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LONDON BOROUGH OF MERTON

Non-Maintained and Independent Special Schools (NMISS) Placement Dynamic Purchasing System (DPS)

**DPS Admission Agreement (DAA)**

**Contract Number:** DN635417

##### dated 2023

**London Borough of Merton**

and

**[Successful Provider]1**

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**DPS Admission Agreement**

**dated 2023**

**Parties**

1. **The Mayor and Burgesses of the London Borough of Merton** of Civic Centre, London Road, Morden, SM4 5DX (the **Authority**); and
2. **[Successful Provider]** incorporated and registered in England and Wales with company number [Company Number] whose registered office is at [Registered Office Address] (the **Provider**)1,

each a **party**, together the **parties**.

**Introduction**

1. The Provider is in the business of providing the Services.
2. The Authority commenced a procurement exercise on [to be stated] by publishing a Contract Notice under the light touch procurement regime to establish a Dynamic Purchasing System (DPS) for the purchase of the Services.
3. The Provider is eligible to be admitted to the Dynamic Purchasing System.
4. This DPS Admission Agreement sets out the process by which the Authority may request the Provider to perform any part of the Services through the DPS and the terms, conditions and fees, that will apply to the performance of any such Services.
5. In order to be admitted to the DPS, the Provider is required to enter this DPS Admission Agreement which it has agreed to do.

**Agreed terms**

**Definitions and Interpretation**

* 1. In this DPS Admission Agreement, unless otherwise defined, capitalised words and expressions shall have the same meanings as are respectively assigned to them in the Call- Off Terms and Conditions at DAA Schedule 1. The following terms are expressly defined as follows:

**Agreement Term** means the period beginning on the Effective Date and ending on 31st March 2028 unless extended in accordance with clause 3.2 this Agreement;

**Call-Off Criteria** means the criteria listed in clause 6.1.3;

**Call-Off Terms and Conditions** means the call-off terms and conditions set out in DAA Schedule 1;

**COTC Schedule** means a schedule to the Call-Off Terms and Conditions;

**DAA Schedule** means a schedule to this DPS Admission Agreement;

**DPS Admission Agreement (DAA)** means this agreement governing the admission to and operation of the Dynamic Purchasing System;

**Dynamic Purchasing System (DPS)** means the system established by the Authority pursuant to the Procurement Exercise in accordance with Regulation 74-77 of the Public Contracts Regulations 2015 to procure the Services;

**Procurement Exercise** means the procurement exercise referred to in Recital (B) (above);

**Provider's Bid** means the Provider's submitted response to the Procurement Exercise which is attached at DAA Schedule 5 – Provider's Bid;

**Services** means the provision of education, care, work, actions and responsibilities required of the Provider as set out in COTC Schedule 1 – Specification and more particularly described in an Individual Placement Form;

* 1. The DAA Schedules form part of this DPS Admission Agreement and shall have effect as if set out in full in the body of this DPS Admission Agreement. Any reference to this DPS Admission Agreement includes the DAA Schedules.
  2. The rules of interpretation set out in clause 1 of the Call-Off Terms and Conditions shall apply to this DPS Admission Agreement.
  3. In the event of a conflict or inconsistency between this DPS Admission Agreement, an Individual Placement Form, the Call-Off Terms and Conditions and the COTC Schedules, the conflict shall be resolved in accordance with the following order of precedence:
     1. The Individual Placement Form (including the CYP’s current EHC Plan and other relevant documentation appended to the Individual Placement Form or later shared between and agreed by both Parties which share the specifics of a CYP’s education provision requirements);
     2. The Call-Off Terms and Conditions and the COTC Schedules; and
     3. This DPS Admission Agreement and the DAA Schedules.

2 Insert date that the Provider is to join the DPS.

**Appointment to the DPS**

* 1. The Provider is admitted to the Dynamic Purchasing System with effect from the Effective Date and shall remain so listed unless and until expiry or earlier termination of this DPS Admission Agreement.

