

**The Mayor and Burgesses of the London Borough of Bromley**

**Contract for the provision of Supply Teachers, Tutors and School Support Consultants**

**Supplier Agreement**

Procurement via Dynamic Purchasing System

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**PARTIES**

1. THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF BROMLEY of Civic Centre, Bromley BR1 3UH (the **Council**).
2. [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (the **Supplier**).

(Full details to be entered into Signature Document)

**BACKGROUND**

* 1. The Council placed a Contract Notice in the Official Journal of the European Union on 20th January 2014 to establish a Dynamic Purchasing System (“DPS”) for the procurement of Supply Teachers, Tutors and School Support Consultants
  2. In accordance with Regulation 20 of the Public Contracts Regulations 2006 (The Regulations), the Council has used the open procedure to establish a DPS
  3. The Council has contracted with adam HTT Limited (the Service Provider) to provide a web-based software system namely SProc.Net, or such other technology as agreed between the Parties from time to time (the “Application”), to procure Services via the DPS as set out in the Public Contract Regulations 2006, as amended from time to time, and for such Services to be transacted as further set out in this Supplier Agreement.
  4. The Council shall admit to the DPS each Supplier that satisfies the Selection Criteria and has submitted an Indicative Tender which complies with the Specification and any additional documents produced by the Council.
  5. It is the Parties' intention that there will be no obligation for the Council to award any orders under the Contract during its Term as defined in clause

**AGREED TERMS**

* + 1. **DEFINITIONS AND INTERPRETATION**
       1. The definitions and rules of interpretation in this clause apply in this agreement.

**Accreditation and Enrolment:** the evaluation of indicative tenders received from Suppliers and the admittance to the DPS of Suppliers that fulfil the Council’s selection criteria

**Application**: the proprietary web-based software owned and operated by the Supplier, currently called Sproc.net or such other technology as agreed between the Parties.

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

**Authorised Representatives:** the persons respectively designated as such by the Council and the Supplier, the first such persons being set out in [Schedule 5](#_bookmark41).

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**Best Industry Practice:** the service should be of a standard which would be judged by Ofsted to be good or outstanding.

**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.

**Business Continuity Plan:** a plan which sets out the procedures to be adopted by the Supplier in the event that there is a disruption in the Services as set out in schedule 6

# Catastrophic Failure

* + - * 1. a failure by the Supplier for whatever reason to implement the Business Continuity Plan successfully and in accordance with its terms on the occurrence of a Disruption.
        2. any action by the Supplier , whether in relation to the Services and this agreement or otherwise, which in the reasonable opinion of the Council's Representative has or may cause significant harm to the reputation of the Council.

**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](#_bookmark42).

**Charges:** the charges which shall become due and payable by the Council to the Supplier in respect of the Services in accordance with the provisions of this agreement.

**Commencement Date:** the date of this agreement

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**Commercially Sensitive Information:** the information listed in [Schedule 11](#_bookmark54) comprising the information of a commercially sensitive nature relating to the Supplier , its intellectual property rights or its business or which the Supplier has indicated to the Council that, if disclosed by the Council, would cause the Supplier significant commercial disadvantage or material financial loss.

**Consistent Failure:** shall have the meaning set out in 2 of [Schedule 2](#_bookmark38).

**Contract** shall mean the agreement in respect of the provision of the Services consisting of the following listed documents which shall be read as one document:-

The Supplier Agreement;

The Self-Billing Agreement; and

The DPS Entry Guide.

Collectively called the “Contract Documents

**Crown:** the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales) including, but not limited to, government ministers and government departments and particular bodies, persons and government agencies.

**Crown Body:** any department, office or agency of the Crown.

**“Data Controller”** has the meaning set out in the GDPR-DPA

**“Data Processor”** has the meaning set out in the GDPR-DPA

**Data Protection Legislation:** the Data Protection Act 1998, the Data Protection Directive (*95/46/EC*), the Data Protection Bill 2017-2019 (as enacted), the General Data Protection Regulation 2016/679 (GDPR), the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (*SI 2000/2699*), the Electronic Communications Data Protection Directive (*2002/58/EC*), the Privacy and Electronic Communications (EC Directive) Regulations 2003 (*SI 2426/2003*) and all applicable laws and regulations relating to the processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner.

**"Data and Reports”** means all documents, drawings, data and databases written reports and any other information produced by the Contractor in connection with the Services.

**“Data Subject”** has the meaning set out in the GDPR-DPA

**Deduction:** any Default Costs the Council decides to deduct from a payment or recover by any other method.

**Default Costs:** all and any monies however due which are payable to the Council by the Supplier at any time (and whether before or after the termination of this Contract) under the provision of this Contract.

**Default Notice:** is defined in clause 5.9

**Defective Services:** the Supplier’s failure to perform the Service or any part thereof in accordance with this Agreement.

**“Disclosure and Barring Service (DBS)”** means the service established pursuant to the Protection of Freedom Act 2012 and merges the functions of the Criminal Records Bureau and Independent Safeguarding Authority to assist employers to make safe recruitment decisions by identifying workers who may be unsuitable to work with vulnerable people and provide access to criminal record information in accordance with the Police Act 1997.

**Dispute Resolution Procedure:** the procedure set out in clause [20](#_bookmark12).

**DPS Entry Guide:** the entry guide issued by the Council detailing the operation of the Dynamic Purchasing System

**E-Auction:** an e-auction run within the Application for the purpose of awarding a Requirement

**Environmental Information Regulations:** the Environmental Information Regulations 2004 (SI 2004/3391) together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.

**FOIA:** the Freedom of Information Act 2000, and any subordinate legislation made under the Act from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.

**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 Supplier, the Supplier's Personnel or any other failure in the Supplier's supply chain.

**“GDPR-DPA”** means the Data Protection Legislation as set out in paragraph 26.

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

**Initial Term:** the period commencing on the Commencement Date and ending on the 4th anniversary of the Commencement Date.

**Intellectual Property:** any and all intellectual property rights of any nature anywhere in the world whether registered, registerable or otherwise, including patents, utility models, trademarks, 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 Performance Failure**: To be agreed on upon award of each individual service agreement

**Key Performance Levels**: To be agreed on upon award of each individual service agreement.

**Key Performance Indicators**: To be agreed on upon award of each individual service agreement.

**Key Personnel:** those personnel identified [Schedule 5](#_bookmark41) for the roles attributed to such personnel, as modified pursuant to clause [13](#_bookmark7).

**Lot** shall mean an individual service category within the DPS for which the Supplier may provide Services

**Management Reports:** the reports to be prepared and presented by the Supplier as required for each service

**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

**Offer** shall mean the Supplier’s tender for the desired Services in response to the Council’s Requirement

**Open for Offers** shall mean the period during which time the Supplier can create and submit their Offer within the Application

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

**Prohibited Act:** the following constitute Prohibited Acts:

1. to directly or indirectly offer, promise or give any person working for or engaged by the Council a financial or other advantage to:
   1. induce that person to perform improperly a relevant function or activity; or
   2. reward that person for improper performance of a relevant function or activity;
2. 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;
3. committing any offence:
   1. under the Bribery Act;
   2. under legislation creating offences concerning fraudulent acts;
   3. at common law concerning fraudulent acts relating to this Agreement or any other contract with the Council; or
   4. defrauding, attempting to defraud or conspiring to defraud the Council.

**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 [30.1.1](#_bookmark30).

**Replacement Services:** 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 expiry of this agreement and which shall be provided by a Replacement Supplier who has already been admitted to the DPS.

**Replacement Supplier:** a third party supplier of Replacement Services admitted to the DPS and appointed by the Council from time to time.

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

**Self-Billing Agreement** shall mean the separate agreement between the Supplier and the Council, whereby the Supplier agrees to receive pre- populated Self-Bill Invoices generated through the Application for the billing of the appropriate Price and payment

**Self-Bill Invoice** shall mean the invoice produced by the Service Provider using the Application

**Services:** the services to be delivered by or on behalf of the Supplier under this agreement, as more particularly described in each service requirement.

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**Service Requirements**: The Services required by the Council in accordance with its Specification

**Service Receipt** shall mean the agreed record of payment for the delivery of the Services as quantified and agreed between the Parties within the Application

**Service User** shall mean the person receiving the Service from the Supplier.

**Signature Document:** the signed agreement between London Borough of Bromley and the Supplier

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

**Sub-Contractor:** the contractors or suppliers that enter into a Sub-Contract with the Supplier.

**Successor Supplier:** any third party at any time appointed by the Council to provide a Service or any part thereof in succession to or in substitution for the Supplier including where relevant the Council itself.

**Supplier**: Person, firm or Company that entered into the contract to provide the Services

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

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

**Supplier's Tender:** the tender submitted by the Supplier

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

1. any extensions to this agreement which are agreed pursuant to clause [3](#_bookmark0); or
2. 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:** In the event that at any time undisputed Charges of the equivalent of the value of 3 months invoices have been overdue for payment for a period of 60 days of more the Council will have committed a Termination Payment Default.

