

DATED THE

DAY OF

20

SALFORD CITY COUNCIL

- and -

(PROVIDER NAME)

AGREEMENT RELATING TO APPOINTMENT TO THE

DYNAMIC PURCHASING SYSTEM TO SUPPLY
ALTERNATIVE PROVISION TO SALFORD PUPILS

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Authorised Signatories

THIS Agreement is made on the day of two thousand and

BETWEEN:

1. SALFORD CITY COUNCIL of Civic Centre, Chorley Road, Swinton, Salford (hereinafter called "the Council");

AND

2. [Name] (hereinafter called "the Provider") of [address], a [company type] with [registered number].

each one a Party and together the Parties.

Whereas

- A. The Council has invited applications through The Chest for organisations to join a Dynamic Purchasing System for Alternative Provision who may be called upon to provide Alternative Provision for Schools or the Council.
- B. The Provider has submitted an application to the Council, and after consideration of these details, the Council has agreed to appoint the Provider to the Dynamic Purchasing System for Alternative Provision to support the Schools'/Council's Alternative Provision need.
- C. Where the Provider is requested to provide the Services to a School they will be required to enter into a contractual agreement with the School.
- D. The Council does not guarantee that the Provider will be requested to provide Alternative Provision and there will be no obligation on any School or the Council to use the Dynamic Purchasing System for Alternative Provision unless they wish to do so at their discretion.

NOW THIS AGREEMENT WITNESS in consideration of the sum of £1.00 paid by the Council, receipt of which the Provider acknowledges, as follows:

1. Definitions

The following words and expressions shall have the following meanings:

Alternative Provision:	means the Services delivered by an Alternative Provision Provider as commissioned by a School.
Dynamic Purchasing System for Alternative Provision:	means a list of Alternative Provision Providers meeting the Council's standards
Alternative Provision Provider:	means a person, firm or company, of which the Provider is one, whose application to join the Approved Provider Dynamic Purchasing System for Alternative Provision has been accepted and where the context so admits, his personal representatives, successors and permitted assignees.
Change in Control:	means the events in clause 7.
Commencement Date:	means the date of this Agreement.
Confidential Information:	means any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential.
Data Protection Legislation:	means the DPA, the Privacy and Electronic Communications (EC Directive) Regulations 2003 (as amended, consolidated, extended or re-enacted from time to time) and all other applicable legislation, regulations, codes of practice and requirements of any relevant government or governmental agency, regulator, or any other applicable body in respect of the Processing of Personal Data and data protection including any guidance or codes of practice that may from time to time be issued by the Information Commissioner (or any successor regulator).
Dynamic Purchasing System (DPS):	A two stage process which allows providers who meet the selection criteria to be added to the DPS, and then DPS providers have the opportunity to bid for individual contracts.
DPA:	means the Data Protection Act 1998.
Personal Data:	shall have the meaning as set out in the DPA.
Processing:	shall have the same meaning as set out in the DPA (and "Process" shall be construed accordingly) and, for the purposes of this Agreement, it shall include both manual and automatic processing.
Regulatory Body:	means any body which is established by or pursuant to statute, to whose regulatory powers either of the Parties are subject.
School:	means a school located in the City of Salford which has signed the Terms of Use and is permitted to use the Dynamic Purchasing System for Alternative Provision.

Service Specification	means the specification for the Services attached at Schedule 2 of this Agreement.
Services:	means the services described in the Service Specification.
Terms of Use:	means the agreement entered into between the School and the Council regulating the use of the Dynamic Purchasing System for Alternative Provision by the School.
Working Day	means a day (other than a Saturday or Sunday) on which banks are open for domestic business in the City of London.

