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| **DATED 2021** | | |
| 1. THE COUNCIL OF THE BOROUGH OF STOCKTON ON TEES 2. [ xxxxxxxxx ] | | |
| **services Agreement** | | |
| Contract re: **Supporting Educators to respond to Communication and Interaction Needs**  Legal Services  Stockton-on-Tees Borough Council  Municipal Buildings  Church Road  Stockton-on-Tees  TS18 1LD  Ref: PRO.21.108 | | |
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**PART ONE**

**MEMORANDUM OF AGREEMENT**

**THis AGREEMENT** is made on the \_\_\_\_\_\_\_ day of\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_2021

**BETWEEN:**

1. **THE COUNCIL OF THE borough OF STOCKTON-ON-TEES** of Municipal Buildings, Church Road, Stockton-on-Tees, TS18 1LD (“**Council**”)

and

1. **[XXXXXXXXXXXXX]**, a company registered in England and Wales with registered company number: xxxxxxx and whose registered office address is xxxxxxxxxxxxxxxx **(**“the **Contractor**”).

Together the “Parties”

**WHEREAS**

1. The Council has sought the provision of Services from the Contractor in order to respond to children and young people with communication and interaction/ASD needs.
2. This Agreement sets out the terms and conditions upon which the Council wishes the Contractor to provide the Services, and upon which the Contractor agrees to provide the Services to the Council.
3. The Council has relied and will continue to rely upon the professional skill and judgment of the Contractor in respect of all matters covered by this Agreement.

**NOW IT IS AGREED** as follows:

1. The following documents listed herein, in distinct parts, shall be deemed to form, and be read and construed together as constituting the entire Agreement between the parties, namely:-

|  |  |
| --- | --- |
| **Parts** | **Description** |
| Part One | Memorandum of Agreement |
| Part Two | Contract Particulars |
| Part Three | Special Terms and Conditions |
| Part Four | Standard Terms and Conditions |
| Part Five | Specification |

And in the event of ambiguity, conflict or contradictions between these documents the conflict will be resolved according to the numerical order listed (with Part One constituting the highest priority, then Part Two and so on).

1. In consideration of the payments to be made by the Council to the Contractor as hereinafter mentioned, the Provide hereby covenants with the Council to provide the Services in conformity in all respects with the provisions of the Contract.
2. Subject to clause 4 below, the Council hereby covenants to pay to the Contractor, in consideration of provision of the Services, the Price at the times and in the manner prescribed by the Contract.
3. The Provider acknowledges and agrees that the Council does not guarantee the amount of Services required under the Contract and as such, the Price paid shall reflect the Services received (in response to the referrals made to the Provider as further set out in Part 5 (Specification) of the Contract).
4. The Contractor acknowledges that it:
   1. has made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of the Council;
   2. has raised all relevant due diligence questions with the Council before the date of this Agreement; and
   3. has entered into this Agreement in reliance on its own due diligence alone.

**EXECUTED** as a Deed by the Parties on the date first above written

**THE COMMON SEAL OF** **THE** )

**COUNCIL OF THE BOROUGH** )

**OF STOCKTON-ON-TEES** )

was hereunto affixed in )

the presence of)

…………………………………….

Authorised Officer

**EXECUTED as a Deed by** )

**[xxxxxxxxxxxxxxxxxx]** )

acting by two members/authorised )

signatories namely )

………………………………………..

print name signature

And

…………………………………………

print name signature



**PART TWO**

**CONTRACT PARTICULARS**

**CONTRACT PARTICULARS**

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| --- | --- | --- | --- |
| **Contract Title** | | **Supporting Educators to respond to Communication and Interaction Needs** | |
| **Council** | | **The Council of the Borough of Stockton-On-Tees** | |
| **Contractor** | | **[xxxxxxxxxxxx]** | |
| **Commencement Date** | | **[xxxxxxxxxxxx]** | |
| **Contract Period** | | **[xxxx] to [xxxx] inclusive with an option to extend by [xx] x [12 month] periods entirely at the Council’s discretion.** | |
| **Services/Goods/Works** | | **Services** | |
| **Specification/Description** | | **A contract supporting educators to respond to communication and interaction needs. The Services to be delivered are more specifically described within the Specification which forms Part Five of this Contract.** | |
| **Address for Notice** | | **Council:-**   1. **The Council of the Borough of Stockton on Tees, Church Road, Stockton on Tees, TS18 1LD**   **Contractor :-**   1. **[xxxxxxxxxxx]** | |
| **Price** | | 1. **The Price shall be [xxxxxxxxxxx] [inclusive/exclusive] of VAT.**   **The overall Price payable to the Contractor under the Contract shall not exceed £189,000.00** | |
| **Council Authorised Officers** | | | |
| **Name** | **Position** | | **Contact Details** |
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| **Contractor Authorised Officer** | | |
| **Name** | **Position** | **Contact Details** |
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| **Insurance** | |
| **Insurance type:** | **Minimum level** |
| **Employer’s Liability Insurance** | **£10 million** |
| **Public Liability Insurance** | **£5 million** |
| **Professional Indemnity Insurance** | **An amount for each and every claim, act or occurrence or series of claims, acts or occurrences which is sufficient to cover the Contractor’s liabilities under this Contract.** |



**PART THREE**

**SPECIAL TERMS AND CONDITIONS**

*STOCKTON ON TEES BOROUGH COUNCIL*

**SPECIAL TERMS AND CONDITIONS**

1. Safeguarding Children and Vulnerable Adults
   1. The parties acknowledge that the Contractor is a Regulated Activity Provider with ultimate responsibility for the management and control of the Regulated Activity provided under this Contract and for the purposes of the Safeguarding Vulnerable Groups Act 2006.
   2. The Contractor shall:
      1. ensure that all individuals engaged in the provision of the Services are subject to a valid enhanced disclosure check undertaken through the Disclosure and Barring Service including a check against the adults' barred list or the children's barred list, as appropriate; and
      2. monitor the level and validity of the checks under this clause 1.2 for each member of staff.
   3. The Contractor warrants that at all times for the purposes of this Contract it has no reason to believe that any person who is or will be employed or engaged by the Contractor in the provision of the Services is barred from the activity in accordance with the provisions of the Safeguarding Vulnerable Groups Act 2006 and any regulations made thereunder, as amended from time to time.
   4. The Contractor shall
      1. immediately notify the Council of any information that it reasonably requests to enable it to be satisfied that the obligations of this clause 1 have been met.
      2. ensure as a minimum and in addition to the requirement to monitor as set out in clause 1.2.2 that a new enhanced disclosure check at the appropriate level is undertaken through the Disclosure and Barring Service for each member of staff at least every three years or more frequently as directed by the Council or if the individual is registered with the DBS Update Service they provide prior written consent to the Council to allow access to their DBS Certificate status on-line.
   5. The Contractor shall refer information about any person carrying out the Services to the DBS where it removes permission for such person to carry out the Services (or would have, if such person had not otherwise ceased to carry out the Services) because, in its opinion, such person has harmed or poses a risk of harm to the Service users.
   6. The Contractor shall not employ or use the services of any person who is barred from, or whose previous conduct or records indicate that he or she would not be suitable to carry out Regulated Activity or who may otherwise present a risk to Service users.
2. DATA PROTECTION

In this Clause 2:

* 1. **interpretation**

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| **‘Data Controller’** | has the meaning given in the Data Protection Legislation. |
| **‘Data Loss Event’** | means any event that results, or may result, in unauthorised access to Personal Data held by the Contractor under this Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Contract. |
| **‘Data Processing Schedule’** | the Schedule attached and incorporated into the Contract |
| **’Data Processor’** | has the meaning given in the Data Protection Legislation. |
| **‘Data Protection Impact Assessment’** | means an assessment by the Data Controller of the impact of the envisaged processing on the protection of Personal Data. |
| **“Data Protection Legislation”** | means (i) the Data Protection Act 2018 (‘DPA 2018’), (ii) the UK General Data Protection Regulation (‘UK GDPR’) (iii) the Regulation of Investigatory Powers Act 2000, (iv) the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000, (v) the Privacy and Electronic Communications (EC Directive) Regulations 2003 and (vi) all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner. |
| **‘Data Protection Officer’** | has the meaning given in the Data Protection Legislation. |
| **‘Data Sharing Agreement’** | Means a formal agreement that documents what data is being shared and how the data can be used between the Parties. |
| **‘Data Sharing Code of Practice’** | Means the code of practice issued by the Information Commissioner in respect to the sharing of personal data. |
| **‘Data Subject Access Request’** | Means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data |
| **‘Data Subject’** | has the meaning given in the Data Protection Legislation. |
| **‘Personal Data’** | has the meaning given in the Data Protection Legislation. |
| **‘Protective Measures’** | has the meaning given in the Data Protection Legislation and may include pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it. |