**TUPE:** the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246).

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

* + - 1. Clause, schedule and paragraph headings shall not affect the interpretation of this agreement.
      2. 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].
      3. 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.
      4. A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
      5. Words in the singular shall include the plural and vice versa.
      6. A reference to one gender shall include a reference to the other genders.
      7. 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.
      8. A reference to **writing** or **written** includes faxes and e-mail.
      9. 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.
      10. 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.
      11. References to clauses and schedules are to the clauses and schedules of this agreement; references to paragraphs are to paragraphs of the relevant schedule.
      12. 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:
          1. the clauses of the agreement;
          2. [Schedule 1](#_bookmark37) to this agreement;
          3. the remaining schedules to this agreement other than [Schedule 3](#_bookmark39);
          4. [Schedule 3](#_bookmark39) to this agreement.

**COMMENCEMENT AND DURATION**

* + 1. **TERM**

This agreement shall take effect on the Commencement Date and shall continue for the Term.

* + 1. **EXTENDING THE INITIAL TERM**
       1. This contract will not be extended outside the boundaries of the period allowable in the Public Contract Regulations 2006.
       2. If the Council gives such notice then the Term shall be extended by the period set out in the notice.
       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](#_bookmark36) shall apply.
    2. **CONSENTS, SUPPLIER’S WARRANTY AND DUE DILIGENCE**
       1. The Supplier 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.
       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 Supplier has made all reasonable attempts to obtain a Necessary Consent in line with the requirements of the Services.
       3. The Supplier acknowledges and confirms that:
          1. 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;
          2. it has received all information requested by it from the Council pursuant to clause [4.3(a)](#_bookmark2) to enable it to determine whether it is able to provide the Services in accordance with the terms of this agreement;
          3. 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)](#_bookmark3);
          4. it has raised all relevant due diligence questions with the Council before the Commencement Date; and
          5. it has entered into this agreement in reliance on its own due diligence.
       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 Supplier by the Council and any such representations, warranties or conditions are excluded, save to the extent that such exclusion is prohibited by law.
       5. The Supplier:
          1. as at the Commencement Date, warrants and represents that all information contained in the Supplier'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
          2. 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.
       6. The Supplier 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 Supplier in accordance with clause [4.5(b)](#_bookmark4) save where such additional costs or adverse effect on performance have been caused by the Supplier having been provided with fundamentally misleading information by or on behalf of the Council and the Supplier could not reasonably have known that the information was incorrect or misleading at the time such information was provided. If this exception applies, the Supplier 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.
       7. Nothing in this clause [4](#_bookmark1) shall limit or exclude the liability of the Council for fraud or fraudulent misrepresentation.

# THE SERVICES

* + - 1. The Supplier 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
      2. In the event that the Supplier does not comply with the provisions of clause

5.1 in any way, the Council may serve the Supplier with a notice in writing setting out the details of the Supplier’s default (a Default Notice)

# SCOPE OF SUPPLIER AGREEMENT

* + - 1. This Agreement governs the relationship between the Council and the Supplier in respect of the provision of Services by the Supplier to the Council
      2. The Council may at its absolute discretion and from time to time, order Services from the Supplier in accordance with the procedure set out in the Supplier Entry Guide. If there is a conflict between the Supplier Entry Guide and the Regulations, the Regulations shall take precedence.
      3. The Supplier acknowledges that there is no obligation whatsoever on the Council to purchase any Services from the Supplier during the Term.
      4. The Council appoints the Supplier as a potential Supplier of the Services and the Supplier shall be eligible to be considered for the award of a contract for such services.

# SERVICE FAILURE

* + - 1. The Supplier shall inform the Council’s Authorised Representative of anything (including an act or omission by the Council) which might prevent the Supplier from performing the Service either in part or at all and of any risk of such an event. The Supplier shall inform the Council as soon as possible and provide all relevant information in order to avoid the risk. For the avoidance of doubt, this includes situations where the actions of a third party including the intended recipient of the service prevent the performance of the requirement. This matter will then be considered as necessary within the terms and conditions of this Contract.
      2. If a Default Notice is issued by the Council’s Authorised Representative it must specify the nature of the Defective Service and any action which must be taken by the Supplier to remedy it (if it is capable of remedy), and the time within which such action must be taken.
      3. If the Supplier fails to comply with the Default Notice the Council’s Authorised Representative may at his discretion suspend this Contract or any part of it. In the event that the contract is suspended the Council’s Authorised Representative shall appoint a Successor Supplier. The full

and entire costs of that provision will be wholly and exclusively borne by the original Supplier on a full indemnity basis and shall be payable on demand to the Council. If the period of suspension lasts for longer than one month, the Council’s Authorised Representative may terminate the Contract by notice in writing from the date of the notice.

* + - 1. Any action taken by the Council’s Authorised Representative to secure continuance of the Service need not use the cheapest alternative way of providing the Service but must act in the best interest of the Service Users in procuring rapid quality assured Best Practice replacement of the affected Service.
    1. **DPS PROCEDURES**
       1. The Council shall:
    2. Offer tenderers unrestricted, direct and full access to the Specification (by electronic means) and to any additional documents relating to the provision of the Service from the date of publication of the contract notice to the date when the system ceases to be operated.
    3. Give any tenderers the opportunity to submit an indicative tender and be admitted (accredited and enrolled) on to the DPS provided they satisfy the selection criteria and have submitted an indicative tender which complies with the Specification and any additional documents produced by the Council.
    4. Complete the evaluation of an indicative tender within 15 days from the date of its submission or such longer period as the Council may determine
    5. invite all tenderers who have been admitted to the DPS to submit a further tender for each contract within a time limit specified by the Council.
    6. award the contract to the tenderer who submits the tender which best meets the award criteria specified in the contract notice for the establishment of the DPS

# SERVICE STANDARDS

* 1. The Supplier shall provide the Service in such a manner as will ensure that it satisfies the required service standards in respect of that Service as agreed with the Commissioner on the award of each contract.
  2. Without prejudice to clause 7.1, the Supplier shall provide the Services, or procure that they are provided:
     1. with reasonable skill and care and in accordance with [the best practice prevailing in Education;
     2. in all respects in accordance with the Council's policies set out in [Schedule 1](#_bookmark37); and
     3. in accordance with all Applicable Laws.
  3. Without limiting the general obligation set out in clause [7.2](#_bookmark5), the Supplier shall (and shall procure that the Supplier's Personnel shall):
     1. at all times comply with the provisions of the Human Rights Act 1998 in the performance of this agreement. The Supplier 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
     2. not unlawfully discriminate within the meaning and scope of any law, enactment, order or regulation relating to discrimination in employment.

1. **HEALTH AND SAFETY**
   1. The Supplier 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 Supplier of any health and safety hazards that may exist or arise at the Council's Premises and that may affect the Supplier in the performance of the agreement.
   2. While on the Council's Premises, the Supplier 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.
   3. The Supplier 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.
   4. The Supplier shall comply with the requirements of the Health and Safety at Work 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 working on the Council's Premises in the performance of the agreement.
   5. The Supplier shall ensure that its health and safety policy statement (as required by the Health and Safety at Work Act 1974) is made available to the Council on request.
2. **COUNCIL'S PREMISES AND ASSETS NOT USED**

# DISASTER RECOVERY

* 1. The Supplier shall comply at all times with the relevant provisions of the Business Continuity Plan.
  2. Following the disruption of services the Supplier shall:
     1. implement the Business Continuity Plan ;
     2. continue to provide the affected Services to the Council in accordance with the Business Continuity Plan; and
     3. restore the affected Services to normal within the period laid out in the Business Continuity Plan.

To the extent that the Supplier complies fully with the provisions of this clause (and the reason for the disruption did not breach any of the other terms of this agreement on the part of the Supplier), the Service Levels to which the affected Services are to be provided during the continuation of the disruption shall not be the Service Levels as referred to in Schedule 2 but shall be the service levels set out in the Business Continuity Plan or (if none) the best service levels which are reasonably achievable in the circumstances.

