

## Provider Agreement

**THIS AGREEMENT is dated** [DATE]

**and is made between :**

- (1) **The Mayor and Burgesses of the London Borough of Newham** of Newham Town Hall East Ham London E6 2RP ("**the Council**"); and
- (2) [THE PROVIDER] (Company Number: ) whose registered address is at [ ] ("**the Provider**")

each a Party and together the Parties.

### **BACKGROUND**

- (A) The Council placed a Contract Notice in the Official Journal of the European Union on [insert date] to establish a Dynamic Purchasing System ("DPS") for the procurement of Commissioned Support Services for Children and Young People with Special Educational Needs and/or Disabilities (SEND).
- (B) In accordance with Regulation 34 of the Public Contracts Regulations 2015 the Council has used the restricted procedure to establish a DPS.
- (C) The Council has contracted with adam HTT Limited trading as *adam* (registered company 07716565 – the "Technology Provider") to provide a web-based software system namely SProc.Net, or such other technology as agreed between the Parties from time to time (the "Technology"), to procure Services via the DPS as set out in the Public Contracts Regulations 2015, as amended from time to time, and for such Services to be transacted as further set out in this Provider Agreement.
- (D) The Council shall admit to the DPS each Provider that satisfies the Selection Criteria and has submitted a request to participate in the DPS which complies with the Specification and any additional documents produced by the Council.
- (E) For the avoidance of doubt, there will be no obligation for the Council to award any contracts under the Provider Agreement during its Term.

---

### **Definitions**

**Accreditation and Enrolment:** the evaluation of a Provider's request to participate in the DPS and the subsequent admittance to the DPS of Providers that fulfil the Council's Selection Criteria.

**Contract:** the agreement in respect of the provision of the Services consisting of the following listed documents which shall be interpreted as a single contractual arrangement:-

- 1 The Provider Agreement;
- 2 The Provider Entry Guide;
- 3 The Service Agreement(s).

Collectively called the “Contract Documents”.

**Data Protection Legislation** means:

- a) The Data Protection Act 2018;
- c) The General Data Protection Regulation 2016/679 (GDPR);
- d) The Privacy and Electronic Communications (EC Directive) Regulations 2003;
- e) Any other applicable data protection laws and regulations (including amended, supplemental or replacement laws and regulations) applicable in the United Kingdom;
- f) Codes of Conduct published by the Information Commissioner’s Office (ICO).

**Dynamic Purchasing System or “DPS”:** the dynamic purchasing system operated via the Technology, which applies the procurement methodology provided for by Regulation 34 of the Public Contracts Regulations 2015, as amended from time to time.

**ICO** means the Information Commissioners Office which is the supervisory authority for the United Kingdom;

**Offer:** the Provider’s tender for the desired Services in response to the Council’s Requirement.

**Open for Offers:** the period during which time the Provider can create and submit their Offer within the Technology.

**Provider Agreement:** the terms and conditions set out in this document and the overarching agreement between the Council and each Provider.

**Provider Entry Guide:** the entry guide issued by the Council detailing the operation of the DPS.

**Replacement Services:** services that are identical or substantially similar to any of the Services to be provided the Provider, which the Council receives in substitution by a Replacement Provider who has already been admitted to the DPS, following the termination or expiry of a Service Agreement with the Provider.

**Replacement Provider:** a third party supplier of Replacement Services admitted to the DPS and appointed by the Council from time to time.

**Requirement:** a request for Services made by the Council via the Technology and in accordance with the Council’s Specification.

**Selection Criteria:** the requisite criteria that a Provider must meet and maintain throughout the term of the DPS in order to successfully complete their Accreditation and Enrolment into the DPS.

**Self-Bill Invoice:** the invoice produced via the Technology on the Provider’s behalf, through which the Technology Provider shall process payment.

**Service Agreement:** an agreement between the Provider and the Council entered into following a mini competition (as described within clause 2(d)) between the Providers appointed to the DPS.