* 1. The Contractor shall (and shall procure that any of its Employees involved in the provision of the Services) comply with any requirements under the Data Protection Legislation.
  2. In particular, and without prejudice to the generality of Clause 2.2 above, if the Contractor is acting as Data Controller within the meaning of the Data Protection Legislation for any data provided to the Contractor by the Council or vice versa under this contract then the following provisions shall apply:
     1. The Contractor and the Council shall comply with the Data Sharing Code of Practice produced by the Information Commissioner and as amended from time to time;
     2. In accordance with good practice, either Party may, at any time, require the other to enter into a Data Sharing Agreement. In considering a proposed Data Sharing Agreement, either Party cannot unreasonable and without good reason refuse to enter into a Data Sharing Agreement.
  3. In particular, and without prejudice to the generality of Clause 2.2 above, if the Contractor and the Council are acting as Joint Data Controllers within the meaning of the Data Protection Legislation for any data collected by or provided to either party under this contract then the following provisions shall apply:
     1. The Parties shall designate between them a contact point for data subjects in relation to any personal data under the joint control of the parties.
     2. Each Party shall provide all reasonable assistance to the other in relation to any complaint, communication or request made under the data protection legislation and the preparation of any Data Protection Impact Assessment
     3. Each Party shall ensure that it has in place Protective Measures as appropriate to protect the Personal Data having taken account of the:
        1. nature of the data to be protected;
        2. harm that might result from a Data Loss Event;
        3. state of technological development; and
        4. cost of implementing any measures;
     4. Each Party shall take all reasonable steps to ensure the reliability and integrity of any personnel or staff who have access to the Personal Data and ensure that they are aware of and comply with the Party’s data protection obligations and have undergone adequate training in the use, care, protection and handling of Personal Data.
     5. Each Party shall notify the other immediately if it:
        1. receives a Data Subject Access Request (or purported Data Subject Access Request) in relation to any data under the joint control of the Parties;
        2. receives a request to rectify, block or erase any Personal Data in relation to any data under the joint control of the Parties;
        3. receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation in relation to any data under the joint control of the Parties;
        4. receives any communication from the Information Commissioner or any other regulatory authority in relation to any data under the joint control of the Parties;
        5. receives a request from any third Party for disclosure of Personal Data under the joint control of the Parties where compliance with such request is required or purported to be required by Law; or
        6. becomes aware of a Data Loss Event in relation to any data under the joint control of the Parties;.
     6. Each Party shall designate a Data Protection Officer if required by the Data Protection Legislation
     7. The Parties agree to take account of any guidance issued by the Information Commissioner’s Office.
     8. Each Party shall fully indemnify the other against any costs, claims, actions or otherwise brought against the other party arising as a result of the indemnifying party’s breach of any of its data protection obligations.
  4. In particular and without prejudice to the generality of Clause 2.2 above, if the Contractor is acting as Data Processor on behalf of the Council within the meaning of the Data Protection Legislation for any data provided to it by the Council under this contract then the following provisions shall apply:
     1. Annex 1 to these Special Terms and Conditions, (The Data Protection Schedule), shall apply and the only processing that the Contractor is authorised to do is listed in Annex 1 (as may be amended by the Council) and may not be determined by the Contractor.
     2. The Contractor shall notify the Council immediately if it considers that any of the Council's instructions infringe the Data Protection Legislation.
     3. The Contractor shall provide all reasonable assistance to the Council in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Council, include:
        1. a systematic description of the envisaged processing operations and the purpose of the processing;
        2. an assessment of the necessity and proportionality of the processing operations in relation to the Services;
        3. an assessment of the risks to the rights and freedoms of Data Subjects; and
        4. the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
     4. The Contractor shall, in relation to any Personal Data processed in connection with its obligations under this Contract:
        1. Process that Personal Data only in accordance with Annexes 1 and 2 of these Special Terms and Conditions unless the Contractor is required to do otherwise by Law. If it is so required the Contractor shall promptly notify the Council before processing the Personal Data unless prohibited by Law;
        2. ensure that it has in place Protective Measures, which have been reviewed and approved by the Council as appropriate to protect the Personal Data having taken account of the:
           1. nature of the data to be protected;
           2. harm that might result from a Data Loss Event;
           3. state of technological development; and
           4. cost of implementing any measures;
        3. ensure that the Contractor Personnel do not process Personal Data except in accordance with this Agreement (and in particular the Data Processing Schedule)
        4. ensure it takes all reasonable steps to ensure the reliability and integrity of any Contractor personnel or staff who have access to the Personal Data and ensure that they:
           1. are aware of and comply with the Contractor’s duties under this clause;
           2. are subject to appropriate confidentiality undertakings with the Contractor or any Sub-processor;
           3. are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Council or as otherwise permitted by this Agreement; and
           4. have undergone adequate training in the use, care, protection and handling of Personal Data; and
        5. not transfer Personal Data outside of the EU unless the prior written consent of the Council has been obtained and the following conditions are fulfilled:
           1. the Council or the Contractor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or Law Enforcement Directive Article 37) as determined by the Council;
           2. the Data Subject has enforceable rights and effective legal remedies;
           3. the Contractor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Council in meeting its obligations); and
           4. the Contractor complies with any reasonable instructions notified to it in advance by the Council with respect to the processing of the Personal Data;
     5. At the written direction of the Council, delete or return Personal Data (and any copies of it) to the Council on termination of the Contract unless the Contractor is required by Law to retain the Personal Data.
     6. The Contractor shall notify the Council immediately if it:
        1. receives a Data Subject Access Request (or purported Data Subject Access Request);
        2. receives a request to rectify, block or erase any Personal Data;
        3. receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
        4. receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Contract
        5. receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
        6. becomes aware of a Data Loss Event
     7. The Contractor’s obligation to notify under Clause 2.5.6 shall include the provision of further information to the Council in phases as details become available.
     8. Taking into account the nature of the processing, the Contractor shall provide the Council with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under such legislation (and insofar as possible within the timescales reasonably required by the Council) including by promptly providing:
        1. the Council with full details and copies of the complaint, communication or request;
        2. such assistance as is reasonably requested by the Council to enable the Council to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
        3. the Council, at its request, with any Personal Data it holds in relation to a Data Subject;
        4. assistance as requested by the Council following any Data Loss Event;
        5. assistance as requested by the Council with respect to any request from the Information Commissioner’s Office, or any consultation by the Council with the Information Commissioner's Office.
     9. The Contractor shall maintain complete and accurate records and information to demonstrate its compliance with Clause 2.5.
     10. The Contractor shall allow for audits of its Data Processing activity by the Council or the Council’s designated auditor.
     11. The Contractor shall designate a Data Protection Officer if required by the Data Protection Legislation.
     12. Before allowing any Sub-processor to process any Personal Data related to this Contract, the Contractor must:
         1. notify the Council in writing of the intended Sub-processor and processing;
         2. obtain the written consent of the Council;
         3. enter into a written agreement with the Sub-processor which give effect to the terms set out in this Clause 2.5 such that they apply to the sub- processor; and
         4. provide the Council with such information regarding the Sub-processor as the Council may reasonably require.
     13. The Contractor shall remain fully liable for all acts or omissions of any Sub-processor.
     14. The Council may, at any time on not less than 30 Working Days’ notice, revise any part of this Clause 2.5 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Contract).
     15. The Parties agree to take account of any guidance issued by the Information Commissioner’s Office. The Council may on not less than 30 Working Days’ notice to the Contractor amend this Contract to ensure that it complies with any guidance issued by the Information Commissioner’s Office.

1. **Business Continuity Plan**

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| ‘Business Continuity Plan’ | means the plan setting out the Contractor’s proposed methodology to make sure of continuance of the Contract in the event of an emergency. |

* 1. The Civil Contingencies Act 2004 requires the Council to maintain plans to make sure it can continue to perform all of its ordinary functions in the event of an emergency. Organisations providing Services or goods which underpin the Council’s service provision must be able to continue to provide those goods or Services in the event of an emergency. The Contractor shall use its reasonable endeavours:
     1. to prepare a robust Business Continuity Plan that makes sure of the continuation of this Contract;
     2. upon request, to disclose to the Council the contents of its Business Continuity Plan (including any revisions made to it from time-to-time);
     3. to allow the Council at its discretion from time-to-time to monitor the Contractor’s business continuity arrangements;
     4. to notify the Council if an incident occurs which activates the Contractor’s Business Continuity Plan (such notification to be given prior to the issue of any notification to the press or other media); and
     5. to provide the Council with details of how the Contractor managed any incident which resulted in the activation of the Contractor’s Business Continuity Plan and any consequential amendments made to the Contractor’s processes and/or procedures afterwards.

1. Post-contract monitoring
   1. The Contractor is required to collaborate with the Council over the Contract Period to achieve continuous improvement in the quality and delivery of the Services in accordance with the Council’s obligations under Part I of the Local Government Act 1999.
2. Community safety
   1. The Council has a statutory duty to make sure that it does all that it reasonably can to prevent crime and disorder in its area under the Crime and Disorder Act 1998. The Contractor is requested to assist the Council in the provision of the Services, in order to enable the Council to comply with this obligation at no additional expense to the Council.
3. **Independent contractor**
   1. The parties agree that the Contractor is an independent contractor and not an agent, employee or partner of the Council and therefore not eligible to participate in any benefit programmes of the Council. The Contractor will be responsible for payment of his or her own Income Tax and National Insurance Payments or similar contributions in respect of his or her fees and the Contractor by this indemnifies the Council against any claims that may be made against the Council for Income Tax or National Insurance or similar contributions relating to the provision of the Services by the Contractor.
   2. The Contractor shall also be responsible for any loss of benefits paid under his previous contract of employment, or additional tax liability incurred, by reason of his accepting a contract with the Council as a consultant which commences immediately after the termination of his employment with the Council and the Contractor shall indemnify the Council in respect of any additional tax liability, loss or demand that the Council may get because of that.
4. Meetings and progress reports
   1. The Contractor manager shall attend any meetings, including site meetings, as may reasonably be requested by the Council. The Contractor shall make all arrangements for sub-contractors and suppliers to be present as required by the Council.
   2. The Contractor shall submit written reports to the Council about any material changes to the Tender submitted by the Contractor.
5. TUPE indemnity

For the purposes of this clause 8, the following definitions shall take effect.

‘Current Employer’ the employer of the Transferring Employees immediately before the commencement date.

’Employment Costs’ **remuneration, benefits, entitlements and outgoings in respect of the Transferring Employees and including without limitation all wages, holiday pay, bonuses, commissions, payment of PAYE, national insurance contributions and pensions contributions.**

**’Prohibited Act’ include any of the following (i) termination of employment of any employees; or (ii) the alteration or change of terms or conditions of any employees; or (iii) the recruitment of any employees; or (iv) relocation or assignment to new duties of any employees.**

‘Transferring Employees’ those employees employed wholly or mainly by the current employer in providing the Services described in the Specification prior to the commencement date.