**Duration**

* 1. This DPS Admission Agreement shall come into effect on the Effective Date and shall remain in force for the Agreement Term.
  2. The Authority may at any time by giving not less than 3 months' notice in writing to the Provider under this clause 3.3 bring this DPS Admission Agreement to an end without incurring any financial liability to the Provider.
  3. Any Placement that is in effect at the time of the expiry or termination of this DPS Admission Agreement shall continue until the end of that Placement, despite any expiry or termination of this DPS Admission Agreement. The Provider shall continue to perform its obligations under any Individual Placement Form and Placement which remain to be performed as at the date of expiry or termination of the DPS Admission Agreement.

**Provider Obligations**

* 1. Throughout the Agreement Term the Provider shall:
     1. act in good faith towards and co-operate with the Authority in all matters relating to this DPS Admission Agreement and shall do all things reasonably within their power which are necessary or desirable to give effect to the spirit and intent of this DPS Admission Agreement;
     2. provide such co-operation assistance and information to the Authority as the Authority may reasonably require so as to refresh, renew, supplement, replace, amend or develop all and any parts of this DPS Admission Agreement and its DAA Schedules and all policies, procedures, other documents and software associated with the Dynamic Purchasing System as the Authority may require and shall enter into such agreements (whether new or amending existing documents) as the Authority may require to enact such changes;
     3. provide such information to the Authority as the Authority may require (acting reasonably) to refresh, renew, supplement, replace or update any information provided by the Provider in the Provider's Bid and confirm (on an annual or more frequent basis if required) the information in the Provider's Bid remains true, complete and accurate.
  2. The Provider shall not:
     1. contact parent/carers of CYPs (by way of advertising, taster days, tours, interviews or similar) in relation to a potential Placement until the Authority has indicated this is appropriate;
     2. offer CYPs taster or assessment days until Step 5 of the call-off process set out in clause 6.1 and after the Authority has identified the Provider as the preferred provider for a CYP's Placement. Taster or assessment days shall not be funded by LBM;
     3. use any Fees received from the Authority to:
        1. fund the provision of services to a CYP other than the CYP specified in the relevant Individual Placement Form;
        2. fund any fee deposits
        3. fund education provision for a CYP that has not been agreed with the Authority;
        4. fund provision not directly related to education provision (for example health and social care costs), unless agreed by the Authority in the relevant CYP’s Individual Placement Form;
        5. fund activities such as school trips, lunches, equipment such as laptops and travel unless clearly stated in the relevant CYP’s Individual Placement Form,

in order to ensure the Authority maintains equity across the cohort of CYP for which it is responsible for the education of.

**Authority Obligations**

The Authority shall co-operate with the Provider in all matters relating to this DPS Admission Agreement.