**CHARGES AND PAYMENT**

1. **PAYMENT**
   1. In consideration of the provision of the Services by the Supplier in accordance with the terms and conditions of this agreement, the Council shall pay the Charges to the Supplier in accordance with the Self Billing Agreement. For the avoidance of doubt, the Service Provider shall act as the Council’s payment agent for such transactions.
   2. The Supplier shall invoice the Council for payment of the Charges at the time the Charges are expressed to be payable in accordance with the Self Billing Agreement. All invoices shall be directed to the Council's Representative.
   3. The Council shall pay the Charges which have become payable in accordance with the Self Billing Agreement within 30 days of the appropriate undisputed Self-Bill invoice.
   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 21. Provided that the sum has been disputed in good faith, interest due on any sums in dispute shall not accrue until the earlier of 28 days after resolution of the dispute between the parties.
   5. Subject to clause [11.4](#_bookmark6), interest shall be payable on the late payment of any undisputed Charges properly invoiced under this agreement in accordance with the Late Payment of Commercial Debts (Interest) Act 1998. The Supplier 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](#_bookmark31) for failure to pay undisputed charges.
   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 Supplier 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 Supplier's failure to account for, or to pay, any VAT relating to payments made to the Supplier under this agreement.
   7. The Supplier 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 6 (SIX) years from the end of the Contract Year to which the records relate.
   8. Where the Supplier 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 Supplier 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.
   9. The Council may retain or set off any sums owed to it by the Supplier which have fallen due and payable against any sums due to the Supplier under this

agreement, or any other agreement pursuant to which the Supplier or any Associated Company of the Supplier provides goods or services to the Council.

* 1. The Supplier shall make any payments due to the Council without any Deduction whether by way of set-off, counterclaim, discount, abatement or otherwise, unless the Supplier has a valid court order requiring an amount equal to such deduction to be paid by the Council to the Supplier.
  2. For the avoidance of doubt, the Supplier acknowledges and accepts that the Charges due for the Services provided under the Supplier Agreement shall be paid by the London Borough of Bromley via the Service Provider, acting as the Council’s payment agent.

1. **SERVICE CREDITS - NOT USED**
2. **KEY PERSONNEL**
   1. Each party shall appoint the persons named as such in [Schedule 5](#_bookmark41) 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 Council to act on behalf of their respective party on the matters for which they are expressed to be responsible.
   2. The Supplier shall not remove or replace any of the Key Personnel unless:
      1. requested to do so by the Council;
      2. the person is on long-term sick leave;
      3. the element of the Services in respect of which the individual was engaged has been completed to the Council's satisfaction;
      4. the person resigns from their employment with the Supplier; or
      5. the Supplier obtains the prior written consent of the Council.
   3. The Supplier 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.
   4. Each party shall ensure that the role of each of its Key Personnel is not vacant (in terms of a permanent representative) for more than 20 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 Supplier or the Council becoming aware of the role becoming vacant.
   5. The Council may require the Supplier 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.
   6. If the Supplier replaces the Key Personnel as a consequence of this clause [13](#_bookmark7), the cost of effecting such replacement shall be borne by the Supplier.
3. **OTHER PERSONNEL USED TO PROVIDE THE SERVICES**
   1. At all times, the Supplier shall ensure that:
      1. each of the Supplier's Personnel is suitably qualified, adequately trained and capable of providing the applicable Services in respect of which they are engaged;
      2. there is an adequate number of Supplier's Personnel to provide the Services properly;
      3. only those people who are authorised by the Supplier (under the authorisation procedure to be agreed between the parties) are involved in providing the Services; and
      4. all of the Supplier'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.
   2. The Council may refuse to grant access to, and remove, any of the Supplier's Personnel who do not comply with any such policies, or if they otherwise present a security threat.
   3. The Supplier shall replace any of the Supplier'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 Supplier's Personnel for any reason, the Supplier shall ensure such person is replaced promptly with another person with the necessary training and skills to meet the requirements of the Services.
   4. The Supplier shall maintain up-to-date personnel records on the Supplier's Personnel engaged in the provision of the Services and, on request, provide reasonable information to the Council on the Supplier's Personnel. The Supplier shall ensure at all times that it has the right to provide these records in compliance with the applicable Data Protection Legislation.
   5. The Supplier 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 at the prevailing industry norm for similar services, locations and environments.
4. **SAFEGUARDING CHILDREN AND VULNERABLE ADULTS**
   1. The parties acknowledge that the Supplier 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.
   2. The Supplier shall ensure that all individuals engaged in the provision of the Services are:
      1. subject to a valid enhanced disclosure check undertaken through the Disclosure and Barring Service including a check against the adults' barred list or the children's barred list, as appropriate; and
      2. the Supplier shall monitor the level and validity of the checks under this clause [15.2](#_bookmark9) for each member of staff.
   3. The Supplier warrants that at all times for the purposes of this agreement it has no reason to believe that any person who is or will be employed or engaged by the Supplier in the provision of the Services is barred from the activity in accordance with the provisions of the Safeguarding Vulnerable Groups Act 2006 and any regulations made thereunder, as amended from time to time.
   4. The Supplier shall immediately notify the Council of any information that it reasonably requests to enable it to be satisfied that the obligations of this clause [15](#_bookmark8) have been met.
   5. The Supplier shall refer information about any person carrying out the Services to the DBS where it removes permission for such person to carry out the Services (or would have, if such person had not otherwise ceased to carry out the Services) because, in its opinion, such person has harmed or poses a risk of harm to any [service users/children/vulnerable adults].
   6. The Supplier shall not employ or use the services of any person who is barred from, or whose previous conduct or records indicate that they would not be suitable to carry out Regulated Activity or who may otherwise present a risk to service users.
   7. The Supplier shall ensure that any sub-contractors used to deliver the service shall be prepared to present a valid DBS check to the Council’s representative on site before commencing work.

# TUPE

The parties agree that the provisions of [Schedule 10](#_bookmark44) shall apply to any Relevant Transfer of staff under this agreement.

**CONTRACT MANAGEMENT**

1. **REPORTING AND MEETINGS**
   1. The Supplier shall provide the management reports in the form and at the intervals set out in [Schedule 5](#_bookmark41) and the Service Agreement.
   2. The Authorised Representatives and relevant Key Personnel shall meet in accordance with the details set out in [Schedule 5](#_bookmark41) and the Service Agreement and the Supplier shall, at each meeting, present its previously circulated Management Reports [and Financial Reports] in the format set out in that Schedule.
2. **MONITORING**
   1. The Council may monitor the performance of the Services by the Supplier.
   2. The Supplier 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](#_bookmark10) at no additional charge to the Council.
3. **CHANGE CONTROL AND CONTINUOUS IMPROVEMENT**
   1. Any requirement for a Change shall be subject to the Change Control Procedure.
   2. The Supplier shall have an ongoing obligation throughout the Term to identify new or potential improvements to the Services. As part of this obligation the Supplier shall identify and report to the Council's Representative [quarterly] in

the first Contract Year and once every [six] months for the remainder of the Term on:

* + 1. the emergence of new and evolving relevant technologies which could improve the Services;
    2. new or potential improvements to the Services including the [quality, responsiveness, procedures, performance mechanisms and customer support services in relation to the Services
    3. 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
    4. changes in ways of working that would enable the Services to be delivered at lower costs and/or at greater benefits to the Council.
  1. Any potential Changes highlighted as a result of the Supplier's reporting in accordance with clause [19.2](#_bookmark11) shall be addressed by the parties using the Change Control Procedure.

1. **DISPUTE RESOLUTION**
   1. Either party may call an extraordinary meeting of the parties by service of not less than [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.
   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 [senior officers of the two parties] who shall co-operate in good faith to resolve the dispute as amicably as possible within [14 days] of service of such notice. If the [senior officers] fail to resolve the dispute in the allotted time, then [the Dispute Resolution Procedure shall be deemed exhausted **OR** the parties shall, within that period, on the written request of either party enter into an alternative Dispute Resolution Procedure with the assistance of a mediator agreed by the parties or, in default of such agreement within [seven days] of receipt of such request, appointed, at the request of either party, by the [Centre for Dispute Resolution or such other similar body as is agreed]].
   3. [The parties shall then submit to the supervision of the mediation by the [Centre for Dispute Resolution or similar body] for the exchange of relevant information and for setting the date for negotiations to begin.]
   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 or any other form of arbitration 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).]
   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.]
   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.]
   7. [While the Dispute Resolution Procedure referred to in this clause [20](#_bookmark12) 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.]
2. **SUB-CONTRACTING AND ASSIGNMENT**
   1. Subject to clause [21.3](#_bookmark13), neither party shall be entitled to assign, novate or otherwise dispose of any or all of its rights and obligations under this agreement without the prior written consent of the other party, neither may the Supplier sub- contract the whole or any part of its obligations under this agreement except with the express prior written consent of the Council, such consent not to be unreasonably withheld.
   2. In the event that the Supplier enters into any Sub-Contract in connection with this agreement it shall:
      1. 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;

* + 1. 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
    2. 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.
  1. 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**

1. **INDEMNITIES**

The Supplier 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 Supplier's Personnel).

