

# Service Provider Contract

for the ... Provision

at

Eliot Bank / Gordonbrock *(delete as appropriate)* Primary School

## Terms and Conditions of Appointment

**Date of commencement of contract:**

**Date on which contract issued:**

between

(1) .... of The Eliot Bank and Gordonbrock Schools Federation

and

(2) ....

### Introduction

A The School wishes to engage the Service Provider to provide an ... **Provision** in accordance with the specifications outlined below.

B The Service Provider has agreed to provide the Service in accordance with the terms of this Contract.

### Terms and Conditions

#### 1. Definitions

“Default” means any failure by the Service Provider to carry out any of its obligations under or arising out of this Contract;

“Commencement Date” means

“Contract documents” means the Contract between the parties hereto comprising the Terms and Conditions as varied or

amended from time to time in accordance with the provisions of this Contract

“Default Notice”	means a notice setting out the nature of the Default committed and, if the Default can be put right, the action required to put it right and the timescale within which it is to be put right. Any such timescale must be reasonable in all the circumstances;
“Force Majeure”	means war, terrorism, floods and industrial strike
“Looked After Children”	means children that are looked after by the state, according to relevant national legislation
“School”	means the
“School Officer”	means the nominated officer of the School
“Service”	means the activities to be carried out to form the extended after school provision
“Service Provider”	means the organisation appointed to manage the Service and their personnel (including volunteers).
“Service User”	means the [pupils] of the School
“SLT”	means the School’s Senior Leadership Team

## **2. Contract**

- 2.1 This Contract begins on ... and ends on ... or any other date agreed between the School Officer and the Service Provider.
- 2.2 The Service Provider agrees to deliver the Service in accordance with:
- a) the specifications (subject to changes as may be agreed between the School and the Service Provider);
  - b) the Terms and Conditions ;
  - c) all relevant legal or regulatory requirements and in particular in such a way as to make sure that opportunities for children to suffer harm are minimised;
  - d) in a timely and efficient manner and to a good and professional standard
- 2.3 From the Commencement Date the Service Provider will perform the Service. Such performance of the Service will be carried out comprehensively and strictly in accordance with the provisions of this Contract and without limitation:
- 2.3.1 in accordance with all legislation (including legislative change) and best practice as are relevant to the Service (including all standards or guidance that come into force after the Commencement Date);
- 2.3.2 in accordance with Ofsted Registration Requirements;
- 2.3.3 in accordance with the Contract Documents, including the Specification; and
- 2.3.4 in an efficient, professional, ethical and courteous manner.

- 2.4 The Service Provider will inform the School Officer in writing immediately if it receives any notice or other communication from any regulatory body alleging that the Service Provider does not comply, or suggesting that it may not comply, with the requirements of any legislation and/or best practice and must immediately give a free copy of any such notice to the School.
- 2.5 The Service Provider will make sure that the requirements of this Contract and any relevant policies of the Service Provider have been drawn to the attention of all of the Service Provider's staff and that all of the Service Provider's staff have a detailed knowledge of them and comply fully with them.
- 2.6 The Service Provider must attend regular meetings with members of the SLT as the School may require in connection with this Contract.
- 2.7 The Service Provider will provide all equipment, tools and vehicles and other items as are required to provide the Service.

**3. Premises, facilities, equipment and storage**

3.1 If necessary, the School shall provide the Service Provider with reasonable access at reasonable times to its premises for the purpose of supplying the Services. All equipment, tools and vehicles brought onto the School's premises by the Service Provider shall be at the Service Provider's risk.

3.2 Opening Times

....

These times are non-negotiable. The Service Provider must ensure at all times that enough staff are employed to make sure that the Service is provided in accordance with the Contract Documents including during staff holidays and other staff absence whether through sickness, maternity or paternity leave, industrial action or any other reason.

