

DRAFT CONTRACT

FOR THE PROVISION OF

CLEANING SERVICES

(1) Marner Primary School

(2) Juniper Pursuits Limited



Contract Form

This Contract is made on the date set out on the front page to the terms set out in the schedules listed below ("**Schedules**").

BETWEEN

- 1) **Marner Primary School** whose registered office is **Marner Primary School, Devas Street, Tower Hamlets, London, E3 3LL** (the "**Client**"); and
- 2) **Juniper Pursuits Limited** (Registered in England No.11227559) whose registered office is at The Old Town Hall, 29 Broadway, Stratford, London, E15 4BQ (the "**Supplier**").

BACKGROUND

- 1) The Supplier is engaged in the business of providing cleaning and related services.
- 2) The Client wishes to appoint the Supplier to provide the services described in this Agreement to the Client at the Premises (which are owned and operated by the Client) and the Supplier is willing to provide the same and to accept such appointment on the terms and conditions of this Agreement.

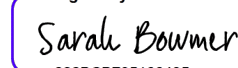
IT IS AGREED that this Contract comprises this Contract form and the following documents attached to it:

Schedule 1	Definitions and Constructions
Schedule 2	Key Provisions
Schedule 3	General Terms and Conditions
Schedule 4	Information Governance
Schedule 5	Specification and Tender Response Document
Schedule 6	Commercial Schedule
Schedule 7	Staff Transfer
Schedule 8	Key Performance Indicators

Signed by the authorised representative of the Client

Name:	Philippa Terry	Date:	10/29/2025
Position:	Chief Operating Officer	Signature:	Signed by:  C6482018E95D461...

Signed by the authorised representative of the Supplier

Name:	Sarah Bowmer	Date:	05/11/2025
Position:	Headteacher	Signature:	Signed by:  832BCB705166495...

Schedule 1

Definitions and Constructions

1 Definitions

1 In this Contract the following words shall have the following meanings unless the context requires otherwise:

"Business Continuity Event"	means any event or issue that could impact on the operations of the Supplier and its ability to provide the Services including an influenza pandemic, COVID 19 and any Force Majeure Event;
"Business Continuity Plan"	means the Supplier's business continuity plan which includes its plans for continuity of the Services during a Business Continuity Event;
"Business Day"	means any day other than Saturday, Sunday, Christmas Day, Good Friday or a statutory bank holiday in England and Wales;
"Cabinet Office Statement"	the Cabinet Office Statement of Practice – Staff Transfers in the Public Sector 2000 (as revised 2007) as may be amended or replaced;
"Change Control Process"	means the change control process, if any, referred to in the Key Provisions;
"Client"	means the Client named on the form of Contract on the first page;
"Client's Obligations"	means the Client's further obligations, if any, referred to in the Key Provisions;
"Codes of Practice"	shall have the meaning given to it in Clause 1.2 of Schedule 4;
"Commencement Date"	means the date of this Contract;
"Commercial Schedule"	means the document set out at Schedule 6;
"Confidential Information"	means information, data and material of any nature, which either Party may receive or obtain in connection with the conclusion and/or operation of the Contract including any procurement process which is: Personal Data or Sensitive Personal Data including without limitation which relates to any student or other service user; designated as confidential by either party or that ought reasonably to be considered as confidential (however it is conveyed or on whatever media it is stored); and/or Policies and such other documents which the Supplier may obtain or have access to through the Client's intranet;
"Contract"	means the form of contract at the front of this document and all schedules attached to the form of contract;
"Contracting Authority"	means any contracting authority as defined in regulation to the Public Contracts Regulations and Procurement Act 2023, (as amended), other than the Client;
"Contract Manager"	means for the Client and for the Supplier the individuals specified in the Key Provisions; or such other person notified by a Party to the other Party from time to time in accordance with Clause 8.1 of Schedule 3;

"Contract Price"	means the price exclusive of VAT that is payable to the Supplier by the Client under the Contract for the full and proper performance by the Supplier of its obligations under the Contract;
"Convictions"	means, other than in relation to minor road traffic offences, any previous or pending prosecutions, convictions, cautions and binding-over orders (including any spent convictions as contemplated by section 1(1) of the Rehabilitation of Offenders Act 1974 or any replacement or amendment to that Act);
"Data Controller"	means any person who falls under the definition of "Data Controller" in the DPA and any person who falls within the definition of "controller" in the GDPR;
"Data Processor"	means any person who falls under the definition of "Data Processor" in the DPA and any person who falls under the definition of "processor" in the GDPR;
"Data Protection Legislation"	(a) the DPA, the GDPR, any other applicable law concerning data protection, privacy or confidentiality and any subordinate or related legislation; (b) any guidance, codes of practice or instruction issued by the ICO (or any other relevant supervisory authority) from time to time; (c) any replacement to, or amendment of, any of the foregoing; and (d) any other applicable laws concerning data protection, confidentiality or privacy which may come into force from time to time;
"Data Subject"	means an individual who falls under the definition of data subject in the DPA or the GDPR;
"DPA"	the Data Protection Act 2018;
"Default"	any breach of the obligations of the material breach or breach of a material) or any other default, act, omission, negligence or statement of the Supplier, its employees, servants, agents or Sub-contractors in connection with or in relation to the subject-matter of this Contract;
"Delay"	the period of time by which the implementation of the Services by reference to the Implementation Plan is delayed;
"Dispute Resolution Procedure"	means the process for resolving disputes as set out in Clause 22 of Schedule 3;
"Electronic Trading System(s)"	means any electronic data interchange system and/or world wide System(s) web application and/or other application with such message standards and protocols as the Client may specify from time to time;
"Employment Liabilities"	means all claims, demands, actions, proceedings, damages, compensation, tribunal awards, fines, costs (including but not limited to reasonable legal costs), expenses and all other liabilities whatsoever;
"Environmental Regulations"	means the meaning given to the term in Clause 1.2 of Schedule Regulations 4;

"Equality Legislation"	means any and all legislation, applicable guidance and statutory codes of practice relating to equality, diversity, non-discrimination and human rights as may be in force in England and Wales from time to time including, but not limited to, the Equality Act 2010, the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000 and the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002 (SI 2002/2034) and the Human Rights Act 1998;
"FOIA"	shall have the meaning given to the term in Clause 1.2 of Schedule 4;
"Force Majeure Event"	means any event beyond the reasonable control of the Party in question to include, without limitation: war including civil war (whether declared or undeclared), riot, civil commotion or armed conflict materially affecting either Party's ability to perform its obligations under this Contract; acts of terrorism; flood, storm or other natural disasters; fire; unavailability of public utilities and/or access to transport networks to the extent no diligent supplier could reasonably have planned for such unavailability as part of its business continuity planning; government requisition or impoundment to the extent such requisition or impoundment does not result from any failure by the Supplier to comply with any relevant regulations, laws or procedures (including such laws or regulations relating to the payment of any duties or taxes) and subject to the Supplier having used all reasonable legal means to resist such requisition or impoundment; compliance with any local law or governmental order, rule, regulation or direction that could not have been reasonably foreseen; industrial action which affects the ability of the Supplier to provide the Services, but which is not confined to the workforce of the Supplier or the workforce of any subcontractor of the Supplier; and a failure in the Supplier's and/or Client's supply chain to the extent that such failure is due to any event suffered by a member of such supply chain, which would also qualify as a Force Majeure Event in accordance with this definition had it been suffered by one of the Parties;
"Fraud"	means any offence under any law in respect of fraud in relation to this Contract or defrauding or attempting to defraud or conspiring to defraud the government, parliament or any Contracting Authority;
"GDPR"	Regulation (EU) 2016/679 of the European Parliament and the Council of 27 April 2016, otherwise known as the General Data Protection Regulation;
"Good Industry Practice"	means the exercise of that degree of skill, diligence, prudence, risk management, quality management and foresight which would reasonably and ordinarily be expected from a skilled and experienced supplier engaged in the provision of services similar to the Services under the same or similar circumstances as those applicable to this Contract, including in accordance with any codes of practice published by relevant trade associations;

"Guidance"	means any applicable guidance, direction or determination and any policies, advice or industry alerts which apply to the Services, to the extent that the same are published and publicly available or the existence or contents of them have been notified to the Supplier by any other regulator or competent body;
"Implementation Plan"	means the implementation plan, if any, referred to in the Key Provisions;
"Intellectual Property Rights"	means all patents, copyright, design rights, registered designs, trademarks, know-how, database rights, confidential formulae and any other intellectual property rights and the rights to apply for patents and trademarks and registered designs;
"Interested Party"	means any organisation which has a legitimate interest in providing services of the same or similar nature to the Services in immediate or proximate succession to the Supplier or any subcontractor and who had confirmed such interest in writing to the Client;
"Key Provisions"	means the key provisions set out in Schedule 2;
"KPI"	means the key performance indicators as set out in Schedule 8;
"Law"	means: any applicable statute or proclamation or any delegated or subordinate legislation or regulation; any applicable European Union directive, regulation, decision or law; any enforceable community right within the meaning of section 2(1) European Communities Act 1972; any applicable judgment of a relevant court of law which is a binding precedent in England and Wales; requirements set by any regulatory body; and any applicable code of practice, in each case as applicable in England and Wales;
"Measures"	means any measures proposed by the Supplier or any subcontractor within the meaning of regulation 13(2)(d) of TUPE;
"Mediation Notice"	has the meaning given under Clause 22.5.1 of Schedule 3;
"Party"	means the Client or the Supplier as appropriate and Parties means both the Client and the Supplier;
"Personal Data"	means any information which falls within the definition of "personal data" under the DPA or the GDPR;
"Policies"	means the policies, rules and procedures of the Client as notified to the Supplier from time to time;
"Premises and Locations"	has the meaning given under Clause 2.1 of Schedule 3;
"Process", "Processing" and "Processed"	as described in the DPA or the GDPR;
"Qualifying Event"	means the closure of a Client School for all pupils due to: COVID 19 (or a similar epidemic or pandemic), adverse weather, industrial action by school employees or any other closure of a Client School for all pupils where the Client continues to receive revenue funding for that school from the Department for Education;
"Remedial Proposal"	has the meaning given under Clause 15.3 of Schedule 3;

"Sensitive Personal Data"	means any information which falls within the definition of "sensitive personal data" under the DPA and/or "special category data" under the GDPR;
"Services"	means the services set out in this Contract (including, without limitation, Schedule 5 which sets out the requirements of the Client as issued to tenderers as part of the procurement process and the Supplier's response to these requirements);
"Services Commencement Date"	means the date delivery of the Services shall commence as specified in the Key Provisions. If no date is specified in the Key Provisions this date shall be the Commencement Date;
"Services Information"	means information concerning the Services as may be reasonably requested by the Client and supplied by the Supplier to the Client in accordance with Clause 20 of Schedule 3 for inclusion in the Client's services catalogue from time to time;
"Specification and Tender Response Document"	means the document set out in Schedule 5 as amended and/or updated in accordance with this Contract;
"Staff"	means all persons employed or engaged by the Supplier to perform its obligations under this Contract including any subcontractors and person employed or engaged by such subcontractors;
"Subsequent Transfer Date"	means the point in time, if any, at which services the same as or of a similar nature to the Services (either in whole or in part) are first provided by a Successor or the Client, as appropriate, giving rise to a relevant transfer under TUPE;
"Subsequent Transfer Payment"	means the value of the retirement and death benefits under the Supplier's Scheme or Subcontractor's Scheme prospectively and contingently payable to and in respect of the Subsequent Transferring Employees calculated by the Supplier's Actuary or Subcontractor's Scheme Actuary as applicable in accordance with actuarial methods and assumptions no less favourable to the Subsequent Transferring Employees than those set out in the Actuary's Letter;
"Subsequent Transferring Employees"	means any employee, agent, consultant and/or contractor who, immediately prior to the Subsequent Transfer Date, is wholly or mainly engaged in the performance of services the same as or of a similar nature to the Services (either in whole or in part) which are to be undertaken by the Successor or Client, as appropriate;
"Successor"	means any third party who provides services the same as or of a similar nature to the Services (either in whole or in part) in immediate or subsequent succession to the Supplier upon the expiry or earlier termination of this Contract;
"Supplier"	means the supplier named on the form of Contract on the first page;
"Supplier Personnel"	means any employee, agent, consultant and/or contractor of the Supplier or subcontractor who is either partially or fully engaged in the performance of the Services;
"Supplier's Actuary"	means the Actuary (or firm of Actuaries) appointed as scheme actuary by the trustees of the Supplier's Scheme for the purposes of section 47 of the Pensions Act 1995;
"Supplier's Scheme"	means the retirement benefits scheme established by the Supplier.

"Term"	means the term as set out in the Key Provisions;
"Third Party"	means any supplier of the Services or services of the same or similar nature to the Services (either in whole or in part) immediately before the Transfer Date;
"Third Party Body"	has the meaning given under Clause 8.5 of Schedule 3; means all
"Third Party Employees"	those employees, if any, assigned by a Third Party to the provision of a service the same as or similar to the Services immediately before the Transfer Date; means a retirement benefits scheme in which the
"Third Party Scheme"	Third Party participates, which provides pension benefits in respect of Ex-Client Employees;
"Transfer Date"	means the Services Commencement Date;
"Transferring Employees"	means all those employees, if any, assigned by the Client to the provision of a service the same as or similar to the Services immediately before the Transfer Date and listed in Schedule 7;
"TUPE"	means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (2006/246) and/or any other regulations enacted for the purpose of implementing the Acquired Rights Directive (77/187/EEC, as amended by Directive 98/50 EC and consolidated in 2001/23/EC) into English law; and
"VAT"	means value added tax chargeable under the Value Added Tax Act 1994 or any similar, replacement or extra tax.

- 1 References to any statute or order shall include any statutory extension, modification or re-enactment, and any order, regulation, bye-law or other subordinate legislation.
- 1 References to any legal entity shall include anybody that takes over responsibility for the functions of such entity.
- 1 References in this Contract to a "Schedule", "Appendix", "Paragraph" or to a "Clause" are to schedules, appendices, paragraphs and clauses of this Contract.
- 1 References in this Contract to a day or to the calculation of time frames are references to a calendar day unless expressly specified as a Business Day.
- 1 Unless set out in the Commercial Schedule as a chargeable item and subject to Clause 30.6 of Schedule 3, the Supplier shall bear the cost of complying with its obligations under this Contract.
- 1 The headings are for convenience only and shall not affect the interpretation of this Contract.
- 1 Words denoting the singular shall include the plural and vice versa.
- 1 Where a term of this Contract provides for a list of one or more items following the word "including" or "includes" then such list is not to be interpreted as an exhaustive list. Any such list shall not be treated as excluding any item that might have been included in such list having regard to the context of the contractual term in question. General words are not to be given a restrictive meaning where they are followed by examples intended to be included within the general words.
- 1 Where there is a conflict between the Supplier's responses to the Client's requirements (the Supplier's responses being set out in Schedule 5) and any other part of this Contract, such other part of this Contract shall prevail.

