

SCHEDULE 1

EAST SUSSEX COUNTY COUNCIL – TERMS AND CONDITIONS OF SERVICE

1. DEFINITIONS AND INTERPRETATION

1.1 In the Contract, unless the context otherwise requires, the following terms shall have the meanings ascribed to them below:

“Breaching Party”	as defined in Condition 8.3;
“CEDR”	means the Centre for Effective Dispute Resolution (or any successor body);
“Charges”	means the charges payable by the Customer for the supply of the Services by the Council, as set out in the Contract Particulars;
“Commencement Date”	means the date stated at the start of the Contract Particulars;
“Conditions”	means the terms and conditions set out in Conditions 1 (Interpretation) to 23 (Law of Contract and Jurisdiction) (inclusive) of this Schedule 1;
“Confidential Information”	means secret or confidential commercial, financial, marketing, technical or other information, know-how, trade secrets and/or other information in any form or medium, whether disclosed orally or in writing before or after the date of the Contract, together with any reproductions of such information in any form or medium and any part(s) of such information (and ‘confidential’ means that the information, either in its entirety or in the precise configuration or assembly of its components, is not publicly available);
“Confirmation Email”	means an email from the Council (via the stos.enquiries@eastsussex.gov.uk email address) to the Customer issued in response to the purchase of the Services by the Customer via the Webshop;
“Contract”	means the contract between the Customer and the Council for the supply of the Services in accordance with the Contract Particulars, these Conditions and any Schedules;
“Contract Period”	means the period from the Service Start Date until the Termination Date;
“Contract Year”	means a period of twelve (12) months, commencing on 1 April (or in the case of an academy, 1 September);
“Council IPRs”	means all Intellectual Property Rights subsisting in any documents, products or materials developed by the Council or its Representatives as part of or in relation to the Services in any form, including without limitation computer programs but excluding any Customer Materials incorporated in them;

"Customer Data"	means Personal Data or Special Category Data which the Council processes in connection with the performance of the Contract;
"Customer Employees"	means any employees of the Customer;
"Customer Materials"	means all materials, equipment and tools, drawings, specifications and data supplied by the Customer to the Council;
"Data Controller"	has the meaning given to that term in the Data Protection Legislation in force from time to time;
"Data Processor"	has the meaning given to that term in the Data Protection Legislation in force from time to time;
"Data Protection Impact Assessment"	means an assessment carried out pursuant to Article 35 of the General Data Protection Regulation;
"Data Protection Legislation"	means the Data Protection Act 2018, the Privacy and Electronic Communications (EC Directive) Regulations 2003, the Regulation of Investigatory Powers Act 2000, the Investigatory Powers Act 2016, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 and the General Data Protection Regulation and any legislation implemented in connection with the General Data Protection Regulation and any replacement legislation coming into effect from time to time and all applicable laws and regulations relating to the processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner;
"Data Security Breach"	means any breach of security or confidentiality leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Customer Data;
"Data Subject"	has the meaning given to that term in the Data Protection Legislation in force from time to time;
"Discloser"	as defined in Condition 9.1;
"Dispute"	as defined in Condition 16.1;
"East Sussex Maintained School"	means a school maintained by East Sussex County Council in its capacity as local authority in accordance with section 20 of the School Standards and Framework Act 1998;
"Force Majeure"	means any event outside the reasonable control of any party affecting its ability to perform any of its obligations (other than payment) under the Contract including (but not limited to) an Act of God, fire, flood, lightning, war, revolution, act of terrorism, riot or civil commotion;
"General Data Protection Regulation"	means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data;

"Information Commissioner's Office"	means the office of the Information Commissioner, being the regulator appointed in the UK as the data protection supervisory authority;
"Information Laws"	means the FOIA, the Environmental Information Regulations 2004, the Data Protection Legislation and any codes of practice and guidance made pursuant to the same as amended or replaced from time to time;
"Initiating Party"	as defined in Condition 8.3;
"Intellectual Property Rights"	means patents, rights to inventions, copyright and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.
"Material Breach"	means a breach (including an anticipatory breach) which is not minimal or trivial in its consequences to the Initiating Party or which adversely affects the performance of the Services. In deciding whether any breach is material no regard shall be had as to whether it occurs by some accident, mishap, mistake or misunderstanding;
"Mediator"	as defined in Condition 17.2.1;
"Minimum Notice"	as set out in the Contract Particulars;
"Personal Data"	has the meaning given to that term in the Data Protection Legislation in force from time to time;
"Purchasing Window"	means the period from 1 February to 31 March each year;
"Prohibited Act"	<p>the following shall constitute Prohibited Acts:</p> <ul style="list-style-type: none"> (a) to directly or indirectly offer, promise or give any person working for or engaged by the other Party a financial or other advantage to: <ul style="list-style-type: none"> (i) induce that person to perform improperly a relevant function or activity; or (ii) reward that person for improper performance of a relevant function or activity; (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with the Contract and / or the Contract;