1. **LIMITATION OF LIABILITY**
   1. Subject to clause 23 and clause [23.5](#_bookmark15), 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.
   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.
   3. Subject to clause [23.5](#_bookmark15), the Council's total aggregate liability:
2. in respect of the indemnities given by the Council in Schedule 10 is £250,000
3. in respect of all other claims, losses or damages, whether arising from tort (including negligence), breach of contract or otherwise under or in connection with this agreement (other than a failure to pay any of the Charges that are properly due and payable and for which the Council shall remain fully liable), shall in no event exceed £10,000 in each Contract Year or, if lower, 10% of the aggregate Charges paid under or pursuant to this agreement in the subsequent Contract Year in respect of which the claim arises.
   1. Subject to clause 23 and clause [23.5](#_bookmark15), the Supplier's total aggregate liability:
      1. in respect of the indemnities given by the Supplier in clause [22,](#_bookmark14) and clause [29.2](#_bookmark27) and [Schedule 10](#_bookmark44) is unlimited;
      2. in respect of all other claims, losses or damages, whether arising from tort (including negligence), breach of contract or otherwise under or in connection with this agreement, shall in no event exceed £10,000 in each Contract Year or, if greater, 10% of the aggregate Charges paid under or pursuant to this agreement in the subsequent Contract Year in respect of which the claim arises.
   2. Notwithstanding any other provision of this agreement neither party limits or excludes its liability for:
      1. fraud or fraudulent misrepresentation;
      2. death or personal injury caused by its negligence;
      3. breach of any obligation as to title implied by statute; or
      4. any other act or omission, liability for which may not be limited under any applicable law.
4. **INSURANCE**
   1. The Supplier shall at its own cost effect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover as a minimum the following levels of cover:
      1. public liability insurance with a limit of indemnity of not less than

£5,000,000 in relation to any one claim or series of claims;

* + 1. employer's liability insurance with a limit of indemnity of not less than

£5,000,000 **OR** in accordance with any legal requirement for the time being in force in relation to any one claim or series of claims;

* + 1. professional indemnity insurance with a limit of indemnity of not less than £2,000,000 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 cover shall be in respect of all risks which may be incurred by the Supplier, arising out of the Supplier'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 Supplier.

* 1. The Supplier 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.
  2. If, for whatever reason, the Supplier 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 Supplier.
  3. The terms of any insurance or the amount of cover shall not relieve the Supplier of any liabilities under the agreement.
  4. [The Supplier shall hold and maintain the Required Insurances for a minimum of six years following the expiration or earlier termination of the agreement.]

**INFORMATION**

1. **FREEDOM OF INFORMATION**
   1. The Supplier acknowledges that the Council is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and co- operate with the Council (at the Supplier's expense) to enable the Council to comply with these information disclosure requirements.
   2. The Supplier shall and shall procure that its Sub-Contractors shall:
      1. Transfer the Request for Information to the Council as soon as practicable after receipt and in any event within [two] Working Days of receiving a Request for Information;
      2. 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
      3. provide all necessary assistance as reasonably requested by the Council to enable the Council to respond to a Request for Information

within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.

* 1. The Council shall be responsible for determining at its absolute discretion whether the Commercially Sensitive Information and/or any other Information:
     1. is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations; and/or
     2. is to be disclosed in response to a Request for Information.
  2. In no event shall the Supplier respond directly to a Request for Information unless expressly authorised to do so by the Council.
  3. The Supplier acknowledges that the Council may, acting in accordance with the Secretary of State for 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 FOIA or the Environmental Information Regulations to disclose Information:
     1. without consulting with the Supplier; or
     2. following consultation with the Supplier and having taken its views into account,

provided always that where clause [25.5.2](#_bookmark20) applies the Council shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Supplier advanced notice, or failing that, to draw the disclosure to the Supplier's attention after any such disclosure.

* 1. The Supplier shall ensure that all Information produced in the course of the agreement or relating to the agreement is retained for disclosure and shall permit the Council to inspect such records as requested from time to time.
  2. The Supplier acknowledges that any lists or Schedules provided by it outlining Confidential Information are of indicative value only and that the Council may nevertheless be obliged to disclose Confidential Information in accordance with clause [25.5](#_bookmark19).

1. **DATA PROTECTION**

26.1 Data Protection Legislation means**:**

1. The Data Protection Act 1998;
2. The Data Protection Bill 2017-19 (as enacted);
3. The General Data Protection Regulation 2016/679 (GDPR);
4. The Privacy and Electronic Communications (EC Directive) Regulations 2003;
5. Any other data protection laws and regulations (including amended, supplemental or replacement laws and regulations) applicable in the United Kingdom;
6. Codes of Conduct published by the Information Commissioner’s Office (ICO).

26.2 Each party will comply with all applicable requirements of the Data Protection Legislation.

a) The Council is the Data Controller and the Contractor is the Data Processor in relation to the Personal Data processing set out in paragraph 5 and the Schedule to this clause;

b) To the extent that the Council and the Contractor are joint Data Controllers in relation to the processing of any Personal Data they will in good faith agree and sign an Information Sharing Agreement or agree another arrangement which complies with Article 26 GDPR.

26.3 Without prejudice to the generality of paragraph 2 above, in relation to any Personal Data processed in connection with the performance by the Contractor of its obligations under this Agreement the Contractor shall:

* + 1. process that Personal Data only on the written instructions of the Council and only insofar as is necessary for the performance of this Agreement unless the Contractor is otherwise required by law;
    2. ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, including:
       1. anonymising, pseudonymising and encrypting Personal Data where appropriate;
       2. ensuring confidentiality, integrity, availability and resilience of its systems and processes;
       3. ensuring that availability of and access to Personal Data can be restored in a timely manner after any technical or physical incident;
       4. regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it.
    3. ensure that all personnel who have access to and/or process Personal Data are legally obliged to keep the Personal Data confidential;
    4. not disclose or transfer any Personal Data to any third party without the express written consent and instruction of the Council;
    5. notify the Council within 24 hours of any request from a Data Subject and assist the Council in responding to any request from a Data Subject;
    6. comply with the Data Protection Legislation with respect to security, Personal Data Breach notifications, data protection impact assessments and consultations with supervisory authorities or regulators;
    7. co-operate with the Council in relation to any Data Protection Impact Assessment carried out by, at the direction of and/or in conjunction with the Council;
    8. notify the Council within 24 hours on becoming aware of a Personal Data Breach of any kind and assist the Council in responding promptly including any notification to and communication with the affected Data Subject(s) and the ICO;
    9. maintain complete and accurate records and information to demonstrate its compliance with this clause;
    10. submit to audits and inspections by the Council and its authorised agents;
    11. provide the Council with whatever information the Council reasonably needs to ensure that the Council and the Contractor are meeting their respective Data Protection Legislation obligations;
    12. inform the Council immediately if the Contractor is asked to do anything which would infringe the Data Protection Legislation;
    13. employ a Data Protection Officer where required and keep the Council informed from time to time of the identity of the currently appointed Data Protection Officer;
    14. not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Council has been obtained (which consent the Council may in its absolute discretion grant or refuse) and the following conditions are fulfilled:
        1. the Contractor has provided appropriate safeguards in relation to the transfer;
        2. any Data Subject has enforceable legal rights and effective legal remedies;
        3. the Contractor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred;
        4. the Contractor complies with all instructions notified to it in advance by the Council with respect to the processing of the Personal Data.

o) not appoint any Sub-Processor of Personal Data under this Agreement unless the prior written consent of the Council has been obtained (which consent the Council may in its absolute discretion grant or refuse) and the following conditions are fulfilled:

(i) The Contractor notifies the Council of the identity of the Sub-Processor and confirms that the Contractor has entered into or (as the case may be) will enter into with the Sub-Processor a written agreement incorporating terms which are substantially similar to those set out in this clause;

(iii) The Sub-Processor has and at all times shall maintain sufficient commercial, technical and organisational capacity fully to discharge all its obligations under the said written agreement with the Contractor and under the Data Protection Legislation.

p) return all Personal Data and copies thereof to the Council, or delete the same as the Council may direct, on termination of this Agreement howsoever caused.

26.4 The Contractor shall indemnify the Council against all actions, claims, demands, proceedings, damages, liabilities, costs, charges and expenses whatsoever incurred by the Council or for which the Council may become liable due to any breach of this clause or of the Data Protection Legislation by the Contractor or by any Sub-Processor appointed by the Contractor.