* 1. The Council and the Contractor acknowledge that where as a result of TUPE the contracts of employment between the current employer and the Transferring Employees (except in so far as such contracts relate to any occupational pension scheme as defined in Regulation 10 of TUPE) transfer, they will have effect after the commencement date as if originally made between the Contractor and the Transferring Employees.
  2. All employment costs for the period:
     1. up to and including the commencement date in relation to the Transferring Employees (whether or not due for payment at that date) will be borne by the current employer;
     2. after the commencement date will be borne by the Contractor; and
     3. will if necessary be apportioned on a time basis between the Contractor and the current employer.
  3. The Contractor will keep the Council and any replacement contractor indemnified in full against all Liabilities arising directly or indirectly and whether incurred by the Council under an indemnity provided to the replacement contractor for:
     1. the employment or termination of employment of any of the employees (whether or not terminated by notice and, if so terminated, whenever that notice expires);
     2. any act, omission or Default of the Contractor in respect of the employment of the Transferring Employees;
     3. the Contractor’s failure to inform or consult as required under Regulation 13 of TUPE except to the extent that any such action or claim (or any part of such action or claim) arises from any failure by the Council or the replacement contractor to give the Contractor the information required from the Council or the Replacement Contractor to enable the Contractor to comply with its obligations under TUPE;
     4. the Contractor’s failure to provide the employee liability information under Regulation 11 of TUPE;
     5. any claim by a Transferring Employee that such person is entitled for any reason to take early retirement benefits under the terms of any pension scheme in which the Council or the Replacement Contractor is not then participating, or under the Transferring Employee’s terms and conditions of employment; and
     6. the Contractor’s failure to comply with its obligations under clause 8.4 below.
  4. The Contractor will not in the event of notice of termination of this Contract or from a date of 12 months before expiry of the Contract Period carry out a Prohibited Act.

1. **Council Data**

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| ’Council Data’ | the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are:   1. supplied to the Contractor by or on behalf of the Council; or 2. which the Contractor is required to generate, Process, store or transmit under this Contract; or 3. any Personal Data for which the Council is the Data Controller. |
| ‘Default’ | any breach of the obligations of the relevant party (including but not limited to fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or statement of the relevant party, its employees, servants, agents or subcontractors in connection with or in relation to the subject-matter of this Contract and in respect of which such party is liable to the other. |

* 1. The Contractor shall not delete or remove any proprietary notices contained within or relating to the Council Data.

9.2 The Contractor shall not store, copy, disclose, or use the Council Data except as necessary for the performance by the Contractor of its obligations under this Contract or as otherwise expressly authorised in writing by the Council.

* 1. To the extent that Council Data is held and/or processed by the Contractor, the Contractor shall supply that Council Data to the Council as requested by the Council in the format specified in the Contract Particulars and Specification.
  2. The Contractor shall take responsibility for preserving the integrity of Council Data and preventing the corruption or loss of Council Data.
  3. The Contractor shall perform secure back-ups of all Council Data and shall make sure that up-to-date back-ups are stored off-site in accordance with the Business Continuity Plan. The Contractor shall make sure that such back-ups are available to the Council at all times upon request and are delivered to the Council at not less than six monthly intervals.
  4. The Contractor shall make sure that any system on which the Contractor holds any Council Data including back-up data is a secure system that complies with the Security Policy.
  5. If the Council Data is corrupted, lost or sufficiently degraded as a result of the Contractor’s Default so as to be unusable, the Council may do any one or more of the following:
     1. require the Contractor (at the Contractor’s expense) to restore or procure the restoration of Council Data to the extent and in accordance with the Contractor’s Business Continuity and Disaster Recover plan (pursuant to clause 3 of these Special Terms and Conditions) and the Contractor shall do so as soon as practicable but within 30 days.
     2. itself restore or procure the restoration of Council Data, and shall be repaid by the Contractor any reasonable expenses incurred in doing so to the extent and in accordance with the requirements specified in the Business Continuity Plan).
  6. If at any time the Contractor suspects or has reason to believe that Council Data has or may become corrupt, lost or sufficiently degraded in any way for any reason, then the Contractor shall notify the Council promptly and shall then inform the Council of remedial action the Contractor proposes to take.

1. **Licence to occupy Council’s premises**

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| ’ Premises’ | means any land or premises (including temporary buildings) made available to the Contractor by the Council in connection with the Contract. |

* 1. Any Premises shall be made available to the Contractor free of charge and shall be used by the Contractor solely for the purpose of performing its obligations under the Contract. The Contractor shall have the non-exclusive use of such premises as licensee and shall vacate the same on completion, termination or abandonment of the Contract. For the avoidance of doubt the Council shall be under no obligation to provide such Premises but will do so if the Premises are available for the Contractor to use.
  2. The Contractor shall not use the Premises for any purpose or activity other than the provision of the Contract.
  3. Should the Contractor need modifications to the Premises, these modifications shall be subject to prior approval and shall be carried out by the Council at the Contractor’s expense. The Council shall undertake approved modification work without undue delay. Ownership of such modifications shall rest with the Council.
  4. The Contractor shall (and shall make sure that their employees, servants, agents, suppliers or sub-contractors) observe and comply with such rules and regulations as may be in force at any time for the use of such Premises as determined by the Council. The Contractor shall pay the cost of making good any damage caused by the Contractor, his employees, servants, agents, suppliers or sub-contractors other than fair wear and tear. For the avoidance of doubt, damage includes damage to the fabric of the buildings, plant, fixed equipment or fittings there.
  5. The parties agree that there is no intention on the part of the Council to create a tenancy of the Premises of whatsoever nature in favour of the Contractor or its employees, servants, agents, suppliers or sub-contractors and that no such tenancy has or shall come into being despite any rights granted under the Contract. The Council retains the right at any time to use in any manner the Council sees fit any Premises it owns or occupies.

**data Protection Schedule**

**aNNEX 1**

The Contractor shall comply with any further written instructions with respect to processing by the Council.

Any such further instructions shall be incorporated into this Schedule and this Schedule may be amended at any time during the Contract Period by agreement in writing between the Council and the Contractor to ensure that the description and detail set out in this Schedule with regard to the processing of personal data reflects the arrangements between the Parties, is accurate and is compliant against the Data Protection Legislation.

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| **No** | **Description** | **Details** |
| 1 | Subject matter of the processing | *[This should be a high level, short description of what the processing is about i.e. its subject matter]* |
| 2 | Duration of the processing | *[Clearly set out the duration of the processing including dates]* |
| 3 | Nature and purposes of the processing | *[Please be as specific as possible, but make sure that you cover all intended purposes.*  *The nature of the processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc.*  *The purpose might include: employment processing, statutory* obligation*, recruitment assessment etc]* |
| 4 | Type of Personal Data | *[Examples here include: name, address, date of birth, NI number, telephone number, pay, images, biometric data etc]* |
| 5 | Categories of Data Subject | *[Examples include: Staff (including volunteers, agents, and temporary workers), Councils/ clients, suppliers, patients, students / pupils, members of the public, users of a particular website etc]* |
| 6 | Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data | *[Describe how long the data will be retained for, how it be returned or destroyed]* |

**DATA PROTECTION SCHEDULE – SUB PROCESSORS**

**ANNEX 2**

This Annex 2 lists the sub-processors that the Council has authorised the Contractor to use in accordance with Annex 1 – The Data Protection Schedule.

The Council may, at any time, and upon such notice as is reasonable in the circumstances, withdraw its approval in relation to any or all sub-processors listed within this Annex and upon such withdrawal the Contractor must immediately cease using that sub-processor.

If the Contractor wishes to propose a new sub-processor for approval, it must provide written notice to the Council detailing the identity of the proposed sub-processor, the nature of the sub-processing and confirmation that a written contract in relation to the sub-processing is in place between the Contractor and the sub-processor. The Council must not unreasonably refuse or delay approval.

The Council may at any time and upon reasonable notice request copies of the contracts between the Contractor and its approved sub –processors in relation to the sub-processing.

|  |  |  |
| --- | --- | --- |
| **Sub-contractor details:**  (name, address and company registration number) | **Nature of sub-processing:** | **Commencement date and term of contract between Contractor and Sub-processor:** |
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**PART FOUR**

**STANDARD TERMS AND CONDITIONS**

*STOCKTON ON TEES BOROUGH COUNCIL*

STANDARD terms and CONDITIONS OF CONTRACT

FOR THE PURCHASE OF SERVICES

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part a - operative provisions

