AGREEMENT BETWEEN

BIRMINGHAM CITY COUNCIL

- and -

BIRMINGHAM EDUCATION PARTNERSHIP

Contract for the provision of Education Improvement Services
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THIS AGREEMENT is made the 01st (First) Day of September 2018

BETWEEN:

(1) BIRMINGHAM CITY COUNCIL of the Council House Victoria Square Birmingham B1 1BB (“the Council”);

and

(2) BIRMINGHAM EDUCATION PARTNERSHIP (Company No. 08945454) of Unit G4 – G5, The Arch, 48-52 Floodgate Street, Birmingham B5 5SL (“the Provider”)

WHEREAS:-

(A) The Council and the Provider have agreed to work together to provide improved outcomes for children and young people.

(B) The Provider shall assist the Council in its duty to promote high standards in education services in accordance with the terms set out in this Agreement.

IT IS AGREED as follows:-

1. INTERPRETATION

1.1 Definitions

In this Agreement the following words have the meaning assigned:-

“Access to Information Legislation” means the Freedom of Information Act 2000, the Environmental Information Regulations 2004, the Data Protection Act 1998 and/or s.15 Audit Commission Act 1998, together with any other statutory provision or statutory code of practice imposed on a public authority, or a person holding information on behalf of a public authority.

“ADR Notice” means a notice issue under Condition 32.1 requesting mediation.

“Agreement” means this Agreement and all its Schedules.

“Benefitting Employees” means any of the Provider’s Employees who are engaged in the Services for two or more hours in any day during any week for eight or more consecutive weeks during the term of this Agreement on either:-
(a) Council premises;
(b) property owned or occupied by the Council; or
(c) land which the Council is responsible for maintaining or on which
the Provider is required to work.

“Best Value Duty” means the duty imposed on the Council by Part 1 of the 1999
Act and under which the Council is under a statutory duty to continuously improve
the way its functions are exercised, having regard to a combination of economy,
efficiency and effectiveness.

“CEDR” means the Centre for Effective Dispute Resolution, International Dispute
Resolution Centre, 70 Fleet Street, London EC4Y 1EU.

“CLA” means the Commission for Local Administration.

“Commencement Date” means 01 September 2018.

“Conditions” means any references to Conditions are to these terms and
conditions in this Agreement unless stated otherwise.

“Confidential Information” means
• All information relating to this Agreement which includes, but is not limited to,
commercial, financial, technical, operation or other information in whatever
form (including information disclosed orally) and includes any complete or
partial copy of the information, which concerns the business and affairs of a
Party including information disclosed prior to the date of this Agreement,
where one Party can demonstrate to the other Party that disclosure would
cause considerable harm.
• All information reasonably designated as such by either Party in writing
together with all other information which relates to the business, affairs,
products, developments, trade secrets, know-how, personnel, customers and
contractors of either Party being information where the Party can
demonstrate to the other Party that disclosure would cause considerable
harm.
• Any information which is agreed by the Parties at the Commencement Date
or any time prior to publication of this Agreement or any part of it under the
Freedom of Information Act 2000 or any other Legislation as being
commercially sensitive.

“Confidentiality Expiry Date” means the date one year following the Expiry
Date.

“Council’s Representative” means the person named in PART 1 of the FIRST
SCHEDULE or such other officer appointed by the Council to act in the name of
the Council for the purposes of this Agreement PROVIDED THAT:-
The Council shall immediately give notice in writing to the Provider of the
replacement of the Council’s Representative or if any person ceases to be the
Council’s Representative; and from time to time the Council may appoint one or
more representatives to act as the Council’s Representative generally or for
specified periods. The Council shall give written notice of any appointment to the
Provider.

“Data Processing and/or Sharing Agreement” means the agreement(s)
contained at Part 5 of the First Schedule to this Agreement or as amended or
replaced by the provisions of the General Data Protection Regulation (GDPR)
and any succeeding legislation.
“DBS means” the Disclosure and Barring Service established under the Protection of Freedoms Act 2012.

“Default” means a failure to perform the Services or any part of the Services (as varied by any Variation) PROVIDED THAT a Default shall not be treated as having occurred where the Provider has not been able to perform part of the Services on account of Force Majeure.

“Default Notice” means a notice issued under Condition 12.1.

“Dispute Resolution Procedures” means Conditions 31 to 33.

“Documents” means all calculations, details, plans, reports, specifications and other documents prepared or to be prepared by or on behalf of the Provider in connection with this Agreement and all amendments and additions to them whether now or hereafter at any time in existence.

“DPA” means the Data Protection Act 1998, as amended, replaced or superseded from time to time, including by the General Data Protection Regulation (GDPR) unless and until the GDPR is no longer directly applicable in the UK. This definition includes any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK and then any successor legislation to the GDPR or the DPA, and all guidance, standards and codes of practice published by the Information Commissioner’s Office, or any replacement body, which relate to data protection.

“EEA State” means a state which is a contracting party to an agreement on the European Economic Area pursuant to Section 70 DPA.

Employment Checks means the pre-appointment checks that are required by law and applicable guidance, including without limitation, verification of identity checks, right to work checks, registration and qualification checks, employment history and reference checks, criminal record checks and occupational health checks.

Enhanced DBS & Barred List Check means an Enhanced DBS & Barred List Check (child) or Enhanced DBS & Barred List Check (adult) or Enhanced DBS & Barred List Check (child & adult) (as appropriate).

Enhanced DBS & Barred List Check (child) means a disclosure of information comprised in an Enhanced DBS Check together with information from the DBS children’s barred list.

Enhanced DBS & Barred List Check (adult) means a disclosure of information comprised in an Enhanced DBS Check together with information from the DBS adult’s barred list.

Enhanced DBS & Barred List Check (child & adult) means a disclosure of information comprised in an Enhanced DBS Check together with information from the DBS children’s and adult’s barred list.

Enhanced DBS Check means a disclosure of information comprised in a Standard DBS Check together with any information held locally by police forces that it is reasonably considered might be relevant to the post applied for.

Enhanced DBS Position means any position listed in the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (as amended), which also meets the
criteria set out in the Police Act 1997 (Criminal Records) Regulations 2002 (as amended), and in relation to which an Enhanced DBS Disclosure or an Enhanced DBS & Barred List Check (as appropriate) is permitted.

“Expiry Date” means 31 August 2020 unless the Agreement is either extended in accordance with Condition 2 or terminated earlier under Condition 27.

“FOIA Scheme” means the Council’s current published scheme under Section 19 Freedom of Information Act 2000.

“Fee” means the fee payable to the Provider by the Council under this Agreement for the full and proper performance by the Provider of its obligations under this Agreement, in accordance with the Pricing Schedule in PART 3 of the FIRST SCHEDULE.

“Firm” and “Fixed” means, in relation to this Agreement, no variation of the Fee nor reconciliation of costs is permitted other than in accordance with Condition 14.6.

“Force Majeure” means any event or occurrence which is outside the reasonable control of the Party concerned and which is attributable to any act or failure to take preventative action by that Party including strike, lock-out, fire, explosion or accident or any stoppage of either Party’s business or work beyond the Party’s control or any other event or circumstance (whether arising from natural causes human agency or otherwise) beyond the control of the Party concerned.

“Indemnified Loss” means all actions, proceedings, costs, settlement costs, claims, demands, fines, penalties, expenses or legal costs.

“Intellectual Property Rights” means all intellectual property rights (including, without limitation, patents, trademarks, designs, design rights, copyright, inventions, trade secrets, know-how and confidential information) and all applications for protection of any of the same.

“Key Notice” means a notice under any of Conditions 12.1, 27.1, 27.2, 27.3, 0 and 32.1.

“Key Performance Indicators” or “KPI” means the performance standards and outcomes required to be met and delivered by the Provider in the provision of the delivery of the Services.

“Legislation” means any Act of Parliament or subordinate legislation within the meaning of Section 21 (1) of the Interpretation Act 1978, any exercise of the Royal Prerogative, and any 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 of any Regulatory Body in each case in the United Kingdom.

“Living Wage Commencement Date” means 1 September 2018.

“Living Wage” means the UK Living Wage as set annually in November, or as amended from time to time by the Living Wage Foundation (Charity number 1107264) or any successor body. The Living Wage as at the Commencement Date is £8.75 per hour.

“Minimum Professional Indemnity Insurance Figure” means the sum specified in PART 1 of the FIRST SCHEDULE to this Agreement.
“Minimum Public Liability Insurance Figure” means the sum specified in PART 1 of the FIRST SCHEDULE to this Agreement.

“Model Procedure” means CEDR’s Model Mediation Procedure and Contract.

“Monitoring and Default Arrangements” means the guidelines for operating the default procedure contained in PART 2 of the SECOND SCHEDULE.

“Month” means calendar month unless otherwise defined.

“Notice” includes any instruction, notice certificate or other communication.

“Office Hours” means between the hours of 0900 and 1700 hours.

“Parties” mean the Council and the Provider and “Party” means either of them.

“Performance Indicators” means a performance indicator whether established by: the Audit Commission; or the Council.

“Performance Monitoring Plan” means the plan prepared by the Provider (in accordance with the Monitoring and Default Arrangements) which details the Provider’s proposed methods and systems for monitoring the work done under the Agreement to ensure that it complies with the Specification, as amended (if appropriate) by a Variation.

“Personal Data” as defined by the DPA and in relation to this Agreement, unless stated otherwise, means any Personal Data provided under the terms of this Agreement.

“Programme” means any programme or timetable agreed by the parties to this Agreement which regulates or specifies the period or periods for the performance of the Services or any part of them together with any activities ancillary to the performance of the Services or the preparation and submission of reports all as may be set out in PART 2 of the FIRST SCHEDULE to this Agreement.

“Provider’s Employees” means any person employed by the Provider to perform the Services whether under a contract of service or a contract for services.

“Provider’s Insurances” means the professional indemnity insurance required by Condition 19.1, the public liability insurance required by Condition 19.2 and employee insurance required by Condition 19.3.

“Provider’s Representative” means the person named in PART 1 of the FIRST SCHEDULE appointed by the Provider to be its representative in relation to the performance of this Agreement who will receive and act on any directions given by the Council’s Representative.

“Rectification Notice” means a notice issued under Condition 12.12.

“Schedules” means the schedules attached to this Agreement.

“Second Default Notice” means a notice issued under Condition Error! Reference source not found.2.6.

“Services” means any services to be provided and contained within the Specification set out in Part 2 of the FIRST SCHEDULE to this Agreement.

“Specification” means the description of the services to be performed under this Agreement as set out in PART 2 of the FIRST SCHEDULE including any Variation.

“Standard DBS Check” means a disclosure of information which contains certain details of an individual’s convictions, cautions, reprimands or warnings recorded on police central records and includes both 'spent' and 'unspent' convictions.

“Standard DBS Position” means any position listed in the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (as amended) and in relation to which a Standard DBS Check is permitted.


“Variation” means subsequent to the issue of a written instruction by the Council’s Representative to the Provider, the addition, omission, substitution, modification, alteration of the quantity or postponement of any work comprised in the Services.

“Working Day” means any day on which the Council’s principal offices are open.

1.2 Jurisdiction
This Agreement and any non-contractual rights and obligations arising out of or in connection with it shall be governed by and in accordance with the law of England and Wales and subject to Condition 33 any dispute or difference under this Agreement shall be subject to the jurisdiction of the courts of England and Wales.

1.3 Entities
Any reference to “person”, “firm” or “company” includes any entity which has legal capacity.

1.4 Gender
Any term importing gender includes any gender.

1.5 Singular and Plural
Any term importing the singular number includes the plural number and vice versa.

1.6 Headings
Condition and sub condition headings are for ease of reference only and do not form part of or affect the interpretation of this Agreement.

1.7 Statutory Provisions
Any reference to any enactment, order, regulation or other similar instrument shall be construed as a reference to the enactment, order, regulation or instrument as amended, replaced, consolidated or re-enacted.

1.8 Contract (Rights of Third Parties) Act 1999
1.8.1 Subject to Condition 1.8.2, a person who is not party to this Agreement (“Third Party”) has no right to enforce any term of this Agreement but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act. If the Parties rescind this
Agreement or vary any of its terms in accordance with the relevant provisions of this Agreement, such rescission or variation will not require the consent of any Third Party.

1.8.2 Notwithstanding the provisions of **Condition 1.8.1**, any of the Benefitting Employees shall have the right to enforce their rights under **Condition 3.21** (Payment of Living Wage) of this Agreement.

1.9 **Waiver**

If the Council does not enforce strict compliance by the Provider of the terms of this Agreement, this shall not constitute a waiver by the Council of any of its rights or shall not cause a diminution of the obligations or liabilities of the Provider under this Agreement.

1.10 **Common Law**

Except as this Agreement otherwise provides, this Agreement does not affect the rights or remedies of either Party in contract, tort or otherwise.

1.11 **Change in Law**

The Provider shall neither be relieved of its obligations to perform the Services in accordance with the terms of this Agreement nor be entitled to an increase in the Fee as the result of a change in law where the effect of that change in law on the Services is known at the Commencement Date.

1.12 **Entire Agreement**

This Agreement supersedes any previous oral or written agreements or arrangements between the Parties relating to the matters contained in this Agreement and it represents the entire agreement and understanding between the Parties relating to those matters.

1.13 **Conduct of Indemnity Claims**

Where one Party (“Indemnifying Party”) is liable to indemnify the other Party (“Indemnified Party”) under this Agreement in relation to a claim made by a third party against the Indemnified Party, such Indemnity will apply provided that:

1.13.1 the Indemnified Party gives notice of any such claim to the Indemnifying Party as soon as reasonably practicable.

1.13.2 the Indemnified Party provides to the Indemnifying Party on request such information and assistance in relation to such claim as the Indemnifying Party may reasonably require, subject to the Indemnifying Party indemnifying the Indemnified Party against all costs reasonably incurred by it in the provision of such information or assistance.

1.13.3 the Indemnified Party does not make any settlement, compromise or prejudicial written admission in relation to such claim without the prior consent of the Indemnifying Party (such consent not to be unreasonably withheld or delayed); and

1.13.4 the Indemnifying Party shall be entitled to have sole conduct of litigation relating to the third party claim (subject to the Indemnified Party being secured to its reasonable satisfaction).

1.14 **Severability**

If any provision of this Agreement is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions of this Agreement shall continue in full force and effect as if the contract had been executed with the invalid, illegal or
unenforceable provision eliminated. In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of this Agreement, the Council and the Provider shall immediately commence negotiations in good faith to remedy the invalidity.

1.15 **Schedules**
The Schedules to this Agreement form part of this Agreement.

1.16 **Precedence**
These conditions shall have precedence over any printed condition appearing on any acceptance form, delivery form or other documents or letter emanating from the Provider and any conditions of the Provider shall have no effect whatsoever except insofar as they confirm the terms of any order issued within the scope of this Agreement. 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.

1.17 **Amendments**
No deletion from, addition to, or variation of this Agreement shall be valid or of any effect unless agreed in writing and signed by the Parties.

1.18 **Non-Exclusivity**
The Provider does not have exclusive rights to perform the Services during the period of this Agreement and the Council shall be entitled to contract with any person other than the Provider for the performance of services which are the same or similar to the Services throughout the duration of this Agreement.

1.19 **Rights and Duties Reserved**
For the avoidance of doubt it is agreed and declared that nothing in this Agreement express or implied shall prejudice or affect the Council’s rights powers duties and obligations in the exercise of its functions as a local authority and the rights powers duties and obligations of the Council under all public and private statutes bye-laws orders regulations and statutory instruments may be fully and effectively exercised in relation to the subject matter of this Agreement unless stated otherwise shall be in addition to and not in substitution for any consent approval licence or permissions required to be obtained under any statute bye-laws or other Legislation.

1.20 **Non-Solicitation**
Neither Party shall (except with the prior written consent of the other) during this Agreement solicit the services of any senior staff of the other Party who have been engaged in the provision of the Services or the management of this Agreement or any significant part of this Agreement either as principal, agent, employee, independent contractor or in any other form of employment or engagement other than by means of a national advertising campaign open to all-comers and not specifically targeted at such staff of the other Party.

2. **DURATION**
This Agreement shall take effect on the Commencement Date and shall continue until the Expiry Date PROVIDED THAT if the Council shall be satisfied with the Provider’s achievement of the Key Performance Indicators, the Council may extend the Agreement for a further period with the Provider. Any extensions of the Agreement shall be recorded in writing.

3. **PROVIDER’S OBLIGATIONS**

3.1 **Performance of the Services**
The Council appoints the Provider as a contractor having the service expertise specified in **PART 2** of the **FIRST SCHEDULE**. The Provider agrees to perform the Services in accordance with the instructions of the Council and to comply with the terms of this Agreement.

3.2 **Duty of Care**
The Provider shall exercise all the skill, care and diligence in the discharge of the Services to be expected of an appropriately qualified competent Provider experienced in carrying out Services of the relevant nature, size, scope and complexity as described in **PART 2** of the **FIRST SCHEDULE**.

3.3 **Instructions**
The Provider shall comply promptly with all reasonable instructions given to it by the Council or the Council’s Representative on any matter.

3.4 **Discretion**
If, in the performance of the Services the Provider has discretion exercisable between the Council and any third party, the Provider shall exercise its discretion fairly.

3.5 **Council’s Interests**
The Provider shall use it best endeavours to promote the interests of the Council. The Provider shall perform the Services and comply with the terms of this Agreement in such a way so as not to cause any injury or damage to either the public perception of the Services or the image and reputation of the Council.

3.6 **Liaison**
The Provider shall co-operate closely and liaise with the Council in order to properly fulfil the Services. The Council will rely upon the Provider performing the Services and its obligations under this Agreement. No approval, comment or lack of comments, consent, inspection or lack of inspection, or the like by the Council shall limit or discharge the liability of the Provider to the Council however that liability arises.

3.7 **Performance Management**
Properly manage and monitor performance of this Agreement and immediately inform the Council’s Representative if any aspect of this Agreement is not being or is unable to be performed.

3.8 **Sufficiency**
Provide all necessary facilities, materials and any other equipment, and personnel of appropriate qualifications and experience to undertake this Agreement.

3.9 **Rules & Regulations**
Comply with any rules, regulations and any safety and security instructions from the Council, including completion of any additional clearance procedures required by the Council and return of any passes as required.

3.10 **Key Performance Indicators**
The Provider shall perform the Key Performance Indicators as specified by the Council and contained in **PART 2** of the **FIRST SCHEDULE**. The Provider shall promptly notify the Council where it is not able to perform a KPI for any reason. A
failure to perform any KPI shall be dealt with in accordance with Condition 12 of this Agreement.