3.3 Areas to be used:

<b>Main Building</b>	
<b>Outside Space</b>	

- 3.4 If the Service Provider supplies all or any of the Service at or from the School's premises, on completion of the Service or termination or expiry of the Contract (whichever is the earlier) the Service Provider shall vacate the School's premises, remove the Service Provider's plant, equipment and unused materials and all rubbish arising out of the provision of the Service and leave the School's premises in a clean, safe and tidy condition. The Service Provider shall be solely responsible for making good any damage to the School's premises or any objects contained on the School's premises which is caused by the Service Provider, other than fair wear and tear.
- 3.5 If the Service Provider supplies all or any of the Service at or from its premises or the premises of a third party, the School may, during normal business hours and on reasonable notice, inspect and examine the manner in which the relevant Service are supplied at or from the relevant premises.
- 3.6 The School shall be responsible for maintaining the security of its premises in accordance with its standard security requirements. While on the School's premises the Service Provider shall, and shall procure that all of its staff shall, comply with all the

School's security requirements.

- 3.7 Without prejudice to clause 2.7, any equipment provided by the School for the purposes of the Contract shall remain the property of the School and shall be used by the Service Provider and the Staff only for the purpose of carrying out the Contract. Such equipment shall be returned promptly to the School on expiry or termination of the Contract.
- 3.8 The Service Provider shall reimburse the School for any loss or damage to the equipment (other than deterioration resulting from normal and proper use) caused by the Service Provider or any of its staff. Equipment supplied by the School shall be deemed to be in a good condition when received by the Service Provider or its relevant staff unless the School is notified otherwise in writing within 5 Working Days.
- 3.9 The Service Provider shall use the following designated areas for storage only:
- ....
- 3.10 Facilities to be made available & charges
- Photocopying can be arranged by request and must be paid for at the rate set by the School.
  - The Service Provider would be expected to put in their own provision.
  - Heating, lighting, other utilities and daily cleaning are provided as part of the school's existing contracts.
  - The school will undertake emergency lighting tests, fire equipment testing and equipment maintenance.
  - Premises Officer: The school will provide caretaking facilities and will undertake termly fire drills.
  - The Service Provider would be expected to pay a hire charge each half term to cover these costs, which will include the running cost of the school's facilities and premises. The cost may be varied at the Schools discretion. The Service Provider will be invoiced each half term for this. **The proposed charge is £.... per session. This charge will be reviewed after one year.**
  - **PAT testing charges for the Service Provider's equipment can be provided as part of the school's PAT testing programme if required (the cost is currently in the region of £2.00 per small appliance, microwaves £4.00)**

#### **4. The Manager, Staffing and the School Officer**

- 4.1 The Service Provider shall nominate a lead officer to be known as the Manager. The Manager is responsible for ensuring the proper control of the Service and the supervision and submission of all information required by the School Officer. Should the Manager leave the Service, the Service Provider must promptly appoint a replacement and inform the School of that change in Manager.
- 4.2 All staff or other persons engaged by the Service Provider in the provision of the Service (including volunteers) shall be suitably qualified and experienced to work with the user group as defined in the Specification. The Service Provider will identify any additional training and support that may be required.
- 4.3 The ratio of adults to children will be as set out in Ofsted guidelines. The Service Provider is responsible for ensuring these ratios are met on a daily basis.
- 4.4 The Service Provider will ensure that all recruitment to the Service includes Disclosure and Barring Service (DBS) checks to identify anyone who is believed to be unsuitable to work with children/young people. These records must be checked and updated every three years for staff who remain in the Services.

- 4.5 The School may require any person engaged in the carrying out of the Service to be withdrawn where in its reasonable opinion it is not appropriate for that person to be engaged because of lack of qualifications, experience or other relevant reason.
- 4.6 **The Service Provider will inform the School of all names of staff on request by the School within a reasonable period. The Service Provider must also confirm that DBS checks have been carried out and that all staff members are suitable to work with children/young people. A list of DBS numbers and dates for all staff needs to be made available to the School on a regular basis and new staff must not start work before a satisfactory DBS check has been completed and the outcome has been communicated back to the School.**

**Further to this, the Service Provider must ensure that a Childcare Disqualification Declaration Form is completed and signed by every staff member and that a copy is passed on to the School. This needs to be done, every time that the Service Provider's staff change their domestic circumstances, (i.e. move to a new address, move in with a new partner, etc.)**

