (or any Sub-Contractor of any such Sub-Contractor);

Relevant Transfer Date: in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place;

Replacement Sub-Contractor: a Sub-Contractor of the Replacement Provider to whom Transferring Provider Employees will transfer on a Service Transfer Date (or any Sub-Contractor of any such Sub-Contractor);

Service Transfer: any transfer of the Services (or any part of the Services), for whatever reason, from the Provider or any Sub-Contractor to a Replacement Provider or a Replacement Sub-Contractor;

Service Transfer Date: the date of a Service Transfer;

Staffing Information: in relation to all persons identified on the Provider's Provisional Personnel List or Provider's Final Personnel List, as the case may be, such information as the Council may reasonably request (subject to all applicable provisions of the DPA), but including in an anonymised format:

- (h) their ages, dates of commencement of employment or engagement and gender;
- (i) details of whether they are employed, self employed contractors or consultants, agency workers or otherwise;
- (j) the identity of the employer or relevant contracting party;
- (k) their relevant contractual notice periods and any other terms relating to termination of employment, including redundancy procedures, and redundancy payments;
- (l) their wages, salaries and profit sharing arrangements as applicable;
- (m) details of other employment-related benefits, including (without limitation) medical insurance, life assurance, pension or other retirement benefit schemes, share option schemes and company car schedules applicable to them;
- (n) any outstanding or potential contractual, statutory or other liabilities in respect of such individuals (including in respect of personal injury claims);
- (o) details of any such individuals on long term sickness absence, parental leave, maternity leave or other authorised long term absence;
- (p) copies of all relevant documents and materials relating to such information, including copies of relevant contracts of employment (or relevant standard contracts if applied generally in respect of such employees); and
- (q) any other "employee liability information" as such term is defined in regulation 11 of TUPE;

Provider Personnel: all directors, officers, employees, agents, consultants and contractors of the Provider and/or any Sub-Contractor engaged in the performance of the Provider's obligations under this agreement;

Provider's Final Personnel List: a list provided by the Provider of all Provider Personnel who will transfer under TUPE on the Relevant Transfer Date;

Provider's Provisional Personnel List: a list prepared and updated by the Provider of all Provider Personnel who are engaged in or wholly or mainly assigned to the provision of the Services or any relevant part of the Services which it is envisaged as at the date of such list will no longer be provided by the Provider;

Transferring Provider Employees: those employees of the Provider and/or the Provider's Sub-Contractors to whom TUPE will apply on the Service Transfer Date.

2. Interpretation

Where a provision in this Schedule imposes an obligation on the Provider to provide an indemnity, undertaking or warranty, the Provider shall procure that each of its Sub-Contractors shall comply with such obligation and provide such indemnity, undertaking or warranty to the Council, Former Provider, Replacement Provider or Replacement Sub-Contractor, as the case may be.

NO TRANSFER OF EMPLOYEES AT COMMENCEMENT OF SERVICES

3. Procedure in the event of transfer

- 3.1 The Council and the Provider agree that the commencement of the provision of the Services or of any part of the Services will not be a Relevant Transfer in relation to any employees of the Council and/or any Former Provider.
- 3.2 If any employee of the Council and/or a Former Provider claims, or it is determined in relation to any employee of the Council and/or a Former Provider, that his/her contract of employment has been transferred from the Council and/or the Former Provider to the Provider and/or any Sub-Contractor pursuant to TUPE or the Acquired Rights Directive then:
- (a) the Provider shall, and shall procure that the relevant Sub-Contractor shall, within five Working Days of becoming aware of that fact, give notice in writing to the Council and, where required by the Council, give notice to the Former Provider; and
 - (b) the Council and/or the Former Provider may offer (or may procure that a third party may offer) employment to such person within 15 Working Days of the notification by the Provider or the Sub-Contractor (as appropriate) or take such other reasonable steps as the Council or Former Provider (as the case may be) considers appropriate to deal with the matter provided always that such steps are in compliance with applicable law.
- 3.3 If an offer referred to in paragraph 3.2(b) is accepted (or if the situation has otherwise been resolved by the Council and/or the Former Provider), the Provider shall, or shall procure that the Sub-Contractor shall, immediately release the person from his/her employment or alleged employment.
- 3.4 If by the end of the 15 Working Day period specified in paragraph 3.2(b):
- (a) no such offer of employment has been made;
 - (b) such offer has been made but not accepted; or
 - (c) the situation has not otherwise been resolved,

the Provider and/or the Sub-Contractor may within five Working Days give notice to terminate the employment or alleged employment of such person.