2. Supply of Alternative Provision to Schools

- 2.1 The Provider agrees and acknowledges that that at no time shall a School or the Council, when requiring Alternative Provision, be required to appoint an Alternative Provision Provider from the Dynamic Purchasing System for Alternative Provision. Where the DPS for Alternative Provision is utilised, the Council shall manage the call-off procedure that will select the most appropriate Alternative Provision Provider to deliver the Alternative Provision.
- 2.2 The Provider agrees and acknowledges that the Schools and the Council are not limited to utilising the DPS for Alternative Provision and may choose to source Alternative Provision outside of the DPS for Alternative Provision, although the use of the DPS is highly encouraged.
- 2.3 When a School does source Alternative Provision from an Alternative Provision Provider, both the School and Provider will be required to enter into a contractual agreement to ensure that the expectations of the purchased Alternative Provision are clearly and appropriately outlined.
- 2.4 When the Council sources Alternative Provision from an Alternative Provision Provider, both the Council and the Provider will be required to enter into a contractual agreement. The contracting parties will be clearly stated in the call-off documents.
- 2.5 The Provider shall take out and maintain in full force and effect with a reputable company, at its own cost, minimum levels of insurance cover when entering into a contract as follows:
- 2.5.1 Public Liability Insurance – minimum insurance of £5,000,000 against all loss of and damage to property (real or personal or intellectual) and death or injury to persons in relation to any one claim or series of claims;
- 2.5.2 Employer’s Liability (Compulsory Insurance) Act 1969 – minimum insurance of £10,000,000 in relation to any one claim or series of claims;
- 2.5.3 Professional Indemnity Insurance - (where applicable) in respect of the Provider’s business with a minimum level of indemnity of £2,000,000 in relation to any one claim or series of claims.

3. Commencement and Duration

- 3.1. This Agreement shall commence on the Commencement Date and shall continue until 31st March 2019 ('the Initial Period').
- 3.2. The Agreement may be extended at the option of the Council for a period of up to one (1) year plus one (1) year (or such further period as may be agreed by the Parties) ('the Extended Agreement Period') but otherwise upon the same terms and conditions set out in this Agreement.
- 3.3. Unless terminated earlier in accordance with the terms of this Agreement, this Agreement shall expire either at the end of the Initial Period or, upon exercise of the option by the Council under clause 3.2 above, at the end of the Extended Agreement Period.

4. Provider's Status

- 4.1 Nothing in the Agreement shall create, or be deemed to create, a partnership between the Parties.

5. Regulatory Body Registration and Notice

- 5.1 The Provider warrants and represents that it holds and will continue to hold the requisite registration during the existence of this Agreement as outlined in the Service Specification.
- 5.2 The Provider must notify the Council:
 - 5.2.1 of any order, or inquiry by any Regulatory Body into any misconduct or mismanagement
 - 5.2.2 if the Provider's registration is withdrawn or cancelled.

6. Minimum Standards

- 6.1 The Provider shall comply with and give all notices required by any Act of Parliament, Regulation, by-law and any European Union directive.
- 6.2 The Provider for the duration of the Agreement shall meet the Council's minimum requirements as set out below.
 - 6.2.2 Safeguarding
 - 6.2.2.1 The Provider shall ensure that all persons employed in the provision of the Services who have access to children and vulnerable adults have undertaken all necessary checks with the Disclosure and Barring Service ("the DBS"). In particular the Provider shall ensure that enhanced DBS checks are carried out against the barred list kept under Safeguarding Vulnerable Groups Act 2006.

- 6.2.2.2 The Provider shall ensure that no person who is employed in provision of the Services is barred from the performance of the Services in accordance with the Safeguarding Vulnerable Groups Act 2006 and any regulations made thereunder.
- 6.2.2.3 The Provider shall not employ any person who is barred from or whose previous conduct or records indicate that they would not be suitable to carry out the service or who may otherwise present risk to the Schools.
- 6.2.2.4 The Provider must have suitable procedures in respect of child protection and adult safeguarding to prevent and respond to abuse which comply with the Salford Safeguarding Children's Board Policy and Procedures.
- 6.2.2.5 The Provider must meet the minimum criteria in relation to the 20 Safeguarding Standards in order to be accepted onto the DPS. The Provider will be awarded interim compliance and provided with a detailed report indicating the actions required to achieve full compliance.
- 6.2.2.6 The Provider must complete all outstanding actions relating to the safeguarding evaluation within the agreed timescales in order to be commissioned to provide services. Completion of the safeguarding evaluation will include a visit to the organisation to verify the information submitted. Failure to comply or to make significant progress may result in the early termination of the DPS agreement.