- 4.7 The School shall nominate a lead officer to be known as the "School Officer" and any replacement or deputy necessary. That officer has authority to issue any instructions or notices in accordance with this Contract on behalf of the School.
- 4.8 The Service Provider's child protection procedure(s) must be in line with the School's Safeguarding Policy and its Child Protection Procedures. The Service Provider's procedures must include responsibilities:
- (a) to report suspected, alleged, or observed abuse to a member of the School's SLT immediately and the allocated social worker within established timescales;
  - (b) to co-operate fully with any child protection investigation; and
  - (c) to take measures to ensure the safety of other children when an allegation is made about a member of the Service Provider's staff.

The Service Provider must be familiar with and comply with the School's Child Protection procedures. The Service Provider's staff must be given specific training and guidance into how to respond to disclosures, identify and report abuse or suspected abuse without compromising the personal safety of Service Users, Lewisham Looked After children/young people.

## **5. Payments Process, Financial Records and Equipment**

- 5.1 The Service Provider shall pay the Charges in accordance with the Pricing Schedule.
- 5.2 The School shall be entitled to raise invoices for the Charges in accordance with the Pricing Schedule. Payment of the invoices for the Charges shall be made by the Service Provider to the School in cleared funds within 30 days
- 5.3 Arrears
- The Service Provider is expected to pay the hire charges on time every half term.
  - If late payments are made at any time there will be a 2.5% penalty on the outstanding amount.
  - If late payments are continually made over a period of a full term the school will terminate this contract with the specified notice (one term).
- 5.4. The Service Provider is not permitted to use any school equipment. It is expected that the Service Provider will provide all resources necessary to deliver the service.

## 5.5 Complete records

The Service Provider will maintain current, complete, clear and accurate financial and operational records in relation to all work carried out by it, and in particular relating to the provision of the Service including (but not limited to) a daily record of the nature and quality of the Service performed under this Contract.

This will include making sure that there are procedures which are followed and which are likely to include:

- definition of roles and responsibilities for the maintenance and completion of the Service Provider's accounts
- the recording of clear, correct and consistent treatment of all transactions in the Service Provider's accounting systems
- the reporting of any major variations between planned and actual figures
- clear audit trails for all expenditure.

## 5.6 Availability and inspection

The records referred to above must be available for inspection by the Authorised Officer, any Relevant Organisation, and any other person authorised by the School at all reasonable times. Copies must be provided to the School forthwith upon request. The Service Provider must provide requested information or documents no later than ten Working Days from the date of the request, or sooner if (in the opinion of the School) that is necessary. The Service Provider must allow the School at reasonable times and upon reasonable notice to visit and allow the Authorised Officer or someone authorised by him/her to inspect records. This provision will survive the termination or earlier expiry of this Contract or the termination of the provision of the Service.

## 5.7 Claims and complaints

The Service Provider must keep a complete and accurate record of all live claims or complaints by or against the Service Provider relating to the performance of the Service.

# 6. **Data Protection and Confidentiality**

6.1 The Service Provider will comply with the Data Protection Act 1998 concerning directly or indirectly confidential information or Personal Data (as defined by the Data Protection Act 1998) relating to any individual it receives as a result of providing the Service. The Service Provider shall treat such information as confidential and shall not disclose any Personal Data or confidential information without the consent of the School.

6.2 Subject to clause 6.1 the Parties must keep confidential and must make sure their staff keep confidential all information in connection with the provision of the Service and must not use that information for any purpose other than to perform its obligations under this Contract.

6.3 The Service Provider must not use any information obtained by them as a result of their involvement in the Service for any purpose other than for their involvement in the Service without the prior written consent of the School.

6.4 The Service Provider hereby indemnifies the School in respect of any claims, fines, penalties or losses incurred by the School by reason on the Service Provider's breach of this clause 6, including for the avoidance of doubt reasonable legal and administrative costs incurred by the School but excluding pure economic or consequential loss.

