

Draft Catering Services Contract 2020

Dated _____

THE BOARD OF GOVERNORS of Pangbourne Primary School and Purley CE Primary School

- and -

[Insert Contractor Name]

**AGREEMENT
relating to
THE PROVISION
of
Catering Services**

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THIS AGREEMENT is made on the

day of

2020

BETWEEN:

- (1) **THE BOARD OF GOVERNORS** of Pangbourne Primary School, Kennedy Drive, Pangbourne, Reading, Berkshire, RG8 7LB; and
- (2) **THE BOARD OF GOVERNORS** of Purley CE Primary School, Purley Village, Purley on Thames, Reading, Berkshire RG8 8AF

TOGETHER **“the Schools”**; and

- (3) **[Insert full registered name of company]** of [Insert full company registered address] (Company Registration No.[]) of the other part (**“the Contractor”**)

WHEREAS:

- (a) The Schools wish to appoint a catering contractor for the provision of Catering Services at the School premises of Pangbourne Primary School, Kennedy Drive, Pangbourne, Reading, Berkshire, RG8 7LB, and Purley CE Primary School, Purley Village, Purley on Thames, Reading , Berkshire, RG8 8AF (defined below as the Sites);
- (b) The Contractor submitted its expression of interest on [Insert full date];
- (c) The Contractor submitted a tender on [Insert full date];
- (d) On the basis of the Contractor’s tender the Schools selected the Contractor to enter into an Agreement;
- (e) The Contractor has agreed to enter into this Agreement with the Schools for the provision of the Services:

IT IS AGREED AS FOLLOWS:

CONTRACT PARTICULARS

<i>Clause etc</i>	<i>Subject</i>	
1.1.5	Commencement Date	24 th July 2020
1.1.26	Extension Period	A maximum of two (2) one (1) year periods will be offered
1.1.27	Expiry Date	23 rd July 2023
1.1.15	Contract Review Date	24 th July 2021 and on each annual anniversary thereafter
1.1.32	Key Personnel (Contractor)	
13.2	Authorised Officer	<p>Name: Mrs Melissa Fry, Headteacher Address: Kennedy Drive, Pangbourne Primary School, Pangbourne, Reading RG8 7LB Telephone: 0118 984 2315 Email: headteacher@pangbourne.w-berks.sch.uk</p> <p>Name: Mrs Karen Fakes, Headteacher Address: Purley CE Primary School, Purley Village, Purley on Thames, Reading RG8 8AF Telephone: 0118 984 2384 Email: headteacher@purley.w-berks.sch.uk</p>
13.3	Contract Manager	<p>Name: [Insert name of Contractor's Contract Manager] Address: [Insert Contractor's address] Telephone: [Insert Contractor's number] Email: [Insert Contractor's email address]</p>
21.3	Employers Liability Insurance	£10 million
21.3	Public Liability Insurance	£5 million
21.3	Professional Indemnity Insurance	£5 million

1 DEFINITIONS AND INTERPRETATION

- 1.1 In this Agreement unless the context otherwise requires the following provisions shall have the meanings given to them below:
- 1.1.1 “Agreement” means this written agreement or contract between the Schools and the Contractor consisting of these clauses and any attached Schedules, the Invitation to Tender and the Tender;
- 1.1.2 “Agreement Term” means the period from and including the Commencement Date to the Expiry Date, or if earlier, the Termination Date;
- 1.1.3 “Approval” means the written consent of the Schools;
- 1.1.4 “Authorised Officer” means the person stated in the Contract Particulars or any other representative authorised to act on their behalf;
- 1.1.5 “Commencement Date” means the date stated in the Contract Particulars;
- 1.1.6 “Commercially Sensitive Information” means the subset of Confidential Information listed in column 1 of Parts 1 and 2 of Schedule 4 (Commercially Sensitive Contractual Provisions) and column 1 of Part 2 of Schedule 4 (Commercially Sensitive Information) in each case for the period specified in column 2 of Parts 1 and 2 of Schedule 4 (Commercially Sensitive Information);
- 1.1.7 “Conditions” means the terms and conditions contained in the clauses of this Agreement including the schedules and appendices to this Agreement;
- 1.1.8 “Confidential Information” means:
- a) information that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) and may include information whose disclosure would, or would be likely to, prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights and know-how of any Party and all personal data within the meaning of the Data Protection Act 1998;
 - b) Commercially Sensitive Information;
- 1.1.9 “Consents” means all permissions, consents, approvals, certificates, permits, licences, agreements and authorities (whether statutory, regulatory or otherwise) necessary for the provision of the Services;
- 1.1.10 “Contract” has the same meaning given in clause 1.1.1;
- 1.1.11 “Contract Manager” means the person appointed by the Contractor to manage the delivery of the Services;
- 1.1.12 “Contract Particulars” means the particulars in the Agreement and there described as such, including entries made by the Parties attached to this Agreement;

- 1.1.13 “Contract Price” means the price (exclusive of any applicable VAT), payable to the Contractor by the Schools under the Agreement, as set out at Schedule 2, for the full and proper performance by the Contractor of its obligations under the Agreement;
- 1.1.14 “School Policies” means the policies of the Schools (referred to in the Specification);
- 1.1.15 “Contract Review Date” means the date or dates stated in the Contract Particulars;
- 1.1.16 “Data Protection Legislation” means (i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018; (iii) all applicable Law about the processing of personal data and privacy;
- 1.1.17 “Data Protection Impact Assessment” means an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.
- 1.1.18 Controller, Processor, Data Subject, Personal Data, Personal Data Breach, Data Protection Officer take the meaning given in the GDPR.
- 1.1.19 “Data Loss Event” means any event that results, or may result, in unauthorised access to Personal Data held by the Contractor under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach.
- 1.1.20 “Data Subject Access Request” means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.
- 1.1.21 “DPA 2018” means Data Protection Act 2018
- 1.1.22 “GDPR” means the General Data Protection Regulation (Regulation (EU) 2016/679)
- 1.1.23 “Default” means any failure or breach, on the part of the Contractor, to carry out its obligations under this Agreement;
- 1.1.24 “Default Notice” means a notice from the Schools to the Contractor as more particularly described in clause 19;
- 1.1.25 “EIR” means the Environmental Information Regulations 2004;
- 1.1.26 “Extension Period” means the period stated in the Contract Particulars as agreed between the Parties;
- 1.1.27 “Expiry Date” means the date stated in the Contract Particulars;
- 1.1.28 “FOIA” means the Freedom of Information Act 2000;
- 1.1.29 “Information” has the meaning given under Section 84 of the Freedom of Information Act 2000;

- 1.1.30 “Intellectual Property Rights” means all registered or unregistered trademarks, service marks, patents, registered designs, utility models, applications for any of the foregoing, copyrights, unregistered designs, the sui generis rights of extraction relating to databases, trade secrets and other confidential information or know-how which (or the subject matter of which) is created, brought into existence, acquired, used or intended to be used by the Contractor, its Staff, its sub-contractor or their staff, or by other third parties (for the use by or on behalf of or for the benefit of the Contractor) for the purposes of providing the Services or otherwise for the purposes of this Agreement;
- 1.1.31 “Invitation to Tender” means an invitation for the Contractor to bid for the Services required by the Schools;
- 1.1.32 “Key Personnel” means any persons specified as such in the Contract Particulars or otherwise notified as such by the Schools to the Contractor in writing.
- 1.1.33 “Law” means any applicable Act of Parliament, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, enforceable community right within the meaning of Section 2 of the European Communities Act 1972, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements or any Regulatory Body of which the Contractor is bound to comply;
- 1.1.34 “LED” means the Law Enforcement Directive (Directive (EU) 2016/680);
- 1.1.35 “Party/Parties” means the Schools or the Contractor or both the Schools and the Contractor;
- 1.1.36 “Performance Improvement Plan” means the plan agreed in accordance with clause 19;
- 1.1.37 “Persistent Default” means where the Contractor has committed more than six [6] Defaults during any consecutive period of twelve [12] months, whether or not these are the same Defaults or different Defaults and even if the Contractor remedies the default each time;
- 1.1.38 “Pricing Schedule” means the Schedule 2 containing details of the Contract Price;
- 1.1.39 “Protective Measures” means appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of such measures adopted by it;
- 1.1.40 “Quality Standards” means the quality standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardisation or other reputable or equivalent body, (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Contractor would reasonably and ordinarily be expected to comply with, and as may be further detailed in the Specification Schedule;
- 1.1.41 “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;