- 1 Where a document is required under this Contract, the Parties may agree in writing that this shall be in electronic format only.

Schedule 2

Key Provisions

Standard Key Provisions

1 Application of the Key Provisions

- 1 The standard Key Provisions at Clauses 1 to 10 of this Schedule 2 shall apply to this Contract.
- 1 Extra Key Provisions shall only apply to this Contract where such provisions are set out at the end of this Schedule 2.

2 Term & Commencement

- 2 This Contract shall commence on the Commencement Date, 03/11/25, and the core period shall naturally expire on 02/11/28. The term may be extended by two (2) yearly periods in accordance with Clause 15.2 of Schedule 3 provided that the duration of this Contract shall be no longer than five (5) years in total, such that the maximum Contract end date shall be 02/11/30.

3 Contract Managers

- 3.1 The Contract Managers at the commencement of this Contract are:

3.1.1 for the Client:
Sarah Bowmer – Headteacher
Jackie O'Hara – School Business Manager

3.1.2 for the Supplier:
Jhonny Lozada – Head of Cleaning
John Hopkins – Area Cleaning Manager

4 Names and addresses for notices

- 4.1 Notices served under this Contract are to be delivered to:

4.1.1 for the Client:
Marner Primary School, Devas Street, Bow, London E3 3LL

4.1.2 for the Supplier: Juniper Pursuits Ltd, The Old Town Hall, 29 Broadway, Stratford, London, E15 4BQ

5 Management levels for dispute resolution

- 5 The management levels at which a dispute will be dealt with are as follows:

Level	Client Representative	Supplier Representative
1	Sarah Bowmer – Headteacher	Michael Hales – CEO
2	Jackie O'Hara – School Business Manager	Philippa Terry – COO

6 Order of precedence

6.1 Subject always to Clause 1.10 of Schedule 1, should there be a conflict between any other parts of this Contract the order of priority for construction purposes shall be:

- 6 the provisions on the front page of this Contract;
- 6 Schedule 2: Key Provisions;
- 6 Schedule 5: Specification and Tender Response Document (but only in respect of the Client's requirements);
- 6 Schedule 3: General Terms and Conditions;
- 6 Schedule 6: Commercial Schedule;
- 6 Schedule 4: Information Governance;
- 6 Schedule 7: Staff Transfer;
- 6 Schedule 1: Definitions and Constructions; and
- 6 the order in which all subsequent schedules, if any, appear.

7 Application of TUPE at the commencement of the provision of services

7 The Parties agree that the commencement of the provision of the services under this Contract shall give rise to a relevant transfer as defined in TUPE and the provisions of Schedule 7 shall apply to such transfer.

8 Implementation phase

8 Prior to commencement of delivery of the services, there is an implementation phase and therefore all references in Schedule 2 to the Implementation Plan shall apply and the Implementation Plan is set out in Schedule Five.

9 Different levels and/or types of insurance

9 The Supplier shall put in place and maintain in force the following insurances with the following minimum cover per claim:

Type Of Insurance Required	Minimum Cover
Employer's Liability	five million pounds (£5,000,000)
Public Liability	two million pounds (£10,000,000)

Schedule 3

General Terms and Conditions

Contents

1. Provision of Services
2. Premises, locations and access
3. Cooperation with third parties
4. Use of Client equipment
5. Staff
6. Business continuity
7. The Client's obligations
8. Contract management
9. Price and payment
10. Warranties
11. Intellectual property
12. Indemnity
13. Limitation of liability
14. Insurance
15. Term and termination
16. Consequences of expiry or earlier termination of this Contract
17. Staff information and the application of TUPE at the end of the Contract
18. Complaints
19. Sustainable development
20. Premises closure
21. Change management
22. Dispute resolution
23. Force majeure
24. Records retention and right of audit
25. Conflicts of interest and the prevention of fraud
26. Equality and human rights
27. Notice
28. Assignment, novation and subcontracting
29. Prohibited Acts
30. General

1 Provision of Services

- 1 The Client appoints the Supplier and the Supplier agrees to provide the Services:
 - 1 promptly and in any event within any time limits as may be set out in this Contract;

1.1.2 in accordance with all other provisions of this Contract;

- 1 with reasonable skill and care and in accordance with any quality assurance standards as set out in the Key Provisions;
- 1 in accordance with the Law and with Guidance;
- 1 in accordance with Good Industry Practice;
- 1 in accordance with the Policies; and
- 1 in a professional and courteous manner.

- 1 Immediately following the Commencement Date, the Supplier shall, if specified in the Key Provisions, implement the Services fully in accordance with the Implementation Plan. If the Implementation Plan is an outline plan, the Supplier shall, as part of implementation, develop the outline plan into a full plan and agree this with the Client. Once this is agreed, the Supplier shall comply with the full Implementation Plan.
- 1 The Supplier shall commence delivery of the Services on the Services Commencement Date.
- 1 The Supplier shall comply fully with its obligations set out in the Specification and Tender Response Document, including without limitation the KPIs.
- 1 The Supplier shall ensure that all relevant consents, authorisations, licences and accreditations required to provide the Services are in place at the Services Commencement Date and are maintained throughout the Term.
- 1 If the Services, or any part of them, are regulated by any regulatory body, the Supplier shall ensure that at the Services Commencement Date it has in place all relevant registrations and shall maintain such registrations during the Term. The Supplier shall notify the Client forthwith in writing of any changes to such registration or any other matter relating to its registration that would affect the delivery or the quality of Services.
- 1 The Supplier shall notify the Client forthwith in writing:
 - 1 of any pending inspection of the Services, or any part of them, by a regulatory body immediately upon the Supplier becoming aware of such inspection; and
 - 1 of any failure of the Services, or any part of them, to meet the quality standards required by a regulatory body, promptly and in any event within two (2) Business Days of the Supplier becoming aware of any such failure. This shall include without limitation any informal feedback received during or following an inspection raising concerns of any nature regarding the provision of the Services.

- 1.8 Following any inspection of the Services, or any part of them, by a regulatory body, the Supplier shall provide the Client with a copy of any report or other communication published or provided by the relevant regulatory body in relation to the provision of the Services. - 14 -
- 1.9 Upon receipt of notice pursuant to Clause 1.7 of this Schedule 3 or any report or communication pursuant to Clause 1.8 of this Schedule 3, the Client shall be entitled to request further information from the Supplier and/or a meeting with the Supplier, and the Supplier shall cooperate fully with any such request.
- 1.10 Where applicable, the Supplier shall implement and comply with the Policies on reporting and responding to all incidents and accidents, including serious incidents requiring investigation, shall complete the Client's incident and accident forms in accordance with the Policies and provide reasonable support and information as requested by the Client to help the Client deal with any incident or accident relevant to the Services. The Supplier shall ensure that its Contract Manager informs the Client's Contract Manager in writing forthwith upon (a) becoming aware that any serious incidents requiring investigation and/or notifiable accidents have occurred; or (b) the Supplier's Contract Manager having reasonable cause to believe any serious incidents and/or notifiable accidents requiring investigation have occurred. The Supplier shall ensure that its Contract Manager informs the Client's Contract Manager in writing within forty eight (48) hours of all other incidents and/or accidents that have or may have an impact on the Services.
- 1.11 The Client may exercise a right to step-in and provide the Services where:
- 1 there is a Default entitling the Client to terminate in accordance with this clause;
 - 1 there is a Default by the Supplier that is materially preventing or materially delaying the performance of the Services or any part of the Services;
 - 1 there is a Delay that has or the Client reasonably anticipates will result in the Supplier's failure to achieve a milestone;
 - 1 where the Supplier is not in breach of its obligations under this Contract but the Client considers that the circumstances constitute an emergency;
 - 1 because a serious risk exists to the health or safety of persons, property or the environment;
 - 1 to discharge a statutory duty; and/or on the occurrence of an insolvency event in respect of the Supplier.

The Contractor shall bear its own costs in connection with any step-in by the Client under this clause.

- 1.12 The Supplier shall be relieved from its obligations under this Contract to the extent that it is prevented from complying with any such obligations due to any acts, omissions or defaults of the Client. To qualify for such relief, the Supplier must notify the Client promptly (and in any event within five (5) Business Days) in writing of the occurrence of such act, omission, or default of the Client together with the potential impact on the Supplier's obligations.

2 Premises, locations and access

- 2 The Services shall be provided at such Client premises and at such locations within those premises, as may be set out in the Specification and Tender Response Document or as otherwise agreed by the Parties in writing ("**Premises and Locations**").

- 2.2 Subject to the Supplier and its Staff complying with all relevant Policies applicable to such Premises and Locations relating to the Services, the Client shall grant reasonable access to the Supplier and its Staff to such Premises and Locations to enable the Supplier to provide the Services. - 15 -
- 2.3 Subject to Clause 2.4 of this Schedule 3, any access granted to the Supplier and its Staff under Clause 2.2 of this Schedule 3 shall be non-exclusive and revocable. Such access shall not be deemed to create any greater rights or interest than so granted (to include, without limitation, any relationship of landlord and tenant) in the Premises and Locations. The Supplier warrants that it shall carry out all such reasonable further acts to give effect to this Clause 2.3 of this Schedule 3.
- 2.4 Where, in order to provide the Services, the Supplier requires any greater rights to use or occupy any specific Premises and Locations over and above such reasonable access rights granted in accordance with Clause 2.2 and Clause 2.3 of this Schedule 3, such further rights shall be limited to any rights granted to the Supplier by the Client in accordance with any licence and/or lease entered into by the Supplier in accordance with the Key Provisions.
- 2.5 Where it is provided for by a specific mechanism set out in the Specification and Tender Response Document, the Client may increase, reduce or otherwise vary the Premises and Locations in accordance with such mechanism subject to the provisions of any licence or lease entered into by the Parties as referred to at Clause 2.4 of this Schedule 3. Where there is no such specific mechanism set out in the Specification and Tender Response Document, any variations to the Premises and Locations where the Services are to be provided shall be agreed by the Parties in accordance with Clause 21 of this Schedule 3. If agreement cannot be reached the matter shall be referred to, and resolved in accordance with, the dispute resolution process set out in Clause 5 of the Key Provisions and Clause 22.3 of this Schedule 3.

3 Cooperation with third parties

- 3 The Supplier shall, as reasonably required by the Client, cooperate with any other service providers to the Client and/or any other third parties as may be relevant in the provision of the Services.

4 Use of Client equipment

- 4 Unless otherwise set out in the Specification and Tender Response Document or otherwise agreed by the Parties in writing, any equipment or other items provided by the Client for use by the Supplier:
- 4 shall be provided at the Client's sole discretion;
 - 4 shall be inspected by the Supplier in order that the Supplier can confirm to its reasonable satisfaction that such equipment and/or item is fit for its intended use and shall not be used by the Supplier until it has satisfied itself of this;
 - 4 must be returned to the Client within any agreed timescales for such return or otherwise upon the request of the Client; and
 - 4 shall be used by the Supplier at the Supplier's risk and the Supplier shall upon written request by the Client reimburse the Client for any loss or

damage relating to such equipment or other items caused by the Supplier (fair wear and tear exempted).

5 Staff

- 5.1 Subject to the requirements of this Contract and any Law, the Supplier shall be entirely responsible for the employment and conditions of service of Staff. The Supplier shall ensure that such conditions of employment are consistent with its obligations under this Contract.
- 5.2 The Supplier will employ sufficient Staff to ensure that it complies with its obligations under this Contract. This will include, but not be limited to, the Supplier providing a sufficient reserve of trained and competent Staff to provide the Services during Staff holidays or absence. - 16 -
- 5.3 The Supplier shall use reasonable endeavours to ensure the continuity of all Staff in the provision of the Services and, where any member of Staff is designated as key to the provision of the Services as set out in the Specification and Tender Response Document or as otherwise agreed between the Parties in writing, any redeployment and/or replacement of such member of Staff by the Supplier shall be subject to the prior written approval of the Client, such approval not to be unreasonably withheld or delayed.
- 5.4 The Supplier shall ensure that all Staff are aware of, and at all times comply with, the Policies. The Supplier shall provide copies of its safeguarding and recruitment policies that set out and meet the required standards in accordance with Keeping Children Safe in Education (as amended).
- 5.5 The Supplier shall:
 - 5 employ only those Staff who are careful, skilled and experienced in the duties required of them;
 - 5 ensure that every member of Staff is properly and sufficiently trained and instructed in accordance to the standards and checks as outlined in the Keeping Children Safe in Education (as amended) before commencing their employment;
 - 5 demonstrate adequate controls to ID staff that are on site at any time to ensure that all Staff have been subject to the standards and checks referred to in Clause 5.5.2 of this Schedule 3 before commencement of employment. The Supplier will inform the client of all new starter's names and DBS clearance numbers and leavers as they occur;
 - 5 ensure all Staff have the qualifications to carry out their duties;
 - 5 maintain throughout the Term all appropriate licences and registrations with any relevant bodies (at the Supplier's expense) in respect of the Staff; and
 - 5 ensure all Staff comply with such registration, continuing professional development and training requirements or recommendations appropriate to their role.
- 5.6 The Supplier shall not deploy in the provision of the Services any person who has suffered from, has signs of, is under treatment for, or who is suffering from any medical

condition which is known to, or does potentially, place the health and safety of the Client's staff, students, service users or visitors at risk unless otherwise agreed in writing with the Client.