## **7. Freedom of Information Act**

- 7.1 The Service Provider and the School acknowledge and agree that the School is subject to legal duties under the Freedom of Information Act 2000 ("FOIA"), which may require it to disclose on request information relating to this Contract or otherwise relating to the Service Provider.
- 7.2 The Service Provider acknowledges and agrees that all decisions made by the School pursuant to a request under FOIA is solely a matter for and at the discretion of the School.
- 7.3 The Service Provider shall assist the School, free of charge, as reasonably necessary to enable the School to comply with its obligations under FOIA.

## **8. Media**

- 8.1 Neither party may without the prior written consent of the other make any press release, respond to enquiries from any newspaper, TV or radio company or other broadcasting organisation, or make any other statement to the media (together called 'Media Activity')
- 8.2 If either party seeks the written consent of the other party to do any Media Activity it must first submit to the other party the text of such Media Activity for approval and give details of to whom it is to be given. The other party reserves the right to refuse such consent in its reasonable discretion and/or to reasonably require the party seeking consent to amend the content of the Media Activity.

## **9. Equal Opportunities**

- 9.1 The Service Provider must not treat any person less favourably than another person by reason only of his or her age, race, religion and belief, gender reassignment, disability, sex or sexual orientation, marriage and civil partnership, pregnancy and maternity in relation to anything relevant to the delivery of the Service or otherwise and must comply with the Equality Act 2010.
- 9.2 The Service Provider must promote cross cultural and cross-community working.

## **10. Liability and indemnity**

- 10.1 In carrying out its functions the Service Provider will be acting in its own right and not as the agent of the School and consequently;
- 10.1.1 The Service Provider, its management committee, and/or its employees shall not say or do anything that might lead any other person to believe that the Service Provider is acting as the agent of the School and;
- 10.1.2 Nothing in these Conditions shall render the School liable to indemnify the Service Provider in respect of any liability of any kind incurred by the Service Provider to any other person.
- 10.1.3 The Service Provider shall indemnify the School from liability incurred as a result of breach of any of these Conditions or any related act or omission of the Service Provider.

## 10.2 Notification of claims

10.2.1 Where the School wishes to make a claim under any of the above indemnity in relation to any claim made against it by a third party (a "Third Party Claim") the School shall give notice of the relevant claim to the Service Provider as soon as reasonably practicable setting out the full particulars of the claim.

## 10.3 Conduct and mitigations of claims

10.3.1 The Service Provider may at its own expense and with the assistance and co-operation of the School have the conduct of the Third Party Claim including its settlement and the School shall not, unless the Service Provider has failed to resolve the claim within a reasonable period, take any action to settle or prosecute the Third Party Claim.

## 11. **Insurance**

11.1 The Service Provider must throughout the Contract period take out and maintain with reputable insurers such policy or policies of insurance as may be necessary to insure the Service Provider and any sub-contractor against all risks reasonably anticipated by a prudent company engaged in providing the Service including, for example, employers' liability insurance and public liability insurance.

a. **Employers' Liability Insurance**

The Service Provider shall effect and maintain in full force and effect Employer's Liability insurance (with a well established insurance office or underwriter of repute carrying on business in the United Kingdom) cover of not less than Five Million Pounds (**£5,000,000**) in respect of any one incident; and

b. **Public Liability insurance**

The Service Provider shall effect and maintain in full force and effect (with a well established insurance office or underwriter of repute carrying on business in the United Kingdom) Public Liability insurance for an indemnity limit of not less than Five Million Pounds (**£5,000,000**) for any one occurrence or series of occurrences arising out of any one event throughout the period when the Service is provided.

PROVIDED always that the sums specified under this clause must be reviewed by the parties annually and must be increased by such amounts as the School reasonably requires.]

## 12. **Health and Safety and Environmental Protection**

12.1 The Service Provider must take all necessary steps for the proper protection of the Service Provider's Staff, School employees, members of the public and Service Users at all times.

12.2 The Service Provider must have a written Health and Safety policy in place that complies with Ofsted's requirements and must follow that policy and make sure its Staff comply and must make sure that all its supervisory and managerial staff have a detailed working knowledge of it. A copy of the Service Providers Health and Safety policy is to be provided to the School Officer and any updated version of the Service Providers policy as and when any amendments or updates are made.