4. Indemnities

- 4.1 Subject to the Provider and/or the relevant Sub-Contractor acting in accordance with the provisions of paragraph 3.2 to paragraph 3.4 and in accordance with all applicable employment procedures set out in applicable law and subject also to paragraph 4.4, the Council shall:
- (a) indemnify the Provider and/or the relevant Sub-Contractor against all Employee Liabilities arising out of the termination of the employment of any employees of the Council referred to in paragraph 3.2 made pursuant to the provisions of

paragraph 3.4 provided that the Provider takes, or shall procure that the notified Sub-Contractor takes, all reasonable steps to minimise any such Employee Liabilities; and

- (b) procure that the Former Provider indemnifies the Provider and/or any notified Sub-Contractor against all Employee Liabilities arising out of termination of the employment of the employees of the Former Provider made pursuant to the provisions of paragraph 3.4 provided that the Provider takes, or shall procure that the relevant Sub-Contractor takes, all reasonable steps to minimise any such Employee Liabilities.

4.2 If any such person as is described in paragraph 3.2 is neither re employed by the Council and/or the Former Provider as appropriate nor dismissed by the Provider and/or any Sub-Contractor within the 15 Working Day period referred to in paragraph 3.4 such person shall be treated as having transferred to the Provider and/or the Sub-Contractor (as appropriate) and the Provider shall, or shall procure that the Sub-Contractor shall, comply with such obligations as may be imposed upon it under law.

4.3 Where any person remains employed by the Provider and/or any Sub-Contractor pursuant to paragraph 4.2, all Employee Liabilities in relation to such employee shall remain with the Provider and/or the Sub-Contractor and the Provider shall indemnify the Council and any Former Provider, and shall procure that the Sub-Contractor shall indemnify the Council and any Former Provider, against any Employee Liabilities that either of them may incur in respect of any such employees of the Provider and/or employees of the Sub-Contractor.

4.4 The indemnities in paragraph 4.1:

- (a) shall not apply to:
 - (i) *in any case in relation to any alleged act or omission of the Provider and/or any Sub-Contractor, any claim for: (A) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or (B) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees; or*
 - (ii) *any claim that the termination of employment was unfair because the Provider and/or any Sub-Contractor neglected to follow a fair dismissal procedure; and*
- (b) shall apply only where the notification referred to in paragraph 3.2(a) is made by the Provider and/or any Sub-Contractor to the Council and, if applicable, Former Provider within six months of the Effective Date.

5. Procurement obligations

Where in this schedule the Council accepts an obligation to procure that a Former Provider does or does not do something, such obligation shall be limited so that it extends only to the extent that the Council's contract with the Former Provider contains a contractual right in that regard which the Council may enforce, or otherwise so that it

requires only that the Council must use reasonable endeavours to procure that the Former Provider does or does not act accordingly.

EMPLOYMENT EXIT PROVISIONS

6. Pre-service transfer obligations

6.1 The Provider agrees that within 20 Working Days of the earliest of:

- (a) receipt of a notification from the Council of a Service Transfer or intended Service Transfer;
- (b) receipt of the giving of notice of early termination or any partial termination of this agreement;
- (c) the date which is 12 months before the end of the Term; and
- (d) receipt of a written request of the Council at any time (provided that the Council shall only be entitled to make one such request in any six month period),

it shall provide in a suitably anonymised format so as to comply with the DPA , the Provider's Provisional Personnel List, together with the Staffing Information in relation to the Provider's Provisional Personnel List and it shall provide an updated Provider's Provisional Personnel List at such intervals as are reasonably requested by the Council.