26.5 For the purposes of this Agreement and the Data Protection Legislation if details are not set out in the Schedule below then:

1. The **categories** of Data Subjects is limited to those natural persons whose Personal Data it is necessary to process for the proper performance of this Agreement, including any Specification;
2. The **type** of Personal Data is limited to the type of Personal Data which it is necessary to process for the proper performance of this Agreement, including any Specification;
3. The **subject matter** of the processing of Personal Data is the provision of the specific Contractor works, services and/or goods under this Agreement, including any Specification;
4. The **nature** of the processing of Personal Data means any operation such as collection, recording, organisation, structuring, storage, adaptation, alteration, retrieval, consultation, alignment, combination or use, whether or not by automated means;
5. The **purpose** of the processing of Personal Data is limited to enabling the Contractor to perform its specific contractual obligations under this Agreement, including any Specification;
6. The **duration** of the processing of Personal Data is limited to the life of this Agreement, including any extension

GDPR SCHEDULE

|  |  |
| --- | --- |
| The **categories** of Data Subjects | Individual Looked after Children and Young people not in mainstream education. |
| The **type** of Personal Data | o Unique pupil number (UPN)  o Year  o Forename  o Surname  o Date of birth  o Gender  o Entered care date  o Social worker forename  o Social worker surname  o Social worker email  o Carer forename  o Carer surname  o Carer telephone  o Carer address  o Carer email  o Local authority of carer  o School  o School telephone  o School address  o Designated teacher forename  o Designated teacher surname  o Designated teacher email  o School local authority  o School type  o Code of practice – EHCP, statement  o Ethnicity  o Type of provider  o Legal status  o Attendance  o Exclusions  o Exclusion letters  o Reasons for absence  o Alternative provision  o SATS and GCSE results |
| The **subject matter** of the processing of Personal Data | Providing 1:1 tuition (coaching) to children in care of Bromley Council |
| The **nature** of the processing of Personal Data | Collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction. |
| The **purpose** of the processing of Personal Data | To enable the Council to comply with its statutory duty and the parties to comply with their respective contractual obligations. |
| The **duration** of the processing of Personal Data | The duration of this Contract/Agreement between the parties. |

1. **CONFIDENTIALITY**
   1. Subject to clause [27.2](#_bookmark25), the parties shall keep confidential all matters relating to this agreement and shall use all reasonable endeavours to prevent their Representatives from making any disclosure to any person of any matters relating hereto.
   2. Clause [27.1](#_bookmark24) shall not apply to any disclosure of information:
      1. required by any applicable law, provided that clause [25.1](#_bookmark18) shall apply to any disclosures required under the FOIA or the Environment Information Regulations;
      2. that is reasonably required by persons engaged by a party in the performance of such party's obligations under this agreement;
      3. 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](#_bookmark24);
      4. 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;
      5. to enable a determination to be made under clause [20](#_bookmark12);
      6. which is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party;
      7. by the Council to any other department, office or agency of the Government; and
      8. by the Council relating to this agreement and in respect of which the Supplier has given its prior written consent to disclosure.
   3. On or before the Termination Date the Supplier shall ensure that all documents and/or computer records in its possession, custody or control which relate to personal information of the Authorities' employees, rate-payers or service users, are delivered up to the Council or securely destroyed.
2. **AUDIT**
   1. During the Term and for a period of 6 (SIX) years after the Termination Date, the Council may conduct or be subject to an audit for the following purposes:
      1. 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](#_bookmark40) (Payment)];
      2. to review the integrity, confidentiality and security of any data relating to the Council or any service users;
      3. to review the Supplier's compliance with the DPA, the FOIA, in accordance with clause [26](#_bookmark21) (Data Protection) and clause [25](#_bookmark17) (Freedom of Information) and any other legislation applicable to the Services;
      4. to review any records created [during the provision of the Services];
      5. to review any books of account kept by the Supplier in connection with the provision of the Services;
      6. to carry out the audit and certification of the Council's accounts;
      7. to carry out an examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Council has used its resources;
      8. to verify the accuracy and completeness of the Management Reports delivered or required by this agreement.
   2. Except where an audit is imposed on the Council by a regulatory body, the Council may not conduct an audit under this clause [28](#_bookmark26) more than [twice] in any calendar year.
   3. The Council shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Supplier or delay the provision of the Services.
   4. Subject to the Council's obligations of confidentiality, the Supplier 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:
      1. all information requested by the above persons within the permitted scope of the audit;
      2. reasonable access to any sites controlled by the Supplier and to any equipment used (whether exclusively or non-exclusively) in the performance of the Services; and
      3. access to the Supplier's Personnel.
   5. 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.
   6. 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 Supplier in which case the Supplier shall reimburse the Council for all the Council's reasonable costs incurred in the course of the audit.
   7. If an audit identifies that:
      1. the Supplier has failed to perform its obligations under this agreement in any material manner, the parties shall agree and implement a remedial plan. If the Supplier's failure relates to a failure to provide any information to the Council about the Charges, proposed Charges or the Supplier's costs, then the remedial plan shall include a requirement for the provision of all such information;
      2. the Council has overpaid any Charges, the Supplier shall pay to the Council the amount overpaid within [20] days. The Council may deduct the relevant amount from the Charges if the Supplier fails to make this payment; and
      3. the Council has underpaid any Charges, the Council shall pay to the Supplier the amount of the under-payment [less the cost of audit incurred by the Council if this was due to a default by the Supplier in relation to invoicing] within [20] days.
3. **INTELLECTUAL PROPERTY**
   1. In the absence of prior written agreement by the Council to the contrary, all Intellectual Property created by the Supplier or any employee, agent or subcontractor of the Supplier:
      1. in the course of performing the Services; or
      2. exclusively for the purpose of performing the Services, shall vest in the Council on creation.
   2. The Supplier 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.

**TERMINATION**

1. **TERMINATION FOR BREACH**
   1. The Council may terminate this agreement [in whole or part] with immediate effect by the service of written notice on the Supplier in the following circumstances:
      1. if the Supplier is in breach of any material obligation under this agreement provided that if the breach is capable of remedy, the Council may only terminate this agreement under this clause [30.1](#_bookmark29) if the Supplier has failed to remedy such breach within [28 days] of receipt of notice from the Council (a **Remediation Notice**) to do so;
      2. if a Consistent Failure has occurred;
      3. if a Catastrophic Failure has occurred;
      4. if a resolution is passed or an order is made for the winding up of the Supplier(otherwise than for the purpose of solvent amalgamation or reconstruction) or the Supplier becomes subject to an administration order or a receiver or administrative receiver is appointed over or an encumbrancer takes possession of any of the Supplier's property or equipment;
      5. if the Supplier ceases or threatens to cease to carry on business in the United Kingdom;
      6. if there is a change of control (as defined in section 574 of the Capital Allowances Act 2001) of the Supplier to which the Council reasonably objects.
   2. The Council may terminate this agreement in accordance with the provisions of clause [32](#_bookmark32) .
   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 Supplier hereby indemnifies the Council against any such losses or costs which the Council may suffer as a result of any such termination for cause.
   4. The Supplier 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 Supplier's notice to terminate this agreement shall be deemed to have been withdrawn.
2. **TERMINATION ON NOTICE**

The Council may terminate this agreement at any time by giving 3 months' written notice to the Supplier.

1. **FORCE MAJEURE**
   1. Subject to the remaining provisions of this clause [32](#_bookmark32), 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.
   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:
      1. 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;
      2. use all reasonable endeavours to mitigate the effects of such delay or prevention on the performance of its obligations under this agreement; and
      3. resume performance of its obligations as soon as reasonably possible after the removal of the cause of the delay or prevention.
   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.
   4. The Supplier cannot claim relief if the Force Majeure Event is one where a reasonable Supplier should have foreseen and provided for the cause in question.
   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 Supplier 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.
   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.
   7. The Council may, during the continuance of any Force Majeure Event, terminate this agreement by written notice to the Supplier if a Force Majeure Event occurs that affects all or a substantial part of the Services and which continues for more than 5 (FIVE) Working Days.
2. **PREVENTION OF BRIBERY**
   1. The Supplier:
      1. shall not, and shall procure that any Supplier Party and all Supplier Personnel shall not, in connection with this Agreement commit a Prohibited Act;
      2. 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.
   2. The Supplier shall:
      1. 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;
   3. The Supplier shall have an anti-bribery policy (which shall be disclosed to the Council) to prevent any Supplier Party or Supplier Personnel from committing a Prohibited Act and shall enforce it where appropriate.
   4. If any breach of clause [33.1](#_bookmark34) is suspected or known, the Supplier must notify the Council immediately.
   5. If the Supplier notifies the Council that it suspects or knows that there may be a breach of clause [33.1](#_bookmark34), the Supplier 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 years following the expiry or termination of this Agreement.]
   6. The Council may terminate this Agreement by written notice with immediate effect if the Supplier, Supplier Party or Supplier Personnel (in all cases whether or not acting with the Supplier's knowledge) breaches clause [33.1](#_bookmark34). [In determining whether to exercise the right of termination under this clause [33.6](#_bookmark35), 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 Supplier or a senior officer of the Supplier or by an employee, Sub-Contractor or supplier not acting independently of the Supplier. The expression "not acting independently of" (when used in relation to the Supplier or a Sub-Contractor) means and shall be construed as acting:
      1. with the Council; or,
      2. with the actual knowledge;

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

* + 1. in circumstances where any one or more of the directors of the Supplier ought reasonably to have had knowledge.]
  1. Any notice of termination under clause [33.6](#_bookmark35) must specify:
     1. the nature of the Prohibited Act;
     2. the identity of the party whom the Council believes has committed the Prohibited Act; and
     3. the date on which this Agreement will terminate.
  2. Despite clause [20](#_bookmark12) (Dispute resolution), any dispute relating to:
     1. the interpretation of clause [33](#_bookmark33); or
     2. the amount or value of any gift, consideration or commission, shall be determined by the Council and its decision shall be final and conclusive.
  3. Any termination under clause [33.6](#_bookmark35) will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Council.