1. DEFINITIONS

The terms and expressions used in these Standard Terms and Conditions shall have the meanings set out below:

|  |  |
| --- | --- |
| “Authorised Officer”  “Assigned Employees” | the person duly appointed by the Council and notified in writing to the Contractor to act as the representative of the Council for the purpose of the Contract in the Contract Particulars or as amended from time to time and in default of such notification the Council’s head of procurement or similar responsible officer.  In respect of Clause G4 an individual employed by the Consultant wholly or mainly in the performance of the Services |
| “Business Day” | any day other than a Saturday or Sunday or a public or bank holiday in England. |
| “Change in Law” | the coming into effect or repeal (without re‑enactment or consolidation) in England of any Law, or any amendment or variation to any Law, or any judgement of a relevant court of law which changes binding precedent in England in each case after the date of this Contract. |
| “Commencement Date” | the commencement date stated in the Contract Particulars. |
| “Confidential Information” | any information which has been designated as confidential by either party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information which relates to the Services, the business, affairs, properties, assets, trading practices, developments, trade secrets, Intellectual Property Rights, know-how, personnel, customers and suppliers of either party, all personal data and sensitive personal data (within the meaning of the DPA). |
| “Contract” | the agreement in respect of the provision of the Services consisting of the following listed documents which shall be read as one document. In the event of ambiguity, conflict or contradictions between these documents the conflict will be resolved according to the following order of priority:   1. the Memorandum of Agreement; 2. Contract Particulars; 3. the Special Terms and Conditions; 4. the Standard Terms and Conditions; 5. Specification 6. Pricing Schedule 7. Invitation to Tender 8. the Tender (howsoever termed) except to the extent that any element of the Tender has been included in the Contract Particulars.   In the event that any of the documents referred to in point 1-8 are omitted, the documents that are included in the Contract will be resolved according to the priority listed under this definition |
| “Contractor” | the contractor and where applicable this shall include the contractor's employees, sub-contractors, agents, servants representatives, and permitted assigns and, if the contractor is a consortium or consortium leader, the consortium members. |
| “Contract Manager” | the person named in the Contract Particulars as the contract manager and any replacement from time to time in accordance with clause B3.2. |
| “Contract Particulars” | the document detailing the specific core terms agreed between the parties with regard to the Services which shall include but not be limited to the Pricing Schedule, Delivery Instructions, Commencement Date, Authorised Officer, Contract Manager, Key Personnel, Contract Period, and the Specification and relevant contract specific details of the Tender included in the document. |
| “Contract Period” | the period of the contract as stated in the Contract Particulars (and any extension in accordance with clause B1). |
| “Control” | control as defined by section 1124 of the Corporation Tax Act 2010. |
| “Council” | the Council named in the Contract Particulars and where the context so admits includes any person which takes over or assumes the statutory functions or administrative responsibilities of the Council (whether in part or totally) or which is controlled by or is under common control with the Council (and the expression “control” shall mean the power to direct or cause the direction of the general management and policies of the person in question but only for so long as such control exists). |
| “Data Protection Legislation”  “Declaration” | shall mean (i) The General Data Protection Regulation (Regulation (EU) 2016/679) otherwise referred to as “GDPR”); ii) the Law Enforcement Directive (Directive (EU) 2016/680) (for so long as, and to the extent that the law of the European Union has legal effect in the UK) and (iii) any applicable national implementing Laws as amended from time to time including, but not limited to, The Data Protection Act 2018 (DPA 2018) to the extent that it relates to processing of personal data and privacy; and all applicable Law about the processing of personal data and privacy.  IR35 and HMRC Deemed Employment Status Information and Indemnity Declaration (as amended) |
| “Delivery Instructions” | the instructions provided in the Contract Particulars and any other information that the Council considers appropriate to the provision of the Services. |
| “DPA 2018” | The Data Protection Act 2018 |
| “Employee”  “Employment Status Check” | In respect of Clause G4 (TUPE and Re-tendering) , an individual employed by the Contractor wholly or mainly in the performance of the Services  means the form published by HMRC (as amended from time to time) that is used to establish whether a worker falls inside or outside IR35 or HMRC Deemed Employment Status. |
| “EIR 2004” | The Environmental Information Regulations 2004. |
| “FOIA 2000” | The Freedom of Information Act 2000. |
| “Force Majeure” | any cause materially affecting the performance by a party of its obligations under this Contract arising from any act beyond its reasonable control and affecting either party, including without limitation: acts of God, war, industrial disputes (subject to clause H6.3), protests, fire, flood, storm, tempest, epidemic, explosion, acts of terrorism and national emergencies. |
| “GDPR” | The General Data Protection Regulation (Regulation (EU) 2016/679) |
| “Good Industry Practice”  “HMRC Deemed Employment Status” | the exercise of such degree of skill, diligence, care and foresight which would reasonably and ordinarily be expected from a skilled and experienced contractor engaged in the supply of services similar to the Services under the same or similar circumstances as those applicable to the Contract.  shall mean circumstances where HMRC would deem there to be an employment relationship for tax purposes only. |
| “HRA 1998” | The Human Rights Act 1998. |
| “Intellectual Property Rights”  “Intermediary”  “IR35”  “IR35 Intermediaries Legislation” | patents, inventions, trade marks, service  marks, logos, design rights (whether registrable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registrable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off.  an artificial or natural person (including, but not limited to, a company, an umbrella company, a partnership, a sole trader) as defined in Chapter 8 of Part 2 of The Income Tax (Earnings and Pensions) Act 2003 in relation to income tax; and The Social Security Contributions (Intermediaries) Regulations 2000 in relation to employee national insurance contributions as amended, consolidated and/or re-enacted from time to time.  applies where a worker:   * personally provides services to a client through an Intermediary; and * is deemed to be an employee of the client under a hypothetical contract with the end client, ignoring the Intermediary; or * is an Office Holder of the client.   shall mean the application of Chapter 8 of Part 2 of The Income Tax (Earnings and Pensions) Act 2003 and The Social Security Contributions (Intermediaries) Regulations 2000 as amended, consolidated and/or re-enacted from time to time. |
| “Invitation to Tender” | the Council’s document inviting tenders for the Contract. |
| “Key Personnel” | those persons named in the Contract Particulars as being key personnel and any replacement from time to time under clause B6.1.5. |
| “Law” | any applicable Act of Parliament, sub-ordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, exercise of the Royal Prerogative, enforceable community right within the meaning of section 2 of the European Communities Act 1972, bye-law, regulatory policy, guidance or industry code, judgement of a relevant court of law, or directives or requirements of any regulatory body of which the Contractor is bound to comply. |
| “LED” | Law Enforcement Directive (Directive (EU) 2016/680) |
| “Liabilities”  “Office Holder” | all costs, actions, demands, expenses, losses, damages, claims, proceedings, awards, fines, orders and other liabilities (including reasonable legal and other professional fees and expenses) whenever arising or brought.  means a person who has been appointed to a position but doesn’t have a contract or receive regular payment. The role sits independently from the person who holds it. This includes but is not limited to:   * statutory appointments * appointments under the internal constitution of an organisation * appointments under a trust deed |
| “Order” | an order for Services to be provided where the Contract is identified in the Contract Particulars to be delivered by call off. |
| “PCR 2015” | means the Public Contracts Regulations 2015, SI 2015/102 |
| “Price” | the price of the Services as set out in the Contract Particulars (and, where applicable, the Pricing Schedule)Unless otherwise stated, any reference to Price shall be regarded as being exclusive of properly chargeable VAT which shall be separately accounted for. |
| “Pricing Schedule”  “Relevant Payroll System” | the document setting out the Price as detailed in the Contract Particulars specifying the frequency of payment and any additional elements of the Price  means the payroll system and any change in payroll system that the Council is using at any time throughout the Contract Period |
| “Replacement Contractor”  “Self-Employed Worker” | any company, organisation or person who replaces the Contractor following termination or expiry of all or part of this Contract  An individual whether incorporated or otherwise who does not fall within IR35 or HRMC Deemed Employment Status. |
| “Services” | the services described in the Specification to be supplied by the Contractor in accordance with the Contract together with all equipment required and any associated goods provided by the Contractor in relation to those services. |
| “Special Terms and Conditions” | the additional terms and conditions attached which were set out in the Invitation to Tender. |
| “Specification” | the document, which is referenced in the Contract Particulars, setting out the Council's detailed requirements in relation to provision of the Services. |
| “Standard Terms and Conditions” | the terms and conditions set out in this document. |
| “Sub-Contract” | means a contract between two or more contractors or suppliers, at any stage of remoteness from the Council in a subcontracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Contract. |
| “Tender” | the Contractor’s document (howsoever described) detailing the Contractor’s proposal for delivery of the Services in response to the Council’s Invitation to Tender and references to ‘Proposal’, ‘Brief’ and such like shall be construed to mean the ‘Tender’. |
| “TFEU”  “The ITEPA 2003”  “The Regulations” | means the Treaty on the Functioning of the European Union 2012/C 326/01  The Income Tax (Earnings and Pensions) Act 2003  The Social Security Contributions (Intermediaries) Regulations 2000 |
| “TUPE” | The Transfer of Undertakings (Protection of Employment) Regulations 2006. |
|  |  |

* 1. Any reference to a person shall include any natural person, partnership, joint venture, body corporate, incorporated association, government, governmental agency, persons having a joint or common interest, or any other legal or commercial entity or undertakings.
  2. A reference to any statute, order, regulation or similar instrument shall be construed as a reference to the statute, order, regulation or instrument as amended by any subsequent statute, order, regulation or instrument or as contained in any subsequent re-enactment.

1. HEADINGS
   1. The index and headings to the clauses and appendices to and schedules of this Contract are for convenience only and will not affect its construction or interpretation.
2. NOTICES
   1. Any notice required by this Contract to be given by either party to the other shall be in writing and shall be served personally, by sending it by registered post or recorded delivery to the appropriate address, or email address notified to each other as set out in the Contract Particulars.
   2. Any notice served personally will be deemed to have been served on the day of delivery; any notice sent by post will be deemed to have been served 48 hours after it was posted; any notice sent by email before 5 p.m. will be deemed to have been served on the day of despatch and otherwise on the following day save where the deemed date of service falls on a day other than a Business Day in which case the date of service will be the following Business Day.
3. ENTIRE AGREEMENT
   1. The Contract constitutes the entire agreement between the parties relating to the subject matter of the Contract. The Contract supersedes all prior negotiations, representations and undertakings, whether written or oral, except that this clause A4 shall not exclude liability in respect of any fraudulent misrepresentation.