6.2.3 Data Protection

- 6.2.3.1 The Provider shall ensure that all data collected and held about children, young people and parents/carers meets national guidelines and standards for data protection and client confidentiality. The Provider must have in place a written policy regarding confidentiality. The policy must comply with the provisions of the most recent Data Protection Legislation.

6.2.4 Complaints

- 6.2.4.1 The Provider shall set up and maintain a written complaints, compliments, and comments procedure.

6.2.5 Health & Safety

- 6.2.5.1 The Provider shall comply with the Health and Safety at Work etc Act 1974 and all regulations and codes of practice made under it which relate to the provision of the Services.

6.2.6 Equality & Diversity

- 6.2.6.1 The Provider shall comply with the Equality Act 2010 and shall not unlawfully discriminate within the meaning and scope of the provisions of the Equality Act 2010 (in relation to sex, race, disability, religion or belief, age etc) in:

- 6.2.6.2 provision of the Services; and
- 6.2.6.3 recruitment of its staff and must ensure observance of these provisions by its staff employed in provision of the Services.
- 6.2.3.4 The Provider shall operate an equal opportunities policy and warrants that its equal opportunities policy complies with all statutory obligations and it shall not treat one group of people less favourably than others in relation to recruitment of staff and in provision of the Services.

7. Change in Control

- 7.1 The Provider must notify the Council as soon as it becomes aware of the happening of any of the following Change in Control events:
 - 7.1.2 there is a change in the management or ownership of the Provider;
 - 7.1.3 the merger of the Provider with any other organisation;
 - 7.1.4 the acquisition, sell, transfer of assets or shares of the Provider;
 - 7.1.5 if a company makes any changes in the structure of the Provider which the Provider may be required to notify Company House.
- 7.3 The Provider shall provide to the Council full details and related documentation of the transaction including where relevant any sale agreement and/or Company House documentation of the transaction and the Council may require the Provider to novate the Agreement.
- 7.4 For the avoidance of doubt, any Change in Control whether by transfer or sale of the ownership of the Provider or otherwise to a new organisation shall not discharge the Provider from its obligations under this Agreement. Unless and until the Agreement is novated, the Provider shall remain liable and accountable under this Agreement.

8. Variations and Assignment

- 8.1 Save as provided in this clause or otherwise provided in this Agreement, this Agreement shall not be varied or amended unless both Parties have agreed such variation or amendment in writing.
- 8.2 The Provider may not assign any of its rights or transfer any of its rights or obligations under this Agreement without the prior written consent of the Council.

9. Confidentiality

9.2 The Parties acknowledge that any Confidential Information obtained from or relating to the other, or any sub-contractor, or the Schools, is confidential information for the purposes of this Agreement.

10. Information Sharing

10.1 The Council will share information on the Provider with other local authorities and with Regulatory Bodies in matters of public interest.

11. Suspension

11.1 The Council may suspend the Provider from the DPS for Alternative Provision in order for an investigation to be carried out, if there are serious issues of concern raised by the School or other commissioning organisations.

11.2 The Council shall inform the Provider in writing of the reason for the suspension and the required course of action and timescale for rectification of the same.

11.3 During the period of suspension, no further appointments will be made, but existing Alternative Provision shall remain unaffected unless the issue concerned breaches any contractual requirements or obligations outlined in the contract between the School/Council and Provider.