	<p>(c) committing any offence:</p> <ul style="list-style-type: none"> (i) under the Bribery Act; (ii) under legislation or common law concerning fraudulent acts; (iii) defrauding, attempting to defraud or conspiring to defraud the other Party; and / or <p>(d) any activity, practice or conduct which would constitute one of the offences listed under (c) above, if such activity, practice or conduct had been carried out in the UK.</p>
“Recipient”	as defined in Condition 9.1;
“Relevant Transfer”	means a relevant transfer of the Services for the purposes of TUPE, including upon or as a result of expiry or termination of the Contract;
“Representatives”	means any employee, officer, worker, agent or service provider engaged by a Party in connection with the Services including any Sub-Contractor;
“Replacement Body”	as defined in Condition 18.2;
“Schedules”	means the Schedules listed in the Contract Particulars;
“School Day(s)”	means, in respect of a school or academy, a day on which that school or academy is open and on which lessons are provided;
“Service Description”	means the detailed description of the Services that are to be provided by the Council under the Contract as set out on the Webshop;
“Service Level”	means the standards of performance to be met by the Council in providing the Services as, where applicable, set out in the Service Description (or associated SLA);
“Services”	means the services to be provided by the Customer pursuant to the Contract, as set out in the Contract Particulars and the Service Description;
“Services Start Date”	means the day on which the Council is to start provision of the Services, as set out in the Contract Particulars;
“Special Category Data”	has the meaning given to that term in the Data Protection Legislation in force from time to time;
“Sub-Contract”	means any sub-contract entered into by the Council or by any Sub-Contractor for the purpose of the performance of any of the Council’s obligations under the Contract;
“Sub-Contractor”	means the contractors or service providers engaged by the Council (or a sub-contractor of the Council) to provide goods, services or works to, for or on behalf of the Council for the purposes of providing the Services to the Customer under the Contract;

“Termination Costs”	as defined in Condition 8.2;
“Termination Date”	means the date of termination or expiry of the Contract in accordance with Condition 2.1;
“Third Party Employee”	means employees of Third Party Employers;
“Third Party Employer”	means a service provider engaged by the Customer to provide some or all of the Services to the Customer before the Service Start Date;
“Third Party Services”	means any of the following services: <ul style="list-style-type: none"> • SC01 - School Catering; • GM02 - Grounds Maintenance; • BC04 - Cleaning Contract Management; • WR01 - Waste and Recycling; • S106, S106-2 and S106-3 - Schools Learning and Effectiveness Service; • EM01 Energy and Water Management; • EM02 – Water Management.
“Third Party Software and Applications”	means any of the following: <ul style="list-style-type: none"> • CLEAPPS Advisory Service; • RPA - Radiation Protection Advisor; • IT10, IT11, IT12 - SIMS; • IT50, IT60 East Sussex Education Network • DS01 – Comprehensive Data Package • OAVE1 – Offsite activities and educational visits
“Total Charges”	means all sums paid by the Customer and all sums payable under the Contract in respect of goods and Services actually supplied by the Council, whether or not invoiced to the Customer;
“Transferring Employees”	means: <ul style="list-style-type: none"> (a) Customer Employees; (b) Third Party Employees; and / or (c) employees of the Council (or any Sub-Contractor), whose contracts of employment transfer with effect from the relevant Effective Date;
“Webshop”	Means the Services 2 Schools website, available at the following link: <p>https://www.services2schools.co.uk/</p>
“Working Days”	means a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

1.2 In the Contract:

- 1.2.1 reference to any statutory provision, enactment, order, regulation or other similar instrument shall be construed as a reference to the statutory provision, enactment, order, regulation or instrument (including any EU instrument) as amended, replaced, consolidated or re-enacted from time to time

time and shall (unless the reference expressly states otherwise) include any orders, regulations, codes of practice, instruments or other subordinate legislation made under it;

- 1.2.2 words importing one gender shall include the other; words in the singular shall include the plural and vice versa and words importing individuals shall be treated as importing corporations and vice versa;
- 1.2.3 Condition, schedule and paragraph headings and notes are for ease of reference only and do not affect the interpretation of this Contract;
- 1.2.4 a reference to writing or written includes emails but not faxes.

2. COMMENCEMENT AND TERM

- 2.1 The Contract shall commence on the Commencement Date and shall continue, unless terminated earlier in accordance with its terms, until the date set out in the Contract Particulars.