1. **CONSEQUENCES OF TERMINATION**
   1. On the expiry of the Term, or if this agreement is terminated in whole or in part the Supplier shall co-operate fully with the Council to ensure an orderly migration of the Services to the Council or, at the Council's request, a Replacement Supplier.
   2. On termination of this agreement and on satisfactory completion of the Exit Management Plan (or where reasonably so required by the Council before such completion) the Supplier 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 Supplier's [Authorised Representative or Chief Executive Officer] shall certify full compliance with this clause.
   3. The provisions of clause 18, clause [22](#_bookmark14) (Indemnities), clause [24](#_bookmark16) (Insurance), clause [25](#_bookmark17) (Freedom of Information), clause [26](#_bookmark21) (Data Protection), clause [28](#_bookmark26) (Audit), clause [30](#_bookmark28) (Termination for Breach) and this clause [34](#_bookmark36) (Consequences of termination) shall survive termination or expiry of this agreement.

**GENERAL PROVISIONS**

1. **[NON-SOLICITATION**

Neither party shall (except with the prior written consent of the other) during the term of this agreement[, and for a period of one year thereafter,] 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 national advertising campaign and not specifically targeted at such staff of the other party.]

1. **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 Supplier 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 Supplier of its obligations to deliver the Services in accordance with the provisions of this agreement.

1. **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.

1. **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.

1. **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.

1. **THIRD PARTY RIGHTS**
   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.
2. **PUBLICITY**

The Supplier shall not:

* + 1. make any press announcements or publicise this agreement or its contents in any way; or
    2. 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].

1. **NOTICES**

Notices shall be in writing, and shall be sent to the other party marked for the attention of the person at the address set out for such party in this agreement. Notices may be sent by first-class mail or facsimile transmission provided that facsimile transmissions are confirmed within [24 hours] by first-class mailed confirmation of a copy. Correctly addressed notices sent by first-class mail

shall be deemed to have been delivered 72 hours after posting and correctly directed facsimile transmissions shall be deemed to have been received instantaneously on transmission provided that they are confirmed as set out above.

1. **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.

1. **COUNTERPARTS**

This agreement may be executed in any number of counterparts, provided that the Supplier has signed the appropriate Signature Document, 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.]

1. **GOVERNING LAW AND JURISDICTION**
   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.
   2. The parties irrevocably agree that the courts of England and Wales shall have [non-]exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement or its subject matter.

# DISCRIMINATION

* 1. The Supplier shall not unlawfully discriminate either directly or indirectly on such grounds as race, colour, ethnic or national origin, disability, sex or sexual orientation, religion or belief, or age and without prejudice to the generality of the foregoing, the Supplier shall not unlawfully discriminate within the meaning and scope of the Equality Act 2010, the Human Rights Act 1998 or other relevant legislation or any statutory modification or re- enactment thereof.
  2. The Supplier shall take all reasonable steps to secure the observation of clause 46.1 by all its’ staff or agents and all suppliers and sub-contractors employed in the execution of this Agreement.
  3. If any Court or Tribunal and/or any similar or equivalent body established to monitor the Equality Act 2010 or the Human Rights Act 1988 or any similar or equivalent legislation makes any finding of unlawful discrimination against the Supplier then the Supplier must immediately give the Authorised Officer full details in writing of such findings and take all necessary steps to prevent a recurrence.

This agreement has been entered into between the parties on the date stated within the Signature Document.

# 

# Schedule 1 Specification

The specification for each service will be set out in detail in each individual service requirement and will be subject to the terms and conditions of this contract.

# Schedule 2 Service levels

# Part 1. Service Levels

1. **SERVICE LEVELS**

Service levels will be agreed with the Commissioner at the award of each contract.

1. **CONSISTENT FAILURE**

In this agreement, **consistent failure** shall mean:

* 1. [a failure rate of at least in meeting:
     1. 3 or more agreed service levels in a rolling 6 month period.

# [AND/OR]

* 1. [the Council serving [3 Remediation Notices in a rolling 6 month period or [2 Default Notices in a rolling year.]

# Schedule 3 Supplier's Tender

To be completed within Application

# Schedule 4 Charges and Payment NOT USED

# Schedule 5 Contract management

1. **AUTHORISED REPRESENTATIVES**
   1. The Council's initial Authorised Representative: [INSERT DETAILS]
   2. The Supplier's initial Authorised Representative: [INSERT DETAILS]
2. **KEY PERSONNEL**

[INSERT DETAILS]

1. **MEETINGS**
   1. Type
   2. Quorum
   3. Frequency
   4. Agenda
2. **REPORTS**
   1. Type
   2. Contents
   3. Frequency
   4. Circulation list

# Schedule 6 Business Continuity Plan

1. The Supplier shall have in place a Business Continuity Plan (to be made available to the Council on request) that sets out the detailed procedures and processes to be followed and actions to be taken if there is a failure or disruption of the Services.
2. The parties shall comply with the provisions of the Business Continuity Plan and the Supplier shall ensure that it is able to implement the Business Continuity Plan at any time in accordance with its terms.
3. The Supplier shall test the Business Continuity Plan on a regular basis (and in any event not less than once in every 12 month period). Subject to clause 4, the Council may require the Supplier to conduct additional tests of the Business Continuity Plan where the Council considers it necessary, including where there has been any change to the Services or any underlying business processes, or on the occurrence of any event which may increase the likelihood of the need to implement the Business Continuity Plan. The Council reserves the right to attend any Business Continuity Plan test undertaken by the Supplier.
4. If the Council requires an additional test of the Business Continuity Plan it shall give the Supplier written notice and the Supplier shall conduct the test in accordance with the Council’s requirements and the relevant provisions of the Business Continuity Plan. Following each test, the Supplier shall send to the Council a written report summarising the results of the test and shall promptly implement any actions or remedial measures which the Council considers to be necessary as a result of those tests.
5. The Supplier shall undertake regular risk assessments and/or business impact analysis in relation to the provision of the Services not less than once every six months and shall provide the results of, and any recommendations in relation to those risk assessments or business impact analysis to the Council promptly in writing following each review.

# Schedule 7 Change control

1. **GENERAL PRINCIPLES**
   1. Where the Council or the Supplier sees a need to change this agreement, the Council may at any time request, and the Supplier may at any time recommend, such Change only in accordance with the Change Control Procedure set out in paragraph [2](#_bookmark43) of this [Schedule 7](#_bookmark42).
   2. Until such time as a Change is made in accordance with the Change Control Procedure, the Council and the Supplier shall, unless otherwise agreed in writing, continue to perform this agreement in compliance with its terms before such Change.
   3. Any discussions which may tak e place between the Council and the Supplier in connection with a request or recommendation before the authorisation of a resultant Change shall be without prejudice to the rights of either party.
   4. Any work undertaken by the Supplier and the Supplier'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](#_bookmark42), shall be undertaken entirely at the expense and liability of the Supplier.
2. **PROCEDURE**
   1. Discussion between the Council and the Supplier concerning a Change shall result in any one of the following:
      1. no further action being taken; or
      2. a request to change this agreement by the Council; or
      3. a recommendation to change this agreement by the Supplier.
   2. Where a written request for an amendment is received from the Council, the Supplier shall, unless otherwise agreed, submit two copies of a Change Control Note signed by the Supplier to the Council within three weeks of the date of the request.
   3. A recommendation to amend this agreement by the Supplier shall be submitted directly to the Council in the form of two copies of a Change Control Note signed by the Supplier at the time of such recommendation. The Council shall give its response to the Change Control Note within three weeks.
   4. Each Change Control Note shall contain:
      1. the title of the Change;
      2. the originator and date of the request or recommendation for the Change;
      3. the reason for the Change;
      4. full details of the Change, including any specifications;
      5. the price, if any, of the Change;
      6. a timetable for implementation, together with any proposals for acceptance of the Change;
      7. a schedule of payments if appropriate;
      8. details of the likely impact, if any, of the Change on other aspects of this agreement including:
         1. the timetable for the provision of the Change;
         2. the personnel to be provided;
         3. the Charges;
         4. the Documentation to be provided;
         5. the training to be provided;
         6. working arrangements;
         7. other contractual issues;
      9. the date of expiry of validity of the Change Control Note; and
      10. provision for signature by the Council and the Supplier.
   5. For each Change Control Note submitted by the Supplier the Council shall, within the period of the validity of the Change Control Note:
      1. allocate a sequential number to the Change Control Note; and
      2. evaluate the Change Control Note and, as appropriate:
         1. request further information;
         2. 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 Supplier; or
         3. notify the Supplier of the rejection of the Change Control Note.
   6. A Change Control Note signed by the Council and by the Supplier shall constitute an amendment to this agreement.

