



THIS AGREEMENT is made on **16th September 2021**.

BETWEEN:-

- (1) **THE SECRETARY OF STATE FOR EDUCATION** whose Head Office is at Sanctuary Buildings, Great Smith Street, London, SW1P 3BT (the "**Department**"); and
- (2) **BAXTERSTOREY LIMITED** (No: 01962583) whose registered office is situated at 300 Thames Valley Park Drive, Reading, RG6 1PT ("**Contractor**").

RECITALS:-

- (A) The Department and the Contractor entered into a Contract for Services dated 1st October 2018 with the Department's reference number of con_10141 ("**Original Contract**") for the purposes of On-site Catering Services in DfE Cheylesmore House pursuant to the ESPO Framework Agreement 704.
- (B) The Department and the Contractor have agreed to vary the terms of the Original Contract as set out in this Agreement.
- (C) The Department's reference number for this Variation Agreement is 02.

IT IS AGREED as follows:-

1. CONSIDERATION

In consideration of each of the parties entering into this Agreement (such consideration being agreed by the parties to be good and valuable consideration, the adequacy and sufficiency of which is hereby acknowledged and agreed), the parties have agreed to vary the Original Contract in accordance with Clause 33.

2. VARIATION OF THE ORIGINAL CONTRACT

- 2.1 The parties agree with effect from the date of this Agreement the Original Contract shall be varied as set out in Annex 1 attached.
- 2.2 Subject to the variations set out in Annex 1, the Original Contract shall continue in full force and effect in all respects.
- 2.3 In addition to the amendments set out in Annex 1, the Original Contract shall be construed and interpreted with such further consequential amendments as are necessary to give effect to the amendments set out in Annex 1 of this Agreement, as if such further amendments were also expressly set out in Annex 1.
- 2.4 Except as provided in Clause 2.3 and Annex 1, the parties agree that no other liabilities, financial or otherwise, shall accrue to the Department because of this Variation Agreement.

3. SEVERABILITY

The provisions of this Agreement are intended by the parties to be severable in the event that any part of it is held to be illegal or unenforceable (in whole or in part) and such part shall not affect the validity and enforceability of the remaining provisions or the remainder of the affected provision under this Agreement.

4. **AUTHORITY AND COSTS**

Each party undertakes that it has full power and authority to enter into and shall be responsible for its own costs arising in relation to this Agreement.

5. **THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

5.1 Subject to Clause 5.2 below, this Agreement is not intended to create any benefit, claim or rights of any kind whatsoever enforceable by any person who is not a party to this Agreement. Accordingly, the parties confirm that no term of this Agreement is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party to this Agreement.

5.2 It is the intention of the parties that any other department, officer or agency of the Crown, may as required from time to time act as the Department's agent in enforcing the Department's rights under this Agreement.

6. **GOVERNING LAW AND JURISDICTION**

The parties agree that this Agreement and any dispute arising under or in any way connected with the subject matter of this Agreement (whether of a contractual or tortious nature or otherwise) shall be governed by and construed in accordance with the laws of England, and the parties submit to the jurisdiction of the English Courts.

EXECUTED by the parties on the first date in this Agreement.

**Authorised to sign for and on behalf of the
Secretary of State for Education**

Signature [REDACTED]

Date [REDACTED]

Name in Capitals [REDACTED]

Address in full [REDACTED]

**Authorised to sign for and on behalf of
BaxterStorey Limited**

Signature [REDACTED]

Date [REDACTED]

Name in Capitals [REDACTED]

Address in full [REDACTED]

ANNEX 1

VARIATIONS TO ORIGINAL CONTRACT

All references to Clauses in this Annex 1 are to Clauses in the Original Contract.

1. Clause 1 (Term) shall be amended in its entirety to read:

Commencement Date

1st October 2018

Expiry Date

This Contract shall expire on 30th September 2022, unless terminated earlier pursuant to this Contract.

2. Clause 2 (Service Requirements) shall be amended to include the additional wording:

For the avoidance of doubt, the Services shall include the following Options:

[REDACTED]

The active Option at a given time shall be agreed in writing by both parties at least 1 week in advance of its expected start date. The Contractor shall not change the active Option without express written permission from the Department.

3. Schedule 5: Charges shall be amended to include the additional wording:

Charges for 1st October 2021 – 30th September 2022 shall comprise the aggregate of:

- a) all costs and amounts properly incurred by the Contractor in the provision of the Services;
- b) a management fee of [REDACTED] per year; and
- c) VAT at the appropriate rate.

The Annual Operational Budget agreed between the parties is attached below and it sets out the estimated Charges (Total: £79,598) for the first 12 months.

Working within the cost-plus framework, any changes to the Services shall be agreed in writing between the parties as part of the monthly meeting and performance review. All exceptional costs outside of the agreed Annual Operational Budget will be captured and authorised by the Department in writing.

[REDACTED]

Total Core Subsidy: £79,598