3. SUPPLY OF SERVICES

- 3.1 The Customer hereby appoints the Council to provide the Services.
- 3.2 The Council shall supply the Services to the Customer from the Services Start Date in accordance with the Contract and the Services Description.
- 3.3 The Council shall provide the Services with reasonable care and skill and in accordance with all appropriate legislation.
- 3.4 Where the Services (or any part thereof) are stated to be subject to a specific Service Level, the Council shall use reasonable endeavours to provide the Services in such a manner as to ensure that the level of service provided to the Customer is equal to the specified Service Level.

4. CUSTOMER'S OBLIGATIONS

- 4.1 The Customer shall:
 - 4.1.1 provide, in a timely manner, any information, support and instructions reasonably required by the Council to enable the Council to perform the Services;
 - 4.1.2 co-operate with the Council in all matters relating to the Services; and
 - 4.1.3 comply with all requirements as to the provision of notices set out in the Contract.
- 4.2 Where required for the provision of the Services, the Customer shall provide for the Council (including any Sub-Contractor) access to the Customer's premises and other facilities as required by the Council.
- 4.3 If the Council's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Customer, its agents, subcontractors, consultants or employees, the Council shall:
 - 4.3.1 not be liable for any costs, charges or losses sustained or incurred by the Customer that arise directly or indirectly from such prevention or delay;
 - 4.3.2 be entitled to payment of the Charges despite any such prevention or delay; and
 - 4.3.3 be entitled to recover any additional costs, charges or losses the Council sustains or incurs that arise directly or indirectly from such prevention or delay.

5. CHARGES AND PAYMENT

- 5.1 In consideration for the provision of the Services, the Customer shall pay the Council the Charges in accordance with this Condition 5.
- 5.2 All amounts payable by the Customer exclude amounts in respect of value added tax (“VAT”), which the Customer shall additionally be liable to pay to the Council at the prevailing rate (if applicable), subject to receipt of a valid VAT invoice. The Council shall be entitled to issue a VAT invoice to the Customer in respect of the Services incurred during the relevant Quarter. Any such invoice shall include clear details of the Services being invoiced. Any VAT charged shall be clearly and separately identified on such invoice.
- 5.3 Save as provided in Conditions 5.4 and 5.5:
 - 5.3.1 the Council shall invoice the Customer in arrears at such frequencies as are set out in the Contract Particulars. Each invoice shall include all reasonable supporting information required by the Customer; and
 - 5.3.2 the Customer shall pay each invoice due and submitted to it by the Council, within thirty (30) days of receipt, to a bank account nominated in writing by the Council.
- 5.4 Where the Customer is an East Sussex Maintained School, the Council shall debit the Charges by way of a journal transfer at the time of purchase of the Services.
- 5.5 Where the Customer purchases the Services outside of the Purchasing Window, the full amount of the Charges will be payable by the Customer upfront and the Council shall invoice the Customer accordingly.
- 5.6 Without limiting the Council’s remedies under Condition 8 (Termination), late payment by the Customer of any sum due under the Contract will incur interest at an annual rate of four percent (4%) over the Bank of England’s base rate from time to time (provided that, for any period when that base rate is below zero (0%), the rate payable shall be four percent (4%) per year).
- 5.7 All amounts due under the Contract from the Customer to the Council shall be paid by in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 5.8 Where any party disputes any sum to be paid to it then the parties shall use all reasonable endeavours to resolve such dispute, failing which the provisions of Condition 16 (Dispute Resolution) shall apply.
- 5.9 In the event that the Contract is terminated before the end of the Term, the Customer agrees to pay to the Council, upon receipt of an invoice for the same, all sums due and payable to the Council for Services provided prior to and up to the Termination Date and the provision of this Condition 5 shall apply to the same. The Customer shall also pay the Council any Termination Costs which arise pursuant to Conditions 8.1, 8.2 and / or 8.5.
- 5.10 The Council may make appropriate adjustments to the Charges in respect of any increase in the costs incurred by the Council in providing the Services where such increased costs are occasioned by a change in required national standards and/or general regulations outside the Council’s reasonable control.

6. INSURANCES

- 6.1 Each party shall at its own expense effect and maintain during the term of the Contract, under a policy or policies such insurance as may be required with respect to each party’s respective obligations under the Contract, including but not limited to potential liabilities to any third parties.