6.2 At least 28 Working Days prior to the Service Transfer Date, the Provider shall provide to the Council or at the direction of the Council to any Replacement Provider and/or any Replacement Sub-Contractor:

- (a) the Provider's Final Personnel List, which shall identify which of the Provider Personnel are Transferring Provider Employees; and
- (b) the Staffing Information in relation to the Provider's Final Personnel List (insofar as such information has not previously been provided).

6.3 The Council shall be permitted to use and disclose information provided by the Provider under paragraph 6.1 and paragraph 6.2 for the purpose of informing any prospective Replacement Provider and/or Replacement Sub-Contractor.

6.4 The Provider warrants, for the benefit of the Council, any Replacement Provider, and any Replacement Sub-Contractor that all information provided pursuant to paragraph 6.1 and paragraph 6.2 shall be true and accurate in all material respects at the time of providing the information.

6.5 From the date of the earliest event referred to in paragraph 6.1(a), paragraph 6.1(b) and paragraph 6.1(c), the Provider agrees, that it shall not, and agrees to procure that each Sub-Contractor shall not, assign any person to the provision of the Services who is not listed on the Provider's Provisional Personnel List and shall not without the approval of the Council (not to be unreasonably withheld or delayed):

- (a) replace or re-deploy any Provider Personnel listed on the Provider Provisional Personnel List other than where any replacement is of equivalent grade, skills,

experience and expertise and is employed on the same terms and conditions of employment as the person he/she replaces;

- (b) make, promise, propose or permit any material changes to the terms and conditions of employment of the Provider Personnel (including any payments connected with the termination of employment);
- (c) increase the proportion of working time spent on the Services (or the relevant part of the Services) by any of the Provider Personnel save for fulfilling assignments and projects previously scheduled and agreed;
- (d) introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any employees listed on the Provider's Provisional Personnel List;
- (e) increase or reduce the total number of employees so engaged, or deploy any other person to perform the Services (or the relevant part of the Services); or
- (f) terminate or give notice to terminate the employment or contracts of any persons on the Provider's Provisional Personnel List save by due disciplinary process,

and shall promptly notify, and procure that each Sub-Contractor shall promptly notify, the Council or, at the direction of the Council, any Replacement Provider and any Replacement Sub-Contractor of any notice to terminate employment given by the Provider or relevant Sub-Contractor or received from any persons listed on the Provider's Provisional Personnel List regardless of when such notice takes effect.

6.6 During the Term, the Provider shall provide, and shall procure that each Sub-Contractor shall provide, to the Council any information the Council may reasonably require relating to the manner in which the Services are organised, which shall include:

- (a) the numbers of employees engaged in providing the Services;
- (b) the percentage of time spent by each employee engaged in providing the Services; and
- (c) a description of the nature of the work undertaken by each employee by location.

6.7 The Provider shall provide, and shall procure that each Sub-Contractor shall provide, all reasonable cooperation and assistance to the Council, any Replacement Provider and/or any Replacement Sub-Contractor to ensure the smooth transfer of the Transferring Provider Employees on the Service Transfer Date including providing sufficient information in advance of the Service Transfer Date to ensure that all necessary payroll arrangements can be made to enable the Transferring Provider Employees to be paid as appropriate. Without prejudice to the generality of the foregoing, within 5 Working Days following the Service Transfer Date, the Provider shall provide, and shall procure that each Sub-Contractor shall provide, to the Council or, at the direction of the Council, to any Replacement Provider and/or any Replacement Sub-Contractor (as appropriate), in respect of each person on the Provider's Final Personnel List who is a Transferring Provider Employee:

- (a) the most recent month's copy pay slip data;

- (b) details of cumulative pay for tax and pension purposes;
- (c) details of cumulative tax paid;
- (d) tax code;
- (e) details of any voluntary deductions from pay; and
- (f) bank/building society account details for payroll purposes.