**Call-off Process**

* 1. During the Agreement Term of this DPS Admission Agreement, the Authority may, on identifying the need for a Placement, conduct the following call-off process:
     1. **Step 1:** The Authority may issue an Individual Placement Form detailing the specifics of the Services required for a CYP to all providers that (1) offer the relevant Services within 30 miles of the relevant CYP's home address; and (2) have specified in the Provider's Bid that they can meet the needs of the relevant CYP;
     2. **Step 2:** Providers shall submit an offer within 15 working days and return the Individual Placement Form with their proposed Fees and scope of Services for that Placement and complete full statutory consultations. At the Authority’s discretion, it may shortlist providers throughout the consultation period based on the Call-Off Criteria (providing reasons) and/or negotiate with providers. During Step 2, the Provider may indicate that it intends to conduct a taster day or assessment day(s) as a condition of its response to the Individual Placement Form.
     3. **Step 3:** The Authority shall, applying its reasonable professional judgement, select a preferred Provider from those that have returned an Individual Placement Form based on the specific needs of the CYP and its fiduciary duties to safeguard public money, having regard to:
        1. Location;
        2. CYP Needs;
        3. Costs (based on the Provider's proposed Fees);
        4. Capacity of the Provider
        5. Current cohort of currently placed at the Provider;
        6. Compliance by the Provider with its obligations under this DPS Admission Agreement and its delivery of similar Placements.
     4. **Step 4**: The Authority may then contact the preferred provider based on the consultations and considerations which took place in Step 3 and, if the Provider is chosen, confirm that the Provider can complete the taster or assessment day(s). Taster or assessment days shall be offered at the Provider's cost. If, after the taster or assessment day(s), the Provider can then no longer offer a Placement, the Authority will revert to the consultations completed in Step 2 and offer the Placement to the next preferred provider.
  2. If a parent, carer or CYP expresses a preference for the Provider and the Provider is a non- maintained special school or school approved under section 41 of the Children and Families Act 2014, the Authority is required to seek the views of the Provider. In this case, the Authority will invite the Provider to consult within 15 working days, running parallel to Steps 3 and 4 (as set out in clauses 6.1.3 and 6.1.4 above). The Authority shall make the final decision about a Placement based on the Call-Off Criteria and in line with legislation. For the avoidance of doubt, this clause 6.2 shall not apply to independent schools which are not approved under section 41 of the Children and Families Act 2014, in respect of which the Authority will only consult as set out in clause 6.1.
  3. The parties agree and acknowledge that where a CYP is moving between education phases, this shall be treated as a new Placement request and the processes set out in clauses 6.1 or 6.2 shall be followed if the CYP is deemed to require a Placement in their new education phase.
  4. The Provider acknowledges and agrees that where it is selected pursuant to clauses 6.1 or

6.2 to provide a Placement as detailed in an Individual Placement Form, the Call-Off Terms and Conditions shall apply to and govern that Placement.

* 1. No guarantee representation or warranty is given by the Authority about the minimum or maximum value or volume of quantity or continuity timing of Placements which may be placed pursuant to this DPS Admission Agreement.
  2. For the avoidance of doubt the nature of the relationship created by this DPS Admission Agreement is not one of exclusivity and this DPS Admission Agreement does not confer exclusivity on or in favour of the Provider. The Provider acknowledges and agrees that it is a member of a list of other suppliers who have also been admitted to and may benefit from the Dynamic Purchasing System and that in consequence the Authority may at any time purchase Services from any other supplier (whether admitted to the Dynamic Purchasing System or not) and therefore is not obliged to issue any Individual Placement Form or place any CYP in a Placement.

**Notices**

* 1. Any notice or other communication given to a party under or in connection with this DPS Admission Agreement shall be in writing and shall be:
     1. delivered by hand or by pre-paid first-class post or other next Business Day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
     2. sent by email to:
        1. Authority: [to be inserted]; and
        2. Provider: [to be inserted]4.
  2. Any notice or communication shall be deemed to have been received:
     1. if delivered by hand, at the time the notice is left at the proper address;
     2. if sent by [pre-paid first-class post or other] next working day delivery service, at

9.00 am on the second Business Day after posting; or

* + 1. if sent by email, at the time of transmission, or, if this time falls outside Business Hours in the place of receipt, when business hours resume.
  1. This clause does not apply to the service of any proceedings or any documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

**Change Control Procedure**

* 1. Subject to clause 9, changes to this Agreement shall only have effect if:
     1. in relation to uplifts in fees applied equally to all current Placements (fee uplifts to individual placements may be implemented in accordance with clause 3 of the Call of Terms and Conditions), they are agreed pursuant to the fee uplift process set out in DAA Schedule 4 – Fee Uplift Process; and
     2. in relation to all other changes, they are agreed to by both Parties in writing substantially in the form set out in DAA Schedule 3 – Agreement Variation Form.