- 5.7 The Supplier shall ensure that all potential Staff or persons performing any of the Services during the Term who may reasonably be expected in the course of performing any of the Services under this Contract to have access to or come into contact with children or other vulnerable persons:
 - 5.7.1 are questioned concerning their Convictions; and - 17 -
 - 5.7.2 obtain appropriate disclosures from the Disclosure and Barring Service (or other appropriate body) as required by Law and/or the Policies before the Supplier engages the potential staff or persons in the provision of the Services.
- 5.8 The Supplier shall take all necessary steps to ensure that such potential staff or persons obtain standard and enhanced disclosures from the Disclosure and Barring Service (or other appropriate body) and shall ensure all such disclosures are kept up to date. The obtaining of such disclosures shall be at the Supplier's cost and expense.
- 5.9 The Supplier shall ensure that no person is employed or otherwise engaged in the provision of the Services without the Client's prior written consent if:
 - 5 the person is found to have any Convictions following receipt of standard and/or enhanced disclosures from the Disclosure and Barring Service (or other appropriate body) in accordance with Clause 5.7.2 of this Schedule 3; or
 - 5 the person fails to obtain standard and/or enhanced disclosures from the Disclosure and Barring Service (or other appropriate body) upon request by the Supplier in accordance with Clause 5.7.2 of this Schedule 3.
- 5.10 In addition to the requirements of Clause 5.7 to Clause 5.9 of this Schedule 3, where the Services are or include regulated activities as defined by the Safeguarding Vulnerable Groups Act 2006, Department for Education issued under Section 175 of the Education Act 2002, the Education (Independent School Standards) Regulations 2014 and the Non-Maintained Special Schools (England) Regulations 2015 (as amended), Keeping Children Safe in Education (as amended), the Supplier:
 - 5 warrants that it shall comply with all requirements placed on it by the Safeguarding Vulnerable Groups Act 2006, Department for Education issued under Section 175 of the Education Act 2002, the Education (Independent School Standards) Regulations 2014 and the Non-Maintained Special Schools (England) Regulations 2015 (as amended), Keeping Children Safe in Education (as amended);
 - 5 warrants that at all times it has and will have no reason to believe that any member of Staff is barred in accordance with the Safeguarding Vulnerable Groups Act 2006, Department for Education issued under Section 175 of the Education Act 2002, the Education (Independent School Standards) Regulations 2014 and the Non-Maintained Special Schools (England)

Regulations 2015 (as amended), Keeping Children Safe in Education (as amended)); and

5.10.3 shall ensure that no person is employed or otherwise engaged in the provision of the Services if that person is barred from carrying out, or whose previous conduct or records indicate that they would not be suitable to carry out, any regulated activities as defined by the Safeguarding Vulnerable Groups Act 2006, Department for Education issued under Section 175 of the Education Act 2002, the Education (Independent School Standards) Regulations 2014 and the Non-Maintained Special Schools (England) Regulations 2015 (as amended), Keeping Children Safe in Education (as amended) or may present a risk to students, service users or any other person. - 18 -

- 5 The Supplier shall ensure that the Client is kept advised at all times of any member of Staff who, subsequent to their commencement of employment as a member of Staff receives a Conviction or whose previous Convictions become known to the Supplier or whose conduct or records indicate that they are not suitable to carry out any regulated activities as defined by the Safeguarding Vulnerable Groups Act 2006 or may present a risk to students, service users or any other person. The Supplier shall only be entitled to continue to engage or employ such member of Staff with the Client's written consent and with such safeguards being put in place as the Client may reasonably request. Should the Client withhold consent the Supplier shall remove such member of Staff from the provision of the Services forthwith.
- 5 The Supplier shall immediately provide to the Client any information that the Client reasonably requests to enable the Client to satisfy itself that the obligations set out in Clause 5.7 to Clause 5.11 of this Schedule 3 have been met.
- 5 The Client may at any time request that the Supplier remove and replace any member of Staff from the provision of the Services, provided always that the Client will act reasonably in making such a request. Prior to making any such request the Client shall raise with the Supplier the Client's concerns regarding the member of Staff in question with the aim of seeking a mutually agreeable resolution. The Client shall be under no obligation to have such prior discussion should the Client have concerns regarding students or service user safety.

6 Business continuity

- 6 The Supplier shall use reasonable endeavours to ensure its Business Continuity Plan operates effectively alongside the Client's business continuity plan where relevant to the provision of the services.
- 6 Throughout the Term, the Supplier will ensure its Business Continuity Plan provides for continuity during a Business Continuity Event. The Supplier confirms and agrees such Business Continuity Plan details and will continue to detail robust arrangements that are reasonable and proportionate to:
 - 6 the criticality of this Contract to the Client; and
 - 6 the size and scope of the Supplier's business operations, regarding continuity of the provision of the Services during and following a Business Continuity Event.

- 6.3 The Supplier shall test its Business Continuity Plan at reasonable intervals, and in any event no less than once every twelve (12) months or such other period as may be agreed between the Parties taking into account the criticality of this Contract to the Client and the size and scope of the Supplier's business operations. The Supplier shall promptly provide to the Client, at the Client's written request, copies of its Business Continuity Plan, reasonable and proportionate documentary evidence that the Supplier tests its Business Continuity Plan in accordance with the requirements of this Clause 6.3 of this Schedule 3 and reasonable and proportionate information regarding the outcome of such tests. The Supplier shall provide to the Client a copy of any updated or revised Business Continuity Plan within fourteen (14) Business Days of any material update or revision to the Business Continuity Plan.
- 6.4 The Client may suggest reasonable and proportionate amendments to the Supplier regarding the Business Continuity Plan at any time. Where the Supplier, acting reasonably, deems such suggestions made by the Client to be relevant and appropriate, the Supplier will incorporate into the Business Continuity Plan all such suggestions made by the Client in respect of such Business Continuity Plan. Should the Supplier not incorporate any suggestion made by the Client into such Business Continuity Plan it will explain the reasons for not doing so to the Client. - 19 -
- 6.5 Should a Business Continuity Event occur at any time, the Supplier shall implement and comply with its Business Continuity Plan and provide regular written reports to the Client on such implementation.
- 6.6 During and following a Business Continuity Event, the Supplier shall use reasonable endeavours to continue to provide the Services in accordance with this Contract.

7 The Client's obligations

- 7 Subject to the Supplier providing the Services in accordance with this Contract, the Client will pay the Supplier for the Services in accordance with Clause 9 of this Schedule 3.
- 7 The Client shall, as appropriate, provide copies of or give the Supplier access to such of the Policies that are relevant to the provision of the Services.
- 7 The Client shall comply with the Client's Obligations, as may be referred to in the Key Provisions.
- 7 The Client shall provide water, heating, lighting, electricity, gas and any other fuel required for the provision of the Services.

8 Contract management

- 8 Each Party shall appoint and retain a Contract Manager who shall be the primary point of contact for the other Party in relation to matters arising from this Contract. Should the Contract Manager be replaced, the Party replacing the Contract Manager shall promptly inform the other Party in writing of the name and contact details for the new Contract Manager. Any Contract Manager appointed shall be of sufficient seniority and experience to be able to make decisions on the day to day operation of the Contract. The Supplier confirms and agrees that it will be expected to work closely and cooperate fully with the Client's Contract Manager.
- 8 Each Party shall ensure that its representatives (to include, without limitation, its Contract Manager) shall attend review meetings on a regular basis to review the

performance of the Supplier under this Contract and to discuss matters arising generally under this Contract. Each Party shall ensure that those attending such meetings have the authority to make decisions regarding the day to day operation of the Contract. Review meetings shall take place at the frequency specified in the Specification and Tender Response Document. Should the Specification and Tender Response Document not state the frequency, then the first such meeting shall take place on a date to be agreed on or around the end of the first month after the Commencement Date. Subsequent meetings shall take place at monthly intervals or as may otherwise be agreed in writing between the Parties.

- 8.3 Two weeks prior to each review meeting (or at such time and frequency as may be specified in the Specification and Tender Response Document) the Supplier shall provide a written contract management report to the Client regarding the provision of the Services and the operation of this Contract. Unless otherwise agreed by the Parties in writing, such contract management report shall contain:

- 8 details of the performance of the Supplier when assessed in accordance with the KPIs since the last such performance report;
- 8 details of any complaints from or on behalf of students or other service users, their nature and the way in which the Supplier has responded to such complaints since the last review meeting written report;
- 8 the information specified in the Specification and Tender Response Document;
- 8 a status report in relation to the implementation of any current Remedial Proposals by either Party; and
- 8 such other information as reasonably required by the Client.

- 8.4 Unless specified otherwise in the Specification and Tender Response Document, the Client shall take minutes of each review meeting and shall circulate draft minutes to the Supplier within a reasonable time following such review meeting. The Supplier shall inform the Client in writing of any suggested amendments to the minutes within five (5) Business Days of receipt of the draft minutes. If the Supplier does not respond to the Client within such five (5) Business Days the minutes will be deemed to be approved. Where there are any differences in interpretation of the minutes, the Parties will use their reasonable endeavors to reach agreement. If agreement cannot be reached the matter shall be referred to, and resolved in accordance with, the dispute resolution process set out in Clause 5 of the Key Provisions and Clause 22.3 of this Schedule 3.

- 8.5 The Supplier shall provide such management information as the Client may request from time to time within seven (7) Business Days of the date of the request. The Supplier shall supply the management information to the Client in such form as may be specified by the Client and, where requested to do so, the Supplier shall also provide such management information to another Contracting Client whose role it is to analyse such management information in accordance with UK government policy (to include, without limitation, for the purposes of analysing public sector expenditure and planning future procurement activities) ("**Third Party Body**"). The Supplier confirms and agrees that the Client may itself provide the Third Party Body with management information relating to the Services purchased, any payments made under this Contract, and any other information relevant to the operation of this Contract.

8.6 Upon receipt of management information supplied by the Supplier to the Client and/or the Third Party Body, or by the Client to the Third Party Body, the Parties hereby consent to the Third Party Body and the Client:

- 8 storing and analysing the management information and producing statistics; and
- 8 sharing the management information or any statistics produced using the management information with any other Contracting Client.

8.7 If the Third Party Body and/or the Client shares the management information or any other information provided under Clause 8.6 of this Schedule 3, any Contracting Client receiving the management information shall, where such management information is subject to obligations of confidence under this Contract and such management information is provided direct by the Client to such Contracting Client, be informed of the confidential nature of that information by the Client and shall be requested by the Client not to disclose it to any body that is not a Contracting Client (unless required to do so by Law).

8.8 The Client may make changes to the type of management information which the Supplier is required to supply and shall give the Supplier at least one (1) month's written notice of any changes.

9 Price and payment

9 The Contract Price shall be calculated as set out in the Commercial Schedule.

9 Unless otherwise stated in the Commercial Schedule the Contract Price:

- 9 shall be payable from the Commencement Date;
- 9 shall remain fixed during the Term; and
- 9 is the entire price payable by the Client to the Supplier in respect of the Services and includes, without limitation, any royalties, licence fees, supplies and all consumables used by the Supplier, travel costs, accommodation expenses and the cost of Staff.

9 Unless stated otherwise in the Commercial Schedule:

- 9 where the Key Provisions confirm that the payment profile for this Contract is monthly in arrears, the Supplier shall invoice the Client, within fourteen (14) days of the end of each calendar month, the Contract Price in respect of the Services provided in compliance with this Contract in the preceding calendar month; or
- 9 where Clause 9.3.1 of this Schedule 3 does not apply, the Supplier shall invoice the Client for Services at any time following completion of the provision of the Services in compliance with this Contract.

Each invoice shall contain such information and be addressed to such individual as the Client may inform the Supplier from time to time.

9 The Contract Price is exclusive of VAT, which, if properly chargeable, the Client shall pay at the prevailing rate subject to receipt from the Supplier of a valid and accurate

VAT invoice. Such VAT invoices shall show the VAT calculations as a separate line item.

- 9.5 The Client shall pay each undisputed invoice received in accordance with Clause 9.3 of this Schedule 3 within thirty (30) days of receipt of such invoice at the latest. However, the Client shall use its reasonable endeavours to pay such undisputed invoices sooner in accordance with any applicable government prompt payment targets.
- 9.6 The Supplier shall pay to the Client any service credits that may become due in accordance with the provisions of the Specification and Tender Response Document. - 22 -
- 9.7 The Client reserves the right to deduct any monies due to the Supplier away from any monies due to the Client from the Supplier under this Contract.

10 Warranties

- 1 The Supplier warrants and undertakes that:
- 1 it has, and shall ensure its Staff shall have, and shall maintain throughout the Term, all appropriate licences and registrations with the relevant bodies to fulfil its obligations under this Contract;
 - 1 it has all rights, consents, authorisations, licences and accreditations required to provide the Services and shall maintain such consents, authorisations, licences and accreditations throughout the Term;
 - 1 it has and shall maintain a properly documented system of quality processes covering all aspects of its obligations under this Contract and/or under Law and/or Guidance and shall at all times comply with such quality processes;
 - 1 it shall not make any significant changes to its system of quality processes in relation to the Services without notifying the Client in writing at least twenty one (21) days in advance of such change (such notice to include the details of the consequences which follow such change being implemented);
 - 1 where any act of the Supplier requires the notification to and/or approval by any regulatory or other competent body in accordance with any Law and Guidance, the Supplier shall comply fully with such notification and/or approval requirements;
 - 1 receipt of the Services by or on behalf of the Client and use of the deliverables or of any other item or information supplied or made available to the Client as part of the Services will not infringe any third party rights, to include without limitation any Intellectual Property Rights;
 - 1 it will comply with all Law and Guidance in so far as it is relevant to the provision of the Services;
 - 1 it will provide the Services using reasonable skill and care and in accordance with Good Industry Practice and shall fulfil all requirements of this Contract using appropriately skilled, trained and experienced staff;

- 10.1.9 unless otherwise set out in the Specification and Tender Response Document and/or as otherwise agreed in writing by the Parties, it has and/or shall procure all resources, equipment, consumables and other items and facilities required to provide the Services;
- 10.1.10 without limitation to the generality of Clause 10.1.7 of this Schedule 3, it shall comply with all health and safety processes, requirements safeguards, controls, and training obligations in accordance with its own operational procedures, Law, Guidance, Policies, Good Industry Practice, the requirements of the Specification and Tender Response Document and any notices or instructions given to the Supplier by the Client and/or any competent body, as relevant to the provision of the Services and the Supplier's access to the Premises and Locations in accordance with this Contract; - 23 -
- 10.1.11 without prejudice to any specific notification requirements set out in this Contract, it will promptly notify the Client of any health and safety hazard which has arisen, or the Supplier is aware may arise, in connection with the performance of the Services and take such steps as are reasonably necessary to ensure the health and safety of persons likely to be affected by such hazards;
- 10.1.12 any equipment it uses in the provision of the Services shall comply with all relevant Law and Guidance, be fit for its intended purpose and maintained fully in accordance with the manufacturer's specification;
- 10.1.13 it shall use Good Industry Practice to ensure that any information and communications technology systems and/or related hardware and/or software it uses are free from corrupt data, viruses, worms and any other computer programs or code which might cause harm or disruption to the Client's information and communications technology systems;
- 10.1.14 it will promptly respond to all requests for information regarding the Contract and the provision of the Services at the frequency and in the format that the Client may reasonably require;
- 10.1.15 all information included within the Supplier's responses in the Specification and Tender Response Document and all accompanying materials is accurate;
- 10.1.16 it has the right and Client to enter into this Contract and that it has the capability and capacity to fulfil its obligations under this Contract;
- 10.1.17 it is a properly constituted entity and it is fully empowered by the terms of its constitutional documents to enter into and to carry out its obligations under this Contract and the documents referred to in this Contract;
- 10.1.18 all necessary actions to authorise the execution of and performance of its obligations under this Contract have been taken before such execution;
- 10.1.19 there are no pending or threatened actions or proceedings before any court or administrative agency which would materially adversely affect the financial condition, business or operations of the Supplier;

- 10.1.20 there are no material agreements existing to which the Supplier is a party which prevent the Supplier from entering into or complying with this Contract; - 24 -
 - 10.1.21 it has and will continue to have the capacity, funding and cash flow to meet all its obligations under this Contract; and
 - 10.1.22 it has satisfied itself as to the nature and extent of the risks assumed by it under the Contract and has gathered all information necessary to perform its obligations under the Contract and all other obligations assumed by it.
- 1 The Supplier warrants that all information, data and other records and documents required by the Client as set out in the Specification and Tender Response Document shall be submitted to the Client in the format and in accordance with any timescales set out in the Specification and Tender Response Document.
 - 1 Without prejudice to the generality of Clause 10.2 of this Schedule 3, the Supplier acknowledges that a failure by the Supplier following the Services Commencement Date to submit accurate invoices may result in reimbursing costs to the Client, delaying or failing to make relevant payments to the Client. Accordingly, the Supplier warrants that, from the Services Commencement Date, it shall submit accurate invoices and other information on time to the Client.
 - 1 The Supplier further warrants and undertakes to the Client that it will inform the Client in writing immediately upon becoming aware that any of the warranties set out in Clause 10 of this Schedule 3 have been breached or there is a risk that any warranties may be breached.
 - 1 Any warranties provided under this Contract are both independent and cumulative and may be enforced independently or collectively at the sole discretion of the enforcing Party.

