

SUTTON-McGOUGH SOLUTIONS LIMITED trading as SMS Education incorporated and registered in England and Wales with company number 10374371 whose registered office is at 36 Ropergate, Pontefract, WF8 1LY is referred to in these terms as the **Supply Services Business**. The Supply Services Business will supply the Services to the School in accordance with these terms.

AGREED TERMS

1. INTERPRETATION

1.1 The following definitions and rules of interpretation apply in this Agreement (unless the context requires otherwise).

Activities of the School: 11-16 comprehensive school.

Capacity: as agent, consultant, director, employee, owner, partner, shareholder or in any other capacity.

School Property: all documents, books, manuals, materials, records, correspondence, papers and information (on whatever media and wherever located) relating to the Activities or affairs of the School, its professional contacts, staff and pupils except any works embodying Intellectual Property Rights, and any equipment, keys, hardware or software provided for the Supply Services Business or the Individual's use by the School during the Engagement, and any data or documents (including copies) produced, maintained or stored by the Supply Services Business or the Individual on the computer systems or other electronic equipment of the School, the Supply Services Business or the Individual during the Engagement.

Commencement Date: the date for commencement of the Services as set out in our covering email.

Confidential Information: information in whatever form (including, without limitation, in written, oral, visual or electronic form or on any magnetic or optical disk or memory and wherever located) relating to the activities, planned activities, staff, professional contacts, pupils, parents or guardians of pupils, affairs and finances of the School for the time being confidential to the School and including (but not limited to) information that the Supply Services Business or the Individual creates, develops, receives or obtains in connection with this Engagement, whether or not such information (if in anything other than oral form) is marked confidential.

Daily Rate: the fee to be paid by the School to the Supply Services Business as set out in our covering email or otherwise mutually agreed.

Data Protection Legislation: any data protection legislation from time to time in force in the UK including the Data Protection Act 2018 or any successor legislation.

End Date: the date for the ending of the Services as set out in our covering email or otherwise arising.

Engagement: the engagement of the Supply Services Business by the School on the terms of this Agreement.

Individual: James McGough.

Insurance Policies: professional indemnity insurance cover and public liability insurance cover.

Intellectual Property Rights: copyright and related rights, trade marks, domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or



extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

School: the school establishment to which the Services will be provided as set out in our covering email.

Services: the services as described in our covering email or otherwise agreed in writing.

Substitute: a substitute for the Individual appointed under the terms of clause 3.3.

Teaching Day: the hours of the normal school teaching day as set out in our covering email or otherwise agreed in writing.

- 1.2 The headings in this Agreement are inserted for convenience only and shall not affect its construction.
- 1.3 A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.4 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.6 The Schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the Schedules.

2. TERM OF ENGAGEMENT

- 2.1 The School shall engage the Supply Services Business and the Supply Services Business shall make available to the School the Individual to provide the Services on the terms of this Agreement.

The Engagement commenced on the Commencement Date and shall continue, subject to the remaining terms of this Agreement, until it terminates on the End Date without the need for notice unless previously terminated by either party giving the other not less than one months' notice in writing.

3. DUTIES AND OBLIGATIONS

- 3.1 During the Engagement the Supply Services Business shall, and (where appropriate) shall procure that the Individual shall:
 - 3.1.1 provide the Services with all due care, skill and ability and use its or his best endeavours to promote the interests of the School;
 - 3.1.2 unless the Individual is prevented by ill health or accident, commit to work for the Teaching Day on each day in each calendar month to the carrying out of the Services; and
 - 3.1.3 promptly give to the School all such information and reports as it may reasonably require in connection with matters relating to the provision of the Services or the Activities of the School.
- 3.2 If the Individual is unable to provide the Services due to illness or injury, the Supply Services Business shall advise the School of that fact as soon as reasonably practicable. For the avoidance of doubt, no fee shall be payable in accordance with clause 4 in respect of any period during which the Services are not provided.
- 3.3 The Supply Services Business may, subject to the following proviso, appoint a suitably qualified and skilled Substitute to perform the Services instead of the Individual, provided that the Substitute shall be required to enter into direct undertakings with the School, including with regard to confidentiality. The Supply Services Business



shall continue to invoice the School in accordance with clause 4 and shall be responsible for the remuneration of the Substitute.

- 3.4 If a Substitute is appointed, the provisions relating to sub-processor obligations in clause 8.7 will apply.
- 3.5 The Supply Services Business shall use its reasonable endeavours to ensure that the Individual is available at all times on reasonable notice to provide such assistance or information as the School may require.
- 3.6 Unless it or they have been specifically authorised to do so by the School in writing:
- 3.6.1 neither the Supply Services Business nor the Individual shall have any authority to incur any expenditure in the name of or for the account of the School; and
- 3.6.2 the Supply Services Business shall not, and shall procure that the Individual shall not, hold itself out as having authority to bind the School.
- 3.7 The Supply Services Business shall, and shall procure that the Individual shall, comply with all reasonable standards of safety and safeguarding and shall comply with the School's health and safety and safeguarding procedures from time to time in force at the premises where the Services are provided and report to the School any unsafe working conditions or practices.
- 3.8 The Supply Services Business shall procure that the Individual shall comply with the School's policies on use of information and communication systems and anti-harassment and bullying.
- 3.9 The Supply Services Business may use a third party to perform any administrative, clerical or secretarial functions which are reasonably incidental to the provision of the Services provided that the School will not be liable to bear the cost of such functions
- 3.10 The Supply Services Business shall, and shall procure that the Individual shall comply with all applicable laws, regulations, codes and sanctions relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (Relevant Requirements);

4. FEES

- 4.1 The School shall pay the Supply Services Business the Daily Rate for each day upon which the Services are provided.
- 4.2 Every four weeks during the Engagement the Supply Services Business shall submit to the School an invoice which gives details of the days which the Individual or any Substitute has worked and the amount of the fee payable plus VAT for the Services during that period.
- 4.3 In consideration of the provision of the Services, the School shall pay each invoice submitted by the Supply Services Business in accordance with clause 4.2, within 7 days of receipt. Invoices not paid by the due date shall be subject to an interest payment of 8% per annum.
- 4.4 Payment in full or in part of the fees claimed under clause 4 or any expenses claimed under clause 5 shall be without prejudice to any claims or rights of the School against the Supply Services Business or the Individual in respect of the provision of the Services.

5. EXPENSES

Where agreed in advance the School shall reimburse all reasonable expenses properly and necessarily incurred by the Supply Services Business or the Individual in the course of the Engagement, subject to production of receipts or other appropriate evidence of payment.



6. OTHER ACTIVITIES

Nothing in this Agreement shall prevent the Supply Services Business or the Individual from being engaged, concerned or having any financial interest in any Capacity in any other school, