

SCHEDULE 2

EAST SUSSEX COUNTY COUNCIL – SPECIAL TERMS AND CONDITIONS OF SERVICE

1. DEFINITIONS AND INTERPRETATION

1.1 In this Schedule, the rules of interpretation (including defined terms) set out in the Conditions shall apply.

1.2 In this Schedule, unless the context otherwise requires, the following terms shall have the meanings ascribed to them below:

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| “Administering Authority” | means East Sussex County Council in its role as administrator of the Pension Fund; |
| “Admission Agreement” | means an agreement to be entered into in accordance with regulation 3 of the LGPS Regulations, by (1) the Administering Authority, (2) the Customer and (3) the Service Provider or Sub-Contractor, as appropriate, in the Administering Authority’s standard form; |
| “Appropriate Pension Provision” | means in respect of Eligible Employees, either: <ul style="list-style-type: none"> (a) membership, continued membership or continued eligibility for membership of their Legacy Scheme; or (b) membership or eligibility for membership of a pension scheme, which is certified by the Government Actuary’s Department (GAD) as being broadly comparable to the terms of their Legacy Scheme, save as may be modified or varied by any replacement or amendment of the Best Value Authorities Staff Transfers (Pensions) Direction 2007; |
| “Contract Rates” | means the rates and prices payable by the Council to the Service Provider under the Services Contract; |
| “Contractor” | as defined in Special Condition 14.1; |
| “Eligible Employees” | means: <ul style="list-style-type: none"> (a) any Customer Employees who are active members of (or are eligible to join) the LGPS on the date of a Relevant Transfer; and / or (b) any Third Party Employees who are former employees of the Customer who were active members of (or who were eligible to join) the LGPS on the date of a previous Relevant Transfer of the Services; |
| “Employed In Connection With” | means employed by the Council or the Service Provider (or its Sub-Contractor(s) if relevant) solely or mainly (i.e. more than fifty percent (50%) of their working time) in the management or delivery of the provision of the Services; |
| “Employee Liability Information” | means the information that a transferor is obliged to notify to a |

transferee under Regulation 11(2) of TUPE:

- (a) the identity and age of the employee;
- (b) the employee's written statement of employment particulars (as required under section 1 of the Employment Rights Act 1996);
- (c) information about any disciplinary action taken against the employee and any grievances raised by the employee, where a Code of Practice issued under Part IV of the Trade Union and Labour Relations (Consolidation) Act 1992 relating exclusively or primarily to the resolution of disputes applies, within the previous two (2) years;
- (d) information about any court or tribunal case, claim or action either brought by the employee against the transferor within the previous two (2) years or where the transferor has reasonable grounds to believe that such action may be brought against the transferor or transferee arising out of the employee's employment with the transferor; and
- (e) information about any collective agreement that will have effect after the Effective Date or the Service Transfer Date, as the case may be, in relation to the employee under regulation 5(a) of TUPE.

“Laws”	means any applicable statute or any delegated or subordinate legislation, any enforceable community rights within the meaning of section 2 of the European Communities Act 1972, duly applicable guidance code of practice, direction, judgment or determination with which the Service Provider, the Council and/or the Customer is bound to comply including the Council’s rules, procedures, guidelines, policies, codes of practice, financial regulations and standards from time to time;
“Legacy Scheme”	means the pension scheme of which the Eligible Employees are members, or are eligible for membership of, or are in a waiting period to become a member of, prior to the Relevant Transfer;
“LGPS”	means the Local Government Pension Scheme;
“Management Fee”	means the charges payable by the Customer for the supply of the Support Services by the Council, as set out in the Contract Particulars;
“Management Reports”	means the reports (or such part of the reports as relate to the provision of the Services) prepared by the Service Provider in accordance with the requirements of the Services Contract;
“Pension Fund”	means the East Sussex Pension Fund;
“Pensions Bond”	means a bond to be executed in the Administering Authority’s standard form to the value determined by the Administering