11.4 The suspension will remain in force unless and until the Council notifies the Provider in writing that the suspension has been removed or the DPS Agreement is terminated.

12. Termination

12.1 Termination by either Party

12.1.1 Either Party may terminate this Agreement by notice in writing to the other by giving to the other Party twenty eight (28) days in notice in writing.

12.2 Termination by the Council

12.2.1 The Council may, without prejudice to any accrued rights or remedies of either Party under this Agreement, terminate this Agreement in whole or in part forthwith by notice in writing to the Provider if the Provider:

- (i) in relation to any contract with the Council, committed any offence under the Bribery Act 2010; or under any legislation creating offences concerning fraudulent acts, or defrauding, attempting to defraud or conspiring to defraud; or
- (ii) committed a breach of this Agreement which cannot be remedied;

- (iii) commits any criminal offence
- (iv) fails to operate proper Health and Safety procedures, such that the life of the public, staff, employees or pupils of the Schools or the public or staff or employees of the Council or of the Provider are at risk;
- (v) is struck off by a Regulatory Body;
- (vi) if there is a Change in Control of the Provider.

12.2.2 The Council may terminate this Agreement forthwith by notice in writing if the Provider has:

- (i) a Liquidator, Receiver, Administrator, administrative Receiver or similar officer appointed over its assets; or
- (ii) (being a company) passes a resolution for winding up (otherwise than for the purposes of a solvent amalgamation or reconstruction) or a court makes an order to that effect; or
- (iii) (being a partnership or other unincorporated association) is dissolved or (being a natural person) dies; or
- (iv) becomes or is declared insolvent or convenes a meeting of or makes or proposes to make any arrangement or composition with its creditors; or
- (v) ceases or threatens to cease to carry on its business.

13. Dispute Resolution Procedure

13.1 The Parties shall in the first instance attempt to resolve any disputes arising out of or relating to this Agreement through negotiations between the Parties' senior representatives who shall have authority to settle the dispute.

13.2 Either Party may initiate the negotiations by written notice to the other setting out the details of the dispute.

13.3 The nominated senior representatives shall meet within five (5) Working Days and shall in good faith negotiate to resolve the dispute.

13.4 If the matter is not resolved within twenty (20) Working Days of commencement of negotiations, the Parties agree to settle the dispute by mediation.

14. Waiver

14.1 Failure of either Party to exercise any right or remedy shall not constitute a waiver of such right or remedy.

14.2 No waiver shall be effective unless it is communicated to the other Party in writing.

14.3 Waiver of a default shall not (unless it expressly so provides) constitute a waiver of any future default.

15. Notices

15.1 Any notice, consent, acceptance or the like required or to be given under this Agreement shall be in writing and shall be deemed to be given:

15.1.1 when delivered, if given personally or sent by recorded delivery post;

15.1.2 three (3) days after the day of posting in the case of first class post; or

15.1.3 next Working Day after sending in the case of e-mail.

16. Severance

16.1 If any provision of this Agreement shall be found to be invalid or unenforceable, such invalidity or unenforceability shall not affect the other provisions of this Agreement which shall remain in full force and effect.

16.2 If any provision of this Agreement is so found to be invalid or unenforceable but would be valid or enforceable if some part of the provision were deleted, the provision in question shall apply with such modification(s) as may be necessary to make it valid and enforceable.

17. Governing Law

17.1 The validity, construction and performance of this Agreement shall be construed and governed by the laws of England and Wales and each Party irrevocably submit to the exclusive jurisdiction of the Courts of England and Wales.

18. Entire Agreement

18.1 This Agreement constitutes the entire agreement between the Parties in respect of the Service and the Parties confirm that they have not entered into this Agreement on the basis of any representation that is not expressly incorporated in this Agreement.