**DPS Review**

* 1. The Dynamic Purchasing System shall be reviewed annually in March of each year. Following each review, the Authority may make such changes to the processes and procedures of the Dynamic Purchasing System (including those set out in this DPS Admission Agreement) as it may see fit to improve its operation. The Authority shall notify the Provider of any proposed changes by the end of Term 5 in each Academic Year. This DPS Admission Agreement shall continue in full force and effect as amended by the changes notified by the Authority from the start of the following Academic Year.
  2. Notwithstanding clause 2.6.5 of the Call-Off Terms and Conditions in force for any current Placement, where following an Annual Review the Authority notifies the Provider of a change to the Call-Off Terms and Conditions that change shall apply to the Call-Off Terms and Conditions in force for each current Placement unless the Provider (acting reasonably) objects within 20 working days of receipt of the Authority's notice of the change. Where a change is required by law, it shall not be reasonable for the Provider to object to it. Where such reasonable objection is received, the Call-Off Terms and Conditions in force for current Placements shall continue unamended.

**Termination**

* 1. This Agreement shall terminate automatically in accordance with clause 3 with the effect that the Provider may no longer participate in any future call-off processes under clause 6 to be begun by the Authority issuing a proposed Individual Placement Form.
  2. Without prejudice to any other rights or remedies which it may have, the Authority may terminate this DPS Admission Agreement but only in relation to the Provider's future participation in call-off processes and not in relation to any existing Placements nor in relation to the Dynamic Purchasing System itself which shall continue in relation to all other providers admitted to it if:
     1. the Provider commits a material breach of any of the terms of this DPS Admission Agreement or the Call-Off Terms and Conditions in respect of a Placement and (if such a breach is remediable) fails to remedy that breach within 30 days of being notified in writing of the breach; or
     2. the Provider repeatedly breaches any of the terms of this DPS Admission Agreement or the Call-Off Terms and Conditions in respect of a Placement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this DPS Admission Agreement; or
     3. the Provider becomes insolvent, or if an order is made or a resolution is passed for the winding up of the Provider (other than voluntarily for the purpose of solvent amalgamation or reconstruction), or if an administrator or administrative receiver is appointed in respect of the whole or any part of the Provider’s assets or business, or if the Provider any composition with its creditors or takes or suffers any similar or analogous action (to any of the actions detailed in this clause 10.2.3) in consequence of debt in any jurisdiction,

by giving notice to the Supplier of the happening of any one or more of the above events which notice shall take effect immediately upon receipt.

**Terms Replicated from the Call-Off Terms and Conditions**

* 1. The following clauses of the Call-Off Terms and Conditions shall be (and shall be deemed to be) incorporated in this DPS Admission Agreement with the necessary changes as if they were set out in full in this DPS Admission Agreement:
     1. Clause 5 – Conflict of Interest;
     2. Clause 7 – Liability;
     3. Clause 9 – Records;
     4. Clause 10 – Protection of Personal Data and Security of Data;
     5. Clause 11 – Freedom of Information;
     6. Clause 12 – Confidentiality;
     7. Clause 13 – Monitoring of Service Provision (applied across all on-going Placements);
     8. Clause 14 – Prevention of Fraud and Corruption;
     9. Clause 15 – Dispute Resolution;
     10. Clause 19 – General; and
     11. Clause 21 – Governing Law and Jurisdiction.

Executed as a deed and delivered by the parties on the date stated at the front of the Agreement.

|  |
| --- |
| THE COMMON SEAL of THE MAYOR AND BURGESSES OF THE LONDON BOROUGH  OF MERTON was hereunto affixed  as a deed in the presence of: |
| Signature:  Name: |
| Authorised Signatory : |
| Seal Register No. |

Signed as a deed for **[Successful bidder]** acting by two directors or a director and secretary

Director

Signature: ………………………………………..

Name: ………………………………………..

Director / Secretary

Signature: ………………………………………..

Name: ………………………………………..

5 Drafting note: Successful bidder details to be populated on appointment to the DPS.

**Call-Off Terms and Conditions**

**[TO BE INSERTED - SEE SEPARATE DOCUMENT]**

**Contract Management**

**[TO BE INSERTED – SEE SEPARATE DOCUMENT]**

**Agreement Variation (template)**

**[TO BE INSERTED – SEE SEPARATE DOCUMENT]**

**Fee Uplift Process**

**[TO BE INSERTED – SEE SEPARATE DOCUMENT]**

**Provider's Bid**

**[TO BE INSERTED – PROVIDER'S BID]**