11 Intellectual Property

- 1 The Supplier warrants and undertakes to the Client that either it owns or is entitled to use and will continue to own or be entitled to use all Intellectual Property Rights used in the development and provision of the Services and/or necessary to give effect to the Services and/or to use any deliverables, matter or any other output supplied to the Client as part of the Services.
- 1 Unless specified otherwise in the Key Provisions and/or in the Specification and Tender Response Document, the Supplier hereby grants to the Client, for the life of the use by the Client of any deliverables, material or any other output supplied to the Client in any format as part of the Services, an irrevocable, royalty-free, non-exclusive licence to use, modify, adapt or enhance such items in the course of the Client's normal business operations. For the avoidance of doubt, unless specified otherwise in the Key Provisions and/or in the Specification and Tender Response Document, the Client shall have no rights to commercially exploit (e.g. by selling to third parties) any deliverables, matter or any other output supplied to the Client in any format as part of the Services.

12 Indemnity

- 1 The Supplier shall be liable to the Client for, and shall indemnify and keep the Client indemnified against, any loss, damages, costs, expenses (including without limitation legal costs and expenses), claims or proceedings in respect of:

- 12.1.1 any injury or allegation of injury to any person, including injury resulting in death;
- 12.1.2 any loss of or damage to property (whether real or personal); and/or - 25 -
- 12.1.3 any breach of Clause 10.1.6 and/or Clause 11 of this Schedule 3; and/or
- 12.1.4 any failure by the Supplier to commence the delivery of the Services by the Services Commencement Date;

that arise or result from the Supplier's negligent acts or omissions or breach of contract in connection with the performance of this Contract including the provision of the Services, except to the extent that such loss, damages, costs, expenses (including without limitation legal costs and expenses), claims or proceedings have been caused by any act or omission by, or on behalf of, or in accordance with the instructions of, the Client.

- 1 Liability under Clauses 5.5.2, 5.5.3, 12.1.1, 12.1.3 and 17.13 of this Schedule 3 and Clause 2 of Schedule 4 shall be unlimited. Liability under Clauses 12.1.2 and 12.1.4 of this Schedule 3 shall be subject to the limitation of liability set out in Clause 13 of this Schedule 3.
- 1 In relation to all third party claims against the Client, which are the subject of any indemnity given by the Supplier under this Contract, the Client shall use its reasonable endeavours, upon a written request from the Supplier, to transfer the conduct of such claims to the Supplier unless restricted from doing so. Such restrictions may include, without limitation, any restrictions:
 - 1 relating to any legal, regulatory, governance, information governance, or confidentiality obligations on the Client; and/or
 - 1 relating to the Client's membership of any indemnity and/or risk pooling arrangements.

Such transfer shall be subject to the Parties agreeing appropriate terms for such conduct of the third party claim by the Supplier (to include, without limitation, the right of the Client to be informed and consulted on the ongoing conduct of the claim following such transfer and any reasonable cooperation required by the Supplier from the Client).

13 Limitation of liability

- 1 Nothing in this Contract shall exclude or restrict the liability of either Party:
 - 1 for death or personal injury resulting from its negligence;
 - 1 for fraud or fraudulent misrepresentation; or
 - 1 in any other circumstances where liability may not be limited or excluded under any applicable law.
- 1 Subject to Clauses 12.2, 13.1, 13.3 and 13.5 of this Schedule 3, the total liability of each Party to the other under or in connection with this Contract whether arising in contract, tort, negligence, breach of statutory duty or otherwise shall be limited in aggregate to the greater of: (a) five million GBP (£5,000,000); or (b) one hundred and

twenty five percent (125%) of the total Contract Price paid or payable by the Client to the Supplier for the Services.

- 13.3 There shall be no right to claim losses, damages and/or other costs and expenses under or in connection with this Contract whether arising in contract (to include, without limitation, under any relevant indemnity), tort, negligence, breach of statutory duty or otherwise to the extent that any losses, damages and/or other costs and expenses claimed are in respect of loss of production, loss of business opportunity or are in respect of indirect loss of any nature suffered or alleged. For the avoidance of doubt, without limitation, the Parties agree that for the purposes of this Contract the following costs, expenses and/or loss of income shall be direct recoverable losses (to include under any relevant indemnity) provided such costs, expenses and/or loss of income are properly evidenced by the claiming Party:

13.3.1 extra costs incurred purchasing replacement or alternative services; and/or

~~13.3.2~~ costs of extra management time; and/or in each case to the extent to which such costs, expenses and/or loss of income arise or result from the other Party's breach of contract, negligent act or omission, breach of statutory duty, and/or other liability under or in connection with this Contract.

- 13.4 Each Party shall at all times take all reasonable steps to minimise and mitigate any loss for which one Party is entitled to bring a claim against the other pursuant to this Contract.

- 13.5 If the total Contract Price paid or payable by the Client to the Supplier over the Term:

- 1 is less than or equal to one million pounds (£1,000,000), then the figure of five million pounds (£5,000,000) at Clause 13.2 of this Schedule 3 shall be replaced with one million pounds (£1,000,000);
- 1 is less than or equal to three million pounds (£3,000,000) but greater than one million pounds (£1,000,000), then the figure of five million pounds (£5,000,000) at Clause 13.2 of this Schedule 3 shall be replaced with three million pounds (£3,000,000);
- 1 is equal to, exceeds or will exceed ten million pounds (£10,000,000), but is less than fifty million pounds (£50,000,000), then the figure of five million pounds (£5,000,000) at Clause 13.2 of this Schedule 3 shall be replaced with ten million pounds (£10,000,000) and the figure of one hundred and twenty five percent (125%) at Clause 13.2 of this Schedule 3 shall be deemed to have been deleted and replaced with one hundred and fifteen percent (115%); and
- 1 is equal to, exceeds or will exceed fifty million pounds (£50,000,000), then the figure of five million pounds (£5,000,000) at Clause 13.2 of this Schedule 3 shall be replaced with fifty million pounds (£50,000,000) and the figure of one hundred and twenty five percent (125%) at Clause 13.2 of this Schedule 3 shall be deemed to have been deleted and replaced with one hundred and five percent (105%).

- 13.6 Clause 13 of this Schedule 3 shall survive the expiry of or earlier termination of this Contract for any reason.

14 Insurance

- 1 Subject to Clauses 14.2 and 14.3 of this Schedule 3 and unless otherwise confirmed in writing by the Client, as a minimum level of protection, the Supplier shall put in place and/or maintain in force at its own cost with a reputable commercial insurer, insurance arrangements in respect of employer's liability and public liability in accordance with Good Industry Practice with the minimum cover per claim of the greater of five million pounds (£5,000,000) or any sum as required by Law unless otherwise agreed with the Client in writing.
- 1 Without limitation to any insurance arrangements as required by Law, the Supplier shall put in place and/or maintain the different types and/or levels of indemnity arrangements explicitly required by the Client, if specified in the Key Provisions.
- 1 Provided that the Supplier maintains all indemnity arrangements required by Law, the Supplier may self-insure in order to meet other relevant requirements referred to at Clauses 14.1 and 14.2 of this Schedule 3 on condition that such self-insurance arrangements offer the appropriate levels of protection and are approved by the Client in writing prior to the Commencement Date.
- 1 The amount of any indemnity cover and/or self-insurance arrangements shall not relieve the Supplier of any liabilities under this Contract. It shall be the responsibility of the Supplier to determine the amount of indemnity and/or self-insurance cover that will be adequate to enable it to satisfy its potential liabilities under this Contract. Accordingly, the Supplier shall be liable to make good any deficiency if the proceeds of any indemnity cover and/or self-insurance arrangement is insufficient to cover the settlement of any claim.
- 1 The Supplier warrants that it shall not take any action or fail to take any reasonable action or (in so far as it is reasonable and within its power) permit or allow others to take or fail to take any action, as a result of which its insurance cover may be rendered void, voidable, unenforceable, or be suspended or impaired in whole or in part, or which may otherwise render any sum paid out under such insurances repayable in whole or in part.
- 1 The Supplier shall from time to time and in any event within five (5) Business Days of written demand provide documentary evidence to the Client that insurance arrangements taken out by the Supplier pursuant to Clause 14 of this Schedule 3 and the Key Provisions are fully maintained and that any premiums on them and/or contributions in respect of them (if any) are fully paid.
- 1 Upon the expiry or earlier termination of this Contract, the Supplier shall ensure that any ongoing liability it has or may have arising out of this Contract shall continue to be the subject of appropriate indemnity arrangements for the period of twenty one (21) years from termination or expiry of this Contract or until such earlier date as that liability may reasonably be considered to have ceased to exist.

15 Term and termination

- 1 This Contract shall commence on the Commencement Date and, unless terminated earlier in accordance with the terms of this Contract or the general law, shall continue until the end of the Term.
- 1 The Client shall be entitled to extend the Term on one or more occasions by giving the Supplier written notice no less than three (3) months prior to the date on which this

Contract would otherwise have expired, provided that the duration of this Contract shall be no longer than the total term specified in the Key Provisions.

- 15.3 In the case of a breach of any of the terms of this Contract by either Party that is capable of remedy (including, without limitation any breach of any KPI and any failure to pay any sums due under this Contract), the non-breaching Party shall, without prejudice to its other rights and remedies under this Contract, issue notice of the breach and allow the Party in breach the opportunity to remedy such breach in the first instance via a remedial proposal put forward by the Party in breach ("**Remedial Proposal**") before exercising any right to terminate this Contract in accordance with Clause 15.4.1(ii) of this Schedule 3. Such Remedial Proposal must be agreed with the non-breaching Party (such agreement not to be unreasonably withheld or delayed) and must be implemented by the Party in breach in accordance with the timescales referred to in the agreed Remedial Proposal. Once agreed, any changes to a Remedial Proposal must be approved by the Parties in writing. Any failure by the Party in breach to:

- 1 put forward and agree a Remedial Proposal with the non-breaching Party in relation to the relevant default or breach within a period of ten (10) Business Days (or such other period as the non-breaching Party may agree in writing) from written notification of the relevant default or breach from the non-breaching Party;
- 1 comply with such Remedial Proposal (including, without limitation, as to its timescales for implementation, which shall be thirty (30) days unless otherwise agreed between the Parties); and/or
- 1 remedy the default or breach notwithstanding the implementation of such Remedial Proposal in accordance with the agreed timescales for implementation,

shall be deemed, for the purposes of Clause 15.4.1(ii) of this Schedule 3, a material breach of this Contract by the Party in breach not remedied in accordance with an agreed Remedial Proposal.

- 15.4 Either Party may terminate this Contract forthwith by notice in writing to the other Party if such other Party:
- 1 commits a material breach of any of the terms of this Contract which is:
 - (i) not capable of remedy; or
 - (ii) in the case of a breach capable of remedy, which is not remedied in accordance with a Remedial Proposal; or
 - 1 has been served with at least two (2) previous breach notices as a result of any material breaches which are capable of remedy within any twelve (12) month rolling period whether or not the Party in breach has remedied the breach in accordance with a Remedial Proposal. The twelve (12) months rolling period is the twelve (12) months immediately preceding the date of the third breach notice.

- 15.5 The Client may terminate this Contract forthwith by notice in writing to the Supplier if:

- 15.5.1 the Supplier, or any third party guaranteeing the obligations of the Supplier under this Contract, ceases or threatens to cease carrying on its business; suspends making payments on any of its debts or announces an intention to do so; is, or is deemed for the purposes of any Law to be, unable to pay its debts as they fall due or insolvent; enters into or proposes any composition, assignment or arrangement with its creditors generally; takes any step or suffers any step to be taken in relation to its winding-up, dissolution, administration (whether out of court or otherwise) or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) otherwise than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation; has a liquidator, trustee in bankruptcy, judicial custodian, compulsory manager, receiver, administrative receiver, administrator or similar officer appointed (in each case, whether out of court or otherwise) in respect of it or any of its assets; has any security over any of its assets enforced; or any analogous procedure or step is taken in any jurisdiction; - 29 -
- 15.5.2 the Supplier undergoes a change of control within the meaning of sections 450 and 451 of the Corporation Tax Act 2010 (other than for an intra-group change of control) without the prior written consent of the Client and the Client shall be entitled to withhold such consent if, in the reasonable opinion of the Client, the proposed change of control will have a material impact on the performance of this Contract or the reputation of the Client;
- 15.5.3 the Supplier purports to assign, subcontract, novate, create a trust in or otherwise transfer or dispose of this Contract in breach of Clause 28.1 of this Schedule 3; or
- 15.5.4 pursuant to and in accordance with the Key Provisions and Clauses 15.6, 23.8; 25.2; 25.4 and 29.2 of this Schedule 3.
- 1 If the Client, acting reasonably, has good cause to believe that there has been a material deterioration in the financial circumstances of the Supplier and/or any third party guaranteeing the obligations of the Supplier under this Contract and/or any material subcontractor of the Supplier when compared to any information provided to and/or assessed by the Client as part of any procurement process or other due diligence leading to the award of this Contract to the Supplier or the entering into a subcontract by the Supplier, the following process shall apply:
- 1 the Client may (but shall not be obliged to) give notice to the Supplier requesting adequate financial or other security and/or assurances for due performance of its material obligations under this Contract on such reasonable and proportionate terms as the Client may require within a reasonable time period as specified in such notice;
 - 1 a failure or refusal by the Supplier to provide the financial or other security and/or assurances requested in accordance with Clause 15.6 of this Schedule 3 in accordance with any reasonable timescales specified in any such notice issued by the Client shall be deemed a breach of this Contract by the Supplier and shall be referred to and resolved in accordance with the Dispute Resolution Procedure; and
 - 1 a failure to resolve such breach in accordance with such Dispute Resolution Procedure by the end of the escalation stage of such process (as set out in Clause 22.3 of this Schedule 3) shall entitle, but shall not compel, the Client

to terminate this Contract in accordance with Clause 15.4.1(i) of this Schedule 3.