- 1.1.42 "Regulated Activity Provider": shall have the same meaning as set out in section 6 of the Safeguarding Vulnerable Groups Act 2006;
- 1.1.43 "Relevant Transfer Date has the same meaning as in clause 36.5;
- 1.1.44 "Resumption Notice" means a notice from the Schools to the Contractor as more particularly described in clause 19;
- 1.1.45 "Serious Default" means a Default on the part of the Contractor including but not limited to a Default which materially and adversely affects the Schools or prejudices the health, safety or welfare of any Service User, pupil, employee or member of the Schools, Staff, visitor or any member of the general public;
- 1.1.46 "Serious Incident" means an incident or accident or near-miss where any Service user, pupil, employee or member of the Schools, Staff, visitor or member of the public suffers serious injury, major permanent harm or unexpected death on the Contractor's premises or where the actions of the Contractor and/or the Staff are likely to be of significant public concern;
- 1.1.47 "Services" means the services to be provided by the Contractor in accordance with the Specification annexed to this agreement at Schedule 1 and any subsequent variation to the Services as agreed between the Parties;
- 1.1.48 "Service User" or "Service Users" means a person who receives or who may receive the Service that the Contractor is to provide under this Agreement;
- 1.1.49 "Site" means the School premises at Pangbourne Primary School, Kennedy Drive, Pangbourne, Reading, Berkshire, RG8 7LB and Purley CE Primary School, Purley Village, Purley on Thames, Reading, Berkshire, RG8 8AF where the Services are to be undertaken;
- 1.1.50 "Specification" means the service specification attached to the Invitation to Tender;
- 1.1.51 "Staff" means any person employed by the Contractor to provide any part of the Services;
- 1.1.52 "Sub-processor" means any third Party appointed to process Personal Data on behalf of the Contractor related to this Agreement;
- 1.1.53 "Suspension Notice" means a notice from the Schools to the Contractor suspending provision by the Contractor of the Service(s) as more particularly described in clause 19;
- 1.1.54 "Tender" means the bid documents (and any subsequent clarifications) submitted by the Contractor and relied upon by the Schools in selecting the Contractor to deliver the Services pursuant to this Agreement;
- 1.1.55 "Termination Date" means the date of early termination of this Agreement in accordance with its Conditions;

- 1.1.56 "TUPE" means the Transfer of Undertakings (Protection of Employment) Regulations 2006, as amended;
- 1.1.57 "Variation Notice" means a notice served in accordance with clause 23;
- 1.1.58 "Variation" means a variation to this Agreement or to the Services, made in accordance with clause 23;
- 1.1.59 "VAT" means Value Added Tax;
- 1.1.60 "Working Day" means a day (other than a Saturday or Sunday) on which banks are open for domestic business in the City of London;
- 1.2 The interpretation and construction of this Agreement shall be subject to the following provisions:
 - 1.2.1 Words importing the singular meaning include where the context so admits the plural meaning and vice versa;
 - 1.2.2 Words importing the masculine include the feminine and the neuter;
 - 1.2.3 Reference to a clause is a reference to the whole of that clause unless stated otherwise;
 - 1.2.4 In the event of any inconsistency between the provisions of the body of this Agreement and the Schedules, the body of this Agreement shall take precedence. In the event of any inconsistency between Schedules, the conflict should be resolved according to the following descending order of priority:
 - 1.2.4.1 Schedule 2 (Pricing Schedule);
 - 1.2.4.2 Schedule 1 (Specification);the Schedules other than Schedule 1 and Schedule 2.
 - 1.2.5 Reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;
 - 1.2.6 Reference to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;
 - 1.2.7 The words "include", "includes" and "including" are to be construed as if they were immediately followed by the words "without limitation"; and
 - 1.2.8 Headings are included in the Agreement for ease of reference only and shall not affect the interpretation or construction of the Agreement.

2 START AND DURATION OF THIS AGREEMENT

- 2.1 Subject to clause 2.2 this Agreement will start on the Commencement Date and will continue to apply until the Expiry Date, unless terminated earlier in accordance with the provisions of this Agreement which permit earlier termination.
- 2.2 The Schools may offer an Extension Period and shall serve written notice on the Contractor no later than three [3] months before the Expiry Date of any intention to extend the term under this clause 2.
- 2.3 The Contractor shall within 30 days of receiving the Schools' offer of an Extension Period serve written notice on the Schools indicating whether they wish to continue to discharge the Services under this Agreement.
- 2.4 If the Contractor does not accept the Schools' offer pursuant to clause 2.2 this Agreement will terminate on the Expiry Date.
- 2.5 If the Contractor does accept the Schools' offer pursuant to clause 2.2 this Agreement shall continue on these terms or on such terms as agreed in accordance with clause 23 (Variations) of this Agreement.

3 CONTRACTOR'S STATUS

- 3.1 At all times during the Agreement Term the Contractor shall be an independent Contractor and nothing in the Agreement shall create a contract of employment, a relationship of agency or partnership or a joint venture between the Parties and accordingly neither Party shall be authorised to act in the name of, or on behalf of, or otherwise bind the other Party save as expressly permitted by the terms of the Agreement.

4 SERVICES AND SERVICE STANDARD

- 4.1 The Contractor shall provide the Services. In providing the Services, the Contractor shall:
 - 4.1.1 Comply with its obligations under this Agreement
 - 4.1.2 Ensure that the Services shall conform with all descriptions and specifications set out in the Specification;
 - 4.1.3 Co-operate with the Schools in all matters relating to the Services and comply with all the Schools' instructions;
 - 4.1.4 Perform the Services with all reasonable skill, care and diligence to be expected of a competent organisation who provides or delivers services of a similar kind to the Services and in accordance with good industry practice in the Contractor's industry, profession or trade;
 - 4.1.5 Hold relevant accreditation required to carry out the Services. Failure to comply with this clause 4.1.5 can be regarded as a fundamental breach of this Agreement;

- 4.1.6 Comply with all applicable statutory provisions;
- 4.1.7 Comply with any and all codes of practice, performance ratings and Quality Standards that are laid down in this Agreement or that are issued to the Contractor as part of an agreed Variation Notice.
- 4.1.8 Obtain, maintain and comply with all Consents;
- 4.1.9 Comply with the School Policies (insofar as they are relevant and do not refer to matters addressed specifically elsewhere in this Agreement);
- 4.1.10 Allocate sufficient resources to provide the Services to the satisfaction of the Schools and in accordance with the terms of this Agreement;
- 4.1.11 Use Staff who are suitably skilled and experienced to perform tasks assigned to them and in sufficient number to ensure that the Contractor's obligations are fulfilled in accordance with the Agreement;
- 4.1.12 Provide all equipment, tools and vehicles and other items as are required to provide the Services.

5 SCHOOLS' OBLIGATIONS

- 5.1 Save as otherwise expressly provided, the obligations of the Schools under the Agreement are obligations of the Schools in their capacity as a contracting counterparty and nothing in the Agreement shall operate as an obligation upon, or in any other way fetter or constrain the Schools in any other capacity, nor shall the exercise by the Schools of their duties and powers in any other capacity lead to any liability under the Agreement (howsoever arising) on the part of the Schools to the Contractor.

6 CONTRACT PRICE

- 6.1 In consideration of the Contractor's performance of its obligations under the Agreement, the Schools shall pay the Contract Price in accordance with clause 7 (Payment and VAT).
- 6.2 The Schools shall, in addition to the Contract Price and following receipt of a valid VAT invoice, pay the Contractor a sum equal to the VAT chargeable on the value of the Services supplied in accordance with the Agreement.

7 PAYMENT AND VAT

- 7.1 The Contractor shall submit invoices to the Schools four (4) weekly in arrears.
- 7.2 Where the Contractor submits a correct invoice to the Schools, the Schools will consider and verify that invoice in a timely fashion.
- 7.3 The Contractor shall ensure that each invoice contains all appropriate references and a detailed breakdown of the Services supplied and that it is supported by any other documentation reasonably required by the Schools to substantiate the invoice.