7. Employment regulations exit provisions

- 7.1 The Council and the Provider acknowledge that subsequent to the commencement of the provision of the Services, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of termination or partial Termination of this agreement or otherwise) resulting in the Services being undertaken by a Replacement Provider and/or a Replacement Sub-Contractor. Such change in the identity of the provider of such services may constitute a Relevant Transfer to which TUPE and/or the Acquired Rights Directive will apply. The Council and the Provider further agree that, as a result of the operation of TUPE, where a Relevant Transfer occurs, the contracts of employment between the Provider and the Transferring Provider Employees (except in relation to any contract terms disapplied through operation of regulation 10(2) of TUPE) will have effect on and from the Service Transfer Date as if originally made between the Replacement Provider and/or a Replacement Sub-Contractor (as the case may be) and each such Transferring Provider Employee.
- 7.2 The Provider shall, and shall procure that each Sub-Contractor shall, comply with all its obligations in respect of the Transferring Provider Employees arising under the TUPE in respect of the period up to (and including) the Service Transfer Date and shall perform and discharge, and procure that each Sub-Contractor shall perform and discharge, all its obligations in respect of all the Transferring Provider Employees arising in respect of the period up to (and including) the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period ending on (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between: (i) the Provider and/or the Sub-Contractor (as appropriate); and (ii) the Replacement Provider and/or Replacement Sub-Contractor.
- 7.3 Subject to paragraph 7.4, the Provider shall indemnify the Council and/or the Replacement Provider and/or any Replacement Sub-ContractorSub-Contractor against any Employee Liabilities in respect of any Transferring Provider Employee (or, where applicable any employee representative as defined in TUPE) arising from or as a result of:
- (a) any act or omission of the Provider or any Sub-Contractor whether occurring before, on or after the Service Transfer Date;
 - (b) the breach or non-observance by the Provider or any Sub-Contractor occurring on or before the Service Transfer Date of:

- (i) *any collective agreement applicable to the Transferring Provider Employees; and/or*
 - (ii) *any other custom or practice with a trade union or staff association in respect of any Transferring Provider Employees which the Provider or any Sub-Contractor is contractually bound to honour;*
- (c) any claim by any trade union or other body or person representing any Transferring Provider Employees arising from or connected with any failure by the Provider or a Sub-Contractor to comply with any legal obligation to such trade union, body or person arising on or before the Service Transfer Date;
- (d) any proceeding, claim or demand by HMRC or other statutory Council in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
 - (i) *in relation to any Transferring Provider Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory Council relates to financial obligations arising on and before the Service Transfer Date; and*
 - (ii) *in relation to any employee who is not a Transferring Provider Employee, and in respect of whom it is later alleged or determined that TUPE applied so as to transfer his/her employment from the Provider to the Council and/or Replacement Provider and/or any Replacement Sub-Contractor, to the extent that the proceeding, claim or demand by HMRC or other statutory Council relates to financial obligations arising on or before the Service Transfer Date;*
- (e) a failure of the Provider or any Sub-Contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Provider Employees in respect of the period up to (and including) the Service Transfer Date);
- (f) any claim made by or in respect of any person employed or formerly employed by the Provider or any Sub-Contractor other than a Transferring Provider Employee for whom it is alleged the Council and/or the Replacement Provider and/or any Replacement Sub-Contractor may be liable by virtue of this Agreement and/or the TUPE and/or the Acquired Rights Directive; and
- (g) any claim made by or in respect of a Transferring Provider Employee or any appropriate employee representative (as defined in TUPE) of any Transferring Provider Employee relating to any act or omission of the Provider or any Sub-Contractor in relation to its obligations under regulation 13 of TUPE, except to the extent that the liability arises from the failure by the Council and/or Replacement Provider to comply with regulation 13(4) of TUPE.