# Schedule 8 [Benchmarking] NOT USED

# Schedule 9 Exit

# Schedule 10 TUPE

**INTERPRETATION**

The definitions and rules of interpretation in this paragraph apply in this Agreement:

**Appropriate Pension Provision:** in respect of Eligible Employees, membership or eligibility for membership of a pension scheme, which is certified by the Government Actuary's Department (GAD) as being broadly comparable to the [NAME OF PUBLIC SECTOR PENSION SCHEME].

**Data Protection Legislation:** the Data Protection Act 1998, the Data Protection Directive (*95/46/EC*), the Data Protection Bill 2017-2019 (as enacted), the General Data Protection Regulation 2016/679 (GDPR), the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (*SI 2000/2699*), the Electronic Communications Data Protection Directive (*2002/58/EC*), the Privacy and Electronic Communications (EC Directive) Regulations 2003 (*SI 2426/2003*) and all applicable laws and regulations relating to the processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner.

**Effective Date:** the date(s) on which the Services (or any part of the Services), transfer from the Authority [or any Third Party Employer] to the Supplier or Sub-Contractor, and a reference to the Effective Date shall be deemed to be the date on which the employees in question transferred or will transfer to the Supplier or Sub-Contractor.

# Eligible Employees

* + 1. the Transferring Employees who are active members of (or are eligible to join) the [NAME OF PUBLIC SECTOR PENSION SCHEME] on the date of a Relevant Transfer including the Effective Date; and/or
    2. the Third Party Employees who are former employees of the Authority and who were active members of (or who were eligible to join) the [NAME OF PUBLIC SECTOR PENSION SCHEME] on the date of a previous Relevant Transfer of the Services.

**Employee Liability Information:** the information that a transferor is obliged to notify to a transferee under regulation 11(2) of TUPE:

1. the identity and age of the employee;
2. the employee's written statement of employment particulars (as required under section 1 of the Employment Rights Act 1996);
3. information about any disciplinary action taken against the employee and any grievances raised by the employee, where a Code of Practice issued under Part IV of the Trade Union and Labour Relations

(Consolidation) Act 1992 relating exclusively or primarily to the resolution of disputes applied, within the previous two years;

1. information about any court or tribunal case, claim or action either brought by the employee against the transferor within the previous two years or where the transferor has reasonable grounds to believe that such action may be brought against the Supplier arising out of the employee's employment with the transferor;
2. information about any collective agreement that will have effect after the Effective Date or the Service Transfer Date, as the case may be, in relation to the employee under regulation 5(a) of TUPE.

**Employment Liabilities:** All claims, including claims without limitation for redundancy payments, unlawful deduction of wages, unfair, wrongful or constructive dismissal compensation, compensation for sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy or maternity, or sexual orientation discrimination, claims for equal pay, compensation for less favourable treatment of part-time workers, and any claims (whether in tort, contract, statute or otherwise), demands, actions, proceedings and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs and expenses reasonably incurred in connection with a claim or investigation (including any investigation 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, and any legal costs and expenses.

**Relevant Employees:** those employees whose contracts of employment transfer with effect from the Service Transfer Date to the Authority or a Replacement Supplier by virtue of the application of TUPE.

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

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

**Replacement Supplier:** any third party supplier of Replacement Services appointed by the Authority from time to time.

**Supplier's Final Staff List:** the list of all the Supplier's and Sub-Contractor's personnel engaged in, or wholly or mainly assigned to, the provision of the Services or any part of the Services at the Service Transfer Date.

**Supplier's Provisional Staff List:** the list prepared and updated by the Supplier of all the Supplier's and Sub-Contractor's personnel engaged in, or wholly or mainly assigned to, the provision of the Services or any part of the Services at the date of the preparation of the list.

**Service Transfer Date:** the date on which the Services (or any part of the Services), transfer from the Supplier or Sub-Contractor to the Authority or any Replacement Supplier.

**Staffing Information:** in relation to all persons detailed on the Supplier's Provisional Staff List, in an anonymised format, such information as the Authority may reasonably request including the Employee Liability Information and details of whether the personnel are employees, workers, self-employed, contractors or consultants, agency workers or otherwise, and the amount of time spent on the provision of the Services.

**Sub-Contractor:** the contractors or suppliers engaged by the Supplier to provide goods, services or works to, for or on behalf of the Supplier for the purposes of providing the Services to the Authority.

**Third Party Employees:** employees of Third Party Employers whose contracts of employment transfer with effect from the Effective Date to the Supplier or Sub-Contractor by virtue of the application of TUPE. [An indicative list of the Third Party Employees, as at the date of execution of the Agreement, is attached at Annex B.]

**Third Party Employer:** a supplier engaged by the Authority to provide [some of the] Services to the Authority before the Effective Date and whose employees will transfer to the Supplier on the Effective Date.

**Transferring Employees:** employees of the Authority whose contracts of employment transfer with effect from the Effective Date to the Supplier by virtue of the application of TUPE. [A list of the Transferring Employees, as at the date of execution of the Agreement, is attached at Annex A.]

**TUPE:** the Transfer of Undertakings (Protection of Employment) Regulations 2006 (*SI 2006/246*).

**TRANSFER OF EMPLOYEES TO THE SUPPLIER ON THE EFFECTIVE DATE**

The Authority and the Supplier agree that where the identity of the supplier of any of the Services changes, this shall constitute a Relevant Transfer and the contracts of employment of any Transferring Employees [and Third Party Employees] shall transfer to the Supplier or Sub-Contractor. The Supplier shall comply and shall procure that each Sub-Contractor shall comply with their obligations under TUPE. The [first] Relevant Transfer shall occur on the [Effective Date **OR** [DATE]].

The Authority shall be responsible for all remuneration, benefits, entitlements and outgoings in respect of the Transferring Employees, including without limitation, all wages, holiday pay, bonuses, commissions, payments of PAYE, National Insurance contributions, pension contributions and otherwise, up to the Effective Date. The Authority shall provide and, where necessary, update the Employee Liability Information for the Transferring Employees to the Supplier, as required by TUPE.

The Authority shall warrant that such information is complete and accurate as it is aware or should reasonably be aware as at the date it is disclosed.

Subject to paragraph [0](#_bookmark45), the Authority shall indemnify and keep indemnified the Supplier against any losses, except indirect losses, incurred by the Supplier or any relevant Sub-Contractor in connection with any claim or demand by any Transferring Employee arising out of the employment of any Transferring Employee. This indemnity shall apply provided that it arises from any act, fault or omission of the Authority in relation to any Transferring Employee prior to the Effective Date (except where such act, fault or omission arises as a result of the Supplier or any relevant Sub-Contractor's failure to comply with regulation 13 of TUPE) and any such claim is not in connection with the transfer of the Services by virtue of TUPE on the Effective Date.

The Supplier shall be liable for and indemnify and keep indemnified the Authority [and any Third Party Employer] against any Employment Liabilities arising from or as a consequence of:

* + 1. any proposed changes to terms and conditions of employment the Supplier or Sub-Contractor may consider making on or after the Effective Date;
    2. any of the employees informing the Authority [and any Third Party Employer] they object to being employed by the Supplier or Sub- Contractor; and
    3. any change in identity of the Transferring Employees' [and Third Party Employees'] employer as a result of the operation of TUPE or as a result of any proposed measures the Supplier or Sub-Contractor may consider taking on or after the Effective Date.

The Supplier shall be liable for and indemnify and keep indemnified the Authority [and any Third Party Employer] against any failure to meet all remuneration, benefits, entitlements and outgoings for the Transferring Employees, [the Third Party Employees,] and any other person who is or will be employed or engaged by the Supplier or any Sub-Contractor in connection with the provision of the Services, including without limitation, all wages, holiday pay, bonuses, commissions, payments of PAYE, National Insurance contributions, pension contributions, termination costs and otherwise from and including the Effective Date.

The Supplier shall immediately on request by the Authority [and/or the Third Party Employer] provide details of any measures that the Supplier or any Sub-Contractor of the Supplier envisages it will take in relation to any Transferring Employees [and any Third Party Employees], including any proposed changes to terms and conditions of employment. If there are no measures, the Supplier will give confirmation of that fact, and shall indemnify the Authority [and any Third Party Employer] against all Employment Liabilities resulting from any failure by it to comply with this obligation.

**EMPLOYMENT EXIT PROVISIONS**

This Agreement envisages that subsequent to its commencement, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of termination of this Agreement, or part or otherwise) resulting in a transfer of the Services in whole or in part (**Subsequent Transfer**). If a Subsequent Transfer is a Relevant Transfer then the Authority or Replacement Supplier will inherit liabilities in respect of the Relevant Employees with effect from the relevant Service Transfer Date.