- 7.4 The Schools shall pay all sums due to the Contractor within 30 days from the date on which the Schools have determined that the invoice is valid and undisputed and upon the confirmation by the Authorised Officer that the Service(s) have been provided to the Schools' satisfaction.
- 7.5 If the Schools fail to comply with clause 7.2 and there is an undue delay in considering and verifying the correct invoice, then that invoice shall be regarded as valid and undisputed for the purposes of clause 7.4 after a reasonable time has passed.
- 7.6 If there is a dispute between the Parties as to the amount invoiced then such dispute shall be resolved in accordance with clause 32 (Dispute Resolution).
- 7.7 The Contractor shall indemnify the Schools on a continuing basis against any liability, including any interest, penalties or costs incurred which is levied, demanded or assessed on the Schools at any time in respect of the Contractor's failure to account for or to pay any VAT relating to payments made to the Contractor under the Agreement. Any amounts due under this clause 7.7 shall be paid by the Contractor to the Schools not less than five (5) working days before the date upon which the tax or other liability is payable by the Schools.
- 7.8 Where the Contractor enters into a sub-contract, the Contractor shall include in that sub-contract:
- a) provisions having the same effect as clauses 7.2 to 7.5 of this Agreement; and
 - b) A provision requiring the counterparty to that sub-contract to include in any sub-contract which it awards provisions having the same effect as clauses 7.2 to 7.5 of this Agreement.
 - c) In this clause 7.8, "sub-contract" means a contract between two or more contractors, at a stage of remoteness from the Schools in a subcontracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Agreement.

8 RECOVERY OF SUMS DUE

- 8.1 If the Contractor owes the Schools money under this Agreement (including any sum which the Contractor is liable to pay to the Schools in respect of any breach of the Agreement), then the Schools may unilaterally deduct or set off any such sum against any money due, or which may come due, to the Contractor under this Agreement or under any other agreement or contract with the Schools. The Contractor shall not be entitled to assert any credit, set-off or counterclaim against the Schools in order to justify withholding payment of any such amount in whole or in part.

9 PREMISES AND EQUIPMENT

- 9.1 The Schools shall provide the Contractor with reasonable access at reasonable times to its premises for the purpose of providing the Services. All equipment, tools and vehicles

brought onto the Schools' premises by the Contractor or the Staff shall be at the Contractor's risk.

- 9.2 On completion of the Services or termination or expiry of the Agreement (whichever is the earlier) the Contractor shall vacate the Schools' premises, remove the Contractor's plant, equipment and unused materials and all rubbish arising out of the provision of the Services and leave the Schools' premises in a clean, safe and tidy condition. The Contractor shall be solely responsible for making good any damage to the Schools' premises or any objects contained on the Schools' premises which is caused by the Contractor or any Staff, other than fair wear and tear.
- 9.3 If the Contractor provides all or any of the Services at or from its premises or the premises of a third party, the Schools may, during normal business hours and on reasonable notice, inspect and examine the manner in which the relevant Services are supplied at or from the relevant premises.
- 9.4 The Schools shall be responsible for maintaining the security of its premises in accordance with its standard security requirements. While on the Schools' premises the Contractor shall, and shall procure that all Staff shall, comply with all the Schools' security requirements.
- 9.5 Where all or any of the Services are supplied from the Contractor's premises, the Contractor shall, at its own cost, comply with all security requirements specified by the Schools in writing.
- 9.6 Without prejudice to clause 4.1.12, any equipment provided by the Schools for the purposes of the Agreement shall remain the property of the Schools and shall be used by the Contractor and the Staff only for the purpose of carrying out the Agreement. Such equipment shall be returned promptly to the Schools on expiry or termination of the Agreement.
- 9.7 The Contractor shall reimburse the Schools for any loss or damage to the equipment (other than deterioration resulting from normal and proper use) caused by the Contractor or any Staff. Equipment supplied by the Schools shall be deemed to be in a good condition when received by the Contractor or relevant Staff unless the Schools are notified otherwise in writing within five Working Days.

10 STAFF AND KEY PERSONNEL

- 10.1 If the Schools reasonably believe that any of the Staff are unsuitable to undertake work in respect of the Agreement, it may, by giving written notice to the Contractor:
- 10.2 Refuse admission to the relevant person(s) to the Schools' premises;
- 10.3 Direct the Contractor to end the involvement in the provision of the Services of the relevant person(s); and/or
- 10.4 Require that the Contractor replace any person removed under this clause with another suitably qualified person and procure that any security pass issued by the Schools to the person removed is surrendered,

- 10.5 And the Contractor shall comply with any such notice.
- 10.6 The Contractor shall:
- 10.7 Ensure that all Staff are vetted in accordance with the Agreement;
- 10.8 If requested, provide the Schools with a list of the names and addresses (and any other relevant information) of all persons who may require admission to the Schools' premises in connection with the Agreement; and
- 10.9 Ensure that all Staff comply with any rules, regulations and requirements reasonably specified by the Schools.
- 10.10 Any Key Personnel shall not be released from supplying the Services without the agreement of the Schools, except by reason of long-term sickness, maternity leave, paternity leave, termination of employment or other extenuating circumstances.
- 10.11 Any replacements to the Key Personnel shall be subject to the prior written agreement of the Schools (not to be unreasonably withheld). Such replacements shall be of at least equal status or of equivalent experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Services.

11 AUTHORISED OFFICER

- 11.1 The Schools shall appoint the Authorised Officer as a principal contact in respect of its rights and powers under this Agreement. This will not limit in any way any other of the Schools' rights or obligations.
- 11.2 Details of the person the Schools have appointed to act as Authorised Officer from the Commencement Date (their telephone number, e-mail address and postal address) are set out in the Contract Particulars.
- 11.3 All notifications of changes under this clause will be made in accordance with clause 13 (Notices).

12 CONTRACT MANAGER

- 12.1 The Contractor shall appoint the Contract Manager to be a principal contact in respect of the Contractor's rights and powers under this Agreement.
- 12.2 Details of the person the Contractor has appointed to act as Contract Manager from the Commencement Date (their telephone number, e-mail address and postal address) are set out in the Contract Particulars.
- 12.3 All notifications of changes under this clause should be made in accordance with clause 13 (Notices).

13 NOTICES

13.1 Any notice or other communication under this Agreement must be in writing and can only be sent by:

- i) Pre-paid 1st class post; or
- ii) Recorded delivery post; or
- iii) Personal delivery

No notices under this Agreement will accepted by Email.

13.2 For the purposes of sending notices by post or personal delivery or other communication by post, or personal delivery the Schools' address is set out in the Contract Particulars. All notices and communications must be sent to the Authorised Officer.

13.3 For the purposes of sending notices by post or personal delivery or other communication by post, or personal delivery the Contractor's address is set out in the Contract Particulars. All notice and communications must be sent to the Contract Manager.

13.4 If either party's address changes, it must notify the other party in accordance with this clause 13.

13.5 Subject to clauses 13.2 and 13.3 (above), all notices and communications shall be deemed to have been served:

- i) if posted, two Working Days after the date when posted; or
- ii) if personally delivered, on the date of delivery.

13.6 Notwithstanding clause 15 (above), if by applying its provisions a notice is deemed to have been served on a day which is not a Working Day or it is not received between the hours of 9am to 5pm on a Working Day then it shall be deemed to have been served on the next immediately following Working Day.

14 CONFLICTS OF INTEREST

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

14.2 The Schools reserve the right to terminate the Agreement immediately by notice in writing and/or to take such other steps it deems necessary where, in the reasonable opinion of the Schools, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Contractor and the duties owed to the Schools under the provisions of the Agreement. The actions of the Schools pursuant to this clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Schools.

15 SAFEGUARDING CHILDREN AND VULNERABLE ADULTS

- 15.1 The Parties acknowledge that the Contractor is not likely to fall within the definition of 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. However, the Contractor shall be required to perform its Services on School premises that may bring the Contractor into close proximity or contact with Children and vulnerable adults.
- 15.2 The Contractor shall:
- 15.2.1 Ensure that all individuals engaged in the provision of the Services are subject to a valid enhanced disclosure check undertaken through the Disclosure and Barring Service (“DBS”) including a check against the adults' barred list or the children's barred list, as appropriate; and
- 15.2.2 Monitor the level and validity of the checks under this clause for each member of Staff.
- 15.3 The Contractor 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 Contractor 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.
- 15.4 The Contractor shall immediately notify the Schools of any Information that it reasonably requests to enable it to be satisfied that the obligations of this clause 15 have been met.
- 15.5 The Contractor 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].
- 15.6 The Contractor 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.
- 15.7 Failure by the Contractor to comply with its obligations under this clause 15 may be regarded as a fundamental breach of this Agreement.

16 INCIDENTS REQUIRING REPORTING

- 16.1 The Contractor shall notify Serious Incidents to any regulatory body as applicable, in accordance with the Law.
- 16.2 The Contractor will in connection with the performance of the Services notify the Schools of any Serious Incident which directly or indirectly concerns any pupil, employee or member of the Schools, visitor or any member of the public affected or any other incident or change in circumstances that may affect the safety or well-being of such a person or persons as soon as practically possible and in any event within five Working Days.