3.11 **Retention of Documents**
The Provider undertakes with the Council to retain the Documents for so long as the Provider remains liable under this Agreement. Upon expiry or termination of this Agreement, at the election of the Council, the Provider shall either securely destroy or securely return to the Council all documents which include or contain Personal Data, unless, and only to the extent that, the Provider is required by law to maintain the documentation containing Personal Data.

3.12 **Secure back-up of Information**
The Provider shall ensure that it takes regular back-ups of the Confidential Information and Personal Data, and any other information held or processed in the course of performing its obligations under this Agreement, which are to be stored securely in an off-site location.

3.13 **Advertising**
The Provider shall not (except with the Council’s prior written consent) advertise or permit to be advertised the fact it is providing services to the Council under this Agreement except in response to a questionnaire or invitation to tender from another employer.

3.14 **Commitments**
The Provider shall exercise due care and propriety when dealing with third parties in connection with this Agreement and ensure that no commitments are entered into (unless expressly required under this Agreement), without the Council’s prior written consent.

3.15 **Employment**
Nothing in this Agreement shall be construed as creating a partnership, a contract of employment or a relationship of principal and agent between the Council and the Provider.

3.16 **Merger, Take-Over or Change of Control**
The Provider shall immediately inform the Council in writing of any proposal or negotiations which may or will result in a merger, take-over, change of control, change of name or status, or the Provider (being a company as defined in the Companies Act 2006) shall inform the Council of any such change as defined in the Corporation Taxes Act 2010. The Provider shall comply with any request by the Council for information arising from this Condition.

3.17 **Information for Next Contract**
The Provider shall provide all relevant information which may reasonably be required by the Council in order that the Council can act fairly, properly and in accordance with its statutory obligations including securing Best Value in connection with any tendering exercise whether relating to the provision of the Services or the future provision of the same or any similar services and whether such tendering exercise takes place before or after the Expiry Date (or upon earlier termination of this Agreement). The Council may make a request for any such information at any reasonable time and the Provider shall comply with that request as soon as practically possible.

3.18 **Transfer of Responsibility**
3.18.1 In the event that a different organisation is required to take over the Services at the expiry or termination of this Agreement, the Provider shall co-operate in the transfer, under arrangements to be notified to him by the Council.
3.18.2 The transfer shall be arranged between the Council and the Provider so as to reduce to a minimum any interruption in the Services.

3.19 **Health and Safety**

3.19.1 **Safety Officer**
The Provider shall 14 days prior to the Commencement Date give written notice to the Council’s Representative of the name, address, telephone number, facsimile transmission number, and e-mail address of the person it proposes to be responsible for health and safety matters. Such person may be the same as the Provider’s Representative. The Provider shall immediately give written notice to the Council’s Representative of the change in any of these details.

3.19.2 **Safety Legislation**
The Provider shall comply with the Health and Safety at Work Act 1974, the Management of Health and Safety at Work Regulations 1999 (including the provision by the Provider of a copy of its risk assessment under these Regulations when requested by the Council), and all Legislation relating to health and safety.

3.19.3 **Suspension**
The Council’s Representative may suspend the performance of the Services or part of the Services in the event of any breach of **Condition 3** by the Provider. The Provider shall not resume the performance of this Agreement or such part until the Council’s Representative is satisfied such breach has been rectified or will not recur.

3.19.4 **Health & Safety Policy Documents**
3.19.4.1 The Provider shall maintain a health & safety policy with respect to the performance of the Services which shall deal adequately with the following health and safety issues:-

3.19.4.2 Responsibilities of different grades of the Provider’s Employees.

3.19.4.3 Safety procedures including:-
3.19.4.3.1 Protective clothing and equipment;
3.19.4.3.2 First Aid;
3.19.4.3.3 Accidents and dangerous occurrences;
3.19.4.3.4 Protection of visitors; and
3.19.4.3.5 Safe methods of working.

3.19.4.4 All goods supplied or used by the Provider in the provision of the Services shall comply with all relevant health and safety Legislation and codes of practice and including without limitation the provisions of the Health and Safety at Work Act etc., 1974, and the Control of Substances Hazardous to Health 1994 Regulations (COSHH).

3.20 **Not used**

3.21 **Payment of Living Wage**

3.21.1 The Living Wage shall be payable where the Council estimates the annual value of Services to be supplied in a financial year is likely to exceed two hundred thousand pounds (£200,000) or the aggregate value of the
Services provided under this Agreement and/or any other contract with the Council, is likely to exceed five hundred thousand (£500,000).

3.21.2 Within 5 calendar days of the Commencement Date, the Council shall issue a notice in writing to the Provider notifying as to whether the obligation to pay the Living Wage:-

3.21.2.1 has started and if so the effective date (which shall be a reasonable time not exceeding 30 Working Days from the date of such notice);

3.21.2.2 has ceased and if so the date of cessation; or

3.21.2.3 is continuing;

provided that the Council may at any time following the issue of a notice under Condition 3.21.2 issue a further notice to amend the requirements of any previous notice issued under Condition 3.21.2

3.21.3 On receipt of the Notice issued under Condition 3.21.2, the Provider shall pay to each of the Benefitting Employees the Living Wage in respect of their time spent engaged in activities comprised in the Services from the date specified on the Notice.

3.21.4 The Council shall give notice to the Provider of any change to the Living Wage within thirty (30) Working Days of the change being announced by the Living Wage Foundation. The Council will implement the change in the Living Wage which it pays to its employees within 6 months of such announcement. The Council will confirm to the Provider as soon as practicable following such announcement the date of such implementation by the Council. The Provider shall implement the change to the Living Wage with effect from the date on which it is implemented by the Council.

3.21.5 The Provider shall:

3.21.5.1 carry out appropriate promotional activities to publicise to the Provider's Employees the entitlement of Benefitting Employees to be paid the Living Wage;

3.21.5.2 maintain a register of all of the Benefitting Employees who are entitled to be paid the Living Wage under Condition 3.21.3 and provide a copy of the register to the Council on request;

3.21.5.3 make available for inspection by the Council's employees or agents nominated for the purpose at all reasonable times upon reasonable notice the books and accounts of the Provider together with all supporting documents in the possession or under the control of the Provider as may reasonably be requested by the Council in order for the Council to verify the Provider's compliance with Condition 3.21..

3.21.5.4 on or before the anniversary of the Living Wage Commencement Date, the Provider shall provide the Council with an assurance certificate signed on the Provider's behalf confirming that it has complied with the requirements of this Condition 3.21.

3.21.5.5 If the Provider fails to comply with its obligations under Condition 3.21.3 the Council shall be entitled to issue a written notice in accordance with Condition 27 (Termination) specifying the breach of this Agreement and requiring its remedy within such time as may reasonably be specified by the Council (not exceeding four weeks) and if the Provider shall fail to remedy the breach the Council shall be entitled to terminate this Agreement in accordance with Condition 27 (Termination).

3.22 Change of Law
The Provider shall neither be relieved of its obligations to perform the Services in accordance with the terms of this Agreement nor be entitled to an increase in the Fee as the result of a change in law where the effect of that change in law on the Services is known at the Commencement Date.

3.23 **Summary Management Information**
When requested by the Council’s Representative, the Provider is required to provide summary management information in respect of the provision of the Services to the Council on a monthly basis. Summary management information of purchase data is to indicate (as a minimum) aggregated quantities together with relevant prices of each type of Services supplied to individual Directorates and Schools all to be provided as an electronic copy compatible with MS Excel 2000.

3.24 **Prevention of Performance**
The Provider shall inform the Council’s Representative promptly and in writing of any instances of any act or omission on the part of the Council which prevent or hinder or may prevent or hinder the Provider from performing the Services.

4. **WARRANTIES BY THE PROVIDER**
The Provider warrants that:

4.1 **Accuracy of Information**
All information, representations and other matters of the fact communicated (whether in writing or otherwise) to the Council by the Provider in connection with this Agreement are true, complete and accurate in all respects.

4.2 **Accuracy of Provider’s Rates**
It has satisfied itself as to the accuracy and sufficiency of the rates and prices quoted which shall cover all of its obligations under this Agreement and has obtained all necessary information as to risks, contingencies and any other circumstances which might reasonably influence or affect this Agreement.

4.3 **Council's Representations**
It has not entered into this Agreement in reliance upon any oral statement (or written statement) which is not in this Agreement which has been made by the Council.

4.4 **Vires**
It has corporate power to enter into and perform this Agreement and has taken all necessary corporate or other action required by its memorandum and articles of association or other relevant constitutional document or documents to authorise the execution and performance of this Agreement.

4.5 **Conflict of Interest**
The Provider warrants that:-

4.5.1 It is not aware of any conflict of interest which may affect the performance of this Agreement.

4.5.2 It is not party to any existing or previous arrangement or arrangements which prevent it from entering into this Agreement or adversely affects its ability to perform its obligations under this Agreement.

4.5.3 It will not perform services similar to, or in the nature of the Services for any person or body if such Services could in the reasonable opinion of
the Council lead to a conflict with the Provider's obligations under this Agreement.

4.5.4 The Provider shall take appropriate steps to ensure that neither the Provider nor any of the Provider's Employees are placed in a position where (in the reasonable opinion of the Council) there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Provider or Provider’s Employees and the duties owed to the Council under the provisions of this Agreement.

4.5.5 The Provider shall promptly notify and provide full particulars to the Council if such conflict as referred to in Condition 4.5.4 above arises or is reasonably foreseeable to arise.

4.6 **Fraud**
In entering this Agreement it has not committed any fraud.

4.7 **Sound Financial Position**
It is of sound financial standing and has sufficient working capital available to carry out the Services for the duration of this Agreement.

4.8 **Claims against Assets**
No claim is being asserted and no litigation, arbitration or administration proceeding is presently in progress or, to the best of its knowledge or belief, pending or threatened against it or any of its assets which will or might have a material adverse effect on its ability to perform its obligations under this Agreement.

4.9 **Provider's Actions**
It has not done or omitted to do anything which could have an adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under this Agreement.

4.10 **Other Contractual Obligations**
It is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under this Agreement.

5. **AGENCY**

5.1 **Agent**
The Provider shall not in any circumstances hold itself out as being, the servant or agent of the Council, except than in circumstances implicitly permitted by this Agreement.

5.2 **Contracting**
The Provider shall not in any circumstances hold itself out as being authorised to enter into any contract on behalf of the Council, or in any other way to bind the Council to the performance, variation, release or discharge of any obligation otherwise than in circumstances permitted by this Agreement.

5.3 **Waiver of Legislation**
The Provider shall not in any circumstances hold itself as having, the power to make, vary, discharge or waive any Legislation.

6. **PROVIDER'S EMPLOYEES**

6.1 **Provider's Personnel**
6.1.1 The Provider shall allocate such appropriately experienced and qualified personnel and other resources as may from time to time be necessary for the proper performance of the Services.

6.1.2 The Council may require by notice the removal of any personnel engaged in the performance of the Services if, in the Council’s reasonable opinion, his or her performance or conduct is or has been unsatisfactory. The Provider shall remove and replace promptly the person specified.

6.1.3 The Provider shall give the Council, if so requested, full particulars of all persons who are or may be at any time engaged in the performance of this Agreement.

6.2 Provider's Representative

6.2.1 The Provider shall appoint a senior and competent person as the Provider’s Representative empowered to act on behalf of the Provider for all purposes connected with this Agreement. Such appointment shall be subject to the approval of the Council such approval not to be unreasonably withheld.

6.2.2 The Provider’s Representative shall not be replaced without the prior written approval of the Council such approval not to be unreasonably withheld.

6.2.3 Any Notice given to the Provider’s Representative in accordance with this Agreement shall be deemed to have been given to the Provider.

6.2.4 The Provider’s Representative will receive and act on any directions given by the Council’s Representative.

6.3 Deputy

The Provider shall give notice in writing to the Council’s Representative of the name, address and telephone numbers of any person authorised to act for any period as deputy for the Provider’s Representative and when such deputy ceases to be authorised.

6.4 Not used

6.5 Supervisory Staff

The Provider shall employ an adequate number of supervisory employees of sufficient abilities and skill in addition to the Provider’s Representative, and deputies to ensure that the Provider’s Employees are at all times adequately supervised and properly perform their duties.

6.6 Compliance with Instructions

The Provider’s Employees engaged in and about the performance of the Services shall be under the control and direction of the Provider. Nevertheless the Provider shall ensure that the Provider’s Employees whilst attending Council owned premises comply with all reasonable administrative instructions given to them by the Council’s Representative.

6.7 Council’s Rules

The Provider shall ensure that the Provider’s Employees comply with all relevant rules, codes, policies, procedures and standards of the Council which may be notified to the Provider by the Council from time to time and with all Legislation.

6.8 Quality and Competence

The Provider shall ensure that their staff employed in and about the provision of the Services are properly trained and sufficiently qualified, competent, skilled,
honest and experienced and shall at all times exercise care in the execution of their duties and the Provider shall ensure that such persons are properly and sufficiently instructed and supervised with regard to the provision of the Services and in particular:

6.8.1 the task or tasks such person has to perform;

6.8.2 all relevant provisions of this Agreement;

6.8.3 all relevant policies, rules, procedures and standards of the Council details of which have previously been provided by the Council to the Provider;

6.8.4 all relevant rules, procedures and Legislation concerning health and safety, including the Provider's health and safety policy which shall have been provided to the Council's Representative;

6.8.5 all relevant rules, procedures and Legislation concerning Data Protection, including the Provider’s data protection and information security policies which shall have been provided to the Council’s Representative, and validated by the Council from time to time as providing adequate organisational and technological safeguards to prevent the loss, damage and/or unauthorised use or disclosure of Personal Data, and the relevant Council Standards.

6.9 Qualifications
The Provider shall ensure that Provider's Employees shall have relevant and recognised certificates of professional competence or equivalent qualifications which shall be produced on demand for verification by the Council’s Representative.

6.10 Sufficiency
The Provider shall employ sufficient staff to ensure that the Services are provided at all times in accordance with this Agreement. Accordingly the Provider shall ensure that a sufficient reserve of Provider’s Employees is available to provide the Services during holidays or absence through sickness.

6.11 Training
6.11.1 The Provider shall ensure that the Provider's Employees employed in and about the provision of the Services are properly and sufficiently qualified, competent, skilled, honest and experienced and shall at all times exercise care in the execution of their duties and the Provider shall ensure that such persons are properly and sufficiently instructed and supervised with regard to the provision of the Services and in particular:

   6.11.1.1 the task or tasks such person has to perform;

   6.11.1.2 all relevant provisions of the Agreement;

   6.11.1.3 all relevant policies, rules, procedures and standards of the Council details of which have previously been provided by the Council to the Provider;

   6.11.1.4 all relevant rules, procedures and Legislation concerning health and safety, including the Provider’s health and safety policy under Condition 3.20.5 which shall have been provided to the Council’s Representative;
6.11.1.5 all relevant rules, procedures, Standards and Legislation concerning Data Protection, including the Provider’s data protection and information security policies which shall have been provided to the Council’s Representative, and which the Council shall validate from time to time as providing adequate organisational and technological safeguards to prevent the loss, damage and/or unauthorised use or disclosure of Personal Data, and the relevant Council Standards

6.11.1.6 fire risks and fire precautions and fire escapes;

6.11.1.7 the need to recognise situations which may involve any actual or potential danger of personal injury to any person at Council premises and to report such situations to the Council’s Representative or in the event of an emergency the member of the Council's staff with responsibility for the premises and where possible without personal risk, to make safe such situations;

6.11.1.8 the prevention of, dealing with, and alleviation of any situation which is a potential or actual emergency or disaster; and.

6.11.1.9 customer care procedures.

6.12 Identification

6.12.1 The Provider shall provide (at its own expense) and ensure that the Provider’s Employees wear an identity card at all times when at the Council’s premises when dealing with Council officers and/or members of the public in the provision of the Services.

6.12.2 The identity card shall clearly state the name of the employee, the name of the Provider and a telephone number that can be used to verify the identity of the Provider’s identity. The Provider shall ensure that the telephone number is manned during Office Hours.

6.12.3 The Provider shall provide the Council’s Representative prior to the Commencement Date with a list of the Provider’s Employees who are to be issued with an identity card. This list shall be maintained and updated by the Provider, and written notice of any changes shall be issued to the Council’s Representative.

6.12.4 Where any of the Provider’s Employees ceases to be employed, the Provider shall collect and destroy any identity cards on such employee’s final working day and inform the Council’s Representative of such destruction.

6.12.5 When requested to do so by the Council’s Representative, any of the Provider’s employees shall disclose his/her identity and status as an employee of the Provider and shall not attempt to avoid so doing.

6.12.6 Where the Provider's Employees carry an identity card, the Provider shall ensure that the identity card is shown to any member of the public who requests sight of the card or clarification of identity.

6.12.7 Where the Provider’s Employees are required to visit any premises or property owned or occupied by members of the public, the Provider shall ensure that the identity card shall be shown prior to entry and to any persons requesting sight of such card.
6.13 **Conditions of Service**
The Provider shall be entirely responsible for the employment and conditions of service of the Provider’s Employees.

6.14 **Payment of Taxes**
The Provider shall pay all income or other taxes, national insurance contributions, or levies of any kind, relating to or arising out of the employment of the Provider’s Employees.

6.15 **Behaviour**
6.15.1 The Provider shall ensure that the Provider’s Employees carry out their duties and behave in an orderly manner at all times in the performance of the Services.

6.15.2 The Provider shall further ensure the Provider’s Employees do not unlawfully remove any articles or thing from any premises whether the property of the Council or of its employees, agents or sub-contractors or of other persons.

6.15.3 The Provider shall ensure that the Provider’s Employees comply with such written codes of practice as the Council’s Representative may from time to time specify.

6.16 **Clothing**
6.16.1 The Provider shall ensure that the Provider’s Employees are properly and presentably dressed in appropriate uniforms and work wear.

6.16.2 Where the nature of any task or the place or any duties upon which the Provider’s Employees shall be engaged makes the wearing of any special protective clothing, equipment or footwear necessary or where the Council’s policies or procedures as notified to the Provider so require, the Provider shall provide, and ensure that the Provider’s Employees wear, such clothing, equipment and footwear. Such special or protective clothing or footwear shall be maintained and replaced as necessary by the Provider.

6.17 **Records**
6.17.1 The Provider shall maintain current and accurate records of all the Provider’s Employees which:

   6.17.1.1 shall include employee attendance and shall differentiate between those engaged as operatives and those exercising supervision; and
   6.17.1.2 shall include records of the training undertaken by the employee as required by Condition 6.11; and
   6.17.1.3 shall be open for inspection by the Council’s Representative at all reasonable times, and at such inspection the Council’s Representative shall be entitled to take a copy of all or any part of such records produced by the Provider.