7.4 The indemnities in paragraph 7.3 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Replacement Provider and/or any Replacement Sub-Contractor whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities:

- (a) arising out of the resignation of any Transferring Provider Employee before the Service Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Replacement Provider and/or any Replacement Sub-Contractor to occur in the period on or after the Service Transfer Date); or
 - (b) arising from the Replacement Provider's failure, and/or Replacement Sub-Contractor's failure, to comply with its obligations under TUPE.
- 7.5 If any person who is not a Transferring Provider Employee claims, or it is determined in relation to any person who is not a Transferring Provider Employee, that his/her contract of employment has been transferred from the Provider or any Sub-Contractor to the Replacement Provider and/or Replacement Sub-Contractor pursuant to TUPE or the Acquired Rights Directive, then:
- (a) the Council shall procure that the Replacement Provider shall, or any Replacement Sub-Contractor shall, within five Working Days of becoming aware of that fact, give notice in writing to the Provider; and
 - (b) the Provider may offer (or may procure that a Sub-Contractor may offer) employment to such person within 15 Working Days of the notification by the Replacement Provider and/or any and/or Replacement Sub-Contractor or take such other reasonable steps as it considers appropriate to deal with the matter provided always that such steps are in compliance with Law.
- 7.6 If such offer is accepted, or if the situation has otherwise been resolved by the Provider or a Sub-Contractor, the Council shall procure that the Replacement Provider shall, or procure that the Replacement Sub-Contractor shall, immediately release or procure the release of the person from his/her employment or alleged employment.
- 7.7 If after the 15 Working Day period specified in paragraph 7.5(b) has elapsed:
- (a) no such offer of employment has been made;
 - (b) such offer has been made but not accepted; or
 - (c) the situation has not otherwise been resolved
- the Council shall advise the Replacement Provider and/or Replacement Sub-Contractor, as appropriate that it may within five Working Days give notice to terminate the employment or alleged employment of such person.
- 7.8 Subject to the Replacement Provider and/or Replacement Sub-Contractor acting in accordance with the provisions of paragraph 7.5 to paragraph 7.7, and in accordance with all applicable proper employment procedures set out in applicable law, the Provider shall indemnify the Replacement Provider and/or Replacement Sub-Contractor against all Employee Liabilities arising out of the termination pursuant to the provisions of paragraph 7.7 provided that the Replacement Provider takes, or shall procure that the Replacement Sub-Contractor takes, all reasonable steps to minimise any such Employee Liabilities.
- 7.9 The indemnity in paragraph 7.8:

- (a) shall not apply to:
 - (i) *in any case in relation to any alleged act or omission of the Replacement Provider and/or Replacement Sub-Contractor, any claim for: (A) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or (B) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees; or*
 - (ii) *any claim that the termination of employment was unfair because the Replacement Provider and/or Replacement Sub-Contractor neglected to follow a fair dismissal procedure; and*
 - (b) shall apply only where the notification referred to in paragraph 7.5(a) is made by the Replacement Provider and/or Replacement Sub-Contractor to the Provider within six months of the Service Transfer Date.
- 7.10 If any such person as is described in paragraph 7.5 is neither re-employed by the Provider or any Sub-Contractor nor dismissed by the Replacement Provider and/or Replacement Sub-Contractor within the time scales set out in paragraph 7.5 to paragraph 7.7, such person shall be treated as a Transferring Provider Employee and the Replacement Provider and/or Replacement Sub-Contractor shall comply with such obligations as may be imposed upon it under applicable Law.
- 7.11 The Provider shall comply, and shall procure that each Sub-Contractor shall comply, with all its obligations under TUPE and shall perform and discharge, and shall procure that each Sub-Contractor shall perform and discharge, all its obligations in respect of the Transferring Provider Employees before and on the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part in respect of the period up to (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between:
- (a) the Provider and/or any Sub-Contractor; and
 - (b) the Replacement Provider and/or the Replacement Sub-Contractor.
- 7.12 The Provider shall, and shall procure that each Sub-Contractor shall, promptly provide to the Council and any Replacement Provider and/or Replacement Sub-Contractor, in writing such information as is necessary to enable the Council, the Replacement Provider and/or Replacement Sub-Contractor to carry out their respective duties under regulation 13 of TUPE. The Council shall procure that the Replacement Provider and/or Replacement Sub-Contractor, shall promptly provide to the Provider and each Sub-Contractor in writing such information as is necessary to enable the Provider and each Sub-Contractor to carry out their respective duties under regulation 13 of TUPE.
- 7.13 Subject to paragraph 7.14, the Council shall procure that the Replacement Provider indemnifies the Provider on its own behalf and on behalf of any Replacement Sub-Contractor and its Sub-Contractors against any Employee Liabilities in respect of each