- 16.3 The Parties must comply with the arrangements for reporting, investigating, implementing and sharing the lessons learned from serious incidents and non-Service User(s) safety incidents that are agreed between the Contractor and the Schools.
- 16.4 Subject to the Law, the Schools shall have complete discretion to use the Information provided by the Contractor under this clause 16.

17 REVIEW, MONITORING AND INFORMATION

Review

- 17.1 The Parties shall meet regularly to review and additionally as requested from time to time by either of the Parties:
- 17.1.1 The performance of the Services and
- 17.1.2 The effectiveness of the contract management arrangements in order to assess whether any improvements may be made and implemented by the Parties.
- 17.2 The Parties shall meet in or around each Contract Review Date to review:
- 17.2.1 The performance to date of the Contractor;
- 17.2.2 The ongoing suitability of the Services; and
- 17.2.3 The terms of this Agreement and its effect upon the Parties.
- 17.3 The Parties shall consider in good faith whether amendments may be made to this Agreement and the Services which would improve the service delivery.
- 17.4 If the Parties agree there are amendments as described in clause 17.3 they shall be implemented in accordance with clause 23 (Variations). If the Parties cannot so agree, no such changes shall be made.
- 17.5 The Contractor shall provide, not less than ten Days before a Contract Review Date, all Information the Schools reasonably believe to be relevant and any other Information reasonably requested by the Schools (in each case within its possession or control) to inform the review processes to be conducted pursuant to this clause 17.1.

Monitoring

- 17.6 The Contractor shall comply with the management information requirements as set out in the Specification.
- 17.7 The Contractor shall keep and maintain such data and information and shall provide such assistance as the Schools may reasonably require by written notice to the Contractor to enable the Schools:
- 17.7.1 To complete all official returns, including, but without limitation the following:

- 17.7.1.1 Returns to any central government body or properly authorised agency of central government; and
- 17.7.1.2 Information required by any statutory body or compliance with any statute or statutory instrument; and
- 17.7.2 To comply with its statutory duties relating to the Services; provided in each case the nature of such data and Information and the format for the same has been agreed by the Parties (acting reasonably).
- 17.8 Subject to clause 17.9, the Contractor shall, not more than three times per annum, use reasonable endeavours to procure the Authorised Officer (or his or her nominee) and/or any elected member of the Schools access on reasonable notice during normal working hours (save where the Contractor, acting reasonably, believes such access may have a detrimental impact on Service Users) to any premises used by the Contractor or a sub-contractor for the provision of the Services for the purpose of:
 - 17.8.1.1 Monitoring and inspecting performance of the Services;
 - 17.8.1.2 Inspecting any or all records and documents in the possession, custody or control or held by the Contractor in connection with the provision of the Services;
 - 17.8.1.3 Interviewing Contractor employees, officers, agents and any sub-contractors in connection with the provision of the Services; and
 - 17.8.1.4 Inspecting equipment (including any Contractor assets), systems and procedures used by the Contractor to provide the Services.

Notice for such access shall not be required in cases of emergency.

- 17.9 The Schools may be entitled to access premises used by the Contractor or a Subcontractor for the provision of the Services more than three times per annum where such additional access is necessary to monitor compliance with statutory obligations of the Parties and the delivery of the Services.

Information

- 17.10 The Contractor shall maintain separate records of the information as referred to in the Specification and retain them for a period of at least six years after the Contractor's obligations under this Agreement have come to an end.

Audit

- 17.11 On up to two occasions per annum, the Contractor shall permit and procure for the internal and external auditors of the Schools access to all such locations, staff, property and Information of the Contractor and its agents, consultants and sub-contractors (excluding Commercially Sensitive Information) as those auditors may properly require for the purpose of testing audit and investigation on behalf of the Schools notwithstanding whether such purposes relate to periods prior to the Commencement Date or require access to

information which may relate to parties other than the Schools but the Contractor may not be required to act in breach of any obligation of confidentiality lawfully undertaken prior to the date of this Agreement toward any third party as a condition of the supply of the Information.

- 17.12 The Contractor shall provide to the Schools' internal and/or external auditors within five (5) Days of request such complete and up-to-date files and other documents as those auditors could have inspected by personal attendance under the provisions of this Agreement and those auditors may retain and copy the same for up to five Days and shall return the same by making them available for collection by the Contractor.

18 UNANNOUNCED REVIEW

18.1 Where the Council has concerns over the performance of the Services or the reputation and/or the ability of the Contractor or where in its opinion another good reason exists that may relate to either:

18.1.1 A particular Service; or

18.1.2 A particular Contractor

then the Council reserves the right to undertake an unannounced review either by making an unannounced visit to the Contractor or otherwise.

18.2 The Contractor shall fully co-operate with the Council in carrying out an unannounced review. The Contractor will give the Council such access as it requires including, but not limited to, access to its premises to interview staff and Service Users and have sight of and make copies of its records.

18.3 The Contractor shall make available to the Council, at the Contractor's expense, such facilities, information and assistance as it may reasonably require in order to undertake an unannounced review.

19 DEFAULTS

Defaults

19.1 If the Contractor commits a Default then the Schools shall serve on the Contractor a Default Notice. This will be without prejudice to any other right or remedy which may be available to the Schools, either under this Agreement or at law.

19.2 If the Schools serve on the Contractor a Default Notice which relates to a Default which can be corrected then on receiving such a Default Notice, the Contractor shall:

19.2.1 Take the action specified in the Default Notice to correct matters, within the timescale set out, at its own cost; or

19.2.2 Where the Schools requires it to do so, provide to the Schools as soon as reasonably practicable and in any event within twenty (20) Days with a draft Performance Improvement Plan.

- 19.3 The Schools shall (acting reasonably) either approve the draft Performance Improvement Plan within twenty Days of receipt or it shall inform the Contractor why it cannot accept the draft Performance Improvement Plan. In such circumstances, the Schools and the Contractor shall meet to discuss the Schools' concerns. The Contractor shall submit a revised Performance Improvement Plan to the Schools for approval within ten Days of the meeting, which the Schools shall (acting reasonably) either approve or reject within ten Days of receipt. If the Contractor does not receive notice from the Schools that it does not accept the draft Performance Improvement Plan within the twenty Day time period or if applicable the further ten Day time period, the Contractor's draft Performance Improvement Plan shall be deemed to be agreed.
- 19.4 Once agreed, the Contractor shall promptly start work on and comply fully with the terms of the Performance Improvement Plan.
- 19.5 If the Contractor fails to implement the Performance Improvement Plan or the Contractor fails to rectify the Default within the time period specified in the Default Notice, the Schools may give notice stating that this Agreement will terminate on the date falling five Working Days after the date of service of such notice.
- 19.6 If a Performance Improvement Plan cannot be agreed, then either Party may escalate the matter for resolution in accordance with clause 32 (Dispute Resolution) to resolve any disagreement over the terms of the Performance Improvement Plan or any disagreement over whether the Default is one which is capable of being addressed through a Performance Improvement Plan.

Persistent Default

- 19.7 If the Contractor commits a Persistent Default within the timescale set out in the Default Notice, then the Schools shall be entitled to terminate this Agreement by giving the Contractor not less than one month written notice.

Suspension of Contractor

- 19.8 If the Default is a Serious Default (and the Default Notice shall say so if it is), then the Schools shall be entitled to arrange for an Authorised Officer to carry out an investigation into the Serious Default.
- 19.9 The Schools shall be entitled to serve on the Contractor a Suspension Notice where the Schools (acting reasonably) consider it is not appropriate for the Contractor to continue to provide any or all of the Services because:
- 19.9.1 The Serious Default is of such seriousness; or
- 19.9.2 There is a continuing threat to the health, safety or welfare of any or all of the Service Users, pupils, employees or members of the Schools, Staff, visitors or any member of the public; or
- 19.9.3 The Contractor has committed Persistent Defaults.