6.18 **Smoking**
The Provider shall ensure that Provider’s Employees shall not smoke in any areas designated as a “No Smoking Area” at the relevant premises.

6.19 **Removal**
6.19.1 The Council’s Representative shall be entitled by written notice to the Provider to cease to employ any of the Provider’s Employees including
the Provider’s Representative (“the Identified Employee”) to perform the Services PROVIDED THAT such notice:-

• may not be issued unreasonably or vexatiously;
• shall state the reason for the removal;
• shall state the date on which it is to have effect which shall not be less than 7 days from the date of the notice except where the Council’s Representative considers that the reason constitutes gross misconduct in which case the notice shall have effect on the date of its issue;

and the Provider shall comply with such notice.

6.19.2 The Provider may make written representations concerning the Identified Employee within 14 days of the receipt of notice issued under Condition 6.19.1 to the Council’s Representative who shall consider the same and may:-

• withdraw the notice; or
• suspend its operation subject to such conditions as he/she thinks fit; or
• confirm the notice.

6.19.3 If the Council’s Representative confirms the notice after considering such representations, or if no representations are received within the period prescribed by Condition 6.19.2, then the Provider shall not be entitled to employ the Identified Employee to perform the Services. If the Identified Employee is the Provider’s Representative the Provider will immediately nominate a replacement for the Council’s Representative’s approval under Condition 6.2.

The Council shall neither be liable to the Provider or to the Identified Employee in respect of any liability, loss or damage occasioned by the operation of Condition 6.19 and the Provider shall indemnify the Council against any claim made by an Identified Employee.

6.20 Interview
The Council’s Representative shall be entitled to interview any of the Provider’s Employees in the presence of the Provider’s Representative or his deputy in connection with performance of the Services.

6.21 Disclosure and Barring Service (DBS)
6.21.1 Subject to Condition 6.21.2, before the Provider engages or employs any person in the provision of the Services, or in any activity related to, or connected with, the provision of the Services, the Provider must without limitation complete:

6.21.1.1 the Employment Checks; and
6.21.1.2 such other checks as required by the DBS

6.21.2 Subject to Condition 6.21.3, the Provider may engage a person in a Standard DBS Position or an Enhanced DBS Position (as applicable) pending the receipt of the Standard DBS Check or Enhanced DBS Check or Enhanced DBS & Barred List Check (as appropriate) with the agreement of the Council.
6.21.3 Where **Condition 6.21.2** applies, the Provider will ensure that until the Standard DBS Check or Enhanced DBS Check or Enhanced DBS & Barred List Check (as appropriate) is obtained, the following safeguards will be put in place:

6.21.3.1 an appropriately qualified and experienced member of Staff is appointed to supervise the new member of Staff; and

6.21.3.2 wherever it is possible, this supervisor is on duty at the same time as the new member of Staff, or is available to be consulted; and

6.21.3.3 the new member of Staff is accompanied at all times by another member of staff, preferably the appointed supervisor, whilst providing services under this Agreement; and

6.21.3.4 any other reasonable requirement of the Council.

6.21.4 The Provider will ensure that it complies with the DBS Code of Practice, in particular that it will have and implement a written policy on the correct handling and safekeeping of DBS certificate information.

7. PROVIDER’S OBLIGATIONS IN CONNECTION WITH TUPE

7.1 **Employee Information**
Where requested to do so the Provider shall provide such information (including any changes to and interpretations of) in connection with The Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE), as the Council may require, to the Council and/or to any other person authorised by the Council who is to be invited to submit a tender in relation to the provision of the Service on Expiry or early termination of the Services or for the procurement of similar Services, within 10 days of the request.

7.2 **Changes in Employment**
During the 8 month period preceding the expiry of this Agreement or within any period of notice of termination or notice, the Provider shall not without the prior written agreement of the Council, which shall not be unreasonably withheld or delayed:-

7.2.1 materially amend the terms and conditions of employment of any employee whose work, wholly or mainly falls within the scope of this Agreement; or

7.2.2 materially increase the number of employees whose work (or part of it) is work undertaken for the purposes of this Agreement.

7.3 **Transfer of Responsibility**
The Provider shall not knowingly do or omit to do anything which may adversely affect an orderly transfer of responsibility for provision of the Services.

8. **CO-ORDINATION**
The Provider shall as may be necessary or desirable co-operate, liaise with and co-ordinate its activities with those of any other supplier, Provider or Provider employed directly or indirectly by the Council and shall perform the Services in harmony with and at no detriment to any other service provided by or on behalf of or to the Council provided that the name and function of such supplier, Provider or Provider shall have been notified in writing to the Provider by the Council.
9. **MISTAKES IN DOCUMENTS/INFORMATION**
The Provider shall be responsible for and shall pay any extra costs incurred by the Council as a result of any discrepancies, errors or omissions in drawings, documentation or other information supplied in writing by the Provider whether or not approved by the Council, provided that the Provider shall not be responsible for such extra costs where such discrepancies, errors or omissions are due to inaccurate drawings or information and decisions supplied in writing to the Provider by the Council.

10. **QUALITY CONTROL**

10.1 **Quality System**
The Provider shall maintain a properly documented system of quality control ("Quality System") designed to ensure that the Services are supplied in accordance with this Agreement. Such system shall include daily supervision and a carrying out of inspections at least once every Month. The Quality System shall be operated by the Provider and shall be open to inspection at any time by the Council’s Representative.

10.2 **Performance Monitoring**
The Provider shall regularly and diligently monitor the performance of this Agreement and may be asked to provide reasonable management information to the Council’s Representative within 5 Working Days of receiving such a request.

10.3 **Progress Meetings**

10.3.1 The Provider shall ensure that the Provider’s Representative shall attend regular progress meetings at such times as may be specified by the Council’s Representative to review the performance of the Services and to consider such other matters as may be determined by the Council’s Representative.

10.3.2 Such meetings will be held at intervals of approximately every three (3) months following the Commencement Date provided that the Council’s Representative shall consider that more or less frequent meetings are necessary then such be held at the frequency considered appropriate.

10.3.2 The Provider shall ensure that the Provider’s Representative shall attend such additional meetings as may be required from time to time by the Council’s Representative.

10.4 **Complaints**

10.4.1 The Quality System shall record oral and written complaints received on the performance of the Services, and the action taken by the Provider in respect of each such complaint. The Provider shall deal with all complaints in a prompt, courteous and efficient manner. Unresolved complaints notified to the Council may be investigated by the Council’s Representative who may, where he considers appropriate deal with such issues in accordance with **Condition 12**.

10.4.2 The Provider shall, at the request of the Council’s Representative, in the places and in a form approved by the Council’s Representative, arrange for notices to be permanently displayed giving information as to how complaints about the provision of the Services may be made.

10.5 **Performance Monitoring Plan**
The Provider shall regularly and diligently monitor the performance of the Services in accordance with any Performance Monitoring Plan.
10.6 **Improvement**
The Provider shall make such improvements to the Quality System as shall be reasonably requested by the Council's Representative by notice in writing to the Provider.

10.7 **Provision of Information**
The Provider shall provide the Council's Representative with such information relating to the carrying out of the Services as shall reasonably be required by the Council’s Representative by written notice to the Provider. Without prejudice to the generality of the foregoing:

10.7.1 The Provider immediately shall give written notice to the Council's Representative of any accident, damage or breach of any statutory duty arising out of the performance of the Services immediately upon becoming aware of the same.

10.7.2 The Provider shall provide the Council’s Representative with information in connection with any legal inquiry, arbitration or Court proceedings in which the Council may become involved or any relevant disciplinary hearing internal to the Council and shall give evidence at such inquiries or proceedings or hearings.

10.7.3 The Provider shall notify the Council’s Representative immediately upon becoming aware that any person that has, is likely to, or may have dealings with the Council:-

10.7.3.1 is bankrupt, or makes a composition or arrangement with its creditors, or has a proposal in respect of its company for voluntary arrangements for a composition of debts, or scheme or arrangements approved in accordance with the Insolvency Act 1986;

10.7.3.2 has an application under the Insolvency Act 1986 in respect of its company to the Court for the appointment of an administrator or administrative receiver;

10.7.3.3 has a winding-up order made, or (except for the purposes of amalgamation or reconstruction) a resolution for voluntary winding-up passed;

10.7.3.4 has a provisional liquidator, receiver or manager of its business or undertaking duly appointed;

10.7.3.5 has an administrative receiver, as defined in the Insolvency Act 1986, appointed;

10.7.3.6 has possession taken, or on behalf of the holders of any debentures secured by a floating charge, of any property comprised in, subject to, the floating charge; or

10.7.3.7 is in circumstances which entitle the Court or a creditor to appoint, or have appointed, a receiver, a manager, an administrator or administrative receiver, or which entitle the Court to make a winding-up order.

10.8 **Access for Council’s Representative**
The Provider shall at all times without prior notice allow the Council's Representative access to:-
10.8.1 all work places of the Provider for the purpose of inspecting any part of the Services that is being performed;

10.8.2 all work places of the Provider for the purpose of inspecting records and documents in the possession, custody or control of the Provider in connection with the performance of the Services;

10.8.3 any of the Provider’s Employees for the purpose of interviewing such persons concerning the performance of the Services;

10.8.4 technology, resources, systems and procedures used or proposed to be used in connection with the performance of the Services;

10.9 Other Requirements

10.9.1 The Quality System shall be in addition to and not prejudice:-

10.9.1.1 any independent inspection undertaken by the Council; or

10.9.1.2 the taking of any action under Condition 12.

11. COUNCIL’S REPRESENTATIVE

The Council may delegate to the Council’s Representative any of the functions of the Council under this Agreement. Subject to the Council giving notice to the Provider of the functions which it has delegated to the Council’s Representative, the Provider shall comply promptly with all reasonable instructions given to it by the Council’s Representative in the performance of any such delegated function.

12. PERFORMANCE MECHANISM

12.1 Default

If a Default shall occur, the Council’s Representative shall be entitled to:-

12.1.1 discuss the matter informally with the Provider to determine whether the Default can be remedied without the issue of a Rectification Notice or a Default Notice (where appropriate); or

12.1.2 issue Rectification Notice to the Provider in accordance with Condition 12.2; or

12.1.3 where it is impracticable to issue a Rectification Notice as the Default cannot be remedied, issue a Default Notice in accordance with Condition 12.4; PROVIDED THAT:-

12.1.4 the rights of the Council under Condition 27 (Termination by the Council) shall be without prejudice to the Council’s rights under this Condition 12.1.

12.1.5 the Provider shall not be entitled to receive any payment from the Council in respect of such part of the Service which have not been performed.

12.2 Rectification Notice

A Rectification Notice shall state:-

12.2.1 that it is a Rectification Notice;

12.2.2 the nature of the Default;

12.2.3 the action required to rectify the Default; and
12.2.4 the time within which the Default is to be remedied (which shall be such time as the Council’s Representative reasonably determines).

12.3 **Rectification by Provider**

12.3.1 If the Provider shall comply with the Rectification Notice the Provider shall within one (1) Working Day of such compliance give written notice of such rectification to the Council’s Representative which shall identify:

- 12.3.1.1 the date and time of the completion by the Provider; and
- 12.3.1.2 details of the action taken by the Provider to rectify the Default.

12.4 **Default Notice**

If **Condition 12.3** applies or if the Provider fails to comply with Rectification Notice then the Council’s Representative shall be entitled to issue a Default Notice to the Provider which shall state:

- 12.4.1 that is a Default Notice;
- 12.4.2 the nature of the Default;
- 12.4.3 if the Council’s Representative wishes the Provider to rectify the Default, the time within which the Default is to be remedied (which shall be such time as the Council’s Representative reasonably determines);
- 12.4.4 if the Council’s Representative does not wish the Provider to rectify the Default, whether the Council’s Representative intends to employ another contractor (or its own workforce) to remedy the Default and to charge the Provider the additional cost of so doing in accordance with **Condition 12.5** (which is termed “Default Action”).

12.5 **Default Action**

If the Council’s Representative has:

- 12.5.1 indicated in a Default Notice that the Provider intends to take Default Action; and
- 12.5.2 has either employed another contractor or the Council's own labour (both of whom are termed the “Default Provider”) to remedy the Default;
- 12.5.3 then the Council shall be entitled to charge the Provider the additional cost of so doing from the Provider which shall include:
  - 12.5.3.1 the procuring of the Default Provider;
  - 12.6.3.2 the additional supervision and assistance needed by the Default Provider; and
  - 12.5.3.3 the additional rates payable to the Default Provider above that tendered by the Provider.

12.6 **Second Default Notice**

If the Provider shall fail to comply with a Default Notice the Council’s Representative shall be entitled to issue a Second Default Notice to the Provider which shall state:
12.6.1 that it is a Second Default Notice;
12.6.2 the nature of the Default;
12.6.3 if the Council’s Representative wishes the Provider to rectify the Default, the time within which the Default is to be remedied (which shall be such time as the Council’s Representative determines);
12.6.4 if the Council’s Representative does not wish the Provider to rectify the Default, whether the Council’s Representative intends to employ another Provider (or the Council's own workforce) to remedy the Default and to charge the Provider the additional cost of so doing in accordance with Condition 12.5.

12.7 **Termination**
If either of the following events shall happen namely:-

12.7.1 the cumulative number of Rectification Notices issued by the Council’s Representative to the Provider in any consecutive three (3) month period shall exceed 3; or
12.7.2 the cumulative number of Default Notices and/or Second Default Notices issued by the Council’s Representative to the Provider in any consecutive three (3) month period shall exceed 3; or
12.7.3 the cumulative number of Rectification Notices issued by the Council’s Representative against the Provider in any twelve (12) month period shall exceed 3; or
12.7.4 the cumulative number of Default Notices and Second Default Notices issued by the Council’s Representative against the Provider in any twelve (12) month period shall exceed 3;

then the Council may at any time following such event by written notice to the Provider terminate the Agreement under **Condition 27**.

12.8 **Legal Costs**
The Provider shall reimburse the Council such legal costs as it shall incur following a Default. Such legal costs may be deducted from any payment due to the Provider under this Agreement or may be recovered as a simple contract debt.

13. **SERVICE REVIEW**

13.1 **Annual Service Review**
The Council shall undertake a review of the performance of the Provider as soon as practicable following the expiry of each period of 12 months starting on the Commencement Date.

13.2 **Content**
The Service Review shall consider all aspects of the Provider’s performance of the Services including without limitation:-

13.2.1 The number of Rectification Notices issued.

13.2.2 The number of Default Notices issued.

13.3 **Review Meetings**
The Provider shall ensure that the Provider’s Representative attends such meetings at such reasonable times and places as shall be notified in writing by
the Council’s Representative at which the Service Review shall be carried out. The Provider shall be aware that other Providers may be invited to attend the same service review meeting.

13.4 **Reports**
The Provider shall prepare and produce at such review meetings such written reports as may reasonably be requested by the Council’s Representative.

14. **FEE**

14.1 **Payment of the Fee**
The Council shall pay the Provider the Fee for the satisfactory performance of the Services at any intervals and in any instalments set out in the Pricing Summary in Part 3 of the **FIRST SCHEDULE** subject to:-

14.1.1 the receipt by the Council of a correct Provider’s invoice at least 30 days prior to the corresponding payment; and

14.1.2 the satisfactory performance of the Services and the achievement of the corresponding milestone, where such has been specified by the Council in writing.

Any sums paid to the Provider for the performance of the Services before the date of this Agreement shall be deemed to have been paid on account of the Fee.

14.2 **Disbursements**
Except as may be set out **PART 3** in the **FIRST SCHEDULE** the Fee is to be inclusive of all costs, expenses, disbursements and overheads incurred by the Provider in conjunction with the performance of the Services. The Provider shall not be entitled to payment or reimbursement of any other expenses except those specified in **PART 3** of the **FIRST SCHEDULE** without the prior written authorisation of the Council.

14.3 **Records**
The Provider shall maintain records of any expenses and other disbursements claimed or to be claimed from the Council and shall make these available to the Council when reasonably requested to do so by the Council from time to time.

14.4 **VAT**

14.4.1 **Payment of VAT**
The Council will pay any value added tax properly due to the Provider on any part of the outstanding monies due to the Provider under this Agreement.

14.4.2 **Assessment**
The Provider shall state in each invoice submitted under this Agreement its assessment as to:-

14.4.2.1 which part is exempt from VAT;

14.4.2.2 which part is zero rated for VAT;

14.4.2.3 what part has any other rate specifying the exact rate chargeable.
14.5 **BACS**  
If requested by the Council, the Provider shall provide the Council such details of its bank account as the Council shall reasonably request so that the Council may make all payments under **Condition 14** using BACS.

14.6 **Firm and Fixed Prices**  
14.6.1 Unless specifically agreed in writing in this Agreement all Fees as set out in **PART 3 of the FIRST SCHEDULE** shall be Firm and Fixed for the duration of this Agreement and be exclusive of VAT.

14.7 **Council’s Right to Remedies**  
Any payments made shall be made without prejudice to the Council’s rights should the provision of the Services prove unsatisfactory or not in accordance with this Agreement.

15. **RECOVERY OF SUMS**

15.1 **Set Off**  
Whenever under this Agreement any sum of money shall be recoverable from or payable by the Council to the Provider the same may be deducted from any sum then due, or which may at any time after become due, to the Provider under this Agreement or any other contract between the Council and the Provider.

15.2 **Interest on Late Payment**  
In the event of any failure by either Party to pay the other Party, any sum due under this Agreement, the defaulting Party shall further pay to the other Party interest at the rate of 8% above the base rate of Barclays Bank Plc in force at the time. Such interest shall run from day to day and shall accrue before and after any judgment and shall from time to time be compounded quarterly on the amount overdue until payment is made unless payment is withheld in accordance with this Agreement.

16. **VARIATIONS**

16.1 **Right to Vary**  
The Council may issue instructions in writing to the Provider requiring a Variation and the Provider shall comply with the same.

16.2 **Valuation**  
Where the Variation relates to the execution of additional or substituted service or supply such services shall be valued in accordance with the following rules:-

16.2.1 Where the additional or substituted services are of similar character to, are executed under similar conditions as and do not significantly change the quantity of services set out in the Specification, the rates and prices for the services so set out shall determine the valuation of the Variation;

16.2.2 Where the additional or substituted services are of similar character to the services in the Specification but are not executed under similar conditions and/or change the quantity the rates and prices for the services so set shall be the basis for determining the valuation which shall also include a fair allowance for such difference in conditions and/or quantity;

16.2.3 Where the additional or substituted services are not of similar character to work set out in the Specification the services shall be valued at fair rates and prices;
16.2.4 Where the valuation relates to the omission of services set out in the Specification the rates and prices for such services set out shall determine the valuation of the services omitted.