7. LIMITATION OF LIABILITY

- 7.1 In this Condition 7, all references to the Council or the Customer or the parties shall include their representatives.
- 7.2 The restrictions on liability in this Condition 7 apply to every liability arising under or in connection with the Contract including but not limited to liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 7.3 Neither party may benefit from the limitations and exclusions set out in this Condition in respect of any liability arising from its deliberate default.
- 7.4 Nothing in the Contract limits any liability which cannot legally be limited, including but not limited to liability for:
- 7.4.1 death or personal injury caused by negligence;
 - 7.4.2 fraud or fraudulent misrepresentation; and
 - 7.4.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- 7.5 Subject to Condition 7.4, the Council's total liability to the Customer in respect of all breaches of duty occurring within any Contract Year shall not exceed one hundred per cent (100%) of the Total Charges payable in that Contract Year.
- 7.6 Neither party shall be liable to the other party for any loss of profits, loss of use, loss of revenue, wasted expenditure, or loss of goodwill or any indirect or consequential loss or damage of any kind howsoever arising and whether caused by tort (including negligence), breach of contract or otherwise incurred or suffered by the other party.
- 7.7 Nothing in this Condition 7 shall affect any party's right to terminate the Contract.
- 7.8 The express terms and conditions of the Contract are in lieu of all warranties, conditions, terms, undertakings and obligations implied by statute, common law, custom or otherwise all of which are hereby excluded to the fullest extent permitted by law.
- 7.9 The Council shall indemnify and keep the Customer indemnified against all actions, proceedings, costs, claims, demands, liabilities, losses and expenses whatsoever whether arising in tort (including negligence), contract, common law or otherwise to the extent that any such loss or claim is due to a breach of the Contract by the Council or the negligence, wilful default or fraud of the Council or any of its Representatives save to the extent that the same is directly caused by or directly arises from the negligence, breach of contract or law, or any act or omission of the Customer or its Representatives.
- 7.10 The Customer shall indemnify and keep the Council indemnified against all actions, proceedings, costs, claims, demands, liabilities, losses and expenses whatsoever whether arising in tort (including negligence), contract, common law or otherwise, to the extent that any such loss or claim is due to a breach of the Contract by the Customer or the negligence, wilful default or fraud of the Customer or any of its Representatives save to the extent that the same is directly caused by or directly arises from the negligence, breach of contract or law, or any act or omission of the Council or its Representatives.

8. TERMINATION

- 8.1 Either party may terminate the Contract at any time, on giving the other party not less than the Minimum Notice in writing, unless a shorter period of notice is agreed by both parties mutually.

8.2 For:

8.2.1 Third Party Services; or

8.2.2 Third Party Software and Applications,

if the Customer terminates the Contract in accordance with Condition 8.1, the Council shall also be entitled to charge the Customer for any costs incurred by the Council associated with the early termination of the Contract. These costs may include, but are not limited to, the costs associated with the collection and removal of any equipment or resources of the Council on loan to the Customer and any monies which the Council has committed to a third party contractor and / or has incurred by way of upfront investment in connection with the provision of the Services and which the Council is bound to pay or has already incurred ("**Termination Costs**").

8.3 Without affecting any other right or remedy available to it, either party (the "**Initiating Party**") may terminate the Contract with immediate effect by giving written notice to the other party (the "**Breaching Party**") if:

8.3.1 the Breaching Party commits a Material Breach of any of its obligations under the Contract which incapable of remedy;

8.3.2 the Breaching Party fails to remedy, where such breaches is remediable, or persists in a Material Breach within a period of thirty (30) School Days after being notified in writing to do remedy or desist (as applicable);

8.3.3 the Breaching Party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction; or

8.3.4 the Breaching Party suspends, or threatens to suspend, or ceases or threatens to cease to carry on its business.

8.4 The Council may terminate the Contract immediately by written notice if the Customer commits a breach that results in material damage to the reputation of the Council or commits a Prohibited Act and any provision in the Contract limiting the Customer's liability does not apply to the recovery of losses pursuant to this Condition 8.5.

8.5 If the Contract terminates as a result of a breach by the Customer, the Customer will be required to pay the Council the Termination Costs as per Condition 8.2.

8.6 On termination of the Contract for whatever reason:

8.6.1 any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect; and

8.6.2 termination or expiry of the Contract shall not affect any of the rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

9. CONFIDENTIALITY

9.1 Each party (the "**Recipient**") shall keep confidential all Confidential Information belonging to the other

(the "**Discloser**") and disclosed or obtained as a result of the relationship of the parties under the Contract shall not use nor disclose any such Confidential Information save for the purposes of the proper performance of the Contract or with the Discloser's prior written consent. Where the Recipient discloses any Confidential Information to any employee, consultant, sub-contractor or agent, it shall do so subject to obligations equivalent to those set out in the Contract. The Recipient shall use all reasonable endeavours to procure that any such employee, consultant, sub-contractor or agent complies with such obligations. The Recipient shall be responsible to the Discloser in respect of any disclosure or use of such Confidential Information by a person to whom disclosure is made.