**Service Receipt:** the agreed record within the Technology of the completed delivery of Services as quantified and agreed between the Parties.

**Signature Document:** the signed document between the Council and the Provider which constitutes the Parties' agreement to this Provider Agreement and the creation of the overall Contract.

**Sub-Processor** means a data processor contracted with the Provider to process Personal Data on behalf of the Data Controller;

**Technology:** the proprietary web-based software owned and operated by the Technology Provider, currently called SProc.Net or such other technology as agreed between the Parties.

**Technology Provider:** the owner and provider of the Technology, adam HTT Limited t/a *adam* (registered company #07718565), who shall also act as the Council's payment service provider.

**Term:** the period of validity of the DPS which shall commence on [ ] and shall continue for a period of two (2) years with an option to extend the term for a further one (1) year.

---

## Scope of Provider Agreement

- The Provider agreement needs to acknowledge the purpose of the document and the inter-relation between all of the other "Contract Documents"

### 1 Scope

- 1.1 This Provider Agreement governs the relationship between the Council and the Provider in respect of the provision of Services by the Provider to the Council when procured and/or transacted through the DPS. The Provider must agree to the terms of the Provider Agreement prior to acceptance into the DPS. For the avoidance of doubt, the Provider's acceptance of the Provider Agreement shall not guarantee the Provider's acceptance into the DPS, which shall be subject to successful completion of the Accreditation and Enrolment
- 1.2 In the event of a conflict between the terms of any of the Contract Documents, then the documents shall take precedence in the following order:
  - a) The Service Agreement;
  - b) The Provider Agreement;
  - c) The Provider Entry Guide;
- 1.3 The Council may at its absolute discretion and from time to time, order Services from the Provider in accordance with the procedure set out in the Provider Entry Guide. The Provider acknowledges that there is no obligation whatsoever on the Council to purchase any Services from the Provider during the Term. Notwithstanding the fact that the Council has followed the procedure set out in this Provider Agreement or Provider Entry Guide, the Council shall be entitled at all times to decline to make an award for its Requirement.
- 1.4 The Council may update the Provider Entry Guide at any time throughout the Term of the Contract, provided that the Council provides all Providers with fair and open access to such changes with reasonable advance notice.

- 1.5 The Provider warrants that all information submitted within the Accreditation and Enrolment is correct and accurate at the time of submission and shall ensure that all necessary and appropriate Accreditation and Enrolment checks and details are kept up to date throughout the Term. In the event that the Provider's status or compliance to any of the Selection Criteria changes throughout the Term of the Contract, then the Provider shall inform the Council immediately and the Provider acknowledges that the Council reserves the right to, at its sole discretion, expel the Provider from the DPS, dependent upon the nature of such changes, particularly if such changes are to the detriment of the performance or standards of this Contract.
  - 1.6 The Council reserves the right to request re-submission of any Selection Criteria or other Accreditation or Enrolment details throughout the duration of the Contract, and may perform audit checks of any such or existing Accreditation or Enrolment information.
  - 1.7 The Provider acknowledges that once agreed via the Technology, a Service Agreement is a legally binding agreement between the Providers and the Council and must be adhered to in accordance with the terms of the Contract.
- 

## **2 DPS Process**

### **2.1 The Council shall:**

- a) offer all potential Providers unrestricted, direct access to all appropriate documents, including the template Contract Documents and Selection Criteria by electronic means and to any additional documents relating to the provision of the Service from the date of publication of the contract notice to the date when the system ceases to be operated.
  - b) give any candidate the opportunity to submit a 'request to participate' within the DPS via the Technology to proceed through the Accreditation and Enrolment process. Admission into the DPS is subject to the Provider satisfying the Selection Criteria, passing the Council's review of the request to participate, and submitting a request to participate which complies with the Contract Documents and any additional documents produced by the Council.
  - c) complete the evaluation of a request to participate within 10 working days from the date of its submission or such longer period as the Council may determine
  - d) invite all applicable Providers who have been admitted to the DPS to submit an Offer for each applicable Requirement within a time limit specified by the Council.
  - e) enter into a Service Agreement with the Provider who submits the Offer which best meets the Requirement and its appropriate award criteria, as specified in the Contract Documents, when choosing to enter into a contract via the DPS.
- 

## **3 Procurement Process**

- 3.1 The Provider acknowledges and accepts that Services shall be procured and/or transacted in accordance with the procedures detailed in the Contract.