	Authority’s actuary;
“Relevant Employees”	means those employees whose contracts of employment transfer with effect from the Service Transfer Date to the Customer or a replacement service provider by virtue of the application of TUPE;
“Service Provider”	means the Council’s appointed Sub-Contractor, as identified in the Contract Particulars;
“Service Transfer Date”	means the date on which the Services (or any part of the Services), transfer from the Council or the Service Provider (or any Sub-Contractor) to the Customer or any replacement service provider;
“Services Contract”	means the Sub-Contract between the Council and the Service Provider for the provision of the Sub-Contracted Services;
“Software Agreement”	means any agreement entered into between the Council and any Third Party Supplier for the supply of the Software / Application(s) and, where applicable, associated support and maintenance;
“Software / Application(s)”	means the software / application(s) identified in the Contract Particulars;
“Third Party Supplier”	means a third party supplier of the Software / Application(s);
“Special Conditions”	means the terms and conditions set out in Special Conditions 1 (Definitions and Interpretation) to 11 (Alternative Invoice Process) (inclusive) of this Schedule 2;
“Sub-Contracted Services”	means those elements of the Services that have been sub-contracted by the Council to the Service Provider;
“Sub-Licence”	as defined in Special Condition 12.2;
“Support Services”	means contract management of the Service Provider’s provision of the Services to the Customer;
“Works”	means any construction or civil engineering works listed in Annex II to Directive 2014/24/EU on public procurement (or any equivalent of such list published by the UK Government after 29 March 2019 or such other date as the United Kingdom leaves the European Union);
“Works Contract”	means the Sub-Contract between the Council and the Contractor for the provision of the Works;

PART 1 – THIRD PARTY SERVICES (GENERAL)

2. SUPPLY OF SERVICES

2.1 The Council has engaged the Service Provider to provide the Services.

2.2 The provisions of Condition 3 shall be replaced with the following:

2.2.1 The Council shall use reasonable endeavours to procure the provision of the Services from the Service Provider to the Customer throughout the Contract Period.

2.2.2 The Council shall use reasonable endeavours to procure that the Service Provider deals with any

Customer complaints in a prompt, courteous and efficient manner. The Council shall use reasonable endeavours to procure that the Service Provider keeps a written record of all complaints received and of the action taken in relation to such complaints. Such records shall be kept available for inspection by the Authorised Officer at all reasonable times.

2.2.3 Upon request from the Customer, the Council shall provide a copy of:

2.2.3.1 the Services Contract (with such redactions as the Council considers necessary in compliance with applicable Laws) to the Customer;

2.2.3.2 any Management Reports submitted by the Service Provider.

2.2.4 Where Service Credits are provided for under the Services Contract and the Service Provider fails to provide any of the Services to the Contract Standard, if the Service Credit levied relates exclusively to the provision of Services to the Customer, the Customer shall be entitled to the whole of any Service Credits recovered from the Service Provider (less the Council's reasonable costs incurred in recovering such damages). This will not apply if the Customer has failed to observe and perform its obligations under the Contract which has contributed to the Service Provider's failure.

2.3 References in the Conditions to the Council shall, where appropriate, include reference to the Service Provider.

3. CUSTOMER OBLIGATIONS

3.1 For the avoidance of doubt, the Customer's obligation in Condition 4 to provide access for the Council or its Sub-Contractors to the Customer's premises and facilities where such access is required for the provision of the Services, shall include making such access available to the Service Provider.

3.2 Without prejudice to Condition 8.2, if the Customer terminates the Contract in accordance with Condition **Error! Reference source not found.**, the Customer shall be liable for the full Charges up to the end of the Contract Year in which the notice of termination takes effect.