- 9.2 The obligations of confidentiality of the parties shall not extend to any matter, which the Recipient can show was in its possession prior to the Commencement Date, or was independently disclosed to it by a third party entitled to disclose the same, or is required to be disclosed under any applicable law, or by order of a court or governmental body or authority of competent jurisdiction.
- 9.3 Nothing in the Contract shall confer any right, title, interest or license on the Recipient in relation to any data or information of the Discloser acquired by the Recipient under or in relation to the Contract. The Recipient shall take all necessary steps to ensure that any data or information which comes into its possession or control is adequately protected and in particular the Recipient shall not 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 law, including the relevant information laws, or to perform its obligations under the Contract.

10. FREEDOM OF INFORMATION

- 10.1 The parties acknowledge that each of them is subject to obligations under the Information Laws.
- 10.2 Should either party receive a request for information relating to the Contract, or for information which that party holds for or on behalf of the party to whom the request is made, the parties acknowledge and agree that they shall each assist and co-operate with one another promptly to enable the party who has received the request to comply with its disclosure obligations under the Information Laws. The final decision on the disclosure shall be made by the Data Controller in respect of the information.
- 10.3 Where either party receives a request which should have been directed to the other party, the receiving party shall promptly (and in any event within two (2) days) refer the request to the other party.

11. DATA PROTECTION

- 11.1 Both parties shall duly observe all their obligations under the Data Protection Legislation, which arise in connection with the performance of the Contract.
- 11.2 The Council shall perform its obligations under the Contract in such a way as to ensure that it does not cause the Customer to breach any of its applicable obligations under the Data Protection Legislation.
- 11.3 The provisions of the Contract shall apply during the continuance of the Contract and indefinitely after its expiry or termination.

12. DATA PROCESSOR OBLIGATIONS

- 12.1 With respect to the parties' rights and obligations under the Contract the parties agree that the Customer is the Data Controller and that the Council is the Data Processor. A description of the Personal Data processed by the Council and the processing activities undertaken by the Council is set out in the Data Processing Activities Schedule.

12.2 In respect of the Customer Data, the Council shall:

- 12.2.1 solely process the Customer Data for the purposes of fulfilling its obligations under the Contract, and in compliance with the Customer's written instructions as set out in the Contract and as may be specified from time to time in writing by the Customer;
- 12.2.2 notify the Customer immediately if any instructions of the Customer relating to the processing of Customer Data are unlawful;
- 12.2.3 not transfer to or access any Council Data from a country outside of the United Kingdom without the prior written consent of the Customer;
- 12.2.4 comply with the Customer's instructions in relation to transfers of Customer Data to a country outside of the United Kingdom unless the Council is required pursuant to applicable laws to transfer Customer Data outside the United Kingdom, in which case the Council shall inform the Customer in writing of the relevant legal requirement before any such transfer occurs unless the relevant law prohibits such notification on important grounds of public interest;
- 12.2.5 take reasonable steps to ensure the reliability of any Council staff who have access to the Customer Data and ensure that all such staff used by the Council to process Customer Data are subject to legally binding obligations of confidentiality in relation to the Customer Data;
- 12.2.6 ensure that none of the Council's staff publish, disclose or divulge any of the Customer Data to any third party unless directed in writing to do so by the Customer;
- 12.2.7 not engage any Sub-Contractor to carry out any processing of Customer Data without the prior written consent of the Customer provided that notwithstanding any such consent the Council shall remain liable for compliance with all the requirements of the Contract including in relation to the processing of Customer Data. In respect of Third Party Services and Third Party Software Applications the Customer acknowledges and agrees that the Council's Sub-Contractor is approved for these purposes;
- 12.2.8 ensure that obligations equivalent to the obligations set out in this Condition 12 are included in all contracts between the Council and permitted Sub-Contractors who will be processing Customer Data and who have been approved in accordance with Condition 12.2.7;
- 12.2.9 take appropriate technical and organisational measures against unauthorised or unlawful processing of Customer Data and against accidental loss or destruction of, or damage to, Customer Data taking into account the harm that might result from such unauthorised or unlawful processing, loss, destruction or damage and the nature of the Customer Data to be protected including without limitation, all such measures that may be required to ensure compliance with the Data Protection Legislation;
- 12.2.10 upon request provide a written description of the technical and organisational measures employed by the Council pursuant to Condition 12.2.9 (within the reasonable timescales required by the Customer) and if the Customer does not consider that such measures are adequate to enable compliance with the Data Protection Legislation, implement such additional measures as may be specified by the Customer (acting reasonably) to ensure compliance;
- 12.2.11 taking into account the nature of the data processing activities undertaken by the Council, provide, at no cost to the Customer, all possible assistance and co-operation (including without limitation putting in place appropriate technical and organisational measures) to enable the Customer to fulfil its obligations to respond to requests from individuals exercising their rights under the Data Protection Legislation, including (without limitation):