### 12.3 Emergencies

The Service Provider must ensure that the Service Provider's Staff comply with all statutory fire and other safety regulations.

12.4 Breach of Health and Safety If the School, acting reasonably, considers that there is or is likely to be a breach by the Service Provider of any of its Ofsted requirements relating to health and safety, resulting in a risk to any person, or an accident or other event which in the opinion of the School Officer necessitates investigation and any urgent remedial action the School may tell the Service Provider in writing and request that the Service Provider takes action to remedy that breach or abate that risk and may also state any reasonable time-scales within which such steps are to be taken; In the event that the breach has not been remedied within the agreed timescale, the School may:

- a. require the Service Provider to immediately cease providing the Service or any part thereof, until such time as the breach has been remedied; and/or
- b. itself take such steps or remedial action (or pay or employ others to do the same) as may in the reasonable opinion of the School Officer be necessary to remedy that breach or abate that risk, provided that the School Officer must tell the Service Provider of the action required as soon as it is reasonably practicable to do so. If any steps or remedial action are necessary because of the default of either party then the costs incurred by the other party will be immediately payable by the party in default to the other party and recovered as a debt or in such other way as the other party chooses; and/or
- c. suspend the provision of the Service or any part of it, until such time as the breach has been remedied.

12.5 The Service Provider must as a minimum provide adequate first aid equipment; make sure that a suitable proportion of the Service Provider's Staff have first aid qualifications and know how to use the first aid equipment and where it is kept.

## 13 Assignment and sub-contracting

13.1 The Service Provider shall not without the written consent of the School assign, sub-contract, novate or in any way dispose of the benefit and/ or the burden of the Contract or any part of the Contract. The School may, in the granting of such consent, provide for additional terms and conditions relating to such assignment, sub-contract, novation or disposal. The Service Provider shall be responsible for the acts and omissions of its sub-contractors as though those acts and omissions were its own.

13.2 Where the Service Provider enters into a sub-contract for the purpose of performing its obligations under the Contract, it shall ensure that a provision is included in such sub-contract which requires payment to be made of all sums due by the Service Provider to the sub-contractor within a specified period not exceeding 30 days from the receipt of a valid invoice.

13.3 Where the School has consented to the placing of sub-contracts, the Service Provider shall, at the request of the School, send copies of each sub-contract, to the School as soon as is reasonably practicable.

13.4 The School may assign, novate, or otherwise dispose of its rights and obligations under the Contract without the consent of the Service Provider provided that such assignment, novation or disposal shall not increase the burden of the Service Provider's obligations under the Contract.

## **14**     **Default**

- 14.1 If the Service Provider commits a Default then the School will be entitled to serve on the Service Provider a Default Notice. This will be without prejudice to any other right or remedy that may be available to the School, either under this Contract or at law.
- 14.2 If the School serves on the Service Provider a Default Notice, which relates to a Default which can be put right then on receiving such a Default Notice, the Service Provider will take the action specified in the Default Notice, within the timescale set out, at its own cost.
- 14.3 If there is any disagreement between the parties as to whether a Default has occurred and/or about the action required to be taken and/or the timescale within which the action is to be taken, then either party can refer the matter for resolution, in accordance with clause 18.
- 14.4 If the Service Provider fails to put right a Default in the timescale set out in the Default Notice then the School may, at its sole discretion, terminate this Contract by notice in writing.

## **15**     **Breach and Termination of Contract**

- 15.1 Where there is a material breach of this Contract by the Service Provider then the School may immediately terminate this Contract by serving written notice on the Service Provider that the Contract has been so terminated.
- 15.2 The School may immediately terminate this Contract by notice in writing at any time if:
- (a) any event or circumstance arise which affect or are likely to affect the ability of the Service Provider to carry out the Service
  - (b) the Service Provider becomes insolvent or is wound up or is otherwise dissolved or if any administrator or receiver is appointed or being an individual has an interim order to bankruptcy order made against him/her or if the Service Provider makes a composition or arrangement with its creditors or a Liquidator is appointed or if the Service Provider undergoes any reorganisation, transfer or change which detrimentally affects the Service Provider's ability to deliver the Service.
- 15.3 **In any circumstance other than 14.4, 15.1 and 15.2, either party may terminate this Contract by giving one full terms written notice at any time.**
- 15.4 Upon termination or expiry of this Contract the Service Provider shall return to the School forthwith all Service Products (if applicable).