- 19.10 If the Schools serve a Suspension Notice upon the Contractor, the Contractor shall cease providing the Service set out in the Suspension Notice from the date specified in the Suspension Notice and the Schools shall be entitled either to provide some or all of the Service itself or engage another person to do so on its behalf for as long as the Suspension Notice is in force.
- 19.11 The Schools shall ensure that any investigation is carried out as quickly as possible and shall make available to the Contractor a copy of the report of the investigation's findings as soon as practicable after it has been made available to the Schools.
- 19.12 If the Contractor has been served with a Suspension Notice, then as soon as practicable after the Schools have received the report of the investigation the Schools (acting reasonably) shall decide whether or not the Contractor is to resume provision of any of the suspended Services.
- 19.13 If the Schools decide that the Contractor is to resume provision of any of the suspended Services, then it shall serve on the Provider a Resumption Notice which shall set out the Service(s) to be resumed and the date upon which it is or they are to be resumed.
- 19.14 The Schools shall be entitled to set out in the Resumption Notice such conditions relating to the Contractor's resumption of the Services as may, in the Schools' opinion, be reasonable.
- 19.15 If the Schools decide that the Contractor is not to resume provision of any of the suspended Services then it shall be entitled to give the Contractor notice terminating the application of this Contract solely to the Services concerned in the Suspension Notice with immediate effect, or if the Schools (acting reasonably) considers that the findings of the investigation reflect on the Contractor's ability to carry out the Services generally it shall be entitled to give the Contractor notice terminating this Contract as a whole with immediate effect.
- 19.16 During any period of suspension the Schools shall suspend payments to the Contractor, and if the Schools gives the Contractor notice of termination or the Contractor has been found to have been in Serious Default the Contractor shall repay to the Schools all sums the Schools have paid to the Contractor during or in respect of the period of suspension that relate to the suspended Services concerned. If the Contractor does not repay to the Schools these sums within twenty Working Days of any notice of termination, then the Schools shall be entitled to recover these sums as a debt. The Schools also reserve the right to recover any sums due to it by setting them off against any future payments due to the Contractor in relation to this Contract or any other contract the Contractor has with the Schools.

20 TERMINATION

- 20.1 Without prejudice to any right or remedy it might have, the Schools may terminate this Agreement by written notice to the Contractor with immediate effect if the Contractor:
- 20.1.1 Commits or causes the commission of any criminal offence in providing the Services (except for any minor offence or minor traffic offence); or
- 20.1.2 Fails to comply with clause 26 (Bribery and Corruption); or

- 20.1.3 Commits a Default which is a fundamental breach of its obligations; or
- 20.1.4 Commits a continuing breach of this Agreement; or
- 20.1.5 And/or its Staff are convicted of an offence under the provisions of the Safeguarding Vulnerable Groups Act 2006 and regulations thereto and any subsequent amendments; or
- 20.1.6 And/or its Staff cease to hold appropriate registration with the Independent Safeguarding Authority; or
- 20.1.7 Becomes bankrupt or is the subject of any application or arrangement under the provisions of the Insolvency Act 1986 (as amended by the Enterprise Act 2002); or
- 20.1.8 Has a winding-up order made (except for the purposes of amalgamation or reconstruction) or a resolution of a voluntary winding-up is made; or
- 20.1.9 Has a provisional liquidator, receiver or manager of the business or undertaking duly appointed; or
- 20.1.10 Has an administrative receiver as defined in the Insolvency Act 1986 (as amended by the Enterprise Act 2002) appointed; or
- 20.1.11 Is in circumstances that entitle the court or a creditor to appoint, or have appointed, a receiver, a manager or an administrative receiver, or which entitle the court to make a winding-up order; or
- 20.1.12 Undergoes a change control within the meaning of section 416 of the Income and Corporation Taxes Act 1988; fails to comply with legal obligations in the fields of environmental, social or labour law; or
- 20.1.13 Took financial advantage of a Service User or inappropriately solicited money from his or her representative or third party; or;
- 20.1.14 Offered any inappropriate inducements or exerted pressure on a potential service user or his or her representative or third party to encourage a choice of your Service.
- 20.2 The Schools shall be entitled to terminate this Agreement at any time by giving six months written notice to the Contractor.
- 20.3 If the Schools terminate this Agreement under this clause 20 then;
 - 20.3.1 The Contractor will continue to provide the Services during the period of notice unless the Schools request otherwise;
 - 20.3.2 The Schools shall be entitled:
 - a) to retain any monies owed to the Contractor under this Agreement until the Contractor has paid any monies owed to the Schools under this Agreement; or

- b) to deduct any such monies owed to the Schools under this Agreement from the monies owed to the Contractor under this Agreement

In either case without prejudice to the provisions of clause 8 (Recovery of Sums Due).

21 INSURANCE

- 21.1 For as long as this Agreement is in force the Contractor must take out and maintain as a minimum the insurances set out in clause 21.3 (below). The Contractor must also ensure that any of its sub-contractors who are providing any or all of the Services on its behalf take out and maintain equivalent insurances, as a minimum.
- 21.2 All insurances must be taken out and maintained with a reputable insurance company.
- 21.3 The insurances referred to in clause 21.1 are as follows:
 - i) Employers' Liability insurance with limits of indemnity of the types and in amounts not less than those stated in the Contract Particulars for each and every claim, act or occurrence or series of claims, acts or occurrences, which complies with statutory requirements;
 - ii) public liability insurance with limits of indemnity of the types and in amounts not less than those stated in the Contract Particulars for each and every claim, act or occurrence or series of claims, acts or occurrences; and
 - iii) professional indemnity insurance with limits of indemnity of the types and in amounts not less than those stated in the Contract Particulars for each and every claim, act or occurrence or series of claims, acts or occurrences, which is sufficient to cover the Contractor's liabilities under this Agreement.
- 21.4 The Contractor must provide the Schools with a copy of the policy schedule for the insurances referred to in clause 21.3 (above) at the Schools' request together with evidence that the insurances are in force.
- 21.5 If the Schools are of the opinion (acting reasonably) that any of the policies of insurance do not provide sufficient cover to comply with clause 21.3 (above), then the Contractor must rectify (or if applicable, ensure that the sub-contractor rectifies) the position as soon as possible.

22 LIABILITIES AND INDEMNITIES

- 22.1 Subject to clause 22.2 (below) the Contractor shall indemnify the Schools against all losses, damages, costs, expenses, liabilities, claims or proceedings in respect of claims by third parties made against the Schools whether these arise under statute or common law (together referred to as 'the Schools' losses') that the Schools suffer as a result of any negligence, Default or breach of statutory duty on the Contractor's part in carrying out its obligations under this Agreement or on the part of any person it employs or engages to carry out its obligations under this Agreement.

22.2 The Contractor will not be liable to indemnify the Schools as set out in clause 22.1 (above) to the extent that the Schools' losses are due to any negligence, default or breach of statutory duty on the Schools' part.

22.3 The Contractor shall ensure that any information held on behalf of the Schools is returned to the Schools on the conclusion or termination of this Agreement.

23 VARIATIONS

23.1 A variation to this Agreement shall only be valid if it has been agreed in writing and signed by both Parties.

23.2 If either Party wishes to vary this Agreement then it shall serve on the other a Variation Notice which shall set out the nature of the variation sought and the reasons for it. If the variation would necessitate an increase in the Contract Price then the Party seeking the variation shall agree to pay any increased costs. Any such increase in the Contract Price shall be fair, reasonable and proportionate.

23.3 If either Party receives a Variation Notice then within twenty-eight Days of receipt it shall notify the other in writing whether or not it agrees to the variation and if not, the reasons.

23.4 If the Schools serve a Variation Notice under this clause 23 and is unable to implement the intended variation because the Contractor has not agreed to it and the Schools and the Contractor are unable to resolve their concerns within twenty-eight Working Days of the receipt of the Contractor's notice served under this clause 23, then either Party will be entitled to give three months' notice to the other terminating this Agreement or its application to the Service that is the subject of the Schools' Variation Notice.

24 INTELLECTUAL PROPERTY

24.1 The Contractor:

24.1.1 Hereby grants to the Schools, free of charge, an irrevocable, non-exclusive and transferable (but only to any assignee or transferee of any rights or benefits under this Agreement or upon or at any time following termination of this Agreement) licence (carrying the right to grant sub licences only where, acting reasonably, the Contractor agrees to do so will not materially adversely affect its commercial operations) to use the Intellectual Property Rights which are or become vested in the Contractor; and

24.1.2 Shall, where any Intellectual Property Rights are or become vested in a third party (and are not generally commercially available), use all reasonable endeavours to procure the grant of a like licence to that referred to in clause 24.1.1 above to the Schools;

In both cases, solely for the purpose of the Schools carrying out its duties or exercising any of its rights or statutory functions relating to the Services or, following termination of this Agreement, the carrying out of operations the same as, or similar to, the Services.