- 12.2.11.1 notifying the Customer within four (4) Working Days, of receiving any request from a Data Subject exercising their rights under the Data Protection Legislation;
- 12.2.11.2 complying with the Customer's instructions in relation to complying with the Data Subject's rights under the Data Protection Legislation, which may include (without limitation) providing notices to Data Subjects in a format specified by the Customer, rectifying inaccurate Customer Data, ceasing or restricting processing of Customer Data, providing access to Customer Data, permanently deleting or securely destroying Customer Data and providing copies of Customer Data in a format specified by the Customer;
- 12.2.11.3 maintain a record of the Council's processing activities in accordance with the requirements of the Data Protection Legislation;
- 12.2.11.4 assist the Customer, at no cost to the Customer, in ensuring compliance with the obligations set out in Articles 32 to 36 (inclusive) of the General Data Protection Regulation (or any equivalent legislation in the UK or any subsequent legislation) taking into account the nature of the data processing undertaken by the Council and the information available to the Council, including (without limitation):
 - 12.2.11.4.1 providing information and assistance upon request to enable the Customer to notify Data Security Breaches to the Information Commissioner's Officer and/or to affected individuals and/or to any other regulators to whom the Customer is required to notify any Data Security Breaches; and
 - 12.2.11.4.2 providing input into and carrying out Data Protection Impact Assessments in relation to the Council's data processing activities;
- 12.2.11.5 ensure that it has in place appropriate technical and organisational measures to ensure that processing of Customer Data meets the requirements of the Data Protection Legislation and ensures protection of the rights of individuals under the Data Protection Legislation;
- 12.2.11.6 notify the Customer immediately and in any event within forty eight (48) hours in writing if:
 - 12.2.11.6.1 the Council or any Sub-Contractor engaged by or on behalf of the Council suffers a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Customer Data; or
 - 12.2.11.6.2 the Council or any Sub-Contractor engaged by or on behalf of the Council receives any Data Security Breach notification, complaint, notice or communication which relates directly or indirectly to the processing of the Customer Data or to either party's compliance with the Data Protection Legislation,

and in each case the Council shall provide full co-operation, information and assistance to the Customer in relation to any such Data Security Breach, complaint, notice or communication at no cost to the Customer;
- 12.2.12 upon termination of the Contract, at the discretion of and at no cost to the Customer, delete securely or return all Customer Data to the Customer and delete all existing copies of the

Customer Data unless and to the extent that the Council is required to retain copies of the Customer Data in accordance with applicable laws in which case the Council shall notify the Customer in writing of the applicable laws which require the Customer Data to be retained. In the event the Customer Data is deleted or destroyed by the Council, the Council shall provide the Customer with a certificate of destruction evidencing that the Customer Data has been destroyed or deleted; and

12.2.13 make available to the Customer at no cost to the Customer all information necessary to demonstrate compliance with the obligations set out in this Condition 12 and, upon request, allow the Customer, the Information Commissioner's Office and its representatives access to the Council's premises, records and personnel for the purposes of assessing the Council's compliance with its obligations under Condition 12.

12.3 The provisions of this Condition 12 shall apply during the continuance of the Contract and indefinitely after its expiry or termination.

13. CUSTOMER DATA ON COUNCIL'S IT SYSTEM(S)

13.1 To ensure that the Council processes Customer Data in a manner that ensures appropriate security of the Customer Data, the Council shall:

13.1.1 take reasonable precautions and use reasonable endeavours to preserve the integrity of any Customer Data and to prevent any corruption or loss of such data and to have in place an appropriate archiving and back-up policy;

13.1.2 follow a process (recorded in writing) for backing-up Customer Data including making a back-up copy of Customer Data at regular intervals and recording the copy on media from which the Customer Data can be reloaded if there is any corruption or loss of the Customer Data;

13.1.3 in the event of any corruption of or loss or damage to the Customer Data, use all reasonable endeavours to restore the lost or damaged Customer Data, at its own expense, from the latest back-up of such Customer Data maintained by the Council within a period of ten (10) days, or if unable to do this, reimburse the Customer for any reasonable expenses it incurs in having the Customer Data restored by a third party;

13.1.4 in providing the Services, have in place and comply with a privacy and security policy relating to the privacy and security of the Customer Data which shall be provided to the Customer upon request.