16.3 **Consent**

The Provider shall not perform the additional or varied services without the prior written consent of the Council to the additional or varied Services and to any additional Fee proposed.

16.4 **Liability**

The Council shall have no liability to the Provider for any additional fee, costs, expenses, disbursements or overheads incurred by the Provider in connection with any additional or varied services which the Provider performs or purports to perform without the prior written consent of the Council.

17. **BEST VALUE**

17.1 **Best Value Duty**

The Provider shall acknowledge that the Council is subject to the Best Value Duty and shall, throughout the duration of this Agreement, but only to the extent of its obligations in the Agreement, make arrangements to secure continuous improvement in the way in which the Services are provided, having regard to a combination of economy, efficiency and effectiveness.

17.2 **Satisfaction Survey**

The Provider shall, as directed by the Council, undertake a satisfaction survey the purpose of which shall include assessing the level of satisfaction among users of the Services (including the way in which the Services are provided, performed and delivered) and, in particular, with the quality, efficiency and effectiveness of the Services.

17.3 **Annual Written Report**

Without prejudice to any other provision in the Agreement the Provider shall at its own cost, provide to the Council annually a written report in connection with the Services provision to the reasonable satisfaction of the Council.

18. **LIABILITY**

18.1 **Reliance**

Subject to Condition 3.2 and the Provider’s reliance upon the use of data and information provided by the Council and third parties, the Council shall be relying upon the Providers skill, expertise and experience as a Provider having the Services expertise specified in **PART 2** of the **FIRST SCHEDULE** to this Agreement and the advice given by the Provider and representations and statements contained in any report produced by the Provider for the Council as part of the Services.

18.2 **Indemnity**

18.2.1 The Provider agrees to indemnify the Council against all losses, damage, expenses, costs, fines, legal costs and professional and other expenses of any nature whatsoever incurred by the Council whether direct or consequential to the extent caused by the Provider’s negligence, omission or default in connection with the performance of the Services including, but without limitation, any economic loss or any loss of turnover, profit, business or goodwill incurred as a result of such reliance and for which the Provider would be legally liable.
18.2.2 The Provider agrees to indemnify the Council against all losses, costs, claims, expenses (including reasonable legal costs) damages, liabilities, fines, actions and proceedings brought against such other by any third party, arising out of a breach of the Data Processing Agreement or the seventh principle of the Data Protection Act 1998 by the Provider (or an employee, agent or subcontractor of such party)

18.3 **Scope of Liability**
The Provider accepts:

18.3.1 liability for the death or personal injury resulting from the Provider’s negligence or that of its employees or sub-contractors.

18.3.2 liability for damage to property, plant or equipment to the extent caused by the Provider’s negligence or that of its employees or sub-contractors where such negligence arises in connection with the performance of the Services.

18.4 **Consequential Loss**
The Council shall not be liable to the Provider for any indirect or consequential loss whatever and however caused.

19. **INSURANCE**
The Provider warrants and undertakes:

19.1 **Professional Indemnity Insurance**
To maintain professional indemnity insurance with an insurance office of repute carrying on such insurance business in the United Kingdom in an amount of not less than the Minimum Professional Indemnity Insurance Figure to cover the liability accepted by it under the terms of this Agreement for any one occurrence or a series of occurrences arising out of any one event for a period beginning from the Commencement Date and ending twelve years (12) after completion of the Services available at commercially reasonable rates and terms, and the said terms and conditions shall not include any term or condition to the effect that the Provider must discharge any liability before being entitled to recover from the insurer or any other term or condition which might adversely affect the rights of any person to recover from the insurers pursuant to the Third Parties (Rights Against Insurers) Act 1930 or any amendment or re-enactment thereof;

19.2 **Public Liability Insurance**
To maintain public liability insurance with an insurance office of repute carrying on such insurance business in the United Kingdom in an amount of not less than the Minimum Public Liability Insurance Figure to cover the liability accepted by it under the terms of this Agreement for any one occurrence or a series of occurrences arising out of any one event for a period beginning on the Commencement Date.

19.3 **Insurance of Employees**
The Provider shall for the duration of this Agreement maintain insurance in respect of personal injury or death of any person arising under a contract of service with the Provider and arising out of an incident occurring during the course of such person’s employment and shall comply with the Employer’s Liability (Compulsory Insurance) Act 1969 and any related statutory orders made.

19.4 **Inspection**
As, and when the Provider is reasonably requested to do so by the Council, to produce promptly for inspection documentary evidence that the Provider’s Insurance’s are being maintained in accordance with Conditions 19.1, 19.2 and 19.3.

19.5 Availability
If any of the Provider’s Insurances cease to be available at commercially reasonable rates or on commercially reasonable terms, the Provider shall:
19.5.1 give notice to the Council immediately
19.5.2 take out and maintain the highest level of insurance which is available to the profession of the Provider at commercially reasonable rates and on commercially reasonable terms; and
19.5.3 give notice to the Council of the level of insurance purchased in accordance with Condition 19.

19.6 Information
To the best of its knowledge and belief that the information which it has supplied to the Council in relation to the Provider’s Insurances is true, complete and accurate in every respect and it will use reasonable endeavours to notify the Council immediately of any material change of circumstances affecting the truth, completeness or accuracy of such information.

19.7 Repudiation
To the best of its knowledge and belief that at the date of this Agreement there is no fact or matter known to the Provider which might entitle the insurer in respect of the Provider Insurances to repudiate the liability under the policy generally or in relation to any particular claim.

19.8 Claims
To the best of its knowledge and belief it is not aware of any claims or pending claims on the Provider’s Insurances which affect its ability or is likely to affect its ability to perform its obligations under the Agreement.

19.9 Failure to Insure
If the Provider fails to insure or to continue to insure in accordance with Condition 19 the Council may itself provide such insurance and may charge the cost of such insurance together with an administration charge to the Provider either by way of deduction from amounts payable by the Council to the Provider under Condition 14 or by recovering the same as a debt due to the Council from the Provider.

20. INTELLECTUAL PROPERTY RIGHTS
20.1 The copyright and all other intellectual property and proprietary rights whatsoever (“Intellectual Property Rights”) in any document, material, idea, data or other information (including systems and methodologies, reports, preparatory works, drafts, working papers, correspondence and advice, patents, trademarks, designs, design rights, copyright, inventions, trade secrets, know-how and confidential information (“the Deliverables”)) developed by the Provider in connection with the performance of the provision of Services shall vest in the Council upon the date of such production or provision. Where such Intellectual Property Rights cannot be transferred, the Provider shall ensure that the Council has a royalty free licence to permit it to utilise such Deliverables. The Provider shall do all things reasonably necessary at the Council’s request to perfect such vesting, both during and after the expiry of this Agreement.
20.2 **Condition 20.1** shall not apply to intellectual property rights not created by the Provider at the request of the Council or specifically for the purpose of performing the provision of the Services and shall not, subject to Conditions 21.1 and 21.2 operate to prevent the Provider from making use of the principles and ideas created or produced by the Provider in any document, material, idea, data or other information, (including systems and methodologies, reports, preparatory works, drafts, working papers, correspondence and advice), except those created or supplied by the Council, in future assignments or in relation to potential future assignments.

20.3 Where pre-existing Deliverables are incorporated into the provision of the Services, the Council has a non-exclusive irrevocable worldwide royalty free licence to use, modify and distribute such pre-existing works, for the purposes of this Agreement only.

20.4 The Provider hereby assigns to the Council all existing and future Intellectual Property Rights in the Deliverables and all materials embodying these rights to the fullest extent permitted by law. Insofar as they do not vest automatically by operation of law or under this Agreement, the Provider holds legal title in these rights on trust for the Council.

20.5 The Provider undertakes:

20.5.1 not to register nor attempt to register any of the Intellectual Property Rights in the Deliverables unless requested to do so by the Council; and

20.5.2 to do all acts necessary to confirm that absolute title in all Intellectual Property Rights in the Deliverables has passed, or will pass, to the Council.

20.6 The Provider warrants that:

20.6.1 the Provider has not given and will not give permission to any third party to use any of the Deliverables nor any of the Intellectual Property Rights in the Deliverables;

20.6.2 the Provider is unaware of any use by any third party of any of the Deliverables or Intellectual Property Rights in the Deliverables;

20.6.3 the use of the Deliverables or the Intellectual Property Rights in the Deliverables by the Council will not infringe the rights of any third party.

20.7 Notwithstanding any other provision of this Agreement, and for the avoidance of doubt, nothing in this Agreement shall operate to give any right of ownership or use of the methods and systems employed by the Council.

20.8 The Provider agrees to indemnify the Council and keep it indemnified at all times against all or any costs, claims, damages or expenses incurred by the Council, or for which the Council may become liable, with respect to any intellectual property infringement claim or other claim relating to the Deliverables supplied by the Provider to the Council during the course of the providing the Services.

20.9 The Provider acknowledge that no further remuneration or compensation other than that provided for in this Agreement is or may become due to the Provider in respect of the performance of the Provider’s obligations under these Conditions 20.1 to 20.9.
21. INFORMATION, CONFIDENTIALITY AND DATA PROTECTION

21.1 Restriction of Disclosures
The Parties shall not disclose any Confidential Information and shall use all reasonable endeavours to prevent their employees and agents from making any disclosure to any person of any Confidential Information.

21.2 Exceptions
Condition 21.1 shall not apply to:

21.2.1 any disclosure of confidential Information that is reasonably required by persons engaged in the performance of its obligations under the Agreement.

21.2.2 any Confidential Information which a Party can demonstrate is already generally available and in the public domain otherwise than as a result of a breach of Condition 21.

21.2.3 any disclosure to enable a determination to be made under the Dispute Resolution Procedures;

21.2.4 any disclosure which is required by any Legislation (including any order of a court of competent jurisdiction), and Parliamentary obligation or the rules of any stock exchange or governmental or regulatory authority having the force of law;

21.2.5 any disclosure of Confidential Information which is already lawfully in the possession of the receiving Party, prior to its disclosure by the disclosing Party;

21.2.6 any disclosure by the Council of Confidential Information relating to the Services and such other information as may be reasonably required for the purpose of conducting a due diligence exercise for any proposed successor Provider should the Council decide to re-tender the Agreement;

21.2.7 any disclosure for the purpose of the examination and certification of a Party’s accounts;

21.2.8 any examination pursuant to the Audit Commission Act 1998 of the economy, efficiency and effectiveness with which the Council has used its resources;

21.2.9 disclosure to a Party’s professional advisers;

21.2.10 disclosure to the Council’s Members;

21.2.11 any disclosure required or permitted by the FOIA Scheme 2000 or in compliance with the FOIA Scheme;

21.2.12 any disclosure made by a Party following the prior written consent of the Party owning the Confidential Information;

21.2.13 any disclosure made by a Party where it has requested the owning Party to consent to such disclosure and the owning Party has either:-
21.2.13.1 failed to respond within 10 Working Days of the issue of such request;

21.2.13.2 refused such request and has failed to set out its reasons for refusal; or

21.2.13.3 unreasonably refused to grant such consent or has granted it on terms or subject to conditions which are unreasonable.

21.2.14 any disclosure made following the Confidentiality Expiry Date

21.3 **Recipient’s Duties**
Where disclosure is permitted under **Condition 21.2**, other than **Conditions 21.2.4, 21.2.6, 21.2.7, 21.2.8** and **21.2.10** the recipient of the information shall be made subject to the same obligation of confidentiality as that contained in this Agreement.

21.4 **District Auditor**
For the purposes of the Local Audit and Accountability Act 2014 the District Auditor may examine such documents as he may reasonably require which are owned, held or otherwise within the control of the Provider and may require the Provider to produce such oral or written explanation as he considers necessary.

21.5 **Use of Information**
The Provider shall not make use of the Agreement or any information issued or provided by or on behalf of the Council in connection with the Agreement otherwise than for the purpose of the Agreement, except with the prior written consent of the Council such consent not to be unreasonably withheld.

21.6 **Personal Data**
Where the Provider, in the course of carrying out its obligations under the agreement, is provided with or collects, acquires or otherwise obtains, Personal Data, the Provider shall not disclose or make use of any such information otherwise than for the purpose for which it was provided, unless the Provider has sought the prior written consent of that person and has obtained the prior written consent of the Council.

21.7 **Return of Information**
On or before the Confidentiality Expiry Date the Provider shall ensure that all documents or computer records in its possession, custody or control, which contain information relating to people are delivered up to the Council.

21.8 **Commission for Local Administration**
CLA may investigate complaints of injustice in consequence of administration against the Council under the Local Government Act 1974 which can include complaints relating to the Services. If such complaint is made the Provider shall:

21.8.1 fully and promptly answer whether oral or written communications from the CLA and shall send the Council’s Representative a copy of any communication to the CLA at the same time as it is sent to the CLA;

21.8.2 co-operate fully and courteously in any investigation by the CLA;
21.8.3 fully and promptly respond to any communication from the Council’s Representative concerning the complaint so that the Council may answer issues raised by the CLA directly with the Council; and

21.8.4 fully indemnify the Council in respect of any costs it incurs or compensation paid as a result of a finding of maladministration if and to the extent that maladministration was caused to by any act or omission of the Provider.

21.9 **Data Protection**

In relation to any Personal Data provided by the Council or its agents, other providers or employees, or otherwise acquired and processed by the Provider in relation to this Agreement, the Provider shall comply with the data protection provisions set out in Part 5 of the **FIRST SCHEDULE** to this Agreement (if applicable).

21.10 **Access to Information Legislation**

21.10.1 The Parties recognise and accept that the Council is a “Public Authority” for the purposes of Access to Information Legislation, including the provisions of the Freedom of Information Act 2000 and Environmental Information Regulations 2004, and is obliged to disclose information held by itself, or on its behalf, unless the information falls under one or more exemptions, and that the Council may be required to disclose the information where the public interest test lies in disclosure.

21.10.2 In the event that the Provider receives either:-

21.10.2.1 a request under the Access to Information Legislation; or

21.10.2.2 a request for an internal review in respect of a decision not to disclose information requested under the Access to Information Legislation, where the information requested is deemed to be exempt from disclosure,

where the requests relate to information of Personal Data processed in the course of carrying out its obligations under this Agreement, the Provider shall within 2 Working Days of the receipt of either request for either the information or a request for an internal review against a decision to withhold information requested under the Access to Information Legislation, notify the Council with details of the request.

21.10.3 In the event that the Council receives either:-

21.10.3.1 a request under the Access to Information Legislation; or

21.10.3.2 a request for an internal review in respect of a decision not to disclose information requested under the Access to Information Legislation, where the information requested is deemed to be exempt from disclosure,

where the requests relate to information of Personal Data processed in the course of carrying out its obligations under this Agreement, the Council shall within 2 Working Days of the receipt of either request for either the information or a request for an internal review against a decision to withhold information requested under the Access to Information Legislation, notify the Provider with details of the request.

21.10.4 The Provider shall provide the Council with a copy of all information in its possession or power in the form that the Council requires within 5 Working Days (or such other period as the Council may specify) of the Council requesting that information from the Company.
21.10.5 Following the Council notifying the Provider of the request or asking the Provider to provide comments, the Provider shall provide any such comments, with detailed reasoning, within 5 Working Days (or other such period as the Council may specify), as to what Confidential Information, if any, should be withheld and the reasons why, to allow the Council to consider the public interest considerations applicable under the relevant Access to Information Legislation.

21.10.6 In the event that such comments, with detailed reasoning are not received within the 5 Working Days, the Council shall be entitled to consider the applicability of an exemption without further reference to the Provider, save for the provisions of Condition 21.10.7.

21.10.7 The Council shall provide to the Provider, no less than 3 Working Days prior to the release of any information requested, a copy of the response to the request.

21.10.8 The Council shall be responsible for determining at its absolute discretion whether any information:

21.10.8.1 is exempt from disclosure in accordance with the provisions of the Access to Information Legislation;

21.10.8.2 is to be disclosed in response to a request and in no event shall the Provider respond directly to a request unless expressly authorised to do so by the Council.

21.10.9 The Provider shall ensure that all information produced in the course of this Agreement or relating to the Agreement is retained for disclosure and shall permit the Council to inspect such records as requested from time to time.

21.10.10 The Provider acknowledges that any lists or schedules provided by it outlining Confidential Information are of indicative value only and that the Council may nevertheless be obliged to disclose the Confidential Information.

21.11 Transparency

21.11.1 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, are not Confidential Information. The Council 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.

21.11.2 Notwithstanding any other term of this Agreement, the Provider hereby gives its consent for the Council to publish this Agreement and its Schedules in their entirety including from time to time agreed changes to the Agreement, to the general public in whatever form the Council decides.

21.12 Marking of Tender Documents

If the Provider considers that any other part of its tender apart from Parts entitled "Payment by BACS", "Financial References Authority", "Statement of Insurance Cover", "Tenderer’s Proposals/Method Statement" and "Tender Pricing Summary" is confidential it should appropriately mark that part of its document and explain the justification for so doing. It would in all circumstances be inappropriate merely to mark all parts of a tender as confidential. In law confidentiality will not arise by simply marking a document confidential.
22. **ASSIGNMENT**

22.1 **By Council**
The Council may assign the benefit of this Agreement or any part of it and shall give written notice of any assignment to the Provider. Failure to give this notice shall not affect the validity of the assignment.

22.2 **By Provider**
The Provider shall not assign the benefit of this Agreement or any part of it without the prior written consent of the Council.

22.3 **Novation**
The Provider shall, if requested in writing by the Council, execute a novation agreement in such form as the Council may reasonably require so that a new party is substituted for Birmingham City Council.

23. **GUARANTEE**
Where the Provider is a subsidiary company it shall, if required by the Council, supply a guarantee of its performance of this Agreement from its parent company in such form as the Council may reasonably specify.

24. **SUB CONTRACTING**

24.1 **Consent**
The Provider shall not sub-contract the performance of any of the Services or any part of the Services without the prior written consent of the Council which consent shall be at the discretion of the Council and if given, shall not relieve the Provider from any liability or obligation under this Agreement.

24.2 **Terms of Sub-Contract**
If the Council consents under **Condition 24.1** to the sub-contracting of the obligations under this Agreement or any part of it, the sub-contracting shall:

24.2.1 be upon terms first approved in writing by the Council; and

24.2.2 not relieve the Provider of liability for the performance of the Services or compliance with the terms of this Agreement.

24.2.3 require that the sub-contractor complies with the terms of the Data Processing Agreement at Part 9 of the First Schedule to this Agreement, including obligations to implement the Data Security Obligations as defined in the Data Processing Agreement.