24.2 The Contractor shall use all reasonable endeavours to ensure that any Intellectual Property Rights created, brought into existence or acquired during the term of this Agreement vest,

and remain vested throughout the term of this Agreement, in the Contractor and the Contractor shall enter into appropriate agreements with any Staff, sub-contractor or their staff, (or other third parties) that may create or bring into existence, or from which it may acquire, any Intellectual Property Rights.

- 24.3 Where a claim or proceeding is made or brought against the Schools which arise out of the infringement of any Intellectual Property Rights or because the use of any item infringes any Intellectual Property Rights of a third party then, unless such infringement has arisen out of the use of any Intellectual Property Rights by or on behalf of the Schools otherwise than in accordance with the terms of this Agreement, the Contractor shall indemnify the Schools at all times from and against all losses arising as a result of such claims and proceedings and the provisions of clause 22 (Liabilities and Indemnities) shall apply.
- 24.4 Where a claim or proceeding is made or brought against the Contractor which arises out of the infringement of any Intellectual Property Rights or because the use of any item infringes any rights in or to any Intellectual Property Rights of a third party then, if such infringement has arisen out of the use of any Intellectual Property Rights by or on behalf of the Schools otherwise than in accordance with the terms of this Agreement and otherwise than as a result of a breach of this clause 24 by the Contractor then the Schools shall indemnify the Contractor at all times from and against all losses arising as a result of such claims and proceedings.

25 EQUALITIES

- 25.1 The Contractor as an employer and provider of the Services shall take all reasonable steps to ensure elimination of all forms of discrimination within the meaning and scope of the provisions of the Equality Act 2010 (or any statutory modification or re-enactment thereof) in both its employment practice and in its delivery of the Services in accordance with an established equal opportunities policy, which policy shall include effective monitoring.
- 25.2 In complying with its obligations under clause 25.1, the Contractor shall have due regard to the Schools' Equality Scheme, a copy of which can be made available on request, and the Contractor shall ensure compliance with its obligation under:
- 25.2.1 The Equality Act 2010;
- 25.2.2 The Equality and Human Rights Commission's Guidance for Employers and all amendments, re-enactments, or any subsidiary legislation, enactments, regulations, codes of practice or guidance issued or in force during the Agreement Term.
- 25.3 The Contractor shall take all reasonable steps to secure the observance of clause 25 by servants, employees or agents of the Contractor and all suppliers and sub-contractors employed in the execution of the Agreement.
- 25.4 Failure by the Contractor to comply with its obligations in this clause 25 may be regarded as a fundamental breach of this Agreement.

26 BRIBERY AND CORRUPTION

26.1 The Schools shall be entitled to immediately terminate this Agreement and to recover from the Contractor the amount of any loss resulting from such termination if the Contractor shall:-

- i) have offered or given or agreed to give to any person any gift or consideration of any kind as an inducement or reward for doing, or forbearing to do, or for having done, or refrained from doing any action in relation to the obtaining for execution of this Agreement or any other agreement with the Schools; or
- ii) for showing, or forbearing to show, favour or disfavour to any person in relation to this Agreement or any other agreement with the Schools or if any like acts shall have been done by any person employed by the Contractor, or acting on the Contractor's behalf (whether with or without the knowledge of the Contractor); or
- iii) if in relation to any agreement with the Schools, the Contractor, or any person employed by the Contractor or acting on the Contractor's behalf shall have committed any offence under the Bribery Act 2010, or any amendment of them; or
- iv) shall have given any fee or reward the receipt of which is an offence under the Bribery Act 2010, or any amendment of them.

26.2 Both Parties shall not offer or give or agree to give any representative of the other Party any gift or consideration of any kind as an inducement or reward for doing or refraining from doing any act in relation to this or any other Agreement or for showing favour or disfavour to any person in relation to this Agreement.

26.3 Any dispute relating to:

- a) the interpretation of clause 26; or
- b) the amount or value of any gift, consideration or commission,

shall be determined by the Schools and the decision shall be final and conclusive.

27 PROTECTION OF PERSONAL DATA AND SECURITY OF DATA

27.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Schools are the Controller and the Contractor is the Processor. The only processing that the Contractor is authorised to do is listed in Schedule 3 by the Schools and may not be determined by the Contractor.

27.2 The Contractor shall notify the Schools immediately if it considers that any of the Schools' instructions infringe the Data Protection Legislation.

27.3 The Contractor shall provide all reasonable assistance to the Schools in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Schools, include:

- a) a systematic description of the envisaged processing operations and the purpose of the processing;
- b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;
- c) an assessment of the risks to the rights and freedoms of Data Subjects; and
- d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

27.4 The Contractor shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:

- a) process that Personal Data only in accordance with Schedule 3, unless the Contractor is required to do otherwise by Law. If it is so required the Contractor shall promptly notify the Schools before processing the Personal Data unless prohibited by Law;
- b) ensure that it has in place Protective Measures, which have been reviewed and approved by the Schools as appropriate to protect against a Data Loss Event having taken account of the:
 - i) nature of the data to be protected;
 - ii) harm that might result from a Data Loss Event;
 - iii) state of technological development; and
 - iv) cost of implementing any measures;
- c) ensure that :
 - i) the Contractors' Staff do not process Personal Data except in accordance with this Agreement (and in particular Schedule 3);
 - ii) it takes all reasonable steps to ensure the reliability and integrity of any of the Contractors' Staff who have access to the Personal Data and ensure that they:
 - A. are aware of and comply with the Contractor's duties under this clause;
 - B. are subject to appropriate confidentiality undertakings with the Contractor or any Sub-processor;
 - C. are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Schools or as otherwise permitted by this Agreement; and
 - D. have undergone adequate training in the use, care, protection and handling of Personal Data; and

- d) not transfer Personal Data outside of the EU unless the prior written consent of the Schools has been obtained and the following conditions are fulfilled:
 - i) the Schools or the Contractor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Schools;
 - ii) the Data Subject has enforceable rights and effective legal remedies;
 - iii) 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 (or, if it is not so bound, uses its best endeavours to assist the Schools in meeting its obligations); and
 - iv) Contractor complies with any reasonable instructions notified to it in advance by the Schools with respect to the processing of the Personal Data;
- e) at the written direction of the Schools, delete or return Personal Data (and any copies of it) to the Schools on termination of the Agreement unless the Contractor is required by Law to retain the Personal Data.

27.5 Subject to clause 27.6 , the Contractor shall notify the Schools immediately if it:

- i) receives a Data Subject Access Request (or purported Data Subject Access Request);
- ii) receives a request to rectify, block or erase any Personal Data;
- iii) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
- iv) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;
- v) receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
- vi) becomes aware of a Data Loss Event.

27.6 The Contractor's obligation to notify under clause 27.5 shall include the provision of further information to the Schools in phases, as details become available.

27.7 Taking into account the nature of the processing, the Contractor shall provide the Schools with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 27.5 (and insofar as possible within the timescales reasonably required by the Schools) including by promptly providing:

- i) the Schools with full details and copies of the complaint, communication or request;

- ii) such assistance as is reasonably requested by the Schools to enable the Schools to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
- iii) the Schools, at their request, with any Personal Data it holds in relation to a Data Subject;
- iv) assistance as requested by the Schools following any Data Loss Event;
- v) assistance as requested by the Schools with respect to any request from the Information Commissioner's Office, or any consultation by the Schools with the Information Commissioner's Office.

27.8 The Contractor shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Contractor employs fewer than 250 Staff, unless:

- a) the Schools determines that the processing is not occasional;
- b) the Schools determine the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
- c) the Schools determine that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.

27.9 The Contractor shall allow for audits of its Data Processing activity by the Schools or the Schools' designated auditor.

27.10 The Contractor shall designate a data protection officer if required by the Data Protection Legislation.

27.11 Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Contractor must:

- a) notify the Schools in writing of the intended Sub-processor and processing;
- b) obtain the written consent of the Schools;
- c) enter into a written agreement with the Sub-processor which gives effect to the terms set out in this clause 27 such that they apply to the Sub-processor; and
- d) provide the Schools with such information regarding the Sub-processor as the Schools may reasonably require.

27.12 The Contractor shall remain fully liable for all acts or omissions of any Sub-processor.

27.13 Without prejudice to the generality of clause 27 the Contractor shall, in relation to any Personal Data processed in connection with the performance by the Contractor of its obligations under this agreement indemnify the Schools against any loss or damage suffered by the Schools of its obligations under this clause 27.