14. INTELLECTUAL PROPERTY RIGHTS

14.1 The Council and its licensors shall retain ownership of all Council IPRs;

14.2 The Customer and its licensors shall retain ownership of all Intellectual Property Rights in the Customer Materials.

14.3 Where applicable, the Council grants to the Customer, or shall procure the direct grant to the Customer of, a fully paid up, worldwide, non-exclusive, royalty-free licence to copy the Council's IPRs for the purposes of receiving and using the Services in the Customer's business during the Contract Period.

14.4 Where applicable, the Customer grants the Council a fully paid up, worldwide, non-exclusive, royalty-free licence to copy and modify the Customer Materials for the Contract Period for the purpose of providing the Services to the Customer in accordance with the Contract.

15. EQUAL OPPORTUNITIES AND HUMAN RIGHTS

- 15.1 The parties shall comply, and shall ensure that their Representatives comply, with their respective obligations under the Human Rights Act 1998 and the Equality Act 2010.

16. DISPUTE RESOLUTION

- 16.1 Both parties shall negotiate in good faith and shall use all reasonable endeavours to resolve any question or difference which may arise concerning the construction, meaning or performance (including the level or quality of the Services provided) of the Contract and any dispute arising out of, or in connection with, the Contract ("**Dispute**").
- 16.2 If any such matter cannot be resolved amicably through negotiations between a designated representative of the Council and a designated representative of the Customer within thirty (30) School Days of a written notice from either party to the other, then, where appropriate, the matter will be referred by either party to a meeting to be convened between the relevant Council Service Manager (as set out in the Contract Particulars), the Council's Services to Schools Manager and one (1) or more senior representative of the Customer, to attempt to resolve the matter as soon as possible.

17. MEDIATION

- 17.1 In the event that the Dispute cannot be resolved by negotiation or conciliation under Condition 16 within two (2) months or such other period as may be determined by the Council at its absolute discretion both parties shall attempt to settle it by mediation.
- 17.2 The procedure for mediation and consequential provisions relating to mediation are as follows:-
- 17.2.1 a neutral adviser or mediator (the "**Mediator**") shall be chosen by agreement between the parties or, if they are unable to agree upon a Mediator within ten (10) Working Days after a request by one (1) party to the other or the Mediator agreed upon is unable or unwilling to act, either party shall within ten (10) Working Days from the date of the proposal to appoint a Mediator or within ten (10) Working Days of notice to either party that he is unable or unwilling to act, apply to CEDR to appoint a Mediator;
- 17.2.2 the parties shall within ten (10) Working Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the parties may at any stage seek assistance from CEDR to provide guidance on a suitable procedure;
- 17.2.3 unless otherwise agreed, all negotiations connected with the Dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the parties in any future proceedings;
- 17.2.4 if the parties reach agreement on the resolution of the Dispute, the agreement shall be reduced to writing and shall be binding on the parties once it is signed by their duly authorised representatives; and
- 17.2.5 failing agreement, either of the parties may invite the Mediator to provide a non-binding but informative written opinion. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to this Contract without the prior written consent of both parties.

- 17.3 If the parties fail to resolve the Dispute by mediation within two (2) months of the Mediator being appointed, or such longer period as may be agreed between the parties, then any dispute or difference between them may be referred to the courts pursuant to Condition **Error! Reference source not found.** (Law of Contract and Jurisdiction).

18. ASSIGNMENT , NOVATION AND SUB-CONTRACTING

- 18.1 The Council shall be entitled to sub-contract any of the Services to suitably qualified contractors who are properly trained, competent and adequately supervised and possess suitable skills and experience provided that the Council notifies the Customer in writing in advance of entering into such sub-contracting arrangements.
- 18.2 Where the Customer is an East Sussex Maintained School, in the event that the Customer converts to an academy, whether as a convertor or sponsored academy (or otherwise), the parties agree that the Contract is to be novated to whatever body shall replace it (including an academy trust) ("**Replacement Body**") and each party shall take all actions necessary to procure the novation all the obligations and liabilities under the Contract to the Replacement Body, to take effect on the date of conversion to an academy.
- 18.3 Subject to Conditions 18.1 and 18.2, neither party shall assign, delegate, sub-contract, transfer, charge or otherwise dispose of all or any of its rights and/or responsibilities under the Contract without the prior written consent of the other party, which shall not be unreasonably delayed or withheld.