- 3.2 The Provider shall submit all Offers within the Technology in accordance with the procedures detailed in the Provider Entry Guide, this Provider Agreement, and as may be further supplemented within the Requirement.
- 3.3 The Provider shall submit all Offers within the Technology within a timely manner and no later than the deadlines established within the requisite Requirement or shall otherwise be excluded from the procurement process within the Technology.
- 3.4 The Provider shall submit all Service Receipts within the Technology within a timely manner. The Council reserves the right to consolidate each Service Receipt into such frequent Self-Bill Invoices as set out in clause 4 (payment/ self-billing procedure).
- 3.5 The Provider agrees and acknowledges that all transactions governed by the Contract will be processed via the Technology. The Provider shall not endeavour to process Requirements or Services for the Council that have been subject to the DPS outside of the Technology.
- 3.6 The Provider shall ensure that the Services are provided in accordance with the Requirements, the consequent Service Agreement and the Contract Documents overall. Further, on request at any time, the Provider must be able to evidence compliance with the same.
- 3.7 Where a Requirement is issued to the Provider it shall state the type of or part of the Services required including the Council's necessary timescale for delivery of those Services.
- 3.8 If an Offer appears to be abnormally low, the Council may reject the Offer but only if it has:
- a) requested in writing from the Technology Provider details of the constituent elements of the Offer which are considered to contribute to the Offer being abnormally low;
  - b) taken account of the evidence supplied by the Provider; and
  - c) verified those constituent elements with the Provider;

and concludes that the Provider would not be able to carry out the Services to the required standards.

3.9

The amount of time available to the Provider to respond to a Requirement shall be detailed within the Technology.

- 3.10 The Provider shall neither subject the Council, the Technology Provider or the Technology, to derogatory or abusive treatment nor commit any act or omissions that would, bring the Council or the Technology Provider into disrepute. The Provider acknowledges that in any such circumstances the Council or Technology Provider has the right to suspend the Provider from activities within the Technology, in addition to any other remedies available in this Contract.

---

## **4 Payment / Self-Billing Procedure**

- 4.1 In consideration of the provision of the Services by the Provider in accordance with the terms and conditions of the Contract, the Council shall pay the Charges to the Provider in accordance with the procedure set out in this Clause 4.