The Supplier shall and shall procure that any Sub-Contractor shall on receiving notice of termination of this Agreement or otherwise, on request from the Authority and at such times as required by TUPE, provide in respect of any person engaged or employed by the Supplier or any Sub-Contractor in the provision of the Services, the Supplier's Provisional Staff List and the Staffing Information together with any additional information required by the Authority, including information as to the application of TUPE to the employees. The Supplier shall notify the Authority of any material changes to this information as and when they occur.

At least 14 days prior to the Service Transfer Date, the Supplier shall and shall procure that any Sub-Contractor shall prepare and provide to the Authority and/or, at the direction of the Authority, to the Replacement Supplier, the Supplier's Final Staff List, which shall be complete and accurate in all material respects. The Supplier's Final Staff List shall identify which of the Supplier's and Sub-Contractor's personnel named are Relevant Employees.

The Authority shall be permitted to use and disclose the Supplier's Provisional Staff List, the Supplier's Final Staff List and the Staffing Information for informing any tenderer or other prospective Replacement Supplier for any services that are substantially the same type of services as (or any part of) the Services.

The Supplier warrants to the Authority [and the Replacement Supplier] that the Supplier's Provisional Staff List, the Supplier's Final Staff List and the Staffing Information (**TUPE Information**) will be true and accurate in all material respects and that no persons are employed or engaged in the provision of the Services other than those included on the Supplier's Final Staff List.

The Supplier shall and shall procure that any Sub-Contractor shall ensure at all times that it has the right to provide the TUPE Information under Data Protection Legislation.

The Authority regards compliance with this paragraph [0](#_bookmark46) as fundamental to the Agreement. In particular, failure to comply with paragraph [0](#_bookmark47) and paragraph [0](#_bookmark48) in respect of the provision of accurate information about the Relevant Employees shall

entitle the Authority to suspend payment of the Charges until such information is provided, or indefinitely. The maximum sum that may be retained under this paragraph [0](#_bookmark49) shall not exceed an amount equivalent to the Charges that would be payable in the [three] month period following the Supplier's failure to comply with paragraph [0](#_bookmark47) or paragraph [0](#_bookmark48), as the case may be.

Any change to the TUPE Information which would increase the total employment costs of the staff in the [six] months prior to termination of this Agreement shall not (so far as reasonably practicable) take place without the Authority's prior written consent, unless such changes are required by law. The Supplier shall and shall procure that any Sub-contractor shall supply to the Authority full particulars of such proposed changes and the Authority shall be afforded reasonable time to consider them.

In the [six] months prior to termination of this Agreement, the Supplier shall not and shall procure that any Sub-Contractor shall not materially increase or decrease the total number of staff listed on the Supplier's Provisional Staff List, their remuneration, or make any other change in the terms and conditions of those employees without the Authority's prior written consent.

The Supplier shall indemnify and keep indemnified in full the Authority [and at the Authority's request each and every Replacement Supplier] against all Employment Liabilities relating to:

* + 1. any person who is or has been employed or engaged by the Supplier or any Sub-Contractor in connection with the provision of any of the Services; or
    2. any trade union or staff association or employee representative,

arising from or connected with any failure by the Supplier and/or any Sub- Contractor to comply with any legal obligation, whether under regulation 13 or 14 of TUPE or any award of compensation under regulation 15 of TUPE, under the Acquired Rights Directive or otherwise and, whether any such claim arises or has its origin before or after the Service Transfer Date.

The parties shall co-operate to ensure that any requirement to inform and consult with the employees and or employee representatives in relation to any Relevant Transfer as a consequence of a Subsequent Transfer will be fulfilled.

The parties agree that the Contracts (Rights of Third Parties) Act 1999 shall apply from paragraph [0](#_bookmark47) to paragraph [0](#_bookmark50), to the extent necessary to ensure that any Replacement Supplier shall have the right to enforce the obligations owed to, and indemnities given to, the Replacement Supplier by the Supplier or the Authority in its own right under section 1(1) of the Contracts (Rights of Third Parties) Act 1999.

Despite paragraph [0](#_bookmark51), it is expressly agreed that the parties may by agreement rescind or vary any terms of this Agreement without the consent of any other person who has the right to enforce its terms or the term in question despite that such rescission or variation may extinguish or alter that person's entitlement under that right.

**PENSIONS**

The Supplier shall or shall procure that any relevant Sub-Contractor shall ensure that all Eligible Employees are offered Appropriate Pension Provision with effect from the Effective Date up to and including the date of the termination or expiry of this Agreement.

[The provisions of this paragraph [0](#_bookmark52) shall be directly enforceable by an affected employee against the Supplier or any relevant Sub-Contractor and the parties agree that the Contracts (Rights of Third Parties) Act 1999 shall apply to the extent necessary to ensure that any affected employee shall have the right to enforce any obligation owed to such employee by the Supplier or Sub-Contractor under those paragraphs in his own right under section 1(1) of the Contracts Rights of Third Parties Act 1999.]

The Supplier shall or shall procure that any relevant Sub-Contractor shall offer the Eligible Employees membership of an occupational pension scheme with effect from the Effective Date or, if the Relevant Transfer occurs after the Effective Date, from and including the date of that Relevant Transfer. Such an occupational pension scheme must be:

* + 1. established no later than [three months] prior to the date of the Relevant Transfer; and
    2. certified by the GAD as providing benefits that are broadly comparable to those provided by the [NAME OF PUBLIC SECTOR PENSION SCHEME],

and the Supplier shall produce evidence of compliance with this paragraph [0](#_bookmark52) to the Authority prior to the date of the Relevant Transfer.

The Authority's actuary shall determine the terms for bulk transfers from the [NAME OF PENSION SCHEME] to the Supplier's scheme following the Effective Date and any subsequent bulk transfers on termination or expiry of this Agreement.

The Supplier shall and shall procure that each relevant Sub-Contractor shall:

* + 1. maintain such documents and information as will be reasonably required to manage the pension rights of and aspects of

any onward transfer of any person engaged or employed by the Supplier or any Sub-Contractor in the provision of the Services on the expiry or termination of this Agreement (including without limitation identification of the Eligible Employees);

* + 1. promptly provide to the Authority such documents and information mentioned in paragraph [45.2.10](#_bookmark53) which the Authority may reasonably request in advance of the expiry or termination of this Agreement; and
    2. fully cooperate (and procure that the trustees of the Supplier's scheme shall fully cooperate) with the reasonable requests of the Authority relating to any administrative tasks necessary to deal with the pension rights of and aspects of any onward transfer of any person engaged or employed by the Supplier or any Sub-Contractor in the provision of the Services on expiry or termination of the Agreement.

The Supplier shall and shall procure that any relevant Sub-Contractor shall award benefits (where permitted) to the Eligible Employees under the LGPS Regulations in circumstances where the Eligible Employees would have received such benefits had they still been employed by the Authority. The Supplier shall be responsible for meeting all costs associated with the award of such benefits.

# Annex A. List of Transferring Employees

**Annex B. [List of Third Party Employees]**

# Schedule 11 Commercially sensitive information

DETAILS OF ANY SUPPLIER INFORMATION TO BE CLASSIFIED AS COMMERCIALLY SENSITIVE]

# Schedule 12 Council's Premises and Assets NOT USED

[DETAILS OF COUNCIL PREMISES AND ANY APPLICABLE LEASES OR LICENCES TO BE INSERTED ANY COUNCIL ASSETS]

# Schedule 13 [Insurance] NOT USED

SCHEDULE 14

# COMPLAINTS PROCEDURE

1. The Supplier must have in place written procedures and information approved by the Authorised Officer for informing Service Users and / or their advocates or representatives on how to make a complaint in the first instance, and failing a satisfactory outcome, how to take the complaint further.
2. The Supplier must record all complaints of any nature in a register for that purpose and provide copies when asked by the Authorised Officer. Information to be recorded in the register must include:
   1. The nature of the complaint;
   2. The name of the person making the complaint;
   3. The date and time the complaint was received;
   4. The action taken to remedy the complaint and communicate this to the complainant;
   5. The time and the date when the remedy was completed; and
   6. The names of the Supplier’s supervisor and other Staff involved in the action complained of and its remedy.
3. If anyone makes a complaint to the Supplier regarding the provision of the Service, the Supplier must tell the Authorised Officer, who will immediately consider the same and the action (if any) taken by the Supplier or agreed to be taken by the Supplier to remedy the same.
4. If a complainant is not satisfied with the outcome of the Supplier’s investigation or chooses to bypass an investigation by the Supplier and complains directly to the Council, or if the Authorised Officer is not satisfied with the Supplier’s action or proposals to remedy the complaint, the Supplier must provide any relevant information and evidence in connection with any investigation, inquiry or proceedings considered necessary by the Authorised Officer or any body or panel appointed by the Council to which the complaint is referred by the Authorised Officer, and must comply at its own cost with the findings and decision of the Authorised Officer or the said body or panel in relation to the provision of this Contract. This will include the Local Government Ombudsman to whom the complainant might complain directly.