Part b - Provision of services

1. Contract Period
   1. The Contract shall commence on the Commencement Date and subject to clause B1.2 shall continue for the Contract Period.
   2. If the Contract Period includes an option to extend and the Council intends to take up the option, the Contractor shall be notified in writing within the period stated in the Contract Particulars prior to the commencement of the extension. If no such notification is issued the Contract shall automatically expire after the initial Contract Period.
2. PERFORMANCE
   1. The Services shall be provided in accordance with any Delivery Instructions. If no time for delivery is stated in the Delivery Instructions the Services shall be delivered between 9 a.m. and 5 p.m. on a Business Day.
   2. The time of the delivery of the Services is of essence to the Contract.
   3. The Council will have the right to observe the Contractor’s performance of the Services if the Services are not being performed on the Council’s premises.
   4. If the Contractor at any time becomes aware of any act or omission, or proposed act or omission by the Council which prevents or hinders, or may prevent or hinder the Contractor from performing the Services in accordance with the Contract, the Contractor shall inform the Council and the Council may, at its absolute discretion, extend the period of the Contract accordingly.
   5. If the Contractor at any time becomes aware of any material matter that could affect the performance of the Services in accordance with the Contract, the Contractor shall inform the Council immediately.
   6. If the Contractor has a change in Control, the Contractor shall inform the Council as soon as reasonably practicable.
   7. The Council retains the Contractor for the performance of the Services on a non exclusive basis.
3. CONTRACT MANAGER
   1. The Contractor shall employ a competent and authorised Contract Manager empowered to act on behalf of the Contractor for all purposes connected with the Contract.
   2. The Contractor shall forthwith give notice in writing to the Council of any change in the identity, address and telephone numbers of the person appointed as Contract Manager. The Contractor shall give maximum possible notice to the Council before changing its Contract Manager.
4. ORDERING PROCESS
   1. Where this Contract is identified as requiring Orders in the Contract Particulars the Contractor shall accept Orders made in writing by the Council under the provisions of this clause.
   2. Except where specified Orders are required to call off the Services the Council gives no guarantees whatsoever as to when any Order will be placed during the Contract Period or under the Contract.
   3. The Orders shall state the type of or part of the Services required including the Council’s requirements with regard to timescale for delivery of those Services.
5. RISK IN AND TITLE TO GOODS 
   1. Risk in any goods provided as part of the Services shall pass to the Council upon delivery without prejudice to any rights of rejection which may accrue to the Council under the Contract or otherwise.
   2. Title in any goods provided as part of the Services shall pass to the Council upon delivery or earlier payment.
6. WARRANTY
   1. The Contractor warrants to the Council that the Services will be provided:
      1. in a proper, skilful and workmanlike manner;
      2. by a sufficient number of appropriately qualified, trained and experienced personnel with a high standard of skill, care and due diligence and in accordance with Good Industry Practice;
      3. in accordance with the Contract and any descriptions provided by the Contractor;
      4. to the reasonable satisfaction of the Authorised Officer;
      5. by Key Personnel (if any) who shall not be released from providing the Services permanently without the agreement of the Council, except by reason of sickness, maternity leave, paternity leave, termination of employment or because they have been requested to do so by the Council, or the element of the Services in respect of which the individual was engaged has been completed to the Council’s satisfaction or other extenuating circumstances explained to the Council. Any replacements for the Key Personnel shall be subject to the agreement of the Council and such replacements shall be of at least equal status or of equivalent experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Services. The cost of effecting such replacement shall be borne by the Contractor; and
      6. in a way that the Contractor takes every reasonable precaution to safeguard the Council’s property entrusted to the care of the Contractor.
   2. The Contractor warrants to the Council that to the extent that any goods, equipment or consumables are provided as part of the Services they will:
      1. be free from defects in design, material and workmanship; and
      2. be so formulated, designed, constructed, finished and packaged as to be safe and without risk to health.
   3. Without prejudice to the Council’s rights to terminate under clause D1 (Termination), if any of the Services supplied are not in accordance with the Contract, the Council shall be entitled to:
      1. require the Contractor to provide replacement Services in accordance with the Contract as soon as reasonably practicable and in any event within fourteen (14) days of a request to do so; or
      2. subject to clause E2 (Indemnity and Liability) require repayment of the proportion of the Price which has been paid in respect of such Services together with payment of any additional expenditure over and above the Price reasonably incurred by the Council in obtaining replacement Services.
7. CONTRACTOR’S STAFF
   1. The Council reserves the right under the Contract to refuse to admit to, or to withdraw permission to remain on, any premises occupied by or on behalf of the Council:
      1. any member of the Contractor’s staff; and/or
      2. any person employed or engaged by a sub-contractor, agent or servant of the Contractor

whose admission or continued presence would be, in the reasonable opinion of the Council, undesirable or otherwise likely to damage to reputation of the Council.

* 1. When directed by the Council, the Contractor shall provide a list of the names and addresses of all persons (if any) who it is expected may require admission in connection with the Contract to any premises occupied by or on behalf of the Council, specifying the capacities in which they are concerned with the Contract and giving such other particulars as the Council may reasonably desire.
  2. The Contractor’s staff (and, where applicable, sub-contractors, agents and/or servants) engaged within the boundaries of any of the Council’s premises, shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time for the conduct of personnel when at that establishment and when outside that establishment.
  3. The decision of the Council as to whether any person is to be refused access to any premises occupied by or on behalf of the Council shall be final and conclusive.
  4. The Contractor shall replace any of the Contractor’s staff (and, where applicable, sub-contractors, agents and/or servants) who the Council reasonably decides have failed to carry out their duties with reasonable skill and care. Following the removal of any of the Contractor’s staff (and, where applicable, sub-contractors, agents and/or servants) for any reason, the Contractor shall ensure such person is replaced promptly with another person with the necessary training and skills to meet the requirements of the Services.
  5. The Contractor shall bear the cost of or costs arising from any notice, instruction or decision of the Council under this clause.

part c - PRICE AND PAYMENT

1. PRICE AND PAYMENT
   1. The Council shall pay the Price for the Services to the Contractor.
   2. The Contractor shall submit a single VAT invoice to the Council no later than seven (7) days after the end of each calendar month detailing the Services provided during the calendar month and the amount payable.
   3. Where the Contractor submits an invoice to the Council in accordance with clause C1.2, the Council will consider and verify that invoice in a timely fashion.
   4. The Council shall pay the Contractor any sums due under such an invoice no later than a period of 30 days from the date on which the Council has determined that the invoice is valid and undisputed.
   5. Where the Council fails to comply with clause C1.3 and there is an undue delay in considering and verifying the invoice, the invoice shall be regarded as valid and undisputed for the purposes of paragraph C1.4 after a reasonable time has passed.
   6. The Council reserves the right to withhold payment of the relevant part of the Price without payment of interest where the Contractor has either failed to provide the Services at all or has provided the Services inadequately and any invoice relating to such Services will not be paid unless or until the Services have been performed to the Council’s satisfaction.
   7. Any overdue sums will bear interest from the due date until payment is made at 4% per annum over the Co-operative Bank plc base rate from time to time. The Contractor is not entitled to suspend provision of the Services as a result of any overdue sums.
   8. The Council will be entitled but not obliged at any time or times without notice to the Contractor to set off any liability of the Council to the Contractor against any liability of the Contractor to the Council (in either case howsoever arising and whether any such liability is present or future, liquidated or unliquidated and irrespective of the currency) and may for such purpose convert or exchange any sums owing to the Contractor into any other currency or currencies in which the obligations of the Council are payable under this Contract. The Council’s rights under this clause will be without prejudice to any other rights or remedies available to the Council under this Contract or otherwise.
   9. Further details of payment, if any, are set out in the Pricing Schedule and/or the Special Terms and Conditions where applicable.

part d - termination AND CONSEQUENCES OF TERMINATION

1. TERMINATION
   1. Subject to the provisions of clause H6 (Force Majeure) the Council may terminate the Contract with immediate effect by notice in writing to the Contractor on or at any time if:
      1. the Contractor becomes bankrupt, insolvent, makes any composition with its creditors, has a receiver appointed under the Mental Health Act 1983 or dies; or
      2. the Contractor is convicted of a criminal offence; or
      3. the Contractor ceases or threatens to cease to carry on its business; or
      4. the Contractor has a change in Control which the Council believes will have a substantial impact on the performance of the Contract; or
      5. there is a risk or a genuine belief that reputational damage to the Council will occur as a result of the Contract continuing; or
      6. the Contractor is in breach of any of its obligations under this Contract that is capable of remedy and which has not been remedied to the satisfaction of the Council within 14 days, or such other reasonable period as may be specified by the Council after issue of a written notice specifying the breach and requesting it to be remedied; or
      7. there is a material or substantial breach by the Contractor of any of its obligations under this Contract which is incapable of remedy; or
      8. the Contractor commits persistent minor breaches of this Contract whether remedied or not.
      9. where applicable in accordance with PCR 2015
         * 1. the Contract has been subject to a substantial modification which would have required a new procurement procedure in accordance with regulation 72(9) of PCR 2015;
           2. the Contractor has, at the time of ‘contract award’, been in one of the situations referred to in regulation 57(1) of PCR 2015, including as a result of the application of regulation 57(2), and should therefore have been excluded from the relevant procurement process;
           3. the Contract should not have been awarded to the Contractor in view of a serious infringement of the obligations under the ‘Treaties’ and the ‘Public Contracts Directive’ (as defined in PCR 2015) that has been declared by the Court of Justice of the European Union in a procedure under Article 258 of TFEU;

D1.1.10 the Council is of the view that the Contractor falls inside IR35 / HRMC Deemed Employment Status following an Employment Status Check at any time during the Contract Period and the Contractor does not agree and objects to the deduction of PAYE tax and National Insurance deductions through the Relevant Payroll System.

* 1. The Council reserves the right to terminate the Contract in part in the case of termination under clauses D1.1.6, D1.1.7 and D1.1.8.
  2. Where this Contract is subject to Orders as specified in the Contract Particulars the Council has the right to terminate any individual Order or Orders or the whole Contract under the provisions of this clause D1.
  3. The Council reserves the right to terminate the Contract at will, in whole or in part, at any time with or without notice except that it will give as much notice as possible in the circumstances.