25. **SUSPENSION**

25.1 **Force Majeure**
Neither Party shall be liable to the other Party for any delay in performing, the Services or failing to perform its obligations under this Agreement (other than a payment of the Fee) to the extent that such delay or failure is a result of Force Majeure.

25.2 **Notice**
The Provider shall give immediate notice to the Council of any situation arising from Force Majeure which makes it impractical to perform any of the Services and shall discuss with the Council a suitable course of action.
25.3 **Suspension**
The Council may suspend the performance of all or any of the Services by giving reasonable notice to the Provider.

25.4 **Termination**
Upon the suspension of the performance of all or a substantial part of the Services for more than 6 (six) months, the Provider may give notice to the Council requesting instructions to resume the performance of the suspended Services. If the Provider does not receive these instructions within 28 days from the day the Council receives the notice, the Provider may terminate its appointment under this Agreement by giving 21 days written notice to the Council.

25.5 **Fee**
During the suspension of all or any of the Services, the Council may suspend the payment of that part of the Fee which is proportionate to the suspended Services.

26. **Not used**

27. **TERMINATION AND CANCELLATION**

27.1 **By the Council**
If any of the following events shall occur namely if the Provider:-

27.1.1 commits a material breach of any of its obligations under this Agreement PROVIDED THAT if the breach is capable of remedy the Council's Representative shall first have served a written notice on the Provider specifying such breach and requiring the same to be remedied within 14 days and the Provider shall have failed to remedy the same;

27.1.2 makes a misrepresentation in any information, whether provided orally or in writing, to the Council with respect to any information provided to or requested by the Council with respect to this Agreement including without limitation the Provider’s Employee’s at any time prior to or during the duration of this Agreement;

27.1.3 fails to perform a substantial part of the Services for a period of 2 (two) months;

27.1.4 has been subject of the procedure in **Condition 12** and either of the events in **Condition 12.7** shall have occurred;

27.1.5 has any of its directors or partners convicted of dishonesty;

27.1.6 becomes bankrupt or makes a composition or arrangement with its creditors, or has a proposal in respect of its company for voluntary arrangement for a composition of debts, or scheme or arrangement approved in accordance with the Insolvency Act 1986;

27.1.7 has an application under the Insolvency Act 1986 in respect of its company to the Court for the appointment of an administrator or administrative receiver;

27.1.8 has a winding-up order made, or (except for the purposes of amalgamation or reconstruction) a resolution for voluntary winding-up passed;

27.1.9 has a provisional liquidator, receiver or manager of its business or undertaking duly appointed;
27.1.10 has an administrative receiver, as defined in the Insolvency Act 1986, appointed;

27.1.11 has possession taken, by or on behalf of the holders of any debentures secured by a floating charge, of any property comprised in, or subject to, the floating charge;

27.1.12 is in circumstances which entitle the Court or a creditor to appoint, or have appointed, a receiver, a manager, an administrator or administrative receiver, or which entitle the Court to make a winding-up order; or

if any of the following events shall occur namely:-

27.1.13 the Agreement has been subject to a substantial modification which would have required a new procurement procedure in accordance with Regulation 72 Public Contracts Regulations 2015, and the Council and the Provider have been unable to agree a Variation under Condition 16 to restore the Agreement to the position which existed prior to the making of such substantial modification;

27.1.14 the Provider has at the time of the award of this Agreement, been in one of the situations referred to in Regulation 57(1) Public Contacts Regulations 2015, including as a result of the application of Regulation 57(2), and should therefore have been excluded from the procurement procedure for the award of the Agreement; or

27.1.15 the Agreement should not have been awarded to the Provider in view of a serious infringement of the obligations under the Treaty of European Union and the Treaty on the Functioning of the European Union and Directive 2014/24/EU of the European Parliament and of the Council of the European Union that has been declared by the Court of Justice of the European Union in a procedure under Article 258 of the Treaty on the Functioning of the European Union;

then the Council may, without prejudice to any other right or remedy under this Agreement, terminate the Agreement immediately by a written notice to the Provider.

27.2 Notice
The Council may at any time for any reason terminate the Provider’s appointment by giving at least 6 (six) month’s written notice to the Provider.

In the event of 6 (six) month’s written notice to the Provider a risk share agreement will be enacted whereby 70% of the exit costs will be covered by the Provider and 30% of the exit costs will be covered by the Council.

The 6 (six) month’s written notice to the Provider referred to above relates to ‘termination’ of contract only and does not relate to the ending of the contract due to it running its full course for which Birmingham City Council will incur no liability.

27.3 Prevention of Corruption
27.3.1 The Council shall be entitled forthwith to cancel this Agreement by delivery of written notice to the Provider if the Provider shall have:-

27.3.2 offered, promised or given a financial or other advantage to another person; and either:

27.3.3 the Provider intends the advantage to induce a person to perform improperly a relevant function or activity in relation to the obtaining or execution of the Agreement or any other contract with the Council; or

27.3.4 the Provider knows or believes that the acceptance of the advantage would itself constitute the improper performance of the relevant function or activity in relation to the obtaining or execution of the Agreement or any other contract with the Council; or

27.3.5 If the like act or acts shall have been done by any person employed by the Provider or associated with the Provider (whether with or without the knowledge of the Provider); or

27.3.6. If in relation to any contract with the Council the Provider or any person employed by the Provider or associated with the Provider shall have:-

27.3.6.1 committed an offence or offences under the Bribery Act 2010; or

27.3.6.2 given any fee or reward to an officer of the Council the acceptance of which is an offence under Section 117(2) Local Government Act 1972.

Such cancellation shall not affect the continuing application of any provisions of the Agreement, which are expressed as or capable of having effect after the cancellation of the Agreement.

27.4 Consequences of Termination by the Council
Following termination of this Agreement the Council shall:-

27.4.1 cease to be under any obligation to make further payment to the Provider under this Agreement until the Council’s costs, loss and/or damage resulting from or arising out of termination shall have been ascertained and provided such ascertainment shows a sum or sums due to the Provider;

27.4.2 any sum due or accruing from the Council to the Provider may be withheld or reduced by such amount as the Council in either case considers reasonable and appropriate in the circumstances;

27.4.3 be entitled to employ and pay other persons to provide and complete all or part of the Services, where the total costs reasonably and properly incurred by the Council by reason of such arrangements exceed the amount that would have been payable to the Provider for the completion of the Services, the excess shall be recoverable from the Provider and the Council reserves the right to recover such excess by set-off against any amount withheld by the Council under Condition 27.4.2;

27.4.4 be entitled in respect of any loss or damage to the Council resulting from or arising out of the termination, to deduct the same from any sum or sums which would but for Condition 27, have been due from the Council to the Provider under this Agreement or any other contract or be entitled to recover the same from the Provider as a debt. Such loss or damage shall include the reasonable cost to the Council of the time spent by its officers in cancelling or terminating the Agreement and in making alternative arrangements for the provision of all or part of the Services;
27.4.5 when the total costs, loss and/or damage resulting from or arising out of the termination has been calculated and deducted so far as practicable from any sums which are due to the Provider, the Council shall pay to the Provider any balance shown as due to the Provider.

27.5 **Other Remedies of the Council**
The rights of the Council under this Condition 27 are in addition to and without prejudice to any other rights the Council may have whether against the Provider directly or pursuant to any bond.

27.6 **Indemnity**
In the event the Council terminates this Agreement under Condition 27.1 the Provider shall indemnify the Council against all losses, damages, costs, including management and similar costs, expenses including professional fees and expenses and all other expenditure or economic loss whatsoever incurred or suffered by the Council to the extent caused by the Provider's negligent acts, errors or omissions in the performance of the Services and for any cause for which the Provider is legally liable. This indemnity shall survive the termination of this Agreement.

27.7 **Accrued Rights**
Subject to Condition 27.4 termination of the appointment of the Provider under this Agreement for any reason shall not affect the rights or remedies of either Party in relation to any breach of this Agreement by the other before the termination.

27.8 **Termination by the Provider**
If the Council shall fail to pay to the Provider any sum due under this Agreement and the Council shall fail to remedy such breach within 28 days of the service of a written notice upon the Council specifying such breach then the Provider shall be entitled to terminate this Agreement by 28 days written notice to the Council.

27.9 **Consequences of Termination by the Provider**
If the Provider shall terminate this Agreement under Condition 27.8 the Provider shall be entitled to receive:

27.9.1 Payment for the performance of the Services up to the date of termination;

27.9.2 Any direct loss and/or expense arising out of the termination of the Agreement;

27.10 **Force Majeure**
In the event of Force Majeure which may prevent or hinder the performance of the Services payment for the Services may be suspended or postponed at the Council's option until the circumstances preventing or hindering the performance of the Services have ceased.

28. **EQUALITY ACT 2010 AND EQUALITY POLICY**

28.1 **Compliance**
The Provider shall adopt a policy to comply with its statutory obligations under the Equality Act 2010 and with all regulations and Codes of Practice, made under the Equality Act 2010.

28.1.1 The Provider shall set out its policy to comply with its statutory obligations under the Equality Act 2010:

28.1.1.1 in instructions to those concerned with recruitment, training and promotion;
28.1.1.2 in documents available to employees, recognised trade unions or other representative groups of employees;
28.1.1.3 in recruitment advertisements or other literature,

and the Provider shall, on request, provide the Council with examples of such instructions documents, recruitment advertisements and other literature.

28.2 Unlawful Discrimination
The Provider will not discriminate, as defined by the Equality Act 2010, against another person because that person possesses a single protected characteristic or a combination of protected characteristics which include age, disability, gender reassignment, marriage and civil partnership; pregnancy and maternity; race; religion or belief; sex, and sexual orientation.

28.3 Indirect Discrimination
28.3.1 The Provider shall not indirectly discriminate, as defined by the Equality Act 2010, against a person by applying to that person a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of that person. The relevant protected characteristics are age, disability, gender reassignment, marriage and civil partnership, race, religion or belief, sex, and sexual orientation.

28.3.2 The Provider shall comply with the Equality Act 2010 and examine its provisions, criteria and practices (and where necessary amend them) to ensure they are not discriminatory.

28.4 Duty to make Adjustments
The Provider shall make such reasonable adjustments as may be required by the Equality Act 2010 and, in particular, shall have regard to Section 20 of the Act which requires adjustments to be made in respect of disabled persons.

28.5 Employment
The Provider shall comply with Part 5 (Work) of the Equality Act 2010 and, in particular, Section 39 concerning discrimination against applicants and employees. The Provider shall not discriminate, as defined by the Equality Act 2010, in deciding to whom to offer employment, the terms upon which it offers employment, or the way in which it affords or does not afford access to opportunities for promotion, transfer or training or for receiving any other benefit, facility or service.

28.6 Performance of the Agreement
28.6.1 The Provider shall ensure that its employees in providing services under the Agreement comply with Part 3 (Services and Public Functions) of the Equality Act 2010 and, in particular, shall not discriminate against a person as defined by the Equality Act 2010 :-
28.6.1.1 in refusing to provide to such person services under the Agreement;
28.6.1.2 by harassing a person requiring or being provided with services under the Agreement;
28.6.1.3 as to the terms on which it provides such services to such person;
28.6.1.4 by terminating the provision of the such services to such person; or
28.6.1.5 by subjecting such person to any other detriment.

28.6.2 The Provider will carry out such monitoring as it shall consider reasonably necessary or is reasonably required by the Council to ensure that Condition 28.6.1 is being complied with by the Provider and the Provider’s employees.

28.7 Unlawful racial discrimination
In the event of any finding of unlawful discrimination being made against the Provider in the last three years by any court or employment tribunal, or of an adverse finding in any formal investigation by the Equalities and Human Rights Commission (or its predecessor bodies) over the same period, the Provider shall take appropriate steps to prevent repetition of any unlawful discrimination and the Provider shall, on request, provide the Council with details of the steps it has taken to prevent repetition of the same.

28.8 **Equality and Human Rights Commission Codes of Practice**
The Provider shall, so far as is possible, comply with any statutory codes of practice on employment, equal pay and services, public functions and the public sector equality duty issued by the Equality and Human Rights Commission in respect of the Equality Act 2010. The Provider shall also provide such other information as the Council may reasonably request, from time to time, for the purpose of assessing such compliance.

29. **BUSINESS CHARTER AND SOCIAL VALUE POLICY**

29.1 **Agreement**
The Provider agrees to sign up to the Council’s Business Charter for Social Responsibility (“the Charter”) as set out in Part 4 of the FIRST SCHEDULE. The Service Provider agrees to meet the standards required by the Charter throughout the duration of this Agreement.

29.2 **Action Plan**
In fulfilling its obligations under the Charter, the Provider shall develop and implement an action plan, approved by the Council. The Provider’s action plan shall include sufficient detail as to how the principles of the Charter shall be implemented during the duration of this Agreement.

29.3 **Annual Statement**
The Provider shall provide to the Council on each anniversary date, beginning from the Commencement Date, an annual statement confirming how the principles of the Charter has been implemented or are yet to be implemented.

30. **NOTICES**

30.1 **Form of Notice**
No notice or other communication from one Party to the other shall have any validity under this Agreement unless made in writing by or on behalf of the Party sending the communication, unless otherwise expressly provided within this Agreement.

30.2 **Method of Service**
Any Notice, shall be sufficiently served if served personally on the addressee, or if sent by prepaid first class or recorded delivery post, facsimile transmission or electronic transmission to the correct address set out in Condition 30.3

30.3 **Addresses of Parties**
The Parties’ addresses are as set out in the Address Table.
### ADDRESS TABLE

<table>
<thead>
<tr>
<th></th>
<th>POSTAL ADDRESS</th>
<th>FACSIMILE TRANSMISSION NUMBER</th>
<th>E-MAIL ADDRESS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Council</td>
<td>Birmingham City Council Council House Victoria Square Birmingham B1 1BB</td>
<td>0121 303 4383</td>
<td><a href="mailto:contact@birmingham.gov.uk">contact@birmingham.gov.uk</a></td>
</tr>
<tr>
<td>Council's Representative</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Provider</td>
<td></td>
<td>N/A</td>
<td></td>
</tr>
<tr>
<td>Provider's Representative</td>
<td>Unit G4 – G5 The Arch 48-52 Floodgate St Birmingham B5 5SL</td>
<td>N/A</td>
<td><a href="mailto:office@bep.education">office@bep.education</a></td>
</tr>
</tbody>
</table>

**30.4 Change of Address**

Either Party may by notice to the other change its address for service to take effect no earlier than 7 days from the service of such notice.
30.5 **Date of Service**
Any Notice served in accordance with Condition 30 shall be presumed to have been received at the following time set out in the Service Table.

### SERVICE TABLE

<table>
<thead>
<tr>
<th>METHOD OF SERVICE</th>
<th>TIME OF RECEIPT</th>
<th>ADDITIONAL FORMALITIES REQUIRED</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Personal Service</td>
<td>Time of service</td>
<td>None</td>
</tr>
<tr>
<td>2. Facsimile Transmission</td>
<td>If transmission is completed during Office Hours - on that Working Day</td>
<td></td>
</tr>
<tr>
<td></td>
<td>If transmission is completed outside Office Hours – on the next Working Day</td>
<td>Notice to be sent by pre-paid post to the addressee</td>
</tr>
<tr>
<td>3. First Class or Recorded Delivery Post</td>
<td>on the second Working Day after the date of posting</td>
<td>None</td>
</tr>
<tr>
<td>4. E-mail (except for Key Notices)</td>
<td>On the next Working Day following the date of transmission</td>
<td>None</td>
</tr>
<tr>
<td>5. E-mail (for Key Notices)</td>
<td>On the next Working Day following the date of transmission that the additional formalities required are complied with</td>
<td>Document to be sent immediately by a first class pre-paid letter</td>
</tr>
</tbody>
</table>

31. **NEGOTIATION**

31.1 **Nature of Dispute**
If any dispute or difference of any kind whatsoever shall arise between the Council and/or the Council’s Representative on its behalf, and the Provider in connection with or arising out of this Agreement including any dispute as to any decision, instruction or certificate of the Council’s Representative (whether during the progress of this Agreement or after its termination, cancellation or completion)
the Parties will attempt to settle it within 21 days and such dispute or difference shall be referred in writing to the Parties' representatives under **Condition 31.2**.

31.2 **Meetings of Parties' Representatives**
Any dispute or difference referred under **Condition 30.1** shall be discussed by the Parties' Representatives who shall meet within 7 days of the written reference under **Condition 30.1** to attempt to resolve the dispute.

31.3 **Escalation of Dispute**
If the dispute is not resolved at the meeting convened under **Condition 31.2** or if the Parties fail to meet within the 7 days (or such later period as they shall agree prior to the expiry of the 7 day period) the escalation shall continue with the same maximum time interval up to the second and third management level. If the unresolved dispute is having a material effect on the performance of this Agreement, the Parties shall use their respective best endeavours to reduce the elapsed time in reaching a resolution of the dispute.

31.4 **Second Level and Third Level**
The Parties' representatives at the second and third levels are:-

<table>
<thead>
<tr>
<th>PARTIES' REPRESENTATIVES' TABLE</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>COUNCIL</strong></td>
</tr>
<tr>
<td>--------------------------------</td>
</tr>
<tr>
<td>Second Level</td>
</tr>
<tr>
<td>Assistant Director Safeguarding</td>
</tr>
<tr>
<td>Third Level</td>
</tr>
<tr>
<td>Corporate Director Children and Young People</td>
</tr>
</tbody>
</table>

If any of the Parties' representatives identified in the Parties' Representatives' Table is unable to attend a meeting, a substitute may attend, provided that such substitute has at least the same seniority and is authorised to settle the unresolved dispute.

31.5 **Solution**
Each Party will use all reasonable endeavours to reach a resolution through this dispute resolution procedure. The specific format for such resolution will be left to the reasonable discretion of the relevant management level, but may include the preparation of statements of fact or of position or mediation.

32. **MEDIATION**

32.1 **Initiation**
If any dispute arises out of this Agreement which cannot be resolved under **Condition 31**, the Parties will attempt to settle it in accordance with the Model Procedure. Either of the Parties may initiate mediation by giving an Alternative Dispute Resolution ("ADR Notice") to the other in writing requesting mediation in accordance with **Condition 32.1**. A copy of the ADR Notice shall also be sent to CEDR.

32.2 **Amendments to Model Procedure**
The Procedure in the Model Procedure shall be amended to take account of:-
32.2.1 any relevant provision in this Agreement; and

32.2.2 any other additional agreement which the Parties may enter into in relation to the conduct of the mediation.