## **16.**     **Force Majeure**

- 16.1 Neither Party shall have any liability under or be deemed to be in breach of the Contract for any delays or failures in performance of the Contract which result from circumstances beyond the reasonable control of the Service Provider. Each Party shall promptly notify the other Party in writing when such circumstances cause a delay or failure in performance and when they cease to do so. If such circumstances continue for a continuous period of more than two months, either Party may terminate the Contract by written notice to the other Party.

## **17.**     **Disputes**

- 17.1 The parties must try to resolve any differences between them amicably. The following procedure is set to try to help them to do that.

- 17.2 The parties will in the event of a dispute
- a) each write down their version of the dispute
  - b) hold a meeting which must be attended by the Manager and the School Officer who must discuss these documents and try to reach a resolution; if they cannot, then they must consider whether it would be appropriate to refer the matter to senior managers
- 17.3 The parties may at any time refer any dispute to any other procedure agreed between them or to litigation.
- 17.4 Even though a dispute is being dealt with under any procedure, each party must still perform their obligations under this Contract except where this is otherwise provided for.

## **18. General**

- 18.1 Each of the Parties represents and warrants to the other that it has full capacity and authority, and all necessary consents, licences and permissions to enter into and perform its obligations under the Contract, and that the Contract is executed by its duly authorised representative.
- 18.2 A person who is not a party to the Contract shall have no right to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of the Parties.
- 18.3 The Contract cannot be varied except in writing signed by a duly authorised representative of both the Parties.
- 18.4 The Contract contains the whole agreement between the Parties and supersedes and replaces any prior written or oral agreements, representations or understandings between them. The Parties confirm that they have not entered into the Contract on the basis of any representation that is not expressly incorporated into the Contract. Nothing in this clause shall exclude liability for fraud or fraudulent misrepresentation.
- 18.5 Any waiver or relaxation either partly, or wholly of any of the terms and conditions of the Contract shall be valid only if it is communicated to the other Party in writing and expressly stated to be a waiver. A waiver of any right or remedy arising from a breach of contract shall not constitute a waiver of any right or remedy arising from any other breach of the Contract.
- 18.6 The Contract shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the Parties other than the contractual relationship expressly provided for in the Contract. Neither Party shall have, nor represent that it has, any authority to make any commitments on the other Party's behalf.
- 18.7 Except as otherwise expressly provided by the Contract, all remedies available to either Party for breach of the Contract (whether under the Contract, statute or common law) are cumulative and may be exercised concurrently or separately, and the exercise of one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.
- 18.8 If any provision of the Contract is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from the Contract and rendered ineffective as far as possible without modifying the remaining provisions of the Contract, and shall not in any way affect any other circumstances of or the validity or enforcement of the Contract.

**19 Governing Law and Jurisdiction**

19.1 The validity, construction and performance of the Contract, and all contractual and non contractual matters arising out of it, shall be governed by English law and shall be subject to the exclusive jurisdiction of the English courts to which the Parties submit.

***Signature of Authorised Signatory of Service Provider***

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Name in Capitals: \_\_\_\_\_

Position in Organisation:  
(Director/Chair/Secretary) \_\_\_\_\_

Witnessed by: \_\_\_\_\_

Name in Capitals: \_\_\_\_\_

Authorised to sign for and on behalf of: (the  
Organisation) \_\_\_\_\_

Full Address: \_\_\_\_\_  
\_\_\_\_\_

Telephone Number: \_\_\_\_\_

Email Address: \_\_\_\_\_

***Signature of Authorised Signatory of the School***

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Name in Capitals: \_\_\_\_\_

Position: \_\_\_\_\_

Witnessed by: \_\_\_\_\_

Name in Capitals: \_\_\_\_\_

Authorised signatory of:

Full Address:

Telephone Number: \_\_\_\_\_

Email address: \_\_\_\_\_