In order that the Client may act reasonably in exercising its discretion in accordance with Clause 15.6 of this Schedule 3, the Supplier shall provide the Client with such reasonable and proportionate up-to-date financial or other information relating to the Supplier or any relevant third party entity upon request.

- 1 If the Client novates this Contract to any body that is not a Contracting Client, from the effective date of such novation, the rights of the Client to terminate this Contract in accordance with Clause 15.5.2 to Clause 15.5.4 of this Schedule 3 shall be deemed mutual termination rights and the Supplier may terminate this Contract forthwith by notice in writing to the entity assuming the position of the Client if any of the circumstances referred to in such Clauses apply to the entity assuming the position of the Client.
- 1 Within six (6) months of the Commencement Date the Parties shall develop and agree an exit plan which shall ensure continuity of the services on expiry or earlier termination of this Contract. The Supplier shall provide the Client with the first draft of an exit plan within four (4) months of the Commencement Date. The Parties shall review and, as appropriate, update the exit plan on each anniversary of the Commencement Date of this Contract.

16 Consequences of expiry or earlier termination of this Contract

- 1 Upon expiry or earlier termination of this Contract, the Client agrees to pay the Supplier for the Services which have been completed by the Supplier in accordance with this Contract prior to expiry or earlier termination of this Contract.
- 1 Immediately following expiry or earlier termination of this Contract:
 - 1 the Supplier shall comply with its obligations under any agreed exit plan; and
 - 1 all data, including without limitation Personal Data, documents and records (whether stored electronically or otherwise) relating in whole or in part to the Services, including without limitation relating to students or other service users, and all other items provided on loan or otherwise to the Supplier by the Client shall be delivered by the Supplier to the Client provided that the Supplier shall be entitled to keep copies to the extent that: (a) the content does not relate solely to the Services; (b) the Supplier is required by Law and/or Guidance to keep copies; or (c) the Supplier was in possession of such data, documents and records prior to the Commencement Date.
- 1 The Supplier shall retain all data relating to the provision of the Services that are not transferred pursuant to Clause 16.2 of this Schedule 3 for the period set out in Clause 24.1 of this Schedule 3.
- 1 The Supplier shall cooperate fully with the Client or, as the case may be, any replacement supplier during any re-procurement and handover period prior to and following the expiry or earlier termination of this Contract. This cooperation shall extend to providing access to all information relevant to the operation of this Contract, as reasonably required by the Client to achieve a fair and transparent re-procurement and/or an effective transition without disruption to routine operational requirements.

- 16.5 Immediately upon expiry or earlier termination of this Contract any license or lease entered into in accordance with the Key Provisions shall automatically terminate. - 31 -
- 16.6 The expiry or earlier termination of this Contract for whatever reason shall not affect any rights or obligations of either Party which accrued prior to such expiry or earlier termination.
- 16.7 The expiry or earlier termination of this Contract shall not affect any obligations which expressly or by implication are intended to come into or continue in force on or after such expiry or earlier termination.

17 Staff information and the application of TUPE at the end of the Contract

- 1 Upon the day which is no greater than nine (9) months before the expiry of this Contract or as soon as the Supplier is aware of the proposed termination of the Contract, the Supplier shall, within twenty eight (28) days of receiving a written request from the Client and to the extent permitted by law, supply to the Client and keep updated all information required by the Client as to the terms and conditions of employment and employment history of any Supplier Personnel (including all employee liability information identified in regulation 11 of TUPE) and the Supplier shall warrant such information is full, complete and accurate.
- 1 No later than fourteen (14) days prior to the Subsequent Transfer Date, the Supplier shall or shall procure that any subcontractor shall provide a final list to the Successor and/or the Client, as appropriate, containing the names of all the Subsequent Transferring Employees whom the Supplier or subcontractor expects will transfer to the Successor or the Client and all employee liability information identified in regulation 11 of TUPE in relation to the Subsequent Transferring Employees.
- 1 If the Supplier shall, in the reasonable opinion of the Client, deliberately not comply with its obligations under Clauses 17.1 and 17.2 of this Schedule 3, the Client may withhold payment under Clause 9 of this Schedule 3.
- 1 The Supplier shall be liable to the Client for, and shall indemnify and keep the Client indemnified against, any loss, damages, costs, expenses (including without limitation legal costs and expenses), claims or proceedings that arise or result from any deficiency or inaccuracy in the information which the Supplier is required to provide under Clauses 17.1 and 17.2 of this Schedule 3.
- 1 Subject to Clauses 17.6 and 17.7 of this Schedule 3, during the period of nine (9) months preceding the expiry of this Contract or after notice of termination of this Contract has been served by either Party, the Supplier shall not, and shall procure that any subcontractor shall not, without the prior written consent of the Client, such consent not to be unreasonably withheld or delayed:
 - 1 make, propose or permit any material changes to the terms and conditions of employment or other arrangements of any of the Supplier Personnel;
 - 1 increase or seek to increase the emoluments (excluding cost of living increases awarded in the ordinary course of business) payable to any of the Supplier Personnel;
 - 1 replace any of the Supplier Personnel or increase the total number of employees providing the Services;

- 17.5.4 deploy any person other than the Supplier Personnel to perform the Services;
- 17.5.5 terminate or give notice to terminate the employment or arrangements of any of the Supplier Personnel; - 32 -
- 17.5.6 increase the proportion of working time spent on the Services by any of the Supplier Personnel; or
- 17.5.7 introduce any new contractual term or customary practice concerning the making of any lump sum payment on the termination of employment of any of the Supplier Personnel.

- 1 Clause 17.5 of this Schedule 3 shall not prevent the Supplier or any subcontractor from taking any of the steps prohibited in that Clause in circumstances where the Supplier or subcontractor is required to take such a step pursuant to any changes in legislation or pursuant to a collective agreement in force at that time.
- 1 Where the obligations on the Supplier under Clause 17 of this Schedule 3 are subject to the Data Protection Legislation, the Supplier will, and shall procure that any subcontractor will, use its best endeavours to seek the consent of the Supplier Personnel to disclose any information covered under the Data Protection Legislation and utilise any other exemption or provision within the Data Protection Legislation which would allow such disclosure.
- 1 Having as appropriate gained permission from any subcontractor, the Supplier hereby permits the Client to disclose information about the Supplier Personnel to any Interested Party provided that the Client informs the Interested Party in writing of the confidential nature of the information.
- 1 The Parties agree that where a Successor or the Client provides the Services or services of the same or similar nature to the Services in immediate or subsequent succession to the Supplier or subcontractor (in whole or in part) on expiry or early termination of this Contract (howsoever arising) TUPE may apply in respect of the subsequent provision of the Services or services of the same or similar nature to the Services. If TUPE applies then Clause 17.11 to Clause 17.14 of this Schedule 3 shall apply.
- 1 If on the termination or at the end of the Contract TUPE does not apply, then all Employment Liabilities and any other liabilities in relation to the Supplier Personnel shall remain with the Supplier or subcontractor as appropriate. The Supplier will, and shall procure that any subcontractor shall, indemnify and keep indemnified the Client in relation to any Employment Liabilities arising out of or in connection with any allegation or claim raised by any Supplier Personnel.

17:11 In accordance with TUPE, and any other policy or arrangement applicable, the Supplier shall, and will procure that any subcontractor shall, comply with its obligations to inform and consult with the appropriate representatives of any of its employees affected by the subsequent transfer of the Services or services of the same or similar nature to the Services.

17:12 The Supplier will and shall procure that any subcontractor will on or before any Subsequent Transfer Date:

- 1 pay all wages, salaries and other benefits of the Subsequent Transferring Employees and discharge all other financial obligations (including reimbursement of any expenses and any contributions to retirement benefit schemes) in respect of the period between the Transfer Date and the Subsequent Transfer Date;
- 1 account to the proper Client for all PAYE, tax deductions and national insurance contributions payable in respect of the Subsequent Transferring Employees in the period between the Transfer Date and the Subsequent Transfer Date;
- 1 pay any Successor or the Client, as appropriate, the amount which would be payable to each of the Subsequent Transferring Employees in lieu of accrued but untaken holiday entitlement as at the Subsequent Transfer Date;
- 1 pay any Successor or the Client, as appropriate, the amount which fairly reflects the progress of each of the Subsequent Transferring Employees towards achieving any commission, bonus, profit share or other incentive payment payable after the Subsequent Transfer Date wholly or partly in respect of a period prior to the Subsequent Transfer Date; and
- 1 subject to any legal requirement, provide to the Successor or the Client, as appropriate, all personnel records relating to the Subsequent Transferring Employees including, without prejudice to the generality of the foregoing, all records relating to national insurance, PAYE and income tax. The Supplier shall for itself and any subcontractor warrant that such records are accurate and up to date.

17:13 The Supplier will and shall procure that any subcontractor will indemnify and keep indemnified the Client and/or a Successor in relation to any Employment Liabilities arising out of or in connection with any claim arising from:

- 1 the Supplier's or subcontractor's failure to perform and discharge its obligations under Clause 17:12 of this Schedule 3;
- 1 any act or omission by the Supplier or subcontractor in respect of the Subsequent Transferring Employees occurring on or before the Subsequent Transfer Date;
- 1 any allegation or claim by any person who is not a Subsequent Transferring Employee but who alleges that their employment should transfer or has transferred to the Successor or the Client, as appropriate;

- 17.13.4 any emoluments payable to a person employed or engaged by the Supplier or subcontractor (including without limitation all wages, accrued holiday pay, bonuses, commissions, PAYE, national insurance contributions, pension contributions and other contributions) payable in respect of any period on or before the Subsequent Transfer Date; and
- 17.13.5 any allegation or claim by any of the Subsequent Transferring Employees on the grounds that the Successor or Client, as appropriate, has failed to continue a benefit provided by the Supplier or subcontractor as a term of such Subsequent Transferring Employee's contract as at the Subsequent Transfer Date where it was not reasonably practicable for the Successor or Client, as appropriate, to provide an identical benefit but where the Successor or Client, as appropriate, has provided (or offered to provide where such benefit is not accepted by the Subsequent Transferring Employee) an alternative benefit which, taken as a whole, is no less favourable to such Subsequent Transferring Employee; and - 34 -
- 17.13.6 any act or omission of the Supplier or any subcontractor in relation to its obligations under regulation 13 of TUPE, or in respect of an award of compensation under regulation 15 of TUPE except to the extent that the liability arises from the Successor's or Client's failure to comply with regulation 13(4) of TUPE.

- 1 The Supplier will, or shall procure that any subcontractor will, on request by the Client provide a written and legally binding indemnity in the same terms as set out in Clause 17.13 of this Schedule 3 to any Successor in relation to any Employment Liabilities arising up to and including the Subsequent Transfer Date.
- 1 The Supplier will indemnify and keep indemnified the Client and/or any Successor in respect of any Employment Liabilities arising from any act or omission of the Supplier or subcontractor in relation to any other Supplier Personnel who is not a Subsequent Transferring Employee arising during any period whether before, on or after the Subsequent Transfer Date.
- 1 If any person who is not a Subsequent Transferring Employee claims or it is determined that their contract of employment has been transferred from the Supplier or any subcontractor to the Client or Successor pursuant to TUPE or claims that their employment would have so transferred had they not resigned, then:
 - 1 the Client or Successor will within seven (7) days of becoming aware of that fact, give notice in writing to the Supplier;
 - 1 the Supplier may offer (or may procure that a subcontractor may offer) employment to such person within twenty eight (28) days of the notification by the Client or Successor;
 - 1 if such offer of employment is accepted, the Client or the Successor shall immediately release the person from their employment; and

- 1 if after the period in Clause 17.16.2 of this Schedule 3 has elapsed, no such offer of employment has been made or such offer has been made but not accepted, the Client or the Successor, whichever is the provider of the Services or services of the same or similar nature to the Services, shall employ that person in accordance with its obligations and duties under TUPE and shall be responsible for all liabilities arising in respect of any such person after the Subsequent Transfer Date.

18 Complaints

- 1 Each Party shall inform the other of all complaints from or on behalf of student's or other service users arising out of or in connection with the provision of the Services within twenty four (24) hours of receipt of each complaint and shall keep the other Party updated on the manner of resolution of any such complaints.
- 1 If any complaint or significant concern is made or raised (whether orally or in writing) concerning the Services, the Supplier shall immediately investigate it in a courteous and efficient manner and take such corrective action as is appropriate. The Supplier shall record details of all complaints and concerns and how they were resolved in a written register. The register will be freely available to the Client.
- 1 The Supplier shall provide any information requested by the Client in connection with any complaint or significant concern relating to the Services (whether made to the Client or the Supplier and whether made orally or in writing) and co-operate fully and promptly in every way required by the Client or by any person or body conducting any investigation regarding a complaint or significant concern including attending meetings, and permitting Staff to attend meetings and allowing access to and investigation of documents and data.

19 Sustainable development

- 1 The Supplier shall comply in all material respects with applicable environmental and social Law requirements in force from time to time in relation to the Services. Where the provisions of any such Law are implemented by the use of voluntary agreements, the Supplier shall comply with such agreements as if they were incorporated into English law subject to those voluntary agreements being cited in the Specification and Tender Response Document. Without prejudice to the generality of the foregoing, the Supplier shall:
 - 1 comply with all Policies and/or procedures and requirements set out in the Specification and Tender Response Document in relation to any stated environmental and social requirements, characteristics and impacts of the Services and the Supplier's supply chain;
 - 1 maintain relevant policy statements documenting the Supplier's significant social and environmental aspects as relevant to the Services being provided and as proportionate to the nature and scale of the Supplier's business operations; and
 - 1 maintain plans and procedures that support the commitments made as part of the Supplier's significant social and environmental policies, as referred to at Clause 19.1.2 of this Schedule 3.
- 1 The Supplier shall meet reasonable requests by the Client for information evidencing the Supplier's compliance with the provisions of Clause 19 of this Schedule 3.