32.3 **Conduct of Mediation**
If there is any point on the conduct of the mediation (including as to the nomination of the mediator) upon which the Parties cannot agree within 14 days from the date of the ADR Notice, CEDR will at the request of either Party, decide that point for the Parties having consulted them.

32.4 **Timing**
The mediation will start not later than 4 weeks after the date of the ADR Notice.

32.5 **Termination**
Neither of the Parties may terminate the mediation until each of the Parties has made its opening presentation and the mediator has met each of the parties separately for 1 hour. Thereafter Paragraph 14 of the Model Procedure will apply.

33. **ARBITRATION**

33.1 **Reference of Disputes**
If a dispute shall arise under this Agreement between the Council and/or the Council’s Representative, and the Provider then such dispute shall be referred to an Arbitrator to be agreed between the Parties, or if the Parties shall fail to agree upon an Arbitrator within 28 days of one Party serving upon the other a written notice to concur in the appointment of an Arbitrator, then the Arbitrator shall be appointed by the President or the Vice President of the Chartered Institute of Arbitrators.

33.2 **Arbitration Act 1996**
The Arbitration Act 1996 shall apply to such arbitration.

33.3 **Powers of Arbitrator**
The Arbitrator shall without prejudice to the generality of his powers have power to open up, review and revise any certificate, opinion or decision of the Council’s Representative and to determine all matters in dispute which shall be submitted to him in the same manner as if no such opinion, decision, requirement or notice had been given.

33.4 **Appeal**
The parties agree and consent pursuant to Sections 45(2) (a) and 69(2) (a) of the Arbitration Act 1996 that either Party:-

33.4.1 may appeal to the High Court on any question of law arising out of an award made in arbitration under this Arbitration Agreement.

33.4.2 may apply to the High Court to determine any question of law arising in the course of the reference:

and the Parties agree that the High Court should have jurisdiction to determine any such question of law.

33.5 **Finality**
Subject to Condition 33.4 the award of the arbitrator shall be final and binding on the Parties.
33.6 **Limitation of Costs**

The Parties agree that the maximum recoverable costs which may be awarded to the successful Party in the arbitration shall not exceed one half of the sum claimed by the claimant in the arbitration ("the Claim Sum"). The Claim Sum is the aggregate of the total damages specified in the Claimant's Points of Claim or Statement of Case, and the total interest so specified (excluding in both cases any sums which are not quantified) notwithstanding any subsequent amendment of the same.

33.7 **Allocation of Costs**

The Parties agree pursuant to Section 61 and 62 of the Arbitration Act 1996 that, if the total sum (including interest) awarded to the Claimant in the arbitration (less any sum (including interest) awarded to the Respondent in a counterclaim in the arbitration) does not exceed 20% of the Claim Sum as defined by Condition 33.6 then the arbitrator in determining how costs are to be allocated shall not (if he is minded to make an award in the Claimant's favour) award the claimant more than the lesser of:

33.7.1 50% of the maximum recoverable costs as defined and limited by reference to Condition 33.6.

33.7.2 50% of the Claimant's recoverable costs.
FIRST SCHEDULE

(“Services”)

PART 1

(“Key Details”)

<table>
<thead>
<tr>
<th></th>
<th>Type of Service</th>
<th>School Improvement Services</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Council’s Representative</td>
<td>[redacted]</td>
</tr>
<tr>
<td>3</td>
<td>Provider’s Representative</td>
<td>[redacted]</td>
</tr>
<tr>
<td>4</td>
<td>Minimum Professional Indemnity figure</td>
<td>£250,000.00</td>
</tr>
<tr>
<td>5</td>
<td>Minimum Public Liability Insurance figure</td>
<td>£5 million</td>
</tr>
</tbody>
</table>
PART 2

(“Specification”)

1. Background

The Council made a decision in 2014 to commission the school improvement arrangements, to raise standards in schools and to improve outcomes for all children and young people in the city. This has been achieved through the current school improvement arrangements, currently being delivered by BEP, through a 3 year Contract.

This contract will cease in August 2018. The contract has been funded from the Dedicated School Grant at a value of £1.080 million per financial year. Schools Forum has agreed the continuation of this funding on annual basis.

Moving forward, school improvement is still a focus of the Government’s agenda. The current Strategic School Improvement Fund, is a grant to further build a school-led system, and aims to target resources at the schools most in need to improve school performance and pupil attainment. This fund is not intended to hold schools causing concern to account as outlined in the DfE guidance (Ref: Schools causing concern-intervening in failing, underperforming and coasting schools – Sept 2017)

Therefore there is still a requirement for the Council to continue to commission school arrangements from September 2018. An external tendering process has taken place to identify a new provider, who will support and challenge schools to improve outcomes by;

- Building strong working relationships with Head Teachers, encouraging challenge and support
- Intervening early where performance of a school is declining
- Identify schools that may require support and challenge
- Deliver a programme that ensures schools remain ‘good’ and that improvement is maintained
- Timely and effective intervention where underperformance is identified
- Signposting schools to access appropriate support
- Exploring regional links for sharing good practice and driving up collective performance across the region
- Produce an annual risk assessment of the school estate

The provider must meet the requirements of ‘The framework for inspecting local authority arrangements for supporting school improvement in England’ (LASI) and will be required to work within the relevant government frameworks and take account of changes in policy or legislation as it impacts on the services being delivered.

The new provider will be expected to deliver local partnerships that ensure every school is supported, provide a local face for education, allow schools to shape local service offers and supports and challenges schools singly or in groups to commission services that extend or augment the local offer.

The annual value of the Contract is £1.08m. The contract will have annual break clause, to enable School Forum to agree the continuation of the school improvement funding. The maximum length of the new arrangement will be no longer than 2 academic years, starting from September 2018.
2 Current Position

The performance of schools in Birmingham compares favourably with other core cities*, with 81% at least Ofsted ‘good’ (*Birmingham, Bristol, Leeds, Liverpool, Manchester, Nottingham, Newcastle, Sheffield). However there are disparities in performance across the city and some vulnerable populations perform below the national average for those populations.

Summary of Ofsted Inspection Outcomes for Birmingham
(Provisional, latest inspection: 06 June 2018)

<table>
<thead>
<tr>
<th>Phase</th>
<th>Total</th>
<th>Outstanding</th>
<th>Count</th>
<th>%</th>
<th>Good</th>
<th>Requires Improvement</th>
<th>%</th>
<th>Inadequate</th>
<th>Count</th>
<th>%</th>
<th>Good / Outstanding</th>
<th>Count</th>
<th>%</th>
<th>Special Measures</th>
<th>Count</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Nursery</td>
<td>27</td>
<td>27</td>
<td>14</td>
<td>51.9%</td>
<td>15</td>
<td>48.1%</td>
<td>0</td>
<td>0.0%</td>
<td>0</td>
<td>0.0%</td>
<td>27</td>
<td>100.0%</td>
<td>0</td>
<td>0.0%</td>
<td>0</td>
<td>0.0%</td>
</tr>
<tr>
<td>Primary</td>
<td>297</td>
<td>297</td>
<td>14</td>
<td>50.56%</td>
<td>178</td>
<td>59.9%</td>
<td>49</td>
<td>16.5%</td>
<td>15</td>
<td>5.1%</td>
<td>233</td>
<td>75.5%</td>
<td>12</td>
<td>4.0%</td>
<td>0</td>
<td>0.0%</td>
</tr>
<tr>
<td>Secondary</td>
<td>79</td>
<td>77</td>
<td>2</td>
<td>26.48%</td>
<td>37</td>
<td>46.1%</td>
<td>7</td>
<td>9.1%</td>
<td>5</td>
<td>6.5%</td>
<td>85</td>
<td>84.4%</td>
<td>3</td>
<td>3.9%</td>
<td>0</td>
<td>0.0%</td>
</tr>
<tr>
<td>All Through</td>
<td>8</td>
<td>1</td>
<td>1</td>
<td>100.0%</td>
<td>1</td>
<td>10.0%</td>
<td>2</td>
<td>40.0%</td>
<td>1</td>
<td>10.0%</td>
<td>2</td>
<td>40.0%</td>
<td>1</td>
<td>20.0%</td>
<td>1</td>
<td>20.0%</td>
</tr>
<tr>
<td>Special</td>
<td>27</td>
<td>27</td>
<td>0</td>
<td>0.0%</td>
<td>9</td>
<td>33.3%</td>
<td>1</td>
<td>3.7%</td>
<td>4</td>
<td>14.8%</td>
<td>22</td>
<td>81.5%</td>
<td>2</td>
<td>7.4%</td>
<td>0</td>
<td>0.0%</td>
</tr>
<tr>
<td>PMU/Alternate</td>
<td>7</td>
<td>5</td>
<td>2</td>
<td>28.57%</td>
<td>3</td>
<td>42.86%</td>
<td>1</td>
<td>14.28%</td>
<td>1</td>
<td>14.28%</td>
<td>3</td>
<td>42.86%</td>
<td>1</td>
<td>14.28%</td>
<td>1</td>
<td>14.28%</td>
</tr>
<tr>
<td>Total</td>
<td>445</td>
<td>438</td>
<td>7</td>
<td>5.63%</td>
<td>241</td>
<td>54.15%</td>
<td>60</td>
<td>13.48%</td>
<td>26</td>
<td>5.82%</td>
<td>352</td>
<td>80.44%</td>
<td>19</td>
<td>4.3%</td>
<td>1</td>
<td>20.0%</td>
</tr>
</tbody>
</table>

NB 7 Schools which have opened and not yet had an inspection

Overall performance is below the national average for KS1 and KS2 although Birmingham performs better at KS4.

More detailed analysis of Education Performance can be found through https://www.birmingham.gov.uk/info/20113/policies_and_strategies/1076/education_performance_and_statistics

Birmingham has a significant number of outstanding schools, some of which are National Support Schools led by National Leaders of Education (NLEs). It also benefits from having 17 teaching schools and alliances, which includes many good schools whose head teachers are Local Leaders of Education (LLEs). Experience and research show that under performing schools can achieve rapid and sustained improvement when high quality support and challenge is provided by outstanding schools.

3 Scope

The Council is commissioning school improvement to raise standards in schools and to improve outcomes for all children and young people in the city. The service will extend across statutory school age provision, and include a focus on improving outcomes for vulnerable populations.

The Council’s role following the awarding of a new contract will include involvement in the decision making surrounding the use of the statutory powers of intervention (including IEBs and warning notices), managing the ‘cross-cutting’ process, and maintaining an overview of school improvement and those activities involved in contract management.
3.1 Aims

The partnership between the Contractor and the Council will support and challenge schools to improve outcomes for all children and young people across the city by:

- Intervening early where the performance of a school is declining – ensuring that schools are challenged and secure the support needed to improve to at least ‘good’.
- Identify schools that may require support, may need to be challenged as well as those that are known to require support and challenge.
- Delivering a programme that ensures schools remain ‘good’ and that improvement is sustained.
- Taking timely and effective action where underperformance is identified.
- Encouraging good and outstanding schools to take responsibility for their own improvement.
- Encouraging good and outstanding schools to support and challenge others through a mentoring role or similar.
- Building strong working relationships with Head Teachers – encouraging challenge and support.
- Signposting where schools can access appropriate support.
- Work with partners to develop support mechanisms where it is deemed there are gaps in support required.
- Exploring regional links for sharing good practice and driving up collective performance across the Midlands.
- Knowing our schools better and influencing schools to become engaged in service design, commissioning and delivery at the local level.
- Using Peer Review as a means to build trust and change and so bring about school improvement.
- Develop appropriate partnerships to build capacity for school improvement in Birmingham. This might be evidenced by attracting funding but also by releasing capacity from school or other organisations.

The service must meet the requirements of ‘The framework for inspecting local authority arrangements for supporting school improvement in England’ (LASI). The Contractor is expected to work within the relevant government frameworks and to take account of changes in policy or legislation as it impacts on the services being delivered.

The responsibilities of the contractor with regard to the LASI are detailed in appendix A


3.2 Contractor Outcomes

BCC expects the Contractor to deliver improvement for all Birmingham pupils and across all Birmingham schools– delivering or brokering school improvement activity for maintained schools and taking a role in the co-ordination of system led improvement.

The Council recognise performance may be impacted by changes in assessment and school performance measures. It is evident that performance indicators will need to be revised in light of those changes and this will form part of the contract management process.

The outcomes are:

- Birmingham children are increasingly attending good or outstanding schools – achieving incremental improvement year on year relative to the core cities, statistical
neighbours and national averages."

- Improve performance at key stages 1 and 2 relative to the core cities, statistical neighbours and national average each year.

- Improve performance relative to the core cities, statistical neighbours and national average each year at key stage 4 for the duration of the contract.

- Improve performance of children with special educational needs and disabilities at KS1 KS2 and KS4 relative to the core cities, statistical neighbours and national average for the duration of the contract.

- Maintain or improve the performance of disadvantaged children relative to the core cities, statistical neighbours and national average.

- Improve the performance of looked after children relative to the core cities, statistical neighbours and national average each year.

- Improve attendance in the primary phase, secondary phase and vulnerable populations relative to the core cities, statistical neighbours and national average each year.

- Reduce permanent exclusions and the numbers of children in part time placements – quarter on quarter reporting.

- Reduce the number of young people not in education, employment or training - periodic review.

4. Service Description and Service Delivery

The Contractor will conduct an annual risk assessment of the school estate using the most robust available data and involve appropriate stakeholders. The annual school improvement work plan will be a product of this risk assessment.

The Council expects that the service:

- Will maintain administrative records and management information able to support the Council in assessing the contract performance and provide evidence that informs decision making within the regulatory process.
- Will be branded as a service delivered by the Contractor on behalf of the Council.
- Will have and share regularly with the Council an integrated set of procedures and associated systems for the purpose of providing effective management of incidents and problem resolution.
- Will provide a list of contacts to the Council to allow effective communication.
- Will operate and publicise a written procedure for compliments, comments and complaints.
- Will complete an annual user satisfaction survey due at the end of each academic year, the first being in July 2019.
5. Contract Period and Payment Terms

5.1 Length of Contract

The contract will be for 2 years duration and will run from 1 September 2018 to 31 August 2020, subject to a break clause.

5.2 Payment Terms and Payment Incentives

The contract payment will be quarterly and in advance. Payment will be aligned with the work plan / service provided by BEP. The Council will receive and monitor Reports from the BEP that link expenditure to activity under the contract.

6. Contract Monitoring

The aim of contract management is to optimise the efficiency, effectiveness and economy of the contract.

Key components of the management of this contract will be:

- The publication of a transition plan aligned with budget projection detailing activity to delivery commencement on the 1st of September 2018.
- Creation of a summary business plan showing how the service will be delivered in response to the specification.
- Delivery of the service consistent with the KPI’s – as included in the contract.
- Feedback from schools and other stakeholders.
- Achievement / progress towards the outcomes as described.
- BEP will provide BCC with Performance Reports for consideration as part of the contract monitoring process.

The approach will be characterised by flexibility within the contracting partners, a willingness to adapt the contract in response to wider change and unforeseen problems, an understanding of each party’s objectives and a willingness within the group to manage upwards within their organisations.

The Contract Management will include:

- Monitoring and assessing performance against KPI’s and milestones.
- Manage the conflict resolution process.
- Ensure the appropriate administration of the contract.
- Co-ordinate and review the output of quality assurance activity.
- Review the annual user satisfaction survey completed by the BEP.
- Co-ordinate benchmarking activity and review the output – with a view to ensuring that the contract continues to offer value to the Council.
- Report as required to the BEP Board.
- Review in light of any policy changes by the Department for Education (DfE)
The Strategic Performance Review will take place twice per year – arranged by the Corporate Director for Children and Young People and this will include the Chief Executive of the BEP and BCC Assistant Director.

BEP will provide BCC with bi-annual performance reports to align with the Strategic Performance Reviews, and any other performance requests at the request of BCC."

Reporting to include – Customer satisfaction, quality assurance and financial reporting

7. End of Contract

The contract has a term of 2 years – subject to an annual break clause. Prior to entering the final 6 months the Council will communicate its intention regarding the further procurement of the service. The decision will be informed by contract performance, cost and the legislative context at that point.

Early contract exit may be required or desired in the following circumstances –

- Major default by BCC for example as a consequence of regulatory action or change in legislation.
- Major default by BEP for example technical inability or lack of capacity.
- Frustration of the contract for example as a result of a lack of school confidence

The Council anticipates including within the contract terms and conditions which address these risks, the measures which damages or costs may be mitigated and methods by which the receipt of School Improvement Services continue - relocated to the Council or provided by another supplier.

All current legislation and National Policy relating to School Improvement and Ofsted, Governance and the role of the Local Authority
APPENDIX A- Ofsted

Inspection of the local authority arrangements for school improvement

Ofsted will assess the quality of local authority education functions in relation to promoting improvement, high standards and the fulfilment of educational potential of children and young people in schools. Ofsted recognises that the configuration of school improvement functions will be diverse and relevant to local circumstances. Ofsted has no fixed view on the configuration of such functions, but will focus on their impact, strengths and weaknesses. Ofsted recognises that local authorities are discharging their statutory duties within the context of increasing autonomy of schools. It is also the case that improvement should be led by schools themselves within a framework of accountability. In particular, Ofsted will evaluate:

- the effectiveness of corporate and strategic leadership of school improvement
- the clarity and transparency of policy and strategy for supporting school improvement and how clearly the local authority has defined its monitoring, challenge, support and intervention roles
- the extent to which the local authority knows schools and, where appropriate, other providers, their performance and the standards they achieve and how effectively support is focused on areas of greatest need
- the effectiveness of the local authority’s identification of, and intervention in, underperforming maintained schools, including, where applicable, the use of formal powers available to the local authority
- the impact of local authority support and challenge over time and the rate at which schools and other providers are improving, including impact of the local authority strategy to narrow attainments gaps
- the extent to which the local authority brokers and/or commissions high quality support for maintained schools
- the effectiveness of strategies to support highly effective leadership and management in maintained schools and other providers
- support and challenge for school governance
- the way the local authority uses any available funding to effect improvement, including how it is focused on areas of greatest need.

In relation to the Inspection of Local Authority arrangements for school improvement, BEP will be contractually responsible for the following areas: -

- The effectiveness of the local authority’s identification of, and intervention in, underperforming maintained schools, including, where applicable, the use of formal powers available to the local authority.

And for the following areas of judgement, in so far as they relate to maintained Schools Causing Concern: -

- the impact of local authority support and challenge over time and the rate at which maintained schools causing concern are improving, including impact of the local authority strategy to narrow attainment gaps between maintained schools causing concern and other schools.
• the extent to which the local authority brokers and/or commissions high quality support for maintained schools causing concern
• the effectiveness of strategies to support highly effective leadership and management in maintained schools causing concern.