- 4.2 The Council shall raise only raise a Self-Bill Invoice on behalf of the Provider once the appropriate Service Receipt has been created and agreed between the Parties within the Technology and becomes payable in accordance with the Self Billing Agreement.
- 4.3 The Council shall pay the Charges which have become payable in accordance with this Clause 4 within thirty (30) days of the appropriate undisputed Self-Bill Invoice having been raised.
- 4.4 For the avoidance of doubt, the Provider acknowledges and accepts that the Charges due for the Services provided under the Contract shall be paid by the Council via the Technology Provider, acting as the Council's payment service provider. To this extent, the Provider acknowledges and accepts the Technology Provider can only pay the Provider once it has received cleared funds from the Council. Any disputes regarding payment or the amount payable must first be directed to the Council.
- 4.5 The Council and the Provider have agreed to use a self-billing procedure for all transactions (the "Relevant Transactions") in respect of the Services;
- 4.6 The Council and the Provider shall adhere to the conditions imposed by HM Revenue and Customs in respect of self-billing invoices, as may be amended from time to time;
- 4.7 The Provider hereby agrees:
- i. to accept electronically delivered Self-Bill Invoices raised on its behalf by the Council in respect of all Relevant Transactions;
  - ii. not to issue VAT invoices in respect of the Services;
  - iii. where for internal compliance reasons it raises dummy invoices, the Provider will reconcile such dummy invoices to the Self-Bill Invoice.
  - iv. to reconcile their account with any factoring company as may be applicable from time to time.
  - v. to only submit paper-copy Service Receipts where pre-agreed in writing with the Council;
  - vi. subject to (v) above, to ensure the Technology's Service Receipt submission system is used to capture all hours worked in respect of the Services;
  - vii. to ensure that rates, hours, hours types and expenses are verified prior to submission or on-line entry of Service Receipts;
  - viii. to raise any discrepancies between a Self-Billing Invoice received from the Council and invoicing data in its internal records within seven (7) days of receipt of such Self-Bill Invoice;
  - ix. to notify the Council immediately if the Provider changes its VAT registration number, ceases to be VAT registered or sells or otherwise disposes of all or part of its business;
  - x. to respond to any request for confirmation of its VAT registration details within seven (7) days of receipt of the request.
- 4.8 The Provider agrees and acknowledges that where there is any breach whatsoever of Clause 4.7 above, the Council may at its sole discretion delay or not process payment of the sums due to the Provider from such Self-Bill Invoices that the breach pertains to.
- 4.9 The Council agrees:
- i. wherever reasonably possible, to provide a valid Self-Billing VAT invoice to the Provider on a regular (e.g. weekly or monthly) basis as agreed between the Parties via the Technology;
  - ii. to include on each invoice the Provider's name, address and VAT registration number, invoice total and details of applicable VAT at the prevailing rate;
  - iii. to inform the Provider of any relevant changes to the Council's VAT registration status, and amend this clause 4 should this be necessary;

- 4.10 The Council will not accept any liability for payment of any of the Provider's services where the Provider does not hold a valid signed/approved Service Receipt, as applicable, or where the Service Receipt has not been authorised via the Technology's online Service Receipt system, SProc.Net, or such other application as directed by the Council from time to time.
- 4.11 For the avoidance of doubt, any payment properly due to the Provider will be made in accordance with the terms and conditions of the Agreement between the Parties.
- 4.12 The Parties shall, without limitation to the foregoing, comply at all times with all conditions imposed by HM Revenue & Customs in respect of Self-Bill invoicing processes.
- 4.13 The Provider acknowledges and accepts that the Self-Bill process and payments made under the Service Agreement shall be performed via the Technology Provider acting as the Council's third-party, payment service provider, (adam HTT Limited (trading as *adam* limited registered company number: 07718565) or such other body as may be appointed by the Council from time to time, and payment shall be dependent upon the Technology Provider receiving cleared funds from the Council. For the avoidance of doubt, this arrangement shall not be construed as transferring to the payment service provider any debt that is owed by the Council to the Provider, and any disputes regarding the Relevant Transactions must be managed between the Provider and the Council directly.
- 4.14 For the avoidance of doubt, this Self-Billing process shall be co-terminous with the duration of the Provider Agreement but shall be subject to annual review by the parties.
- 4.15 This Self-Billing Clause shall be read in accordance with the laws of England and Wales and shall be subject to the exclusive jurisdiction of the English courts.

## **5. Data Protection**

- 5.1 The Parties agree to process Personal Data in compliance with Data Protection Legislation and the terms set out in the Service Agreement.

All charges for services provided under the Service Agreement will be subject to VAT at the prevailing rate.

**VAT Details:**

G	B				/					/		
Tick box if not VAT registered												<input type="checkbox"/>

**Bank Details:**

Bank Name:												
Account Name:												
Sort Code:			-			-						
Account Number:					-							

**Provider’s Finance Contact Details:**

Name:												
Telephone Number:												
Email Address for invoices to be sent to:	«Email_Address»											
Invoicing Street Address:												



---

**Agreed and accepted for and on behalf of [Insert Client Name] by:**

Name:	
Position:	
Date:	

---

**Agreed and accepted for and on behalf of the Provider by:**

(Insert digital or written signature here: .....)

Name:	
Position:	
Date:	