20 Premises closure

- 2 In the event that any Client School is closed due to a Qualifying Event on a normal school day (being a day on which the relevant school would usually be delivering education), the Supplier shall be entitled invoice the Client 1/190th of the budgeted Labour Costs and Supplier Management Fee (both as set out in Appendix 1 as relates to the relevant Client School.

21 Change management

- 2 The Supplier acknowledges to the Client that the Client's requirements for the Services may change during the Term and the Supplier shall not unreasonably withhold or delay its consent to any reasonable variation or addition to the Specification and Tender Response Document, as may be requested by the Client from time to time.
- 2 Any change to the Services or other variation to this Contract shall only be binding once it has been agreed either: (a) in accordance with the Change Control Process if the Key Provisions specify that changes are subject to a formal change control process; or (b) if the Key Provisions make no such reference, in writing and signed by an authorised representative of both Parties.

22 Dispute resolution

- 2 During any dispute, including a dispute as to the validity of this Contract, it is agreed that the Supplier shall continue its performance of the provisions of the Contract (unless the Client requests in writing that the Supplier does not do so).
- 2 In the case of a dispute arising out of or in connection with this Contract the Supplier and the Client shall make every reasonable effort to communicate and cooperate with each other with a view to resolving the dispute and follow the procedure set out in Clause 22.3 of this Schedule 3 before commencing court proceedings.
- 2 If any dispute arises out of the Contract either Party may serve a notice on the other Party to commence formal resolution of the dispute. Level 1 of the management levels of the dispute as set out in Clause 5 of the Key Provisions will commence on the date of service of the dispute notice. Respective representatives, as set out in Clause 5 of the Key Provisions, shall have five (5) Business Days at each level to resolve the dispute before escalating the matter to the next level as appropriate.
- 2 If the procedure set out in Clause 22.3 of this Schedule 3 above fails to resolve such dispute, the Parties will attempt to settle it by mediation either: (a) with the Centre for Effective Dispute Resolution ("**CEDR**"); or (b) if agreed in writing by the Parties, with any other alternative mediation organisation, using the respective model procedures of CEDR or such other mediation organisation.
- 2 To initiate mediation a Party shall:
 - 2 give notice in writing ("**Mediation Notice**") to the other Party requesting mediation of the dispute; and
 - 2 send a copy of the Mediation Notice to CEDR or an equivalent mediation organisation as agreed by the Parties asking them to nominate a mediator if the Parties are not able to agree such appointment by negotiation.

- 22.6 Neither Party may issue a Mediation Notice until the process set out in Clause 22.3 of this Schedule 3 has been exhausted. - 37 -
- 22.7 The mediation shall commence within twenty eight (28) days of the Mediation Notice being served. Neither Party will terminate such mediation until each Party has made its opening presentation and the mediator has met each Party separately for at least one hour or one Party has failed to participate in the mediation process. Neither Party will commence legal proceedings against the other until thirty (30) days after such mediation of the dispute in question has failed to resolve the dispute. The Client and the Supplier will cooperate with any person appointed as mediator providing them with such information and other assistance as they shall require and will pay their costs, as they shall determine or in the absence of such determination such costs will be shared equally.
- 22.8 Nothing in this Contract shall prevent:
- 2 the Client taking action in any court in relation to any death or personal injury arising or allegedly arising in connection with the provision of the Services; or
 - 2 either Party seeking from any court any interim or provisional relief that may be necessary to protect the rights or property of that Party or that relates to the safety of students and other service users or the security of Confidential Information, pending resolution of the relevant dispute in accordance with the CEDR or other mediation organisation procedure.
- 22.9 Clause 22 of this Schedule 3 shall survive the expiry of or earlier termination of this Contract for any reason.

23 Force majeure

- 2 Subject to Clause 23.2 of this Schedule 3 neither Party shall be liable to the other for any failure to perform all or any of its obligations under this Contract nor liable to the other Party for any loss or damage arising out of the failure to perform its obligations to the extent only that such performance is rendered impossible by a Force Majeure Event.
- 2 The Supplier shall only be entitled to rely on a Force Majeure Event and the relief set out in Clause 23 of this Schedule 3 and will not be considered to be in default or liable for breach of any obligations under this Contract if:
 - 2 the Supplier has fulfilled its obligations pursuant to Clause 6 of this Schedule 3;
 - 2 the Force Majeure Event does not arise directly or indirectly as a result of any wilful or negligent act or default of the Supplier; and
 - 2 the Supplier has complied with the procedural requirements set out in Clause 23 of this Schedule 3.
- 2 Where a Party is (or claims to be) affected by a Force Majeure Event it shall use reasonable endeavours to mitigate the consequences of such a Force Majeure Event upon the performance of its obligations under this Contract, and to resume the performance of its obligations affected by the Force Majeure Event as soon as practicable.

- 23.4 Where the Force Majeure Event affects the Supplier's ability to perform part of its obligations under the Contract the Supplier shall fulfil all such contractual obligations that are not so affected and shall not be relieved from its liability to do so. - 38 -
- 23.5 If either Party is prevented or delayed in the performance of its obligations under this Contract by a Force Majeure Event, that Party shall as soon as reasonably practicable serve notice in writing on the other Party specifying the nature and extent of the circumstances giving rise to its failure to perform or any anticipated delay in performance of its obligations.
- 23.6 Subject to service of such notice, the Party affected by such circumstances shall have no liability for its failure to perform or for any delay in performance of its obligations affected by the Force Majeure Event only for so long as such circumstances continue and for such time after they cease as is necessary for that Party, using its best endeavours, to recommence its affected operations in order for it to perform its obligations.
- 23.7 The Party claiming relief shall notify the other in writing as soon as the consequences of the Force Majeure Event have ceased and of when performance of its affected obligations can be resumed.
- 23.8 If the Supplier is prevented from performance of its obligations as a result of a Force Majeure Event, the Client may at any time if the Force Majeure Event subsists for thirty (30) days or more, terminate this Contract on service of written notice on the Supplier.
- 23.9 Following such termination in accordance with Clause 23.8 of this Schedule 3 and subject to Clause 23.10 of this Schedule 3, neither Party shall have any liability to the other.
- 23.10 Any rights and liabilities of either Party which accrued prior to such termination in accordance with Clause 23.8 of this Schedule 3 shall continue in full force and effect unless otherwise specified in this Contract.

24 Records retention and right of audit

- 2 Subject to any statutory requirement and Clause 24.2 of this Schedule 3, the Supplier shall keep secure and maintain for the Term and six (6) years afterwards, or such longer period as may be agreed between the Parties, full and accurate records of all matters relating to this Contract.
- 2 Where any records could be relevant to a claim for personal injury such records shall be kept secure and maintained for a period of twenty one (21) years from the date of expiry or earlier termination of this Contract.
- 2 The Client shall have the right to audit the Supplier's compliance with this Contract. The Supplier shall permit or procure permission for the Client or its authorised representative during normal business hours having given advance written notice of no less than five (5) Business Days, access to any premises and facilities, books and records reasonably required to audit the Supplier's compliance with its obligations under this Contract.
- 2 Should the Supplier subcontract any of its obligations under this Contract, the Client shall have the right to audit and inspect such third party. The Supplier shall procure permission for the Client or its authorised representative during normal business hours

no more than once in any twelve (12) months, having given advance written notice of no less than five (5) Business Days, access to any premises and facilities, books and records used in the performance of the Supplier's obligations under this Contract that are subcontracted to such third party. The Supplier shall cooperate with such audit and inspection and accompany the Client or its authorised representative if requested.

24.5 The Supplier shall grant to the Client or its authorised representative, such access to those records as they may reasonably require in order to check the Supplier's compliance with this Contract for the purposes of:

- 2 the examination and certification of the Client's accounts; or
- 2 any examination pursuant to section 6(1) of the National Audit Act 1983 of the economic efficiency and effectiveness with which the Client has used its resources.

24.6 The Comptroller and Auditor General may examine such documents as they may reasonably require which are owned, held or otherwise within the control of the Supplier and may require the Supplier to provide such oral and/or written explanations as they consider necessary. Clause 24 of this Schedule 3 does not constitute a requirement or agreement for the examination, certification or inspection of the accounts of the Supplier under section 6(3)(d) and 6(5) of the National Audit Act 1983.

24.7 The Supplier shall provide reasonable cooperation to the Client, its representatives and any regulatory body in relation to any audit, review, investigation or enquiry carried out in relation to the subject matter of this Contract.

24.8 The Supplier shall provide all reasonable information as may be reasonably requested by the Client to evidence the Supplier's compliance with the requirements of this Contract.

25 Conflicts of interest and the prevention of fraud

- 2 The Supplier shall take appropriate steps to ensure that neither the Supplier nor any Staff are placed in a position where, in the reasonable opinion of the Client, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier and the duties owed to the Client under the provisions of this Contract. The Supplier will disclose to the Client full particulars of any such conflict of interest which may arise.
- 2 The Client reserves the right to terminate this Contract immediately by notice in writing and/or to take such other steps it deems necessary where, in the reasonable opinion of the Client, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier and the duties owed to the Client under the provisions of this Contract. The actions of the Client pursuant to this Clause 25.2 of this Schedule 3 shall not prejudice or affect any right of action or remedy which shall have accrued or shall subsequently accrue to the Client.
- 2 The Supplier shall take all reasonable steps to prevent Fraud by Staff and the Supplier (including its owners, members and directors). The Supplier shall notify the Client immediately if it has reason to suspect that any Fraud has occurred or is occurring or is likely to occur.

- 2 If the Supplier or its Staff commits Fraud the Client may terminate this Contract and recover from the Supplier the amount of any direct loss suffered by the Client resulting from the termination.

26 Equality and human rights

- 2 The Supplier shall:
 - 2 ensure that (a) it does not, whether as employer or as provider of the Services, engage in any act or omission that would contravene the Equality Legislation, and (b) it complies with all its obligations as an employer or provider of the Services as set out in the Equality Legislation and take reasonable endeavours to ensure its Staff do not unlawfully discriminate within the meaning of the Equality Legislation;
 - 2 in the management of its affairs and the development of its equality and diversity policies, cooperate with the Client in light of the Client's obligations to comply with its statutory equality duties whether under the Equality Act 2010 or otherwise. The Supplier shall take such reasonable and proportionate steps as the Client considers appropriate to promote equality and diversity, including race equality, equality of opportunity for disabled people, gender equality, and equality relating to religion and belief, sexual orientation and age; and
 - 2 the Supplier shall impose on all its subcontractors and suppliers, obligations substantially similar to those imposed on the Supplier by Clause 26 of this Schedule 3.
- 2 The Supplier shall meet reasonable requests by the Client for information evidencing the Supplier's compliance with the provisions of Clause 26 of this Schedule 3.

27 Notice

- 2 Any notice required to be given by either Party under this Contract shall be in writing quoting the date of the Contract and shall be delivered by hand or sent by prepaid first class recorded delivery or by email to the person referred to in the Key Provisions or such other person as one Party may inform the other Party in writing from time to time.
- 2 A notice shall be treated as having been received:
 - 2 if delivered by hand within normal business hours when so delivered or, if delivered by hand outside normal business hours, at the next start of normal business hours; or
 - 2 if sent by first class recorded delivery mail on a normal Business Day, at 9.00 am on the second Business Day subsequent to the day of posting, or, if the notice was not posted on a Business Day, at 9.00 am on the third Business Day subsequent to the day of posting; or
 - 2 if sent by email, if sent within normal business hours when so sent or, if sent outside normal business hours, at the next start of normal business hours provided the sender has either received an electronic confirmation of delivery or has telephoned the recipient to inform the recipient that the email has been sent.

28 Assignment, novation and subcontracting

- 2 The Supplier shall not, except where Clause 28.2 of this Schedule 3 applies, assign, subcontract, novate, create a trust in, or in any other way dispose of the whole or any part of this Contract without the prior consent in writing of the Client such consent not to be unreasonably withheld or delayed. If the Supplier subcontracts any of its obligations under this Contract, every act or omission of the subcontractor shall for the purposes of this Contract be deemed to be the act or omission of the Supplier and the Supplier shall be liable to the Client as if such act or omission had been committed or omitted by the Supplier itself.
- 2 Notwithstanding Clause 28.1 of this Schedule 3, the Supplier may assign to a third party ("**Assignee**") the right to receive payment of any sums due and owing to the Supplier under this Contract for which an invoice has been issued. Any assignment under this Clause 28.2 of this Schedule 3 shall be subject to:
 - 2 the deduction of any sums in respect of which the Client exercises its right of recovery under Clause 9.7 of this Schedule 3;
 - 2 all related rights of the Client in relation to the recovery of sums due but unpaid;
 - 2 the Client receiving notification of the assignment and the date upon which the assignment becomes effective together with the Assignee's contact information and bank account details to which the Client shall make payment;
 - 2 the provisions of Clause 9 of this Schedule 3 continuing to apply in all other respects after the assignment which shall not be amended without the prior written approval of the Client; and
 - 2 payment to the Assignee being full and complete satisfaction of the Client's obligation to pay the relevant sums in accordance with this Contract.
- 2 Any authorisation given by the Client for the Supplier to subcontract any of its obligations under this Contract shall not impose any duty on the Client to enquire as to the competency of any authorised subcontractor. The Supplier shall ensure that any authorised subcontractor has the appropriate capability and capacity to perform the relevant obligations and that the obligations carried out by such subcontractor are fully in accordance with this Contract.
- 2 Where the Supplier enters into a subcontract in respect of any of its obligations under this Contract relating to the provision of the Services, the Supplier shall include provisions in each such subcontract, unless otherwise agreed with the Client in writing, which:
 - 2 contain at least equivalent obligations as set out in this Contract in relation to the performance of the Services to the extent relevant to such subcontracting;
 - 2 contain at least equivalent obligations as set out in this Contract in respect of confidentiality, information security, data protection, Intellectual Property Rights, compliance with Law and Guidance and record keeping;
 - 2 contain a prohibition on the subcontractor subcontracting, assigning or novating any of its rights or obligations under such subcontract without the

prior written approval of the Client (such approval not to be unreasonably withheld or delayed);

28.4.4 contain a right for the Client to take an assignment or novation of the subcontract (or part of it) upon expiry or earlier termination of this Contract; and - 42 -

28.4.5 require payment to be made of all sums due to the subcontractor from the Supplier within a specified period not exceeding thirty (30) days from receipt by the Supplier of a valid invoice.