BEP will not have any contractual responsibility to BCC for:
• any school that is not maintained.
• maintained schools that are not causing concern.
• nursery schools or sixth form provision (unless a maintained school causing concern has a sixth form provision within it)
APPENDIX B - Priority Support Delivery Model

priority Support Delivery Model

Current priority schools—In the last visit of the Summer Term, the priority partner will agree with the school if they meet the criteria to continue to be a priority into the following academic year.

School confirmed to be a priority in the coming year

School is not anticipated to be a priority in the coming year unless end of year data indicates so

BEP analyses performance data of all schools received from Birmingham City Council

Risk assessment of leadership, and other contextual information inc. safeguarding and other stakeholders

Any new potential priority schools identified through data analysis

BEP visits or contacts the school—Ofsted imminence takes priority

Headteacher/BEP further risk assessment—Agree if the school requires priority support

Non-agreement of Priority status—Further visits to gather more evidence, write to Chair of Governors re disagreement. If evidence suggests issues and no agreement, ask BCC to prepare warning notice

Agreed school is not a priority—consider if other support is requested

School is a priority—added to list

Letter to confirm school is not a priority

No further action

BEP continual monitoring and alerts can be triggered at any point in the year, including self-referral by the school

Priority schools sent templated letter with hyperlink attached

Priority partner visits, school and BEP create bespoke action plan of priorities and support

Provide a priority partner for new schools

Priority partner provides monitoring and support. All visits recorded in School Visit Reports. Action Plan monitored and ‘RAGGED’

Action Plan and all School Visit Reports sent to school and BEP

Sample of School Visit Reports quality assured by HMI half termly for effectiveness

Priority partners visits are quality assured by SIAB annually

Write to all maintained schools to confirm whether or not they are a priority (priority list agreed with BCC)

Ongoing
APPENDIX C - School Engagement.

“Strategic engagement.

BEP will engage with school consortia through its Headteacher Innovation Committee (SLIC) which includes representation from every consortium and network and has discrete representation from Special schools, Nurseries and the selective sector. The SLIC provides a very broad base for customer feedback and provision of professional advice.

Operational Engagement.

BEP will support existing Council mechanisms that allow it to maintain an overview of all Birmingham schools through:
Targeted senior level engagement with:
- Academies where there are serious concerns.
- Maintained schools in transition from vulnerable good to good.
- Maintained schools that are good or outstanding but may become vulnerable.
- Schools that are disconnected from other forms of engagement and where little is known about their circumstances.

Reporting of the outcomes of this engagement to both the Council and the Regional Schools Commissioner.

Discussion with the Council and the Regional Schools Commissioner to agree what actions need to be taken or support provided, and who is best placed to do so.”
APPENDIX D

Key Performance Indicators

The intention is to set out a broad range of indicators that when considered together give a view of the performance of the School Improvement contract. These include measures of compliance with the contract, of improvement of outcomes and output measures.

- Contractual Compliance - measures such as the recruitment of the required workforce, attendance at performance contract management meetings.
- Outcomes - measures that capture the impact on the quality of education and improvement in education outcomes.
- Outputs – these are the products of the activities undertaken by BEP in school improvement. These products are evidence of the activity of the BEP – so justify the expenditure and give assurance of the improvement in outcomes which will lag behind the activity.

Outcomes are the most important – the other measures provide context. The intention is that by considering these KPI’s the BEP and BCC partnership can understand and respond to changes in outcomes. These will form part of the contract and therefore define performance.

There are concerns about the impact of changes in national policy and the impact that this will have on performance – we will be able to take this into account by benchmarking against other authorities and will have the assurance from the output measures of continued school improvement work.

Compliance with Specification / Process

- 100% attendance at bi-annual Strategic Performance Reviews.
- Submission of reports for each Strategic Performance Review that summarises, performance against aims and KPI’s, customer satisfaction, quality assurance and financial reporting.
- Compliance with the LASI framework
- By September 2018 a summary business plan will be completed that shows how the service will be delivered in response to the service specification
- By September 2018 arrangements for school engagement that meet the requirements of appendix E to be in place.
- By September 2018 a joint MoU to be in place that will ensure that information regarding incidents and problems is shared, responsibilities agreed, and effective responses made.

Outcomes

1. Incremental increase year on year in the number of Birmingham children attending good or outstanding schools relative to the core cities, statistical neighbours and national average.
2. Improve performance at all age-related expectations in KS1 and 2 relative to core cities, statistical neighbours and national average each year.
3. Improve performance at key stages 1 and 2 relative to the core cities, statistical neighbours and national average each year.
4. Improve performance relative to the core cities, statistical neighbours and national average each year at key stage 4 and to maintain our good performance at key stage 5 for the duration of the contract.

5. Improve performance of children with special educational needs and disabilities at KS1, KS2 and KS4 relative to the core cities, statistical neighbours and national average for the duration of the contract.

6. Maintain or improve the performance of disadvantaged children relative to the core cities, statistical neighbours and national average.

7. At KS2 close the gap relative to core cities, statistical neighbours and national average each year at greater depth/higher standard improving the attainment of the most able children.

8. Requirement to provide a narrative report on work done to address these issues as an output.

9. Reduce the number of young people not in education, employment or training through periodic review.

10. 100% attendance at Ofsted inspections/conversations with lead inspectors, for Ofsted inspections of Priority Schools.

11. BEP to support all maintained schools that are judged Good or Outstanding by Ofsted but which are identified as vulnerable through the Priority School process.

Outputs

- Number of Ofsted inspection feedback sessions attended and conversations with Ofsted inspectors held.
- % of Ofsted inspection results for maintained schools accurately predicted prior to inspection.
- Number of Priority Schools supported by BEP.
- Number of days of support provided to Priority Schools.
- Summary of activity delivered to raise attainment (KS1, KS2, KS4 and Progress 8)
- Summary of activity delivered to increase collaboration and capacity.
- Summary of project delivered to meet the needs of the most vulnerable pupils.
The Council shall pay the Provider the sum of £1.08 million per annum over the duration of this Agreement in the following manner and in accordance with Condition 14:

**Payment Terms and Payment Incentives**

This is a developing contract with an emerging entity – therefore it is proposed that payment will be quarterly and in advance. Payment will be aligned with the transition plan and subsequently the work plan / service plan provided by BEP. The Council will receive and monitor Resource Reports from the BEP that link expenditure to activity against the contract. – the intention of both parties is that the investment in School Improvement by the Council will decline over the long term as more schools meet the required outcomes or the proportion of schools becoming academies increases.
PART 4

(“BIRMINGHAM BUSINESS CHARTER FOR SOCIAL RESPONSIBILITY”)

This Charter is a set of guiding principles to which Birmingham City Council (BCC) will adhere to and to which it will invite its contracted suppliers, the wider business community, other public sector bodies (including schools), and third sector organisations (including grant recipients), to adopt. Charter signatories will consider and describe how they can improve the economic, social and environmental well-being of Birmingham that result from their activities.

This includes indirect outcomes through commissioning and procurement. Charter signatories will commit to the principles below, either by fully adopting the Charter at the time of signature or alternatively making a commitment to full adoption within a clear timetable.

Future commissioning and contracting decisions will take account of the principles of this charter and it will form part of the terms of new BCC contracts, and Conditions of Grant Aid (COGA). All the principles and policies of the Charter will be mandatory for organisations with individual contracts or grants over £200,000 per annum and for those that have aggregate annual contracts or grants above £500,000. Contracts and grants below these thresholds have aspects of the Charter that are mandatory and aspects that are voluntary.

Charter Principles:
- Local Employment
- Buy Birmingham First
- Partners in Communities
- Good Employer
- Green and Sustainable
- Ethical Procurement

Local Employment
Charter signatories will create employment and training opportunities for local people especially in target areas:

Mandatory for all
- Commit to create employment and training opportunities for local residents, including people with disabilities and support people into work and work experience placements.
- Adopt an approved Jobs and Skills policy and apply this policy at every stage of the procurement process. BCC’s Policy Toolkit for Jobs and Skills provides an example of an approved policy approach.

Mandatory above Threshold, and Voluntary below Threshold
- Seek opportunities to work with schools to help to ensure that the young people of Birmingham are equipped with the right skills to match the requirements of the labour market.
- Support the local economy and create much needed jobs and apprenticeships by adopting procurement strategies that remove barriers to local businesses.
**Buy Birmingham First**  
Charter Signatories will take account of the social and economic impacts of buying locally when commissioning and contracting, thereby reducing unemployment and raising the skill level of the local workforce.

Mandatory for all
- Support the local economy by choosing suppliers close to the point of service delivery where possible.
- Use Find it in Birmingham as the primary method of sourcing suppliers for contracts in Birmingham, increasing the accessibility of opportunities to local businesses throughout the Supply Chain.
- Encourage their suppliers to endorse the principle of ‘Buy Birmingham First’ throughout their supply chains.

Mandatory above Threshold, and Voluntary below Threshold
- Commit to purchasing from pre-qualified businesses on the Find it in Birmingham website where possible.

**Partners in Communities**  
Charter signatories will play an active role in the local community and community support organisations, especially in those areas and communities with the greatest need.

Mandatory above Threshold, and Voluntary below Threshold
- Build capacity by supporting community organisations with resources and expertise in areas with the greatest need, for example mentoring and working with youth organisations and services.
- Make a local impact by improving local facilities and areas, for example staff volunteering schemes.
- Provide support to third sector organisations and work with third sector organisations to deliver services and contracts.
- Work with schools and colleges, offering work experience and business awareness to students, especially those from disadvantaged areas or communities.
- Support the Birmingham Baccalaureate as it is developed.
- Make accessible all sub-contracting opportunities to a diverse supply base including the third sector and local suppliers and provide mentoring and support to assist these organisations to tender for and deliver these supply opportunities where necessary.

**Good Employer**  
Charter signatories will support staff development and welfare and adopt the Birmingham Living Wage within their own organisation and within their supply chain.

Mandatory for all
- Ensure that employees are given a fair reward for their labours and help foster a loyal and motivated workforce by paying the Birmingham Living Wage.
- Recognise employees’ rights of freedom of association and collective bargaining, including not using blacklists in recruitment processes.
- Provide a safe and hygienic working environment.
- Comply with working hour’s legislation and industry standards.
• Not discriminate in respect of recruitment, compensation, access to training, promotion, termination of employment or retirement based upon race, caste, national origin, religion, age, disability (including learning disability), mental health issues, gender, marital status, sexual orientation, union membership or political affiliation.
• Comply with employment and social security legislation;
• Not employ harassment or intimidation.
• Have and comply with a whistle blowing policy.

**Green and Sustainable**
Charter signatories will commit to protecting the environment, minimising waste and energy consumption and using other resources efficiently. These commitments will also apply to their supply chain.

Mandatory for all
• Eliminate unnecessary waste by adopting the “reduce, reuse, recycle” philosophy.
• Be a good neighbour, minimise negative local impacts (noise, air quality), improve green areas (e.g. biodiversity, visual attractiveness).
• Reduce Carbon footprint – be aware of main impacts on carbon emissions including the indirect carbon used in manufacturing processes and the direct impact of operations and logistics.
• Mandatory for above Threshold, and Voluntary Below Threshold
• Measure carbon emissions and ensure a plan is being implemented using carbon measurement tools. Specific targets to be included in major contracts.
• Protect the environment and minimise adverse impacts and instil this approach throughout suppliers’ supply chains.

**Ethical Procurement**
Charter signatories will commit to employing the highest ethical standards in their own operations and those within their supply chain.

Mandatory for all
• Work to the highest standards of business integrity and ethical conduct.
• Pay their fair share of taxes
• Ensure the well-being and protection of work forces which must be supported by robust systems and procedures.
• Support the principles of the Universal Declaration of Human Rights;
• Support the Fundamental International Labour Organisation Conventions;
• Not engage in or support the use of child labour.
• Adopt best practice when procuring goods and services e.g. procure low energy products and avoid the use of rainforest timber from unmanaged sources.
• Pay suppliers no later than the terms stated in the primary contract.
PART 5

DATA SHARING AGREEMENT

Between

Birmingham City Council

And

Birmingham Education Partnership
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Dated this day 01 (First) of September of 2015

This Agreement sets out the terms and conditions under which information including Personal Data held by Birmingham City Council’s (Information Management Team and/or the Commissioning Centre of Excellence) will be shared with Birmingham Education Partnership Limited. This Data Shared Agreement is entered into with the purpose of ensuring compliance with the Data Protection Act 1998.

The Parties

1. Birmingham City Council of the Council House, 1 Victoria Square, Birmingham (hereafter referred to as “the Council”);

   And

2. Birmingham Education Partnership Limited, (Company No. 08945454) of Unit G4 – G5, The Arch, 48-52 Floodgate Street, Birmingham B5 5SL (hereafter referred to as “the Provider”);

Recitals

As set out in the Agreement for the provision of Education Improvement Services (“the Main Agreement”), the Council, (a local authority, who holds and processes information, including personal data relating to individuals receiving services from the Council) and the Provider have agreed to work together to provide improved outcomes for children and young people. In order to do so the Provider is working with and contracted by the Council to assist the Council in its duty to promote high standards in education services as stated in Section 13A of the Education Act 1996.

The Main Agreement has been formed according with the Leaders Policy Statement 2014 where a commitment is made to ‘rapidly develop the Birmingham Education Partnership so that it can commission a comprehensive range of support services and support strong improvement partnerships between schools’, and is subject to/of the ‘Birmingham Education and Schools Strategy and Improvement Plan’ approved by the Council on December 2014.

The Council has agreed to provide details of individuals accessing their services falling within the defined criteria (“the Data Subjects”) set out in Schedule 1.

The Parties (as set out above) have agreed to enter into this Data Sharing Agreement to facilitate the sharing of information, (including Personal Data) between the parties for the purposes of promoting high standards in education services in order to provide improved outcomes for children and young people.

The Parties acknowledge and accept that the Provider is delivering the contracted Services on behalf of the Council, or otherwise processed by it during the course of the provision of the Services, due to its expertise on Education
Services. The Provider therefore accepts and agrees that it will be a Data Controller in respect of the data shared by the Council, even though it is providing the Service on behalf of the Council.

IN CONSIDERATION of the respective undertakings, warranties and representations given each of the parties as set out in this Agreement; it is hereby agreed as follows:

1 DEFINITIONS AND INTERPRETATION

1.1 The following words and phrases shall have the following meanings unless the contrary intention is expressly stated and all other words have the meanings ascribed in this Agreement:

“Agreement” means this Agreement, its schedules and any other documents attached to, or referred to as forming part of this Agreement;

“Agreed Purpose” means the purpose(s) which the Provider wishes to use the Data for, as set out in this Agreement;

“Data” means personal data (having the meaning ascribed under the Data Protection Act 1998, which is defined as being “data which relate to a living individual who can be identified-

(a) from those data, or

(b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller”

and in respect of which it proposes to provide to the Provider, the details of which are set out in Schedules 1 and 2 as amended and agreed from time to time by both parties;

“Data Controller” has the meaning ascribed under s.1 of the Data Protection Act 1998.

“Data Processor” has the meaning ascribed under s.1 of the Data Protection Act 1998.

“Data Protection Principles” means the eight principles stated under the Data Protection Act 1998;

“Data Sharing Agreement” means this agreement, its schedules and any other documents attached to, or referred to as forming part of this agreement.

“Data Security Obligations / Security Policy” means technical and organisational processes and procedures that will protect the Data against unauthorised or unlawful processing and accidental loss, theft, use, disclosure, destruction and/or damage and which include:
(a) technical security measures;

(b) treating and safeguarding the Data as strictly private and confidential;

(c) minimising disclosure of the Data to third parties to the fullest extent possible;

(d) allowing access to the Data strictly on a “need to know” basis employing appropriate access, controls and times;

(e) copying, reproducing and/or distributing the Data only to the extent necessary for performance of the Services; and

(f) maintaining adequate back-ups for the data to enable the Data to be recovered in the event of damage or loss;

The minimum standards that the Council requires the Provider to meet in order to comply with the Data Security Obligations are detailed in Schedule 3 of this Agreement;

“Data Subjects” means individuals who is the subject of Personal Data, the details of which, for the purposes of this Agreement, are set out in Schedule 1;

“DPA 1998” means the Data Protection Act 1998;

“FOIA 2000” means the Freedom of Information Act 2000;

“Non-Personal Data” means information that does not relate to people including information about organisations, resources, projects or information about people that has been aggregated to a level that is not about individuals;

“Parties” means the Council and the Provider; The above organisations are hereinafter referred to individually as a “Party” and collectively as the “Parties”.

“Personal Data” means personal data (having the meaning ascribed under the DPA 1998) as being “data which relate to a living individual who can be identified-

a) from those data, or

b) from those data and other information which is in the possession of, or is likely to come into the possession of, the Data Controller,

that are under the control of the Council and in respect of which it proposes to share with the Provider, the details of which are set out in Schedule 2 of this Agreement as amended from time to time by the agreement or the Parties and personal data is processed by the Provide during the course of the provision of the Services;
“Privacy Laws” means all applicable privacy laws in England and Wales for the time being, including the DPA 1998 together with all subordinate legislations, directions of any competent privacy regulator, common law decisions, relevant regulatory guidance and codes of practice and any amendments to the same;

“Processing” has the meaning ascribed by the DPA 1998 including any amendments to that Act;

“Sensitive Personal Data” has the meaning ascribed under section 2 of the Data Protection Act 1998 including any amendments to that Act.

“Third Party” means any other than a Party to this Agreement;

“The Main Agreement” means the Agreement for the provision of Education Improvement Services;

and

“Working Day” means any day (other than a Saturday or Sunday) on which banks are open for domestic business.

1.2 In this Data Sharing Agreement:

1.2.1. general references to clauses and schedules are references to the clauses and schedules of this Data Sharing Agreement;

1.2.2. headings shall not affect its interpretation;

1.2.3. words importing a gender shall include all genders and references to a ‘person’ shall include a reference to a body corporate, association or partnership;

1.2.4. the word ‘including’ shall mean including without limitation or prejudice to the generality of any description, definition, term or phrase preceding that word, and the word ‘include’ and its derivatives shall be construed accordingly.

2. COMMENCEMENT

2.1 This Agreement shall commence on the 1st of September of 2018 (‘Commencement Date’).

3. THE BASIS FOR SHARING

3.1 The Parties recognise and accept the processing of personal data by the Provider, and the Provider is entitled to process the Personal Data by virtue of the explicit consent of the Data Subject and/or by virtue of the sections of the Data Protection Act 1998 mentioned below, where the processing is necessary in order to comply with the terms of this agreement in furtherance of the legal obligations imposed on the Council under section 13A of the Education Act 1996.
3.2 Schedule 2 condition 5 (b) and Schedule 3 condition 7 (1) (b) of the Data Protection Act 1998 permit the processing of personal data where necessary for the exercise of any functions conferred on any person by or under an enactment.