1. CONSEQUENCES OF TERMINATION
   1. If this Contract is terminated in whole or in part the Council shall:
      1. be liable to pay to the Contractor only such elements of the Price, if any, that have properly accrued in accordance with the Contract or the affected part of the Contract up to the time of the termination, except for any PAYE tax or National Insurance liability that the Council is obliged to pay in respect of the Contractor; and/or
      2. except for termination under clause D1.4, be entitled to deduct from any sum or sums which would have been due from the Council to the Contractor under this Contract or any other contract and to recover the same from the Contractor as a debt any sum in respect of any loss or damage to the Council resulting from or arising out of the termination of this Contract. Such loss or damage shall include the reasonable cost to the Council of the time spent by its officers in terminating the Contract and in making alternative arrangements for the supply of the Services or any parts of them; and/or
      3. where termination arises under clause D1.4, pay to the Contractor any reasonable, direct and quantifiable costs reasonably incurred by the Contractor due to early termination subject to the maximum liability provision in clause E1.4; and/or
      4. in the event that any sum of money owed by the Contractor to the Council (the Contractor’s debt) exceeds any sum of money owed by the Council to the Contractor (the Council’s debt) under this Contract then the Council shall, at its sole discretion, be entitled to deduct the Contractor’s debt from any future Council’s debt or to recover the Contractor’s debt as a civil debt.
   2. Upon the termination of the Contract for any reason, subject as otherwise provided in this Contract and to any rights or obligations which have accrued prior to termination, neither party shall have any further obligation to the other under the Contract.
2. DISPUTE RESOLUTION PROCEDURE
   1. If a dispute arises between the Council and the Contractor in connection with the Contract, the parties shall each use reasonable endeavours to resolve such dispute by means of prompt discussion at an appropriate managerial level.
   2. If a dispute is not resolved within fourteen (14) days of referral under clause D3.1 then either party may refer it to the Chief Executive or appropriate nominated officer of each party for resolution who shall meet for discussion within 14 days or longer period as the parties may agree.
   3. Provided that both parties consent, a dispute not resolved in accordance with clauses D3.1 and D3.2, shall next be referred at the request of either party to a mediator appointed by agreement between the parties within 14 days of one party requesting mediation with the costs of mediation determined by the mediator.
   4. Nothing in this clause shall preclude either party from applying at any time to the English courts for such interim or conservatory measures as may be considered appropriate.
3. SURVIVAL
   1. The following clauses will survive termination or expiry of the Contract: Clause B5 (Risk in and Title to the Goods), Clause D2 (Consequences of Termination), Clause F1 (Intellectual Property), Clause F2 (Confidentiality and Publicity), Clause F3 (Data Protection), Clause F4 (Freedom of Information), Clause F5 (Record Keeping and Monitoring), Clause G4 (TUPE and Re-Tendering), Clause G5 (IR35 (Intermediaries’ Legislation) & HMRC Employment Status), Clause G6 (IR35 And HMRC Employment Status Indemnity), Clause H4 (Severance), Clause H10 (Non Solicitation and Offers of Employment) and Clause H12 (Law and Jurisdiction).

part e - insurance and liabilities

1. INSURANCE
   1. The Contractor shall maintain insurance necessary to cover any liability arising under the Contract as set out in the Contract Particulars.
   2. The Contractor shall prior to the Commencement Date and on each anniversary of the Commencement Date and/or upon request provide evidence that all premiums relating to such insurances have been paid.
   3. If the Contractor does not maintain the necessary insurances under the Contract the Council may insure against any risk in respect of the default and may charge the Contractor the cost of such insurance together with a reasonable administration charge.
2. INDEMNITY AND LIABILITY
   1. Neither party seeks to exclude or limit its liability for:
      1. death or personal injury caused by its negligence (but will not be liable for death or personal injury caused by the other party’s negligence);
      2. fraudulent misrepresentation; or
      3. any other matter in respect of which, as a matter of Law, liability cannot be excluded or limited.
   2. Except as specifically provided, neither party shall in any event be liable to the other for any indirect or consequential loss (including loss of profit, loss of business opportunity, loss of business, loss of goodwill, loss of production and pure economic loss) however caused.
   3. Subject to clauses E2.1 and E2.2, the Contractor’s liability to the Council under the Contract whether in contract, tort (including negligence) or otherwise shall be limited to 125% of the proportion of the Price which is paid or payable at the time that the liability arises.
   4. Subject to clauses E2.1 and E2.2, the Council’s liability to the Contractor under the Contract whether in contract, tort (including negligence) or otherwise shall be limited to 125% of the proportion of the Price which is paid or payable at the time that the liability arises.
   5. The Contractor shall indemnify the Council in full without limit of liability for any direct loss of or damage to the real or personal property of the Council or any third party, including Intellectual Property Rights, or injury claimed by any third party and against all Liabilities awarded against or incurred by the Council (including legal expenses on an indemnity basis) arising from the Contractor’s negligence, any defect or fault in the Services or any act or omission of the Contractor in delivering the Services.

PART F - PROTECTION OF INFORMATION

1. INTELLECTUAL PROPERTY
   1. All Intellectual Property Rights in any specifications, instructions, plans, data, drawings, databases, patents, patterns, models, designs or other material:
      1. provided to the Contractor by the Council shall remain the property of the Council;
      2. prepared by or for the Contractor specifically for the use, or intended use, in relation to the performance of the Contract shall belong to the Council subject to any exceptions set out in the Contract Particulars.
   2. The Contractor shall obtain necessary approval before using any material, in relation to the performance of the Contract which is or may be subject to any third party Intellectual Property Rights. The Contractor shall procure that the owner of the Intellectual Property Rights grant to the Council a non-exclusive licence, or if the Contractor is itself a licensee of those rights, the Contractor shall grant to the Council an authorised sub-licence, to use, reproduce, and maintain the Intellectual Property Rights. Such licence or sub-licence shall be non-exclusive, perpetual and irrevocable, shall include the right to sub-license, transfer, novate or assign to other Councils, the replacement contractor or to any other third party providing services to the Council, and shall be granted at no cost to the Council.
   3. It is a condition of the Contract that the Services will not infringe any Intellectual Property Rights of any third party and the Contractor shall during and after the Contract Period on written demand indemnify and keep indemnified without limitation the Council against all Liabilities which the Council may suffer or incur as a result of or in connection with any breach of this clause, except where any such claim relates to the act or omission of the Council.
   4. At the termination of the Contract the Contractor shall at the request of the Council immediately return to the Council all materials, work or records held in relation to the Services, including any back-up media.
2. CONFIDENTIALITY AND PUBLICITY
   1. Any documents provided by the Council and information which the Contractor may acquire as a result of the Contract shall to the extent that they are not in the public domain or required to be disclosed by operation of Law remain confidential to the Council and shall not be disclosed disposed of or used for any purpose without prior written consent from the Council.
   2. All Confidential Information provided by the Council to the Contractor shall be returned to the Council at the end of the Contract.
   3. Without prejudice to the Council’s obligations under the FOIA 2000 or EIR 2004, neither party shall make any press announcements or publicise the Contract or any part thereof in any way, except with the written consent of the other party (such consent not to be unreasonably withheld or delayed).
   4. Both parties shall take all reasonable steps to ensure the observance of the provisions of this clause by all of their servants, employees, sub-contractors, agents, professional advisors and consultants.
3. DATA PROTECTION
   1. The Contractor shall (and shall procure that any of its staff, sub-contractors, agents and/or servants involved in the provision of the Services) comply with any requirements under the Data Protection Legislation.
4. FREEDOM OF INFORMATION
   1. The Council is subject to the FOIA 2000 and the EIR 2004(“the Acts”). As part of the Council's duties under the Acts, it may be required to disclose information forming part of the Contract to anyone who makes a reasonable request. The Council has absolute discretion to apply or not to apply any exemptions under the Acts.
   2. The Contractor shall assist and cooperate with the Council (at the Contractor’s expense) to enable the Council to comply with the information disclosure requirements under the Acts and in so doing will comply with any timescale notified to it by the Council.
5. RECORD KEEPING AND MONITORING
   1. In order to assist the Council in its record keeping and monitoring requirements including auditing and National Audit Office requirements, the Contractor shall keep and maintain for six (6) years (or such longer time period required in accordance with any specific legislation) after the Contract has been completed, full and accurate records of the Contract including the Services supplied under it, all expenditure reimbursed by the Council, and all payments made by the Council. The Contractor shall on request allow the Council or the Council’s representatives such access to (and copies of) those records as may be required by the Council in connection with the Contract.
   2. The Contractor will at its own cost, provide any information that may be required by the Council to comply with the Council’s procedures for monitoring of the Contract.

part g - statutory obligations

1. HEALTH AND SAFETY
   1. The Contractor shall comply with all health and safety legislation in force and all health and safety policies of the Council.
2. CORPORATE REQUIREMENTS
   1. The Contractor shall comply with all obligations under the HRA 1998.
   2. The Contractor shall comply with all Council policies and rules, such as, but not limited to:
      1. equality and diversity policies;
      2. sustainability;
      3. information security rules;
      4. whistleblowing and/or confidential reporting policies; and
      5. all site rules relevant to the fulfilment of the Contractor’s obligations in the performance of the Services.
   3. The Contractor shall not unlawfully discriminate within the meaning and scope of any law, enactment, order, or regulation relating to discrimination (whether age, race, gender, religion, disability, sexual orientation or otherwise) in employment.
   4. The Contractor shall comply with all relevant legislation relating to its staff however employed including (but not limited to) the compliance in law of the ability of the staff to work in the United Kingdom.
   5. If the Contractor has a finding against it relating to its obligations under clause G2.4 it will provide the Council with:
      1. details of the finding; and
      2. the steps the Contractor has taken to remedy the situation.
3. LAW AND CHANGE IN LAW
   1. The Contractor shall comply at all times with the Law in its performance of the Contract.
   2. On the occurrence of a Change in Law which has a direct effect upon the Price the parties shall meet within fourteen (14) days of the Contractor notifying the Council of the Change in Law to consult and seek to agree the effect of the Change in Law and any change in the Price as a result following the principle that this clause is not intended to create an artificial cushion from market forces for the Contractor. If the parties, within fourteen (14) days of this meeting, have not agreed the occurrence or the impact of the Change in Law, either party may refer the matter to dispute resolution in accordance with clause D3 (Dispute Resolution Procedure).
   3. Any agreed additional sums payable as a result of the operation of clause G3.2 shall be included in the Price.
   4. For the avoidance of doubt nothing in this Contract is intended to allow the Contractor double recovery of any increase in costs.