4. TUPE AND PENSIONS AT THE COMMENCEMENT OF THE CONTRACT

4.1 In the event of a Relevant Transfer upon Commencement of the Contract, the Customer shall:

4.1.1 be responsible for all remuneration, benefits, entitlements and outgoings in respect of any Customer Employees, including without limitation, all wages, holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions, pension contributions and otherwise, up to the Service Start Date. The Customer shall provide and, where necessary, update the Employee Liability Information for the Customer Employees to the Council (which will be shared with the Service Provider), as required by TUPE;

4.1.2 warrant that any information provided pursuant to clause 4.1.1 is complete and accurate insofar as it is aware or should reasonably be aware as at the date it is disclosed;

4.1.3 procure that the Third Party Employers provide the Employee Liability Information for the Third Party Employees to the Council (which shall be shared with the Service Provider), and, where necessary, update such information, as required by TUPE;

4.1.4 indemnify the Council (and the Service Provider) against any losses, except indirect losses incurred by the Council and / or the Service Provider or any relevant Sub-Contractor in connection with any claim or demand by any Customer Employee arising out of the employment of any Customer

Employee. This indemnity shall apply provided that:

- 4.1.4.1 it arises from any act, fault or omission of the Customer in relation to any Customer Employee prior to the Effective Date (except where such act, fault or omission arises as a result of the Council or the Service Provider's failure to comply with regulation 13 of TUPE); and
- 4.1.4.2 any such claim is not in connection with the transfer of the Services by virtue of TUPE on the Effective Date.

5. PENSIONS

- 5.1 The Council shall use reasonable endeavours to procure that the Service Provider offers all Eligible Employees Appropriate Pension Provision (for so long as the Eligible Employee is Employed in Connection With the Service Contract) with effect from the relevant Effective Date up to and including the Termination Date.

6. ADMITTED BODY STATUS TO THE LOCAL GOVERNMENT PENSION SCHEME

- 6.1 Where Service Provider wishes to offer the Eligible Employees membership of the LGPS, save where the Council is the employer of the Eligible Employees, the Customer shall enter into an Admission Agreement if required by the Council to have effect from and including the relevant Effective Date.
- 6.2 The Council shall procure that the Service Provider or any relevant Sub-Contractor obtains an indemnity or Pensions Bond in respect of liabilities to the Pension Fund in accordance with the Admission Agreement prior to the Effective Date. Save where the Council is the employer of the Eligible Employees, the costs of obtaining the Pensions Bond shall be recoverable from the Customer as a direct pass-through cost, without the addition of overhead or margin.
- 6.3 If, during the Contract Period, the Council and the Service Provider agree a reduction in the Contract Rates pursuant to Schedule H of the Service Contract, the Council shall make a corresponding reduction in the Charges equal to the total resulting savings.
- 6.4 If for any reason after the Effective Date, the Service Provider ceases to provide Appropriate Pension Provision in accordance with paragraph 5 (Pensions) (other than on the Termination Date or the date of termination or expiry of the Services Contract, or because it ceases to employ any Eligible Employees), then the Customer shall be entitled to terminate the Contract by notice in writing to the Council (such notice to take effect upon the date that the Council is able to terminate the relevant part of the Service Contract in accordance with the terms set out in the Service Contract).

7. SERVICE PROVIDER PENSION SCHEME

- 7.1 Where the Service Provider does not wish to or is otherwise prevented from offering all or some of the Eligible Employees membership or continued membership of the LGPS, the Council shall procure that the Service Provider or any relevant Sub-Contractor offers the Eligible Employees membership of an occupational pension scheme that meets the requirements of Schedule H of the Service Contract with effect from the Effective Date.

8. TUPE AND PENSIONS AT THE EXPIRY OR TERMINATION OF THE CONTRACT

- 8.1 At least six (6) months prior to the Termination Date, the Council shall use reasonable endeavours to

procure from the Service Provider for the Customer the Service Provider's Provisional Staff List.

- 8.2 At least twenty eight (28) days prior to the Service Transfer Date, the Council shall use reasonable endeavours to procure that the Service Provider prepares and provides to the Customer, the Service Provider's Final Staff List, which shall be complete and accurate in all material respects and shall identify which of the Service Provider's personnel named are Relevant Employees.
- 8.3 The parties agree that where, upon termination or expiry of the Contract, 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 Relevant Employees shall transfer to the Customer or any replacement service provider.