3.3 Schedule 2 condition 3 of the Data Protection Act permits the processing when it is necessary for compliance with any legal obligation to which the data controller is subject.

4. DATA OWNERSHIP

4.1. The parties declare, acknowledge and accept that upon receipt of the Data from the Council, the Provider is deemed to be a Data Controller (having the meaning ascribed under the DPA 1998) in its own right in respect of the Personal Data. As the Provider is providing the Service on behalf of the Council, the Council is a joint Data Controller in respect of the Personal Data which is processed by the Provider in the course of the provision of the Service.

4.2. Both the Provider and the Council are registered within the Information Commissioner’s Office (The Provider’s Registration Number is ZA131398; The Council’s Registration Number is Z4594350).

5. COUNCIL’S OBLIGATIONS

5.1 The Council warrants that it is lawfully permitted to hold and process the Personal Data and that is has a lawful basis upon which to share the Personal Data with the Provider as set out at clause 3 above.

5.2 The Council warrants that it complies with the Eight Principles stated in the DPA 1998. Regarding the Fourth Principle, which requires that personal data shall be accurate and, where necessary, kept up-to-date, the Council shall disclose to the Provider an up-dated version of the database on a monthly basis.

5.3 The Council shall provide the Personal Data to the Provider in respect of the relevant Data Subjects as required in order to allow the Provider to effectively provide the Service as per the terms set out in the Framework Agreement.

6. THE PROVIDER’S OBLIGATIONS

6.1 The Provider recognise that, as a Data Controller, it is legally liable for any unauthorised loss or disclosure of personal data that occurs once the information has been transferred by the Council to it under the terms of this Agreement and in respect of the Personal Data which is processed by it in the course of the provision of the Services.

6.2 The Provider accepts that it is bound to comply with the Data Security Obligations and that it will co-operate with the Council in providing information to evidence its continue compliance with the Data Security Obligations. The Provider further accepts that in the event that it fails to comply with the Data Security Obligations, the Council or
the Data Subject may report the failure to the Information Commissioner’s Office or instigate legal action in respect of the breach.

6.3 To the extent permitted to do so by applicable law, the Provider shall notify the Council of any communications (including Data Subject Access requests and Freedom of Information requests as agreed in clause 21.10 of the Main Agreement) it receives from third parties or the Data Subject relating to the Personal Data or alternatively to any other information in accordance with the Freedom of Information Act 2000, which may suggest non-compliance by the Council, or the Provider or any other person with the Privacy Laws, including communications from Data Subjects and regulatory bodies in relation to the Personal Data provided to the Provider by the Council;

as soon as possible and no later than 2 working days of the receipt of the communication.

6.4 All or part of the information shared under this agreement will be disclosed by the Provider to Services For Education (hereafter referred to as ‘S4E’) or to any other proper subcontractor who will act as a Data Processor on behalf of the Provider in order to provide the following services:

- ICT services (including IT architectural design, connectivity and ‘hosted’ solutions, licenses, filtering, anti-virus, hardware and appropriate software and IT support). A full and complete inventory of all

- To maintain a full and complete inventory of all hardware/software and peripherals.

- To provide back office solutions, including but not limiting to – accountancy services, payroll services (including payslip production), Aegon pension contract, event management, access to general HR advice and high level ER/HR.

- To provide a CRM system as part of the Suite CRM license in order to create a wholly owned CRM. To create a redesigned website to be developed alongside the CRM to create an interactive web capability.

In order to do so, according to clause 9 the Provider shall sign off a Data Processing Agreement with the subcontractor. This means that according to the DPA 1998, the Provider will take all reasonable steps in order to confirm that the subcontractor has obtained the ISO 27001 Certification (or a similar/comparable one) and it complies with the DPA 1998.

6.5 The Provider further agrees that it shall ensure that any employees, agents and/or subcontractors/data processors that may process the data on behalf of the Provider shall process the data provided under the terms of this Agreement solely for the purposes specified in this Agreement, save where permitted by law including the DPA 1998; and shall ensure it and any data processor it appoints shall:-
6.5.1. comply with all applicable laws including the Privacy Laws;

6.5.2. comply with the following data requirements in respect of the Data:

a) process the Data strictly in accordance with this Agreement;

b) take reasonable steps to ensure the reliability of those of its employees, agents and subcontractors/data processors who may have access to the Data and use all reasonable endeavours to ensure that such persons have sufficient skills and training in the handling of personal data and comply with the Privacy Laws;

c) take all reasonable steps to investigate any alleged breaches of its data security policy(s) in respect of the information shared in accordance with this Agreement.

d) have, maintain and comply with the Data Security Obligations;

e) not cause or permit the data to be transferred outside the European Economic Area without ensuring compliance with the model clauses.

f) The Data will not be used to support decisions or measures with respect to individual Data Subjects.

g) The Data will not be processed in such a way that substantial damage or substantial distress is, or is likely to be, caused to any Data Subject.

h) The results of such processing undertaken by the Provider will not be made available in any form that identifies any or all data subjects.

i) The Provider will provide the Council details of an appropriate valid entry in the Register of Data Controllers managed by the UK Information Commissioner’s Office (ICO) and of every amendment made regarding such notification.

7. ANNUAL REVIEW, VARIATION AND RETENTION OF PERSONAL DATA

7.1 Pursuant to clause 13.1 of the Main Agreement, the provisions of this Agreement shall be subject to a general review on the first of:

7.1.1. the annual anniversary of this agreement or the last review; and/or

7.1.2. changes to legislation or Court decisions which have a material impact on the provisions of this Agreement.

7.2 Along with the general review mentioned in clause 7.1, Schedules 1, 2, and 3 of this agreement shall be reviewed, redefined and amended where necessary on a monthly bases in order for both Parties to comply with the Eight Principles stated in the Data Protection Act 1998 and the upcoming European regulation governing Data Protection.

7.3 The parties can vary the terms of this Agreement by prior written agreement.
7.4 Subject to clause 21.7 of the Main Agreement, on the day or before this agreement expires, the Provider shall ensure that all documents or computer records in its possession, custody or control, which contain information relating to people are delivered up to the Council or, according with clause 3.1 of the Main Agreement, the Provider (if required to do so by the Council) shall securely destroy all documents which include or contain Personal Data, unless, and only to the extent that, the Provider is required by law to maintain the documentation containing Personal Data.

8. WARRANTIES

8.1 Each Party warrants that it has full and due authority to enter into this Agreement, including having the appropriate notifications registered with the Information Commissioner and that entering into this Agreement will not cause it to be in breach of any other contract or order of any competent court or regulatory authority.

8.2 Each Party warrants and undertakes that it and its employees have not done and shall not do or, where they have a duty to act, have not omitted to do and shall not omit to do anything that would cause itself or the other Party to this Agreement to be in breach of the Privacy Laws.

9. USE OF THIRD PARTIES

9.1 The Council accepts that the Provider is entitled, as a Data Controller, to use Data Processor(s) to process the Personal Data provided under this Agreement or Personal Data processed by it in the course of the provision of the Services. The Provider acknowledges and accepts that as a Data Controller, it is legally required to comply with the seventh data protection principle of the DPA 1998. In allowing the processing of the Personal Data by a Data Processor, the Provider must therefore:

9.1.1. ensure that it chooses a Data Processor providing sufficient guarantees in respect of the technical and organisational security measures governing the processing to be carried out, that has obtained the ISO 27001 Certification (or a similar/comparable one) and that complies with the regulations governing Data Protection; and

9.1.2 take reasonable steps to ensure the Data Processor’s compliance with those measures, which includes monitoring the organisational and technical security measures of the Data Processor and maintaining documentary evidence of its compliance monitoring; and

9.1.3. ensure that the processing is carried out under a contract which:

9.1.3.1. is made or evidenced in writing; and

9.1.3.2. under which the Data Processor is to act only on instructions from the Provider; and

9.1.3.3. requires the Data Processor to comply with obligations equivalent to those imposed upon the Provider by the seventh Data Protection principle.
9.2 Upon a request from the Council, the Provider must provide written evidence to the Council of its compliance with clause 9.1 within 14 days of the request.

10. BREACH NOTIFICATION

10.1 In the event of either Party to this Agreement becoming aware of having a reasonable suspicion that a breach of the DPA 1998 has occurred in respect of the Data shared under this Agreement, it shall notify:-

10.1.1 the other Party of the breach or suspected breach; and

10.1.2. it shall report the breach to the Information Commissioner, unless an agreement is reached with the other Party that the nature and scope of the breach is insufficient to justify the Information Commissioner’s attention; such decision to be reached after considering the Information Commissioner’s guidance on breach reporting in force from time to time;

as soon as possible and no later than 2 working days after it becoming aware or having a reasonable suspicion that a breach has occurred.

11. INDEMNITIES

11.1 Each Party shall indemnify the other against any costs, claims, expenses (including reasonable legal costs), damages, liabilities, actions and proceedings brought against such other by any third party, arising out of a breach of this Agreement by the indemnifying Party (or an employee, agent or subcontractor of such Party).

12. NOTICES

12.1 All notices to be given by a Party under this Agreement will be in writing, in English and will be addressed to the other Party at the address shown below (as may be changed by the relevant Party giving notice to the other in accordance with this clause 12):

For the Council

BIRMINGHAM CITY COUNCIL
of the Council House Victoria Square Birmingham B1 1BB (“the Council”);

Email: contact@birmingham.gov.uk

Attention: Corporate Director Children and Young People

For BEP

BIRMINGHAM EDUCATION PARTNERSHIP
of Unit G4 – G5, The Arch, 48-52 Floodgate Street, Birmingham B5 5SL

Email: office@bep.education
12.2 Notices may be served by hand, registered post or fax and will be deemed to have been served as follows:

12.2.1. if delivered by hand or registered post: at a time of delivery provided it is delivered before 5.00pm on a business day (being a week day other than a bank holiday) and, if not, on the next business day; and

12.2.2. if sent by fax: upon receipt by the sender of a successful transmission receipt to confirm that the fax has been transmitted to the correct address.

13. MISCELLANEOUS

13.1 Confidentiality. Both Parties agree that the term ‘Confidential Information’ defined in clause 21 of the Main Agreement includes all material, information, written or oral, disclosed or made available to the Provider (directly or indirectly) through any means of communication (or observation) by the Council to the Provider in accordance with the terms of this Agreement. In other words, any kind of information disclosed by the Council to the Provider under the terms of this Agreement shall in any case be considered (and thus treated) as Confidential Information.

13.1 Assignment. Neither the Provider nor the Council shall be entitled to assign its rights or benefits and/or transfer its obligations or burdens under this Agreement or any other agreement under which the Data are or are to be processed in each case, whether in whole or in part.

13.2. Entire Agreement. This Agreement constitute the entire understanding and agreement of the parties in relation to the processing/sharing of the Data and supersede all prior agreements, discussions, negotiations, arrangements and understandings of the parties and/or their representatives in relation to such processing. However, nothing in this Agreement shall exclude or limit either party’s liability for fraudulent misrepresentation in relation to this Agreement whether occurring before or after the Commencement Date.

13.3 Further Assurance. Each Party will do and execute and/or arrange for the doing an executing of, any act and/or document reasonably requested of it by any other Party to implement and give full effect to the terms of this Agreement.

13.4 Survival. Termination or expiry of this Agreement for any reason will not affect any rights or liabilities that have accrued prior to such termination or expiry, or the coming into force, or continuance in force, of any term that is expressly or by implication intended to come into, or continue in force, on or after termination or expiry.

13.5 Waiver. Delay in exercising, or failure to exercise, any right or remedy in connection with this Agreement will not operate as a waiver of that right or remedy.

13.6. Severance. The Parties intend each provision of this Agreement to be severable and distinct from the others. If a provision of this Agreement is held to be illegal, invalid
or unenforceable, in whole or in part, the Parties will know together in good faith to agree a provision that reflects the original intention of the Parties as a substitute for the affected term.

13.7 **Third party rights.** The Council is entering into this Agreement for the benefit of itself and for the Data Subjects whose personal data are to be shared with and processed by the Provider each of which shall be entitled to enforce this Agreement. In all other cases, a person who is not a party of this Agreement shall not be entitled to benefit or have any rights to enforce any of its provisions and the Contracts (Rights of Third Parties) Act 1999 shall not apply.

13.8 **Termination.** This Agreement shall be binding on the Parties until the Main Agreement is terminated.

13.9 **Law and jurisdiction.** This Agreement is governed by and shall be constructed in accordance with the laws of England and Wales. Each Party hereby submits to the exclusive jurisdiction of the Courts of England and Wales.
SCHEDULE 1

DATA SUBJECTS

Individuals to whom the schools in Birmingham are delivering services.

Senior staff who are/were working for the schools in Birmingham.
SCHEDULE 2
THE PERSONAL DATA

Based on the discussion between the Council and The Provider the following types of personal data have been identified as being within the scope of this Agreement.

- **Type 1 General information about senior staff of the school.**
  - Name
  - Email
  - Telephone number
  - Address

- **Type 2**
  Anonymised information where the data subject will not be identified. In such cases identification is unlikely to take place although not impossible. Therefore the following data will be considered as personal data:
  - Gender;
  - exam results;
  - health conditions;
  - racial/ethnic origin;
  - religious beliefs;
  - physical/mental health;
  - disability;
  - commission of offence.

- **Type 3**
  Employment information regarding head teachers and other senior school staff employed by the Council where this information is necessary and relevant for School Improvement purposes.
SCHEDULE 3
MINIMUM REQUIREMENTS FOR COMPLIANCE WITH THE DATA SECURITY OBLIGATIONS

a) Encryption of all mobile devices to at least 128-bit encryption;

b) All electronic devices, including mobile devices, to be recorded on an Asset Inventory which is to be kept up to date at all times;

c) Use of unique username and passwords for all staff/contractors with access to Personal Data;

d) Passwords with comply with the Council’s Password Standard where the Provider’s systems support this;

e) Secure destruction of devices containing Personal Data when disposed or reassigned;

f) Staff/contractors to be bound by legally enforceable duty of confidentiality in respect of Personal Data;

g) Implementation of a Security Breach Policy that complies with the Privacy Laws and/or the Council’s Information Loss Standard;

h) All staff/contractors to be provided with training on the Provider’s information security and data protection policies and procedures, including but not limited to being made aware of the requirements of this Agreement, and records of the training to be maintained;

i) To have in place a Business Continuity Plan which is tested on at least an annual basis, records of which are to be retained for a period of at least 24 months;

j) Secure back-up of all electronic data which is regularly tested to ensure accuracy and availability;

k) To have and maintain an audit log of individuals with access to Personal Data stored electronically;

l) To install and maintain adequate anti-virus software on devices which are processing Personal Data;
m) To install and maintain adequate physical security measures to the premises where Personal Data are processed including locks on all doors and windows;

n) To implement and carry out a controlled access policy in respect of physical access to the premises where Personal Data are held or processed;

o) To have in place a policy in respect of the secure use of email and facsimile for the transmission of Personal Data;

p) Papers records including Personal Data to be stored in locked cabinets when not attended to by staff/contractors;

q) Secure shredding of paper records including Personal Data;

r) To have in place and implement policies which provide standards equivalent to the following Council Standards which are:

1. Password Standard;

2. Information Security Labelling and Handling Standard;

3. Information Security Labelling and Handling Code of Practice;

4. Information Security General Standard;

5. Flexible and Remote Working Standard (if applicable);

6. Standard of Data Encryption;

7. Compromised ID Procedure;

8. Information Loss Standard;

PART 1

Contract Monitoring and Default Arrangements

The aim of contract management is to optimise the efficiency, effectiveness and economy of the contract.

Key components of the management of this contract will be –

- The publication of a transition plan aligned with budget projection detailing activity to deliver service commencement on the 1st of September 2020
- Creation of a business plan annually showing how the service will be delivered in line with KPI’s.
- Delivery of the service consistent with the KPI’s – as included in the contract.
- Feedback from schools and other stakeholders
- Achievement / progress towards the outcomes as described.
- BEP will provide the following reports for consideration as part of the contract monitoring process:
  - Performance Reports – that address the performance against the KPI’s
  - Resource Reports – that align expenditure to the resource and activity to deliver the contract.

Membership of the Contract Management Group will include a combination of BCC education Corporate Procurement Service and Finance.

The approach will be characterised by flexibility within the contracting partners, a willingness to adapt the terms of the contract in response to wider change and unforeseen problems, an understanding of each parties business objectives and a willingness within the group to manage upwards within their organisations.

The Contract Management Group will –

- Oversee the contract, the delivery of the mobilisation plan and the delivery of the annual plan and the validation and receipt of payments.
- Monitor and assess performance against KPI’s and milestones.
- Implement improvements as agreed by the Council and the BEP Board.
- Manage the conflict resolution process.
- Ensure the appropriate administration of the contract.
- Co-ordinate and review the output of quality assurance activity.
• Review the annual user satisfaction survey completed by the BEP.
• Co-ordinate benchmarking activity and review the output – with a view to ensuring that the contract continues to offer value to the Council.
• Report as required to the BEP Board.
• Annually it will complete the Contract Health Check included in the contract management tool kit.
• Review in light of any policy changes by the Department for Education (DfE).
• With 12 (twelve) months left to run on the Contract the Contract Management Group will commence discussions on ensuring that appropriate exit arrangements are put into place.

The Strategic Performance Review will take place twice per year – arranged by the Interim Executive Director for Education and this will include the Chief Executive of the BEP, BCC Education and the Contract Manager.

This group will review management information, performance against KPIs, results of satisfaction surveys, review of KPIs and agreement of annual service plan.

The contract has a term of 2 years – prior to entering the final 6 months the Council will communicate its intention regarding the further procurement of the service. The decision will be informed by contract performance, cost and the legislative context at that point.

Early contract exit may be required or desired in the following circumstances –
  - Major default by BCC for example as a consequence of regulatory action or change in legislation.
  - Major default by BEP for example technical inability or lack of capacity.
  - Frustration of the contract for example as a result of a lack of school confidence.
In WITNESS of which this document has been executed on the date set out in the heading to this Agreement.

THE COMMON SEAL of 
BIRMINGHAM CITY COUNCIL 
as affixed to this Agreement in the presence of:-

Authorised signatory

IN WITNESS of which this document has been executed on the date set out in the heading to this Agreement.

SIGNED by Director

On behalf of 
Birmingham Education Partnership

In the presence of Director/Secretary