18.2 These terms and conditions shall prevail over any terms and conditions, which emanate from the Provider.

18.3 This Agreement supersedes any prior agreement between the Parties, whether written or oral with effect from the Commencement Date but without prejudice to any rights or remedies which have already accrued to either Party as at such date.

19. Interpretation

- 19.1 Headings are used in this Agreement for the convenience of the Parties and shall not affect the interpretation, and reference to a clause is a reference to the whole of that clause unless stated otherwise.
- 19.2 Words denoting the masculine gender include the feminine gender and words denoting natural persons include corporations and firms and any other legal entity and shall be construed interchangeably in that manner.
- 19.3 Words denoting the singular include where the context so admits the plural and vice versa.
- 19.4 Any reference to this Agreement or to any other document shall include any permitted variation, amendment or supplement to such document.
- 19.5 Any reference to any statute or statutory provision shall be construed as referring to that statute or statutory provision as it may from time to time be amended modified extended or re-enacted or replaced and in force and including all subordinate legislation made under it.

Safeguarding Requirements

In Salford, we are committed to promoting the welfare of all citizens, and ensuring that children and vulnerable adults are kept safe from harm.

Safeguarding Children

All agencies working with children, young people and their families should take reasonable measures to ensure that the risks of harm to children's welfare are minimised and where there are concerns about children's and young people's welfare, all agencies must take appropriate action to address these concerns, working to agreed local policies and procedures in full partnership with other local agencies.

For children, safeguarding applies to any child or young person under the age of 18 years.

Section 11 of the Children Act 2004 requires organisations to have in place arrangements to safeguard and promote the welfare of children.

The requirements under section 11 also apply to services that are commissioned by statutory organisations. Therefore any services Salford City Council commission must be compliant with this requirement.

The Salford Safeguarding Children Board (SSCB) has a performance management framework in place for overseeing the implementation of arrangements for compliance with Section 11 requirements. This is known as the SSCB Safeguarding Standards.

There is an expectation that Providers delivering services will have already achieved and agreed standard in accordance with specified requirements. You will be asked to provide evidence of this for assessment with your tender. If, following assessment it is identified that further improvements are required, Providers will be asked to develop a plan to achieve these within an agreed timescale. Failure to comply or to make significant progress will result in early termination of the contract.

For more information on the Standards see;

<http://www.salfordcvs.co.uk/salford-cvs/children-and-young-people>

<http://www.partnersinsalford.org/sscb/safeguardingstandards.htm>

Providers will also be required to provide evidence of the following policies and procedures:

- Safe recruitment and selection of staff and volunteers
- Management and support of staff and volunteers
- Comments, compliments and complaints
- Keeping children safe and protecting them from harm
- Awareness of and responses to issues of adult abuse

Safeguarding Adults

Safeguarding Adults means all work which enables an adult “who is or may be in need of community and health care services” to retain independence, well-being and choice **and** to access their human right to live a life that is free from abuse and neglect, and who is or may be unable to take care of him or herself, or unable to protect him or herself.

For these purposes ‘Adult’ means a person aged 18 years and over.

Access to adult safeguarding procedures is for people who are or may be unable to take care of themselves OR to protect themselves against significant harm or exploitation. (Significant harm includes ill treatment; the impairment of, or an avoidable deterioration in physical or mental health; **and** the impairment of physical, intellectual, emotional, social or behavioural development).

A service provider commissioned by Salford City Council must ensure that it has suitable procedures in respect of adult protection, to prevent and respond to abuse. These must be compatible with the Safeguarding Vulnerable Adults multi agency policy and procedures.

For more information see;

<http://www.salford.gov.uk/adultabuse.htm>

<http://www.partnersinsalford.org/adultsafeguardingboard.htm>

This is a minimum requirement and depending on particular areas of delivery, other policies may be required or suggested.

Authorised Signatories

On behalf of XXXXX Ltd

Signed

Name

Designation

Date

On behalf of Salford City Council

Signed

Name

Designation

Date