- 27.14 The Schools may, at any time on not less than thirty Working Days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).
- 27.15 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Schools may on not less than thirty Working Days' notice to the Contractor amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.
- 27.16 The provisions of this clause 27 shall apply during the continuance of the Agreement and indefinitely after its expiry or termination.

28 CONFIDENTIALITY

- 28.1 Save for Information already in the public domain or the Contractor's knowledge the Contractor and the Contractor's Staff shall treat as confidential and shall not disclose to any person other than a person authorised by the Schools, any written and Confidential Information acquired by the Contractor or the Contractor's Staff in or in connection with the provision of the Service concerning the Schools' Premises, the Schools, their staff or procedures. This provision is subject to the statutory requirements imposed on the Schools under the Freedom of Information Act 2000 (FOIA) and Environmental Information Regulations 2004 (EIR).

29 FREEDOM OF INFORMATION

- 29.1 Notwithstanding the provisions of this clause 29, the Contractor understands that the Schools are a public authority to which the FOIA and the EIR applies and shall co-operate with and provide assistance to the Schools at its own cost in enabling the Schools to comply with the FOIA and the EIR relating to disclosure of Information arising from the performance of the Service.
- 29.2 All requests to the Contractor for Information in relation to the FOIA and the EIR must be passed without delay, with the Contractor's opinion on disclosure in accordance with the provisions of the FOIA and the EIR to the Schools for a decision to be made as to whether disclosure of such Information should be made.
- 29.3 The Schools shall be responsible for determining at its absolute discretion whether the Commercially Sensitive Information and/or any other Information:
- 29.3.1 Is exempt from disclosure in accordance with the provisions of the FOIA and the EIR;
- 29.3.2 Is to be disclosed in response to a request for Information.
- 29.4 The Contractor shall and shall procure that its sub-contractors shall:
- 29.4.1 Transfer the request for Information to the Schools as soon as practicable after receipt and in any event within three Working Days of receiving a request for Information;

- 29.4.2 Provide the Schools with a copy of all Information in its possession or power in the form that the Schools require within seven Working Days (or such other period as the Schools may specify) of the Schools requesting that Information; and
- 29.4.3 Provide all necessary assistance as reasonably requested by the Schools to enable the Schools to respond to a request for Information within the time for compliance set out in section 10 of the FOIA and the EIR.
- 29.4.4 In no event respond directly to a request for Information unless expressly authorised to do so by the Schools.
- 29.5 Both the FOIA and the EIR imposes timescales for compliance by the Schools. The Contractor will ensure that the Information requested is supplied to the Schools within sufficient time for the Schools to comply with the timescales set out in the FOIA and the EIR.
- 29.6 The Contractor acknowledges that the Schools may, acting in accordance with the Secretary of State's Code of Practice (datasets) on the Discharge of Public Authorities Functions under Part I of the FOIA, be obliged under the FOIA or the EIR to disclose Information:
- 29.6.1 Without consulting with the Contractor; or
- 29.6.2 Following consultation with the Contractor and having taken its views into account.
- 29.7 The Contractor shall ensure that all Information produced in the course of this Agreement or relating to this Agreement is retained for disclosure for a period of six years following the Agreement Term and shall permit the Schools to inspect such records as requested from time to time.
- 29.8 The Contractor acknowledges that any lists or schedules provided by it outlining Confidential Information are of indicative value only and that the Schools may nevertheless be obliged to disclose Confidential Information in accordance with this clause.

30 WAIVER

- 30.1 If the Schools fail to exercise or delays in exercising any right or remedy to which it is entitled under this Agreement or at law then this shall not constitute a waiver of any such right or remedy.
- 30.2 If the Schools waive a Default on the part of the other then this shall not constitute a waiver of any future Default.
- 30.3 No waiver shall be effective unless it is:
- i) expressly stated to be a waiver;
 - ii) in writing; and
 - iii) signed by the Authorised Officer.

31 FORCE MAJEURE AND NON-PERFORMANCE

- 31.1 If the Schools believe that the Contractor is failing to provide the requisite service detailed in the Agreement, then the dispute procedures outlined in clause 32 will apply.
- 31.2 In the event that the Contractor is unable to carry out the Services for whatever reason (save for reasons of Force Majeure) then any advance payments paid to the Contractor shall be refunded in full to the Schools.
- 31.3 If the Schools have to secure the services of an alternative Contractor due to any non-performance by the Contractor (other than through Force Majeure), the Contractor may be liable to meet any additional costs incurred by the Schools in securing the alternative services.
- 31.4 If either Party fails to carry out its respective obligations under this Agreement as a result of Force Majeure then whichever Party is affected shall not be liable under this Agreement for any such failure.
- 31.5 Clause 31.4 is subject to the proviso that whichever Party is affected shall have given the other notice that such failure is the result of Force Majeure within ten Working Days of such failure occurring. If notice is not given in accordance with this clause 31.5 then the failure may be regarded as simply non-performance.
- 31.6 If an event of Force Majeure occurs then the Schools shall meet with the Contractor to discuss how best the Contractor can continue to provide the Service until the Force Majeure event ceases, which may include the Schools providing the Contractor with assistance, where possible.
- 31.7 In this clause Force Majeure means:
- i) acts of war;
 - ii) acts of God;
 - iii) decrees of Government;
 - iv) riots;
 - v) civil commotion; and
 - vi) any event or circumstance which is both beyond the control of whichever Party is affected and which could not have been prevented by acting prudently, diligently or with reasonable foresight.
- 31.8 For the avoidance of doubt Force Majeure shall not include any labour dispute between the Contractor and its Staff, any other staffing problem, or the failure to provide the Service by any of its sub-Contractors.
- 31.9 In the event that a Party is prevented from carrying out its obligations under the Agreement by any act of Force Majeure which continues for a period of thirty days, the other Party may terminate the Agreement by notice in writing giving seven days' notice.

32 DISPUTE RESOLUTION

- 32.1 If there is a dispute between the Contractor and the Schools concerning the interpretation or operation of this Agreement, then either Party may notify the other in writing that it wishes the dispute to be referred to a meeting of the Authorised Officer and the Contract Manager to resolve, negotiating on the basis of good faith.
- 32.2 If after twenty-eight Days (or such longer period as both Parties may agree) of the date of the notice referred to in clause 32.1 (above), the dispute has not been resolved then either Party may notify the other that it wishes the dispute to be referred to a meeting of a Chief Officer of the Schools, (or a person appointed by them to act on their behalf) and a Chief Executive (or equivalent) of the Contractor, to resolve, negotiating on the basis of good faith.
- 32.3 If after twenty-eight Days (or such longer period as both Parties may agree) of the date of the notice referred to in clause 32.2 (above), the dispute has not been resolved then either Party may notify the other that it wishes to attempt to settle the dispute by mediation, in accordance with the Centre for Effective Dispute Resolution ('CEDR') Model Mediation Procedure 2001 (the 'Model Procedure') or such later edition as may be in force from time to time.
- 32.4 If the Schools and the Contractor do not agree on the identity of the Mediator then either Party may request CEDR to appoint one.
- 32.5 Any agreement the Parties reach as a result of mediation shall be binding on both of them, as set out in the Model Procedure, but if the dispute has not been settled by mediation within ten Working Days of the mediation starting then either Party may commence litigation proceedings (but not before then).
- 32.6 The use of the dispute resolution procedures set out in this clause 32 (Dispute Resolution) shall not delay or take precedence over the provisions for termination set out in clause 19 (Defaults) and clause 20 (Termination).

33 ASSIGNMENT OR SUBLETTING

- 33.1 The Schools shall be entitled to assign the benefit of this Agreement and shall give written notice of any assignment to the Contractor.
- 33.2 The Contractor shall not transfer or assign directly or indirectly to any person or persons whatever any portion of this Agreement, without written permission given on behalf of the Schools by the Authorised Officer.

34 HEALTH AND SAFETY

- 34.1 The Contractor must comply with the Law including all requirements of the Health and Safety at Work etc. Act 1974 insofar as they apply to the provision of the Services.
- 34.2 For as long as this Agreement is in force the Contractor must have in place a health and safety policy which complies with all statutory requirements.

- 34.3 The Contractor must provide the Schools with a copy of any such policy at its request.
- 34.4 Failure by the Contractor to comply with its obligations under this clause 34 may be regarded as a fundamental breach of this agreement.