G4. TUPE AND RE-TENDERING

G4.1 In the event of expiry or termination of this Contract or whenever reasonably requested by the Council in preparation for tendering arrangements the Contractor will provide the Council with such assistance as the Council may require and provide at no cost to the Council any information the Council (whether on its own account or on behalf of any potential or confirmed Replacement Contractor) may request in relation to the Employees including but not limited to, providing employee liability information as required under Regulation 11 of TUPE 2006.

G4.2 The Contractor authorises the Council to pass any information supplied to any Replacement Contractor or potential Replacement Contractor and the Contractor will secure all necessary consents from relevant Employees in order to do this.

G4.3 The Contractor will keep the Council and any Replacement Contractor indemnified in full against all Liabilities arising directly or indirectly in connection with any breach of this clause or inaccuracies in or omissions from the information provided.

**G5. IR35 (INTERMEDIARIES’ LEGISLATION) & HMRC EMPLOYMENT STATUS**

G5.1 The Contractor acknowledges and accepts that the Council must comply with the statutory provisions set out in Chapter 8 of Part 2 of The Income Tax (Earnings and Pensions) Act 2003 and The Social Security Contributions (Intermediaries) Regulations 2000 (as amended, consolidated and/or re-enacted from time to time) in circumstances where the Contractor is deemed to be an Intermediary for the purposes of the IR35 Intermediaries’ Legislation or where HMRC would deem there to be an employment relationship for tax purposes only (“HMRC Deemed Employment Status”).

G5.2 The Contractor will comply and co-operate with the Employment Status Check that the Council will undertake to determine the Contractor’s status under IR35/ HMRC Deemed Employment Status.

G5.2 The Contractor accepts and warrants that the Council in its sole discretion shall determine whether the engagement of the Contractor shall trigger:

G5.2.1 the application of the IR35 Intermediaries Legislation; or

G5.2.2 there shall be a HMRC Deemed Employment Status

G5.3 The Council may, where necessary, seek advice from HMRC in order to inform the determination.

G5.4 Where the Council determines that the IR35 legislation or HMRC Deemed Employment Status applies to the Contract, based on the information in the Declaration, the Council shall inform the Contractor, in writing, and all payments to the Contractor shall be paid through the Relevant Payroll System, ensuring that tax and NI contributions are deducted before the Contractor is paid.

G5.5 Where the Council determines that the IR35 Intermediaries’ Legislation or HMRC Deemed Employment Status shall not apply, based on the information in the Declaration, the Contractor shall be paid in accordance with Clause G6 (IR35 and HMRC Employment Status Indemnity) of these Standard Terms and Conditions.

G5.6 The Contractor shall notify the Council of any changes to the information contained in the Declaration which may affect the determination as to whether the IR35 Intermediaries’ Legislation or HMRC Deemed Employment Status applies. The Council shall nevertheless have the right to re-assess if the Contractor falls within IR35 legislation or HMRC Deemed Employment Status at any point throughout the Contract Period, and the Council’s determination will be binding on all Parties.

G5.7 The Council shall be the sole decision maker as to whether the IR35

Intermediaries’ Legislation or HMRC Deemed Employment Status applies to

the Contract. If the Contractor contests the IR35 Intermediaries’ Legislation

or HMRC Deemed Employment Status applies they may seek to reclaim tax

and national insurance deducted directly from HMRC and will have no

contractual rights to challenge the Council on the deductions made.

**G6. IR35 AND HMRC EMPLOYMENT STATUS INDEMNITY**

G6.1 The Contractor shall indemnify the Council against all liabilities (including associated costs and expenses) and losses to the Council, arising directly or indirectly from the application of the IR35 Intermediaries Legislation or HMRC Deemed Employment Status in connection with their engagement with the Council including, but not limited to, all liabilities and losses so arising as a result of the Contractor providing incorrect or misleading information, whether innocently or not, which informs, or informed, the Council’s determination as to whether IR35 Intermediaries’ Legislation applies or HMRC Deemed Employment Status applies.

G6.2 The Contractor undertakes to pay on demand to the Council, such amounts as then owing to the Council, arising from their engagement pursuant to Clause G5 of these Standard Terms and Conditions, and shall immediately thereafter seek to reimburse the Council for such liabilities and losses as then incurred by the Council.

part H - general provisions

1. CONTRACT VARIATION
   1. Subject to clause H1.2, no variation or modification to the Contract is valid unless it is in writing and signed by the Council and the Contractor.
   2. The Council shall be entitled to issue to the Contractor in writing or, in case of urgency orally (provided the Council confirms oral instructions in writing as soon as it is practicable), variation orders requiring the addition, suspension, reduction or cessation of provision of any Services and/or the provision of emergency Services in accordance with revised Delivery Instructions. The Contractor shall charge for the impact of the variation order in accordance with the rates and prices used to calculate the Price.
2. THIRD PARTY RIGHTS
   1. This Contract is enforceable by the original parties to it, by their successors in title and permitted assignees. Any rights of any person to enforce the terms of this Contract pursuant to The Contracts (Rights of Third Parties) Act 1999 are excluded.
3. NO WAIVER
   1. Failure by either party at any time to enforce any one or more of the provisions of this Contract or to require performance by the other party of any of the provisions shall not constitute or be construed as a waiver of the provision or of the right at any time subsequently to enforce all terms and conditions of this Contract nor affect the validity of the Contract or any part of it or the right of the parties to enforce any provision in accordance with its terms.
   2. No waiver of any of the provisions of this Contract shall be effective unless it is expressed to be a waiver in writing and communicated in accordance with clause A3.
4. SEVERANCE
   1. If any provision of the Contract shall become or shall be declared by any court of competent jurisdiction to be invalid or unenforceable in any way, such invalidity shall not impair or affect any other provision all of which shall remain in full force and effect.
5. ASSIGNMENT, SUB-CONTRACTING AND RESPONSIBILITY
   1. Subject to any express provision of this Contract, the Contractor shall not without the prior written consent of the Council, assign all or any benefit, right or interest under this Contract or sub-contract the provision of the Services.
   2. The Council shall be entitled to:
      1. assign, novate or dispose of its rights and obligations under this Contract either in whole or part to any contracting authority (as defined in The Public Contracts Regulations 2015); or
      2. transfer, assign or novate its rights and obligations where required by Law.
   3. The Contractor shall remain responsible and liable for the acts and omissions of any other members of a consortium arrangement, sub-contractors, servant, agent and employee as though they were its own.
   4. Subject to clause H5.1 where the Contractor enters into a Sub-Contract, the Contractor shall include in that Sub-Contract
      1. Provisions having the same effect as clauses C1.3 to C1.5 of this Contract; and
      2. A provision requiring the counterparty to that Sub-Contract to include in any Sub-Contract which it awards provisions having the same effect as clauses C1.3 to C1.5 of this Contract.
6. FORCE MAJEURE
   1. Neither party shall be liable for failure to perform its obligations under the Contract if such failure results from Force Majeure.
   2. If the Council or the delivery location is affected by circumstance of Force Majeure, the Council shall be entitled to, totally or partially, suspend the date or dates for delivery of the Services until the circumstances of the Force Majeure have ceased. The suspension shall not give rise to any claim by the Contractor against the Council nor entitle the Contractor to terminate the Contract.
   3. Industrial action by, or illness or shortage of the Contractor’s staff, agents or subcontractors, failure or delay by any of the Contractor’s suppliers to supply goods, components, services or materials and breach of the Contractor’s warranties under clause B6 (Warranty) shall not be regarded as an event of Force Majeure.
   4. If the event of Force Majeure continues for more than two (2) months either party may give written notice to the other to terminate the Contract immediately or on a set termination date.
   5. If the Contract is terminated in accordance with clause H6.4 neither party will have any liability to the other except that any rights and liabilities which accrued prior to termination will continue to exist.
7. INDUCEMENTS
   1. The Contractor shall not offer or give, or agree to give, to any employee, agent, servant or representative of the Council any gift or consideration of any kind as an inducement or reward for doing, any act in relation to the obtaining or execution of the Contract or any other contract with the Council, or for showing or refraining from showing favour or disfavour to any person in relation to the Contract or any such contract. The attention of the Contractor is drawn to the criminal offences under the Bribery Act 2010.
   2. The Contractor warrants that it has not paid commission nor agreed to pay any commission to any employee or representative of the Council by the Contractor or on the Contractor’s behalf.
   3. Where the Contractor engages in conduct prohibited by clauses H7.1 and H7.2 in relation to this or any other contract with the Council, the Council has the right to:
      1. terminate the Contract and recover from the Contractor the amount of any loss suffered by the Council resulting from the termination, including the cost reasonably incurred by the Council of making other arrangements for the provision of the Services and any additional expenditure incurred by the Council throughout the remainder of the Contract Period; or
      2. recover in full from the Contractor any other loss sustained by the Council in consequence of any breach of this clause whether or not the Contract has been terminated.
8. COSTS AND EXPENSES
   1. Each of the parties will pay their own costs and expenses incurred in connection with the negotiation, preparation, execution, completion and implementation of this Contract.
9. NO AGENCY OR PARTNERSHIP
   1. Nothing contained in this Contract, and no action taken by the parties pursuant to this Contract, will be deemed to constitute a relationship between the parties of partnership, joint venture, principal and agent or employer and employee. Neither party has, nor may it represent that it has, any authority to act or make any commitments on the other party’s behalf.
10. NON SOLICITATION AND OFFERS OF EMPLOYMENT
    1. The Contractor agrees that it will not, without the prior written consent of the Council, whether directly or indirectly, and whether alone or in conjunction with, or on behalf of, any other person and whether as a principal, shareholder, director, employee, agent, consultant, partner or otherwise during the Contract Period or for a period of 12 months following termination of this Contract:
       1. solicit or entice, or endeavour to solicit or entice, away from the Council, any person directly related to the Services employed in a senior capacity in a managerial, supervisory, technical, sales or administrative capacity by, or who is or was a consultant to, the Council at the date of the termination of this Contract or at any time during the period of one month immediately preceding the date of termination; or
       2. attempt, or knowingly assist or procure any other person to do the above.
11. INSPECTION OF CONTRACTOR’S PREMISES
    1. The Contractor shall permit the Council to make any inspections or tests which may reasonably be required in respect of the Contractor’s premises in relation to the Contract.
12. LAW AND JURISDICTION
    1. This Contract shall be governed by the laws of England and shall be subject to the exclusive jurisdiction of the English courts.