19. FORCE MAJEURE

- 19.1 If any party is affected by Force Majeure it shall immediately notify the other parties in writing of the matters constituting the Force Majeure and shall keep those parties fully informed of their continuance and effect and of any relevant change of circumstances whilst such Force Majeure continues.
- 19.2 The party affected by Force Majeure shall take all reasonable steps available to it to minimise the effects of Force Majeure on the performance of its obligations under this Agreement.
- 19.3 Save as provided in Condition 19.5 below, Force Majeure shall not entitle a party to terminate this Agreement and no party shall be in breach of this Agreement, or otherwise liable to any other, by reason of any delay in performance, or non-performance, of any of its obligations due to Force Majeure.
- 19.4 If the party affected by Force Majeure fails to comply with its obligations under Conditions 19.1 and 19.2 above, then no relief for Force Majeure, including the provisions of Condition 19.3 above, shall be available to it and the obligations of all parties shall continue in force.
- 19.5 If the Force Majeure continues for longer than thirty (30) Business Days, either party may at any time whilst such Force Majeure continues on giving thirty (30) Business Days' written notice to the other party terminate this Agreement by notice in writing to the other.

20. TUPE

- 20.1 The parties agree that where the identity of the provider of any of the Services changes, this shall constitute a Relevant Transfer and the contracts of employment (other than in relation to any benefits in respect of old age, invalidity or survivors under any occupational pension scheme (except in the case of staff with entitlement to the Local Government Pension Scheme)) of any Transferring Employees shall:
- 20.1.1 where the Relevant Transfer occurs on commencement of the Contract, transfer to the Council (or it's Sub-Contractor(s); and

20.1.2 where the Relevant Transfer occurs on termination or expiry of the Contract, transfer to the Customer or any replacement service provider.

20.2 The parties shall comply and shall procure that any Sub-Contractor or replacement service provider (as applicable) shall comply with their obligations under TUPE and, where applicable, Best Value Authorities Staff Transfers (Pensions) Direction 2007.

21. NOTICES

21.1 Any notices sent under or in connection with the Contract shall be in writing and may be sent:

21.1.1 by personal delivery or by sending the notice by first class post at the address given above, or at such other address as the relevant party may give for the purpose of service of notices under this Agreement; or

21.1.2 by e-mail to the e-mail address set out in the Contract Particulars or otherwise notified in writing to the other party for this purpose.

21.2 Every such notice shall be deemed to have been served:-

21.2.1 upon delivery if served by hand;

21.2.2 at the expiration of forty eight (48) hours after dispatch of the same if delivered by first class post within the UK and five (5) Working Days if sent by international mail; and

21.2.3 on the same Working Day if it is sent to the other party by e-mail prior to 16.30, but on the following Working Day if sent by email after that time.

21.3 To prove service of any notice it shall be sufficient to show in the case of a notice delivered by hand that the same was duly addressed and delivered by hand. In the case of a notice served by post, it shall be sufficient to show that the same was duly addressed, prepaid and posted in the manner set out above, save in the event of a current industrial dispute affecting relevant postal services, when the relevant party shall serve notice by any other means permitted under the Contract.

22. GENERAL

22.1 The parties shall endeavour at all times during the Contract Period to act in good faith and co-operate with one another so far as appropriate in discharging their respective responsibilities.

22.2 The Contract and its Schedules contain the entire agreement for the provision of the Services between the parties.

22.3 Nothing in the Contract shall create, or be deemed to create, a partnership or joint venture or relationship of employer and employee or principal and agent between the parties.

22.4 The Agreement may only be varied in writing by the parties and such variation executed by an authorised signatory of the same.

22.5 No term or provision of the Contract shall be considered as waived in relation to any party unless a waiver is given in writing by the other party, but no waiver given under this Condition shall be a waiver of a past or future default or breach, nor shall it amend, delete or add to the terms, conditions or provisions of the Contract unless (and then only to the extent) expressly stated in that waiver.

22.6 If any term, condition or provision contained in the Contract shall be held to be invalid, unlawful or unenforceable to any extent such term, condition or provision shall not affect the validity, legality or enforceability of the remaining parts of the Contract.

- 22.7 Unless the right of enforcement is expressly granted, it is not intended that any provision of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to the Contract.
- 22.8 The parties agree that execution of the Contract shall be electronic (evidenced by the Customer ordering the Services through the Council's Services2Schools web-shop (<https://www.services2schools.co.uk/>)) and that this method of execution is as conclusive of the parties intention to be bound by the Contract as if signed by each party's manuscript signature.

23. LAW OF CONTRACT AND JURISDICTION

- 23.1 The Contract shall be governed by, and construed in accordance with the laws of England.
- 23.2 Any disputes arising out of or relating to the Contract, which cannot be amicably settled between the parties in accordance with Condition 16, shall be subject to the exclusive jurisdiction of the English and Welsh Courts to which the parties irrevocably submit.