35 TRANSITION TO ANOTHER CONTRACTOR

- 35.1 During the final six months of the Agreement Term (where this expires by effluxion of time) or during the period of any termination notice, and in either case for a reasonable period thereafter, the Contractor shall co-operate fully with the transfer of responsibility for the Services (or any of the Services) to the Schools or any future service provider, and for the purposes of this clause 35 the meaning of the term “co-operate” shall include:
- 35.1.1 Liaising with the Schools and/or any future service provider, and providing reasonable assistance and advice concerning the Services and their transfer to the Schools or to such future service provider;
- 35.1.2 Providing to the Schools and/or to any future service provider all and any Information concerning the Services which is reasonably required for the efficient transfer of responsibility for their performance but Information which is commercially sensitive to the Contractor shall not be provided (and for the purposes of this clause, “commercially sensitive” shall mean information which would, if disclosed to a competitor of the Contractor, give that competitor a competitive advantage over the Contractor and thereby prejudice the business of the Contractor but shall not include any information referred to in clause 36 (TUPE));
- 35.2 The Contractor shall use all reasonable endeavours so as to facilitate the smooth transfer of responsibility for the Services to a future service provider or to the Schools, as the case may be, and the Contractor shall take no action at any time during the Agreement Term or thereafter which is calculated or intended, directly or indirectly, to prejudice or frustrate or make more difficult such transfer.

36 TUPE

- 36.1 The Contractor recognises that TUPE may apply in respect of this Agreement, and should they so apply that for the purposes of TUPE, the undertaking concerned (or any relevant part of the undertaking) shall transfer to the Contractor on the commencement of full operations. At the termination and/or expiry of this Agreement the provision detailed below shall apply.
- 36.2 During the period of six months preceding the expiry of the Agreement or after the Schools have given notice to terminate the Agreement or the Contractor stops trading, and within twenty Working Days’ of being so requested by the Schools, the Contractor shall fully and accurately disclose to the Schools for the purposes of TUPE all information relating to its employees engaged in providing Services under the Agreement, in particular, but not necessarily restricted to, the following:
- 36.2.1 The total number of Staff whose employment with the Contractor is liable to be terminated at the expiry of this Agreement but for any operation of law; and

- 36.2.2 For each person, age and gender, details of their salary, and pay settlements covering that person which relate to future dates but which have already been agreed and their redundancy entitlements (the names of individual members of employed Staff do not have to be given); and
- 36.2.3 Full information about the other terms and conditions on which the affected Staff are employed (including but not limited to their working arrangements), or about where that information can be found; and
- 36.2.4 Details of pensions entitlements, if any; and
- 36.2.5 Job titles of the members of Staff affected and the qualifications required for each position.
- 36.3 The Contractor shall permit the Schools to use the information for the purposes of TUPE and of re-tendering. The Contractor will co-operate with the re-tendering of the Agreement by allowing the transferee to communicate with and meet the affected employees and/or their representatives.
- 36.4 The Contractor agrees to indemnify the Schools fully and to hold it harmless at all times from and against all losses, actions, proceedings, claims, expenses, awards, costs and all other liabilities whatsoever in any way connected with or arising from or relating to the provision of information under clause 36.2.
- 36.5 The Contractor agrees to indemnify the Schools from and against all losses, actions, proceedings, claims, expenses, awards, costs and all other liabilities (including legal fees) in connection with or as a result of any claim or demand by any employee or other employee or person claiming to be an employee on any date upon which the Agreement is terminated and/or transferred to any third party (“Relevant Transfer Date”) arising out of their employment or its termination whether such claim or claims arise before or after the Relevant Transfer Date.
- 36.6 In the event that the information provided by the Contractor in accordance with clause 36.2 above becomes inaccurate, whether due to changes to the employment and personnel details of the affected employees made subsequent to the original provision of such information or by reason of the Contractor becoming aware that the information originally given was inaccurate, the Contractor shall notify the Schools of the inaccuracies and provide the amended information.
- 36.7 The provisions of this clause shall apply during the continuance of this Agreement and indefinitely after its termination.

37 TRANSPARENCY REQUIREMENT

- 37.1 The Parties acknowledge that, except for any Information which is exempt from disclosure in accordance with the provisions of the FOIA the text of this Agreement, and any Schedules to this Agreement, is not Confidential Information. The Schools shall be responsible for determining in its absolute discretion whether any part of the Agreement or its Schedules is exempt from disclosure in accordance with the provisions of the FOIA.

37.2 Notwithstanding any other term of this Agreement, the Contractor hereby gives its consent for the Schools to publish this Agreement and its Schedules in its entirety, including from time to time agreed changes to the Agreement, to the general public in whatever form the Schools decide.

38 GENERAL

38.1 The Contractor shall ensure that its employees and agents are made aware of the Schools' Whistleblowing Policy and that the details of this policy are fully explained to them, and the Contractor shall provide the Schools with evidence of doing so upon request.

38.2 The Contractor shall, and shall use reasonable endeavours to, ensure that its employees, agents and Sub-contractors shall, at all times, act in a way that is compatible with the Convention Rights within the meaning of Section 1 of the Human Rights Act 1998.

38.3 The Contractor shall not issue any press release or make any public statement concerning the Schools, its employees, the members of the Schools, their pupils, the Schools' Governors, the Goods and/or Services without the prior written consent of the Schools.

38.4 If there is any inconsistency or conflict between what is set out in the Conditions of this Agreement and what is set out in any of the Schedules, then the Conditions will take precedence over any Schedule.

38.5 These conditions constitute the entire understanding between the parties relating to the subject matter of the Agreement and, save as may be expressly referred to or referenced herein, supersede all prior representations, writings, negotiations or understandings with respect hereto, except in respect of any fraudulent misrepresentation made by either party.

39 THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

39.1 Neither Party intends to confer any right or benefit upon a third party and for the avoidance of doubt, the provisions of the Contracts (Rights of Third Parties) Act 1999 are expressly excluded from this Agreement

40 GOVERNING LAW AND JURISDICTION

40.1 The Parties accept the exclusive jurisdiction of the English courts and agree that the Agreement and all non-contractual obligations and other matters arising from or connected with it are to be governed and construed according to English Law.

**SCHEDULE 1
SPECIFICATION**

**SCHEDULE 2
PRICING SCHEDULE**

SCHEDULE 3
PROCESSING, PERSONAL DATA AND DATA SUBJECTS

1. The Contractor shall comply with any further written instructions with respect to processing by the Schools.
2. Any such further instructions shall be incorporated into this Schedule.

Description	Details
Subject matter of the processing	<i>[This should be a high level, short description of what the processing is about i.e. its subject matter]</i>
Duration of the processing	<i>[Clearly set out the duration of the processing including dates]</i>
Nature and purposes of the processing	<i>[Please be as specific as possible, but make sure that you cover all intended purposes. The nature of the processing means any operation such as 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 of data (whether or not by automated means) etc. The purpose might include: employment processing, statutory obligation, recruitment assessment etc]</i>
Type of Personal Data	<i>[Examples here include: name, address, date of birth, NI number, telephone number, pay, images, biometric data etc]</i>
Categories of Data Subject	<i>[Examples include: Staff (including volunteers, agents, and temporary workers), customers/ clients, suppliers, patients, students / pupils, members of the public, users of a particular website etc]</i>
Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data	<i>[Describe how long the data will be retained for, how it be returned or destroyed]</i>

SCHEDULE 4
COMMERCIALLY SENSITIVE INFORMATION

Commercially Sensitive Contractual Provisions

<i>Contractual Provision</i>	<i>Time Period</i>	<i>Reason for Confidentiality</i>

Commercially Sensitive Material

<i>Material</i>	<i>Time Period</i>	<i>Reason for Confidentiality</i>

IN WITNESS of which this Agreement has been duly executed by the Parties on the date and year stated at the beginning of this Agreement

<p>Executed as a Deed by the Schools by affixing</p> <p>THE COMMON SEAL of The Governing Body of Pangbourne Primary School and authenticated by</p> <p>Authorised signatory (Headteacher)</p> <p>Authorised signatory (Chair of Governors)</p>	
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<p>Executed as a Deed by the Schools by affixing</p> <p>THE COMMON SEAL of The Governing Body of Purley CE Primary School and authenticated by</p> <p>Authorised signatory (Headteacher)</p> <p>Authorised signatory (Chair of Governors)</p>	
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<p>Execute as a deed by the Contractor acting by 2 Directors or a Director and Company Secretary:</p> <p>Director:</p> <p>Director/Company Secretary:</p>	
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<p>Executed as a deed by the Contractor acting by a single Director:</p> <p>Director:</p> <p>Witness' signature:</p> <p>Witness' name:</p> <p>Witness' address:</p>	
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