**PART FIVE**

**SPECIFICATION**

**Service Specification**

**Supporting Educators to respond to Communication and Interaction Needs**

**September 2021**

**Introduction**

Our vision for children and young people with Special Educational Needs and Disabilities (SEND) is the same as for all children and young people – that Stockton-on-Tees is a great place to grow up, where children and young people are protected from harm and are supported to be the best they can be in life. We are seeking a flexible and responsive service that can adapt to changing needs across the SEND system and will work closely with Stockton-on-Tees Borough Council to understand these needs and develop an appropriate response.

In Stockton we aspire for high quality teaching that is differentiated and personalised to meet the needs of our children and young people, including those with communication and interaction difficulties and / or with autism (ASD Needs). To provide this quality of teaching, educators in mainstream schools may benefit from access additional training and support from specialist educators to help them meet these Special Educational Needs (SEN).

It is envisaged that through early identification of support needs alongside the availability of more trained and skilled educators, greater numbers of children and young people will be able to remain within their existing school setting. This will also contribute to the reduction in demand for both formal assessments and specialist placements.

**Local Context**

The Stockton on Tees SEND strategy 2021-2023 describes the Local Area’s transformation and improvement journey, building upon learning from the SEND inspection in 2019. The Strategy brings together previous strategic plans into a single, shared and long-term vision for every child and young person with SEND in Stockton on Tees to be supported in the community where they live wherever this is possible. The Strategy commits to supporting educators to effectively identify needs and put in place strategies and interventions to help children and young people develop, participate, and learn, whilst achieving the best possible outcomes.

At the time of writing this specification (April 2021) 277 / or 80% of children and young people with an EHCP identified on the spectrum for Autism and are attending schools in Stockton. 238 /or 90% of children and young people with an EHCP identified as having speech, language and communication needs are attending schools in Stockton.

Table 1: Overall Number of EHCPs by Primary Need at April 2021

|  |  |
| --- | --- |
| **EHCP By Primary Needs** | **No. of EHCPs** |
| Moderate Learning Difficulty | 451 |
| Autistic Spectrum Disorder | 347 |
| Social, Emotional & Mental | 321 |
| Speech Language & Communication Needs | 252 |
| Severe Learning Difficulty | 137 |
| Physical Disability | 85 |
| Specific Learning Difficulty | 41 |
| Profound and Multiple Learning Difficulty | 36 |
| Hearing Impairment | 26 |
| Vision Impairment | 23 |
| Multi-Sensory Impairment | 0 |

Further data comparisons can be found at <https://lginform.local.gov.uk>

**Service Aims:**

The Council aims to improve on the current and effective arrangements by supporting our educators to respond to children and young people with communication and interaction / ASD needs. Evidence based practice tells us that we need a tiered approach to support schools and educators as follows: -

To provide educators with evidence-based training to enable them to develop interventions and strategies to support children and young people with communication and interaction and/or ASD needs

To Upskill Educators to recognise and meet needs much earlier in a way that reduces numbers of EHCPs.

1. To offer educators high challenge and high support within this specialist area and create communication and interaction / autism champions for schools.
2. Enable more children and young people to remain in mainstream/ existing school environments than before.

**Service Outcomes**

The Service will contribute to the outcomes below:

* Educators will have increased confidence and ability to identify and provide effective strategies for pupils with communication and interaction or ASD needs
* Educators will have increased capacity to support pupils within their own school environment in a long term and sustainable way
* Reduced demand for specialist education placement
* Reduced demand for placements within Enhanced Mainstream Schools

As a result of the service, the Council will:

* See a reduction in demand for specialist placement for children and young people
* A reduction in the demand for placements within Enhanced Mainstream Provision
* Have a local offer that responds to a current gap in provision for children and young people with communication and interaction or ASD needs.
* Have more educators within Stockton who can identify needs at an earlier stage with the skills and strategies to respond on an individual level or create a universally inclusive environment that benefits the learning experience for children and young people.
* See a reduction in the costs of SEND provision

**Service Delivery:**

The Service will work with the Council and be flexible when responding to changing needs within its delivery. The provider will use a time limited and value for money response when meeting need using the options below that may include, but not be limited to:

* Evidence-based specialist training sessions that are specific to working with children and young people with communication and interaction and or ASD needs.
* One to one support with educators to upskill their knowledge and skillset to develop strategies for children with higher needs centred around autism, and communication and interaction.
* The opportunity to learn through observation of specialist teaching, where educators from mainstream and where appropriate those from an Enhance Mainstream School (EMS) can witness specialist teaching and see strategies used in practice. This allows them to take direct learning and response strategies back into their own classroom and educational environments. To ensure this opportunity is reasonably accessible to teachers in Stockton-on-Tees, the Provider must have a special school located within the borough from the contract start date.
* Bespoke Assessments for children and young people that will provide effective planning strategies to assist the child/young person to reach their full potential within their educational setting. This may include, but not limited to assessments that support the development of school readiness, stay within mainstream school or Enhanced mainstream provision. With a focus on: -
  1. Support Needs
  2. Communication
  3. Sensory Needs
  4. General Risk Assessment
  5. Positive and Proactive Support Plans
  6. Assessment of behaviour ie essential information central to removing barriers to education

**Access and Eligibility:**

Access to this service will be determined through the One Point Panel with clear communication links developed between the Provider and One Point Panel Chair. The process will be monitored and evaluated to both meet and manage demand for the service and regular discussions will be held with the Council’s SEND and Inclusion Team.

**Service Monitoring:**

This service will be subject to monitoring meetings between the Provider, Commissioning Lead and SEND representatives to discuss activity during the period and any issues that need to be brought to the Council’s attention.

The provider is required to produce monitoring reports. Areas to be captured in the report will be set within the first term of the contract to ensure that its development is flexible to the needs identified. However, it may include, but not be limited to:

* Overview of reporting period (number of teachers trained and at what level, wards/ locality of educators trained or school cluster that will enable us to identify any gaps in provision within the borough, number of children and young people remaining in their current provision after training intervention)
* Activity during the reporting period
* Number of any repeat referrals from school and reason why (i.e. to monitor where all tiers of training offered);
* Any referral themes and emerging trends;
* Clear financial breakdown of service expenditure;
* Service User Feedback, and
* Conclusions and Recommendations, including areas for reflective practice and service review and development for the Council and the provider.

Reports will be provided to the Council’s Contract Management Officer within 3 weeks of the end of each term, which will be in advance of the monitoring meetings.

The Provider is also required to report against a set of performance indicators within the monitoring reports (providing both quantitative performance information and qualitative context where a target cannot be achieved). These are identified below:

**Management Information**

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| **KPI Ref. No.** | **KPI description** | **Purpose** | **Responsibility for supplying KPIs** | **Responsibility for collecting KPIs** | **Frequency** | **Target** | **Tolerance** |
| 1 | Turnaround time for referrals | To ensure referrals are dealt with swiftly in line with the service specification | Provider | Contract Management Officer | Termly | 100% of referrals are responder to within 10 days | 0% |
| 2 | Management Information reports are delivered on time, accurate and in full | To ensure the effectiveness of the service is measured | Provider | Contract Management Officer | Termly | 100% | 0% |
| 3 | Feedback received from educators | To ensure enough feedback is provided to be useful at measuring the service | Provider | Contract Management Officer | Termly | 75% of teachers provide feedback which includes a rating of how effective they feel the service has been | 0% |

**Contract Period and Payment Terms:**

The Contract Period will be from the start of the autumn term 2021 to the end of the summer term 2022.

Invoices shall be submitted monthly in arrears, and be accompanied with a summary of each case that was active during the month

|  |  |  |
| --- | --- | --- |
| **Activity** | **Frequency (not limited to)** | **Cost** |
| Evidence-based specialist training sessions | X26 for Secondary  X24 Primary  X12 for Early Years | e.g. £xx per session / hour |
| One to one support | Preferred delivery number to be agreed based on need | e.g. £XX per session/hour |
| Observation of specialist teaching | Preferred delivery number to be agreed based on need | e.g. £XX per session/hour |
| Bespoke Assessments | e.g. 40-50 sessions | e.g. £xx per session / hour |

Any amendments to the specification will be negotiated through regular contract management meetings and agreed via formal contract variation in agreement with both parties.

For the avoidance of doubt, as set out in the Contract Particulars the Price payable by the Council under the Contract shall not exceed £189,000.00 for the Contract Period.