Transferring Provider Employee (or, where applicable any employee representative (as defined in TUPE) of any Transferring Provider Employee) arising from or as a result of:

- (a) any act or omission of the Replacement Provider and/or Replacement Sub-Contractor;
- (b) the breach or non-observance by the Replacement Provider and/or Replacement Sub-Contractor on or after the Service Transfer Date of:
 - (i) *any collective agreement applicable to the Transferring Provider Employees; and/or*
 - (ii) *any custom or practice in respect of any Transferring Provider Employees which the Replacement Provider and/or Replacement Sub-Contractor is contractually bound to honour;*
- (c) any claim by any trade union or other body or person representing any Transferring Provider Employees arising from or connected with any failure by the Replacement Provider and/or Replacement Sub-Contractor to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;
- (d) any proposal by the Replacement Provider and/or Replacement Sub-Contractor to change the terms and conditions of employment or working conditions of any Transferring Provider Employees on or after their transfer to the Replacement Provider or Replacement Sub-Contractor (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Provider Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of TUPE) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;
- (e) any statement communicated to or action undertaken by the Replacement Provider or Replacement Sub-Contractor to, or in respect of, any Transferring Provider Employee on or before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Provider in writing;
- (f) any proceeding, claim or demand by HMRC or other statutory Council in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
 - (i) *in relation to any Transferring Provider Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory Council relates to financial obligations arising after the Service Transfer Date; and*
 - (ii) *in relation to any employee who is not a Transferring Provider Employee, and in respect of whom it is later alleged or determined that TUPE applied so as to transfer his/her employment from the Provider or Sub-Contractor, to the Replacement Provider or Replacement Sub-Contractor to the extent that the proceeding, claim or demand by HMRC or other statutory Council relates to financial obligations arising after the Service Transfer Date;*

- (g) a failure of the Replacement Provider or Replacement Sub-Contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Provider Employees in respect of the period from (and including) the Service Transfer Date; and
- (h) any claim made by or in respect of a Transferring Provider Employee or any appropriate employee representative (as defined in TUPE) of any Transferring Provider Employee relating to any act or omission of the Replacement Provider or Replacement Sub-Contractor in relation to obligations under regulation 13 of TUPE.

7.14 The indemnities in paragraph 7.13 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Provider and/or any Sub-Contractor (as applicable) whether occurring or having its origin before, on or after the Relevant Transfer Date, including any Employee Liabilities arising from the failure by the Provider and/or any Sub-Contractor (as applicable) to comply with its obligations under TUPE.

Schedule 11 – Commercially sensitive information

DETAILS OF ANY PROVIDER INFORMATION TO BE CLASSIFIED AS COMMERCIALY SENSITIVE

Schedule 12 – Council's Premises and Assets

Not used

Schedule 13 - Safeguarding Policies

Safeguarding adults - policies and protocols

Please find below current protocols and procedures that guide Southwark Councils work in safeguarding adults in Southwark.

Safeguarding adults: London multi-agency policies and procedures

London Authorities follow the standards set out by the Pan London Adult Safeguarding Editorial Board: [London multi-agency policies and procedures to safeguard adults from abuse](#)

Safeguarding adults referral process

The [Safeguarding adults referral process](#) describes the processes involved from alerting a safeguarding issue through to investigation

Serious case review protocol

[Safeguarding adults serious case review protocol](#) ensures that public interest is best served by the presence of an effective and robust serious case review process.

Information sharing protocol

[Safeguarding adults information sharing protocol](#) provides clear guidance on the exchange of sensitive information concerning allegations of abuse

Southwark victim and witness charter

[Southwark victim and witness charter](#) outlines the services and the support that victims and witnesses can expect

Whistle-blowing protocol

[Safeguarding adults whistle-blowing protocol](#) highlights client interest and the common law 'duty of care' in relation to whistle-blowing

Please contact the safeguarding adults partnership team if you require assistance with, or further information about any of the documents listed above.