- 2 Where the Client pays the Supplier's undisputed invoices earlier than thirty (30) days from receipt in accordance with any applicable government prompt payment targets, the Supplier shall use its reasonable endeavours to pay its relevant subcontractors within a comparable timeframe from receipt by the Supplier of such undisputed invoices from its subcontractors.
- 2 The Client shall upon written request have the right to review any subcontract entered into by the Supplier in respect of the provision of the Services and the Supplier shall provide a certified copy of any subcontract within five (5) Business Days of the date of a written request from the Client. For the avoidance of doubt, the Supplier shall have the right to redact any confidential pricing information in relation to such copies of subcontracts.
- 2 The Client may at any time transfer, assign, novate, subcontract or otherwise dispose of its rights and obligations under this Contract or any part of this Contract and the Supplier warrants that it will carry out all such reasonable further acts required to effect such transfer, assignment, novation, subcontracting or disposal. If the Client novates this Contract to any body that is not a Contracting Client, from the effective date of such novation, the party assuming the position of the Client shall not further transfer, assign, novate, subcontract or otherwise dispose of its rights and obligations under this Contract or any part of this Contract without the prior written consent of the Supplier, such consent not to be unreasonably withheld or delayed by the Supplier.

29 **Prohibited Acts**

- 2 The Supplier warrants and represents that:
 - 2 it has not committed any offence under the Bribery Act 2010 or done any of the following ("**Prohibited Acts**"):
 - (i) offered, given or agreed to give any officer or employee of the Client any gift or consideration of any kind as an inducement or reward for doing or not doing or for having done or not having done any act in relation to the obtaining or performance of this or any other agreement with the Client or for showing or not showing favour or disfavour to any person in relation to this or any other agreement with the Client; or
 - (ii) in connection with this Contract paid or agreed to pay any commission other than a payment, particulars of which (including the terms and conditions of the agreement for its payment) have been disclosed in writing to the Client; and

2 it has in place adequate procedures to prevent bribery and corruption, as contemplated by section 7 of the Bribery Act 2010.

29.2 If the Supplier or its Staff (or anyone acting on its or their behalf) has done or does any of the Prohibited Acts or has committed or commits any offence under the Bribery Act 2010 with or without the knowledge of the Supplier in relation to this or any other agreement with the Client:

29.2.1 the Client shall be entitled:

- (i) to terminate this Contract and recover from the Supplier the amount of any loss resulting from the termination;
- (ii) to recover from the Supplier the amount or value of any gift, consideration or commission concerned; and
- (iii) to recover from the Supplier any other loss or expense sustained in consequence of the carrying out of the Prohibited Act or the commission of the offence under the Bribery Act 2010;

29.2.2 any termination under Clause 29.2.1 of this Schedule 3 shall be without prejudice to any right or remedy that has already accrued, or subsequently accrues, to the Client; and

29.2.3 notwithstanding Clause 22 of this Schedule 3, any dispute relating to:

- (i) the interpretation of Clause 29 of this Schedule 3; or
- (ii) the amount or value of any gift, consideration or commission, shall be determined by the Client, acting reasonably, and the decision shall be final and conclusive.

30 General

- 3 Each of the Parties is independent of the other and nothing contained in this Contract shall be construed to imply that there is any relationship between the Parties of partnership or of principal/agent or of employer/employee nor are the Parties hereby engaging in a joint venture and accordingly neither of the Parties shall have any right or Client to act on behalf of the other nor to bind the other by agreement or otherwise, unless expressly permitted by the terms of this Contract.
- 3 Failure or delay by either Party to exercise an option or right conferred by this Contract shall not of itself constitute a waiver of such option or right.
- 3 The delay or failure by either Party to insist upon the strict performance of any provision, term or condition of this Contract or to exercise any right or remedy consequent upon such breach shall not constitute a waiver of any such breach or any subsequent breach of such provision, term or condition.
- 3 Any provision of this Contract which is held to be invalid or unenforceable in any jurisdiction shall be ineffective to the extent of such invalidity or unenforceability without invalidating or rendering unenforceable the remaining provisions of this Contract and any such invalidity or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provisions in any other jurisdiction.

- 30.5 Each Party acknowledges and agrees that it has not relied on any representation, warranty or undertaking (whether written or oral) in relation to the subject matter of this Contract and therefore irrevocably and unconditionally waives any rights it may have to claim damages against the other Party for any misrepresentation or undertaking (whether made carelessly or not) or for breach of any warranty unless the representation, undertaking or warranty relied upon is set out in this Contract or unless such representation, undertaking or warranty was made fraudulently.
- 30.6 Each Party shall bear its own expenses in relation to the preparation and execution of this Contract including all costs, legal fees and other expenses so incurred. - 44 -
- 30.7 The rights and remedies provided in this Contract are cumulative and not exclusive of any rights or remedies provided by general law, or by any other contract or document. In this Clause 30.7 of this Schedule 3, right includes any power, privilege, remedy, or proprietary or security interest.
- 30.8 A person who is not a party to this Contract shall have no right to enforce any terms of it which confer a benefit on such person except that a Successor and/or a Third Party may directly enforce any indemnities or other rights provided to it under this Contract. No such person shall be entitled to object to or be required to consent to any amendment to the provisions of this Contract.
- 30.9 This Contract, any variation in writing signed by an authorised representative of each Party and any document referred to (explicitly or by implication) in this Contract or any variation to this Contract, contain the entire understanding between the Supplier and the Client relating to the Services to the exclusion of all previous agreements, confirmations and understandings and there are no promises, terms, conditions or obligations whether oral or written, express or implied other than those contained or referred to in this Contract. Nothing in this Contract seeks to exclude either Party's liability for Fraud.
- 30.10 This Contract, and any dispute or claim arising out of or in connection with it or its subject matter (including any non-contractual claims), shall be governed by, and construed in accordance with, the laws of England and Wales.
- 30.11 Subject to Clause 22 of this Schedule 3, the Parties irrevocably agree that the courts of England and Wales shall have non-exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Contract or its subject matter.
- 30.12 All written and oral communications and all written material referred to under this Contract shall be in English.

Schedule 4

Information Governance

1 Confidentiality

- 1.1 In respect of any Confidential Information it may receive directly or indirectly from the other Party ("**Discloser**") and subject always to the remainder of Clause 1 of this Schedule 4, each Party ("**Recipient**") undertakes to keep secret and strictly confidential and shall not disclose any such Confidential Information to any third party without the Discloser's prior written consent provided that:
- 1 the Recipient shall not be prevented from using any general knowledge, experience or skills which were in its possession prior to the Commencement Date;
 - 1 the provisions of Clause 1 of this Schedule 4 shall not apply to any Confidential Information:
 - (i) which is in or enters the public domain other than by breach of this Contract or other act or omissions of the Recipient;
 - (ii) which is obtained from a third party who is lawfully authorised to disclose such information without any obligation of confidentiality;
 - (iii) which is authorised for disclosure by the prior written consent of the Discloser;
 - (iv) which the Recipient can demonstrate was in its possession without any obligation of confidentiality prior to receipt of the Confidential Information from the Discloser; or
 - (v) which the Recipient is required to disclose purely to the extent to comply with the requirements of any relevant stock exchange.
- 1.2 Nothing in Clause 1 of this Schedule 4 shall prevent the Recipient from disclosing Confidential Information where it is required to do so by judicial, administrative, governmental or regulatory process in connection with any action, suit, proceedings or claim or otherwise by applicable Law, including the Freedom of Information Act 2000 ("**FOIA**"), Codes of Practice on Access to Government Information, on the Discharge of Public Authorities' Functions or on the Management of Records ("**Codes of Practice**") or the Environmental Information Regulations 2004 ("**Environmental Regulations**").
- 1.3 Provided the Client makes clear the confidential nature of such information and that it must not be further disclosed except in accordance with Law or this Clause 1.3 of this Schedule 4, the Client may disclose the Supplier's Confidential Information to the following third parties:
- 1 any Contracting Authority (the Parties agree that all Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Contracting Authorities on the basis

that the information is confidential and is not to be disclosed to a third party which is not part of any Contracting Authority);

- 1.3.2 to any consultant, contractor or other person engaged by the Client and/or the Contracting Authority receiving such information; - 46 -
- 1.3.3 to any relevant party for the purpose of the examination and certification of the Client's accounts; or
- 1.3.4 to any relevant party for any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Client has used its resources.

- 1 The Supplier may only disclose the Client's Confidential Information, and any other information provided to the Supplier by the Client in relation to the provision of the Services, to the Supplier's Staff or professional advisors who are directly involved in the performance of or advising on the Supplier's obligations under this Contract. The Supplier shall ensure that such Staff are aware of and shall comply with the obligations in Clause 1 of this Schedule 4 as to confidentiality and that all information, including Confidential Information, is held securely, protected against unauthorised use or loss and, at the Client's written discretion, destroyed securely or returned to the Client when it is no longer required. The Supplier shall not, and shall ensure that the Staff do not, use any of the Client's Confidential Information received otherwise than for the purposes of performing the Supplier's obligations in this Contract.
- 1 For the avoidance of doubt, save as required by Law or as otherwise set out in this Schedule 4, the Supplier shall not, without the prior written consent of the Client (such consent not to be unreasonably withheld or delayed), announce that it has entered into this Contract and/or that it has been appointed as a Supplier to the Client and/or make any other announcements about this Contract.
- 1 Clause 1 of this Schedule 4 shall remain in force:
 - 1 without limit in time in respect of Confidential Information which comprises Personal Data, Sensitive Personal Data or which relates to national security; and
 - 1 for all other Confidential Information for a period of two (2) years after the expiry or earlier termination of this Contract.

2 **Data protection**

- 2.1 Each party (in this clause 2 the "**Processing Party**") shall take all necessary steps to ensure that data or information belonging to the other party (in this clause 2 the "**Controlling Party**") which comes into its possession or control in the course of providing or receiving the Services is protected in accordance with the Client's ICT policy and data privacy policy, in each case as the same are in force from time to time and are notified to the Supplier, and in particular the Processing Party shall not:
- 2.1.1 use the data or information nor reproduce the data or information in whole or in part in any form except as may be required by this Contract; or - 47 -
 - 2.1.2 disclose the data or information to any third party or persons not authorised by the Controlling Party to receive it, except with the prior written consent of the Controlling Party; or
 - 2.1.3 alter, delete, add to or otherwise interfere with the data or information (save where expressly required to do so by the terms of this Contract).
- 2.2 To the extent that any data or information belonging to the Controlling Party is personal data within the meaning of Data Protection Legislation:
- 2 the Processing Party shall provide the Controlling Party with reasonable co-operation and assistance so as to assist the Controlling Party to comply with its obligations under this clause 2 and Data Protection Legislation;
 - 2 where the Processing Party Processes Personal Data as a Data Processor of the Controlling Party then the Processing Party shall Process such Personal Data in accordance with the following:
 - (i) the Processing Party shall only Processes the Personal Data on documented instructions from the Controlling Party, including with regard to transfers of Personal Data to a third country or an international organisation, unless required to do so by any applicable law to which the Processing Party is subject, and in such a case the Processing Party shall inform the Controlling Party of that legal requirement before Processing, unless that law prohibits such information on important grounds of public interest;
 - (ii) the Processing Party shall ensure that persons authorised to Process the Personal Data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality;
 - (iii) the Processing Party shall take reasonable steps to ensure the reliability of all individuals employed by or on behalf of it who will have access to Personal Data, and ensure that such individuals are aware of and trained in the policies and procedures identified in this clause 2;

- (iv) the Processing Party shall take all measures required pursuant to Article 32 of the GDPR;
- (v) the Processing Party shall not engage another Data Processor without first informing the Controlling Party of any intended changes concerning the addition or replacement of other Data Processors, thereby giving the Controlling Party the opportunity to object to such changes; - 48 -
- (vi) where the Processing Party engages another Data Processor for carrying out specific Processing activities on behalf of the Controlling Party, the same data protection obligations as set out in this Contract shall be imposed on that other Data Processor by way of a contract or other legal act under applicable law, in particular providing sufficient guarantees to implement appropriate technical and organisational measures in such a manner that the Processing will meet the requirements of the GDPR. Where that other Data Processor fails to fulfil its data protection obligations, the Processing Party shall remain fully liable to the Controlling Party for the performance of that other Data Processor's obligations;
- (vii) taking into account the nature of the Processing, the Processing Party shall assist the Controlling Party by appropriate technical and organisational measures, insofar as this is possible, for the fulfilment of the Controlling Party's obligation to respond to requests for exercising the data subject's rights laid down in Chapter III of the GDPR;
- (viii) the Processing Party shall ensure that Personal Data is safeguarded at all times in accordance with Data Protection Legislation, and this obligation will include (if transferred electronically) only transferring Personal Data (a) if essential, having regard to the purpose for which the transfer is conducted; and (b) that is encrypted (this includes, data transferred over wireless or wired networks, held on laptops, CDs, memory sticks and tapes;
- (ix) the Processing Party shall assist the Controlling Party in ensuring compliance with the obligations pursuant to Articles 32 to 36 of the GDPR taking into account the nature of Processing and the information available to the Processing Party;
- (x) at the choice of the Controlling Party, the Processing Party shall delete or return all the Personal Data to the Controlling Party after the end of the provision of the Services relating to Processing, and delete existing copies unless applicable law requires storage of the Personal Data;
- (xi) the Processing Party shall make available to the Controlling Party all information necessary to demonstrate compliance with the obligations laid down in the GDPR and allow for and contribute to audits, including inspections, conducted by the Controlling Party or another auditor mandated by the Controlling Party;

- (xii) the parties acknowledge and agree that by Regulation 28.3 of the GDPR, this Contract must set out the "subject-matter and duration of the processing, the nature and purpose of the processing, the type of personal data and categories of data subject and the obligations and rights of the controller." These requirements are referred to in this clause 2 as the Data Processing Particulars. Where the Data Processing Particulars are not apparent from this Contract then the Client may, from time to time, by written notice to the Supplier set out the Data Processing Particulars and such document shall be incorporated into this Contract; - 49 -
- (xiii) if either party receives any complaint or communication which relates directly or indirectly to the Processing of Personal Data in connection with this Contract or the Services, the receiving party shall immediately notify the other party and shall provide full cooperation in relation to any such complaint or communication;
- (xiv) at the Controlling Party's request, the Processing Party shall promptly provide to the Controlling Party a copy of all Personal Data held in the format specified;
- (xv) the Processing Party shall promptly inform the Controlling Party if any Personal Data is lost or destroyed or becomes damaged, corrupted or unusable and will restore such Personal Data at its own expense;
- (xvi) the Processing Party agrees and warrants that it will take all steps which are necessary to ensure compliance with its obligations as set out in this clause 2;

- 2 Where, as a requirement of this Contract, the Supplier is Processing Personal Data (to include, without limitation, Sensitive Personal Data) relating to students and/or service users as part of the Services, the Supplier shall:
 - 2 complete and publish an annual information governance assessment when required by the Client, in a format agreed by both parties;
 - 2 nominate an information governance lead able to communicate with both parties, who will be responsible for information governance and from whom both parties will receive regular reports on information governance matters including, but not limited to, details of all incidents of data loss and breach of confidence;
 - 2 report all incidents of data loss and breach of confidence in accordance with the procedure agreed by both parties;
 - 2 put in place and maintain policies that describe individual personal responsibilities for handling Personal Data and apply those policies vigorously;
 - 2 put in place and maintain a policy that supports its obligations under the procedure agreed by both parties;
 - 2 put in place and maintain agreed protocols for the lawful sharing of Personal Data with the Client and (as appropriate) with other

organisations in circumstances in which sharing of that data is required under this Contract; and

2.3.7 where appropriate, have a system in place and a policy for the recording of any telephone calls in relation to the Services, including the retention and disposal of those recordings. - 50 -

2 The Processing Party shall assume all liability to third parties in respect of its Processing of the Controlling Party's Personal Data as from the Commencement Date and shall indemnify the Controlling Party against all costs, claims, damages or expenses arising from the Processing Party's failure to adhere to the terms of this Contract and/or Data Protection Legislation in respect of its Processing of the Controlling Party's Personal Data.