PART 2 –THIRD PARTY SERVICES (WITH SUPPORT SERVICES)

9. SUPPLY OF THE SUPPORT SERVICES

- 9.1 The Council shall provide the Support Services in accordance with the requirements of the Contract throughout the Contract Period.
- 9.2 The Council shall employ in and about the provision of the Support Services only such persons as are careful, skilled and experienced in their trades and callings.

10. CHARGES AND PAYMENT FOR SUPPORT SERVICES

- 10.1 In consideration of the provision of the Support Services, the Customer shall pay the Management Fee in accordance with this Special Condition 9.
- 10.2 The Council shall invoice the Customer in respect of the Support Services annually in advance. Each invoice shall include all reasonable supporting information required by the Customer.
- 10.3 Where the Customer is an East Sussex Maintained School, the Council shall debit the Charges by way of a journal transfer three (3) times per year.
- 10.4 Without prejudice to Condition 8.2, if the Customer terminates the Contract in accordance with Condition **Error! Reference source not found.**, the Customer shall be liable for the full Management Fee to the end of the Contract Year in which the notice of termination takes effect.

PART 3 - CATERING SERVICES

11. ALTERNATIVE INVOICE PROCESSES

- 11.1 Where the Customer is an East Sussex Maintained School:
 - 11.1.1 the Customer shall be invoiced by the Service Provider directly; and
 - 11.1.2 the Customer shall pay each invoice due and submitted to it by the Service Provider, within thirty (30) days of receipt, to a bank account nominated by the Service Provider for this purpose.

PART 4 – THIRD PARTY SOFTWARE AND APPLICATIONS

12. SUPPLY OF THIRD PARTY SOFTWARE AND APPLICATIONS

- 12.1 In order to deliver the Services, the Council has purchased the Software / Application(s) from the Third Party Supplier(s).
- 12.2 The Council hereby grants a sub-licence to the Customer in respect of the Software / Application(s) on the same terms as the Software Agreement (“**Sub-Licence**”). The terms of the Sub-Licence shall form part of and are expressly incorporated into the Contract.

13. CUSTOMER OBLIGATIONS

- 13.1 The Customer shall comply with the terms of the Sub-Licence and shall not do, cause or permit any act or omission that shall cause the Council to be in breach of its obligations under the Software Agreement.
- 13.2 Without prejudice to Condition 8.2, if the Customer terminates the Contract in accordance with Condition **Error! Reference source not found.**, the Customer shall be liable for the full Charges up to the end of the Contract Year in which the notice of termination takes effect.

PART 5 – BUILDING MAINTENANCE SERVICES

14. SUPPLY OF SERVICES AND WORKS

- 14.1 Where, as part of the Services, the Council considers that Works are required, the Council shall identify and appoint a contractor to deliver the Works (the “**Contractor**”).
- 14.2 In identifying the Contractor, the Council shall comply with its procurement standing orders and good procurement practice.
- 14.3 The Council shall use reasonable endeavours to procure that the Contractor deals with any Customer complaints in a prompt, courteous and efficient manner.
- 14.4 Upon request from the Customer, the Council shall provide a copy of:
- 14.4.1 the Works Contract (with such redactions as the Council considers necessary in compliance with applicable Laws) to the Customer;
- 14.4.2 any Management Reports submitted by the Contractor.

15. CUSTOMER OBLIGATIONS

- 15.1 For the avoidance of doubt, the Customer’s obligation in Condition 4 to provide access for the Council or it’s Sub-Contractors to the Customer’s premises and facilities where such access is required for the provision of the Services, shall include making such access available to the Contractor where such access is required for the performance of the Works.
- 15.2 Without prejudice to Condition 8.2, if the Customer terminates the Contract in accordance with Condition **Error! Reference source not found.**, the Customer shall be liable for the full Charges up to the end of the Contract Year in which the notice of termination takes effect.