3 Freedom of Information and Transparency

- 3 The Parties acknowledge the duties of Contracting Authorities under the FOIA, Codes of Practice and Environmental Regulations and shall give each other all reasonable assistance as appropriate or necessary to enable compliance with those duties.
- 3 The Supplier shall assist and cooperate with the Client to enable it to comply with its disclosure obligations under the FOIA, Codes of Practice and Environmental Regulations. The Supplier agrees:
- 3 that this Contract and any recorded information held by the Supplier on the Client's behalf for the purposes of this Contract are subject to the obligations and commitments of the Client under the FOIA, Codes of Practice and Environmental Regulations;
 - 3 that the decision on whether any exemption to the general obligations of public access to information applies to any request for information received under the FOIA, Codes of Practice and Environmental Regulations is a decision solely for the Client;
 - 3 that where the Supplier receives a request for information under the FOIA, Codes of Practice and Environmental Regulations and the Supplier itself is subject to the FOIA, Codes of Practice and Environmental Regulations it will liaise with the Client as to the contents of any response before a response to a request is issued and will promptly (and in any event within two (2) Business Days) provide a copy of the request and any response to the Client;
 - 3 that where the Supplier receives a request for information under the FOIA, Codes of Practice and Environmental Regulations and the Supplier is not itself subject to the FOIA, Codes of Practice and Environmental Regulations, it will not respond to that request (unless directed to do so by the Client) and will promptly (and in any event within two (2) Business Days) transfer the request to the Client;
 - 3 that the Client, acting in accordance with the Codes of Practice issued and revised from time to time under both section 45 of FOIA, and regulation 16 of the Environmental Regulations, may disclose information concerning the Supplier and this Contract; and to assist the Client in responding to a request for information, by processing information or environmental

information (as the same are defined in FOIA and the Environmental Regulations) in accordance with a records management system that complies with all applicable records management recommendations and codes of conduct issued under section 46 of FOIA, and providing copies of all information requested by the Client within five (5) Business Days of that request and without charge.

- 3.3 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, Codes of Practice and Environmental Regulations, the content of this Contract is not Confidential Information.
- 51 -
- 3.4 Notwithstanding any other term of this Contract, the Supplier consents to the publication of this Contract in its entirety (including variations), subject only to the redaction of information that is exempt from disclosure in accordance with the provisions of the FOIA, Codes of Practice and Environmental Regulations.
- 3.5 In preparing a copy of this Contract for publication under Clause 3.4 of this Schedule 4, the Client may consult with the Supplier to inform decision making regarding any redactions but the final decision in relation to the redaction of information will be at the Client's absolute discretion.
- 3.6 The Supplier shall assist and cooperate with the Client to enable the Client to publish this Contract.
- 3.7 Where any information is held by any subcontractor of the Supplier in connection with this Contract, the Supplier shall procure that such subcontractor shall comply with the relevant obligations set out in Clause 3 of this Schedule 4, as if such subcontractor were the Supplier.

4 Information Security

- 4 Without limitation to any other information governance requirements set out in this Schedule 4, the Supplier shall:
 - 4 notify the Client forthwith of any information security breaches or near misses (including without limitation any potential or actual breaches of confidentiality or actual information security breaches) in line with the Client's information governance Policies; and
 - 4 fully cooperate with any audits or investigations relating to information security and any privacy impact assessments undertaken by the Client and shall provide full information as may be reasonably requested by the Client in relation to such audits, investigations and assessments.
- 4 Where required in accordance with the Specification and Tender Response Document, the Supplier will ensure that it puts in place and maintains an information security management plan appropriate to the Services and the obligations placed on the Supplier under this Contract. The Supplier shall ensure that such plan is consistent with any relevant Policies, Guidance, Good Industry Practice and with any relevant quality standards as may be set out in the Key Provisions and/or the Specification and Tender Response Document.

Schedule 5

Commercial Schedule

1. Commercial Schedule

- 1.1 The Commercial Schedule governing this Contract is the Commercial pricing response submitted by the supplier, and is detailed in Appendix 1.
- 1.2 For the purposes of this Contract, the Contract Price is the Guaranteed Position detailed in the Commercial pricing response in Appendix 1. - 52 -
- 1.3 As per the tender documents it is the Supplier's responsibility to ensure that the commercial performance indicated in this tender bid is achieved and the Supplier shall be managed as such.1.4 The Client will receive payment of the Contract Price from the Supplier as detailed in this commercial schedule. The Client will not receive any less than the guaranteed position detailed in the commercial schedule and will not incur any costs, unless such costs or reductions can either:
 - (a) be reasonably held as outside the scope of this Contract, or
 - (b) be attributed to the Suppliers compliance with any changes in law or governmental order, rule, regulation or direction that could not have been reasonably foreseen at the time of entering the Contract. If the Contractor incurs such additional costs, then the parties will in good faith agree to adjust the Contract Price subject to the provision of clear written evidence. The Contractor shall give the Client at least three months' prior written notice of any proposed increase. Where a change to the national minimum wage or the national living wage or resulting from any other legislation, regulation, directive or statutory requirement reduces the employment cost, the Contract Price may be increased to reflect that change.
- 1.5 If there is a material change to the service requirement then the Client or Supplier may request a variation to Appendix 1 under the change control process specified in this Contract.

2. Supplier Invoicing

- 2.1 In circumstances constituting a Qualifying Event the Supplier shall be entitled to invoice the Client for payment in accordance with clause 20 of Schedule 3.

3. Client Invoicing

- 3 The Client will invoice the Supplier on a monthly basis in arrears. Payment will be made by the Supplier within 30 days of receipt of a correct invoice.

4. Management Data

- 4 The Supplier shall provide their management data to the Client on a quarterly basis.

Schedule 6

Staff Transfer

- 1 The Parties agree that the commencement of the provision of Services under this Contract shall give rise to a relevant transfer as defined in TUPE. Accordingly the contracts of employment of the Third-Party Employees will transfer on the Transfer Date to the Supplier or a subcontractor pursuant to TUPE.
- 1 The Supplier agrees or shall ensure by written agreement that any subcontractor shall agree, to accept the Third-Party Employees into its employment on the Transfer Date upon their then current terms and conditions of employment (including if required the provision of a broadly comparable pension) and with full continuity of employment.
- 1 The Supplier's agreement in Clause 1.2 of Part C of this Schedule 7 (and any subsequent agreement by any subcontractor), is subject to the right of any Third-Party Employee to object to being transferred to the Supplier or any subcontractor.
- 1 The Supplier will, or shall ensure by written agreement that any subcontractor will:
 - 1 not later than fourteen (14) days after issue of a written notice in writing to it from the Client, provide the Third Party with the information required under regulation 13(4) of TUPE. The Supplier shall be liable to the Client for, and shall indemnify and keep the Client and any Third Party indemnified against, any loss, damages, costs, expenses (including without limitation legal costs and expenses), claims or proceedings that arise or result from any breach of this obligation;
 - 1 provide such assistance and information to the Third Party as it may reasonably request to facilitate a smooth and efficient handover of the Third-Party Employees to the Supplier or any subcontractor (including attendance at any meetings with Third Party Employees, trade unions and employee representatives);
 - 1 comply with its obligations to inform and, if necessary, consult with the appropriate representatives of any employees who are affected by the relevant transfer in accordance with regulation 13 of TUPE; and
 - 1 immediately following the Transfer Date comply with its obligation to consult with the appropriate representatives of the Third-Party Employees about any Measures in accordance with regulation 13(6) of TUPE.
- 1 The Supplier shall be responsible for or shall procure that any relevant subcontractor shall be responsible from the Transfer Date, for all remuneration, benefits, entitlements and outgoings in respect of the Third-Party Employees and other Staff.
- 1 The Supplier shall indemnify and will keep indemnified the Client and any Third Party in relation to any Employment Liabilities arising out of or in connection with:
 - 1 any act or omission of the Supplier or a subcontractor on or after the Transfer Date (or any other event or occurrence after the Transfer Date) in respect of any Third-Party Employee or Staff (including but not limited to any liability which arises because a Third Party Employee's employment with the Supplier or a subcontractor is deemed to include their previous continuous employment with the Third Party);

- 1.6.2 any act or omission of the Supplier or a subcontractor in relation to its obligations under regulation 13 of TUPE, or in respect of an award of compensation under regulation 15 of TUPE except to the extent that the liability arises from the Third Party's failure to comply with regulation 13 of TUPE;
 - 1.6.3 any claim or allegation by a Third-Party Employee or any other employee of the Client or Third Party that in consequence of the transfer of Services to the Supplier or a subcontractor there has or will be a substantial change in their working conditions to their detriment within regulation 4(9) of TUPE; and - 54 -
 - 1.6.4 any claim or allegation that the termination of employment of any of the Third-Party Employees or any other employee of the Third Party whether on or before the Transfer Date or not which arise as a result of any act or omission by the Supplier or a subcontractor save for where such act or omission results from complying with the instructions of the Client.
- 1 The Client shall use reasonable endeavours to transfer to the Supplier or any subcontractor the benefit of any indemnity it has from the Third Party.
 - 1 In the event of expiry or termination of this Contract, or whenever reasonably requested by the Client in preparation for tendering arrangements, the Supplier will (if the Client has reasonable grounds to believe that TUPE will apply to any employees of the Supplier or its Sub-Contractors on expiry or termination in connection with a service provision change) provide the Client with such assistance as the Client may require and provide at no cost to the Client any information the Client (whether on its own account or on behalf of any potential or confirmed Successor) may request in relation to the employees including but not limited to, providing employee liability information as required under Regulation 11 of TUPE.
 - 1 The Supplier shall (and shall procure that any subcontractor shall) within the period of twelve (12) months immediately preceding the expiry of this Contract or following the service of a notice under clause 15 (Term and termination) or as a consequence of the Client notifying the Supplier of its intention to retender this Agreement:
 - 1 be precluded from making any material increase or decrease in the numbers of Staff without the Client's prior written consent;
 - 1 be precluded from transferring any of the Staff to another part of its business or moving other employees from elsewhere in its or their business or who have not previously been employed or engaged in providing the Services to provide the Services save with the Client's prior written consent.

Appendix 1

Commercial Offer Form

Marner Primary School
Commercial Offer Form: Cleaning Contract (3FE School)
Juniper Pursuits Limited

		Year One	Year Two	Year Three	3 Yr. Total
Core Costs	Total Labour (London Living Wage Requirement)	£ 115,344.32	£ 121,518.15	£ 128,000.67	£ 364,863
	Janitor Role	£ 17,969.87	£ 18,931.82	£ 19,941.87	£ 56,844
	External Window Cleaning (2x per year)(all internal glazing forms part of base cleaning services)	£ 5,280.00	£ 5,438.40	£ 5,601.55	£ 16,320
	Annual deep clean (3 week period per year estimated during summer)	£ 7,488.00	£ 7,712.64	£ 7,944.02	£ 23,144.66
	Cleaning Costs	£ 4,527.97	£ 4,730.28	£ 4,994.10	£ 14,252.35
	Equipment (as detailed)	£ 1,422.68	£ 1,422.68	£ 1,422.68	£ 4,268.04
	Uniform	£ 1,080.00	£ 240.00	£ 1,080.00	£ 2,400.00
	Telephone	£ 360.00	£ 370.80	£ 381.92	£ 1,112.72
	ICT	£ 675.00	£ 695.25	£ 716.11	£ 2,086.36
	DBS	£ 187.50	£ 187.50	£ 187.50	£ 562.50
	Contingency	£ -	£ -	£ -	£ -
	Direct Costs	£ -	£ -	£ -	£ -
	Training	£ 1,125.00	£ 1,158.75	£ 1,193.51	£ 3,477.26
	Total Core Costs	£ 155,460.34	£ 162,406.27	£ 171,463.93	£ 489,330.53
Peripheral Costs	Agent Management Fee (Payment made upon Contract Award)	£ 19,500.00	£ -	£ -	£ 19,500.00
	<i>Management</i>	£ 3,406.45	£ 3,508.64	£ 3,613.90	£ 10,528.99
	<i>Administration</i>	£ 3,406.45	£ 3,508.64	£ 3,613.90	£ 10,528.99
	<i>Profit</i>	£ 3,406.45	£ 3,508.64	£ 3,613.90	£ 10,528.99
	<i>other (complete as nessary)</i>	£ -	£ -	£ -	£ -
	<i>other (complete as nessary)</i>	£ -	£ -	£ -	£ -
	<i>other (complete as nessary)</i>	£ -	£ -	£ -	£ -
	Total Peripheral Costs	£ 29,719.35	£ 10,525.92	£ 10,841.70	£ 51,086.97
Total Costs		£ 185,179.69	£ 172,932.19	£ 182,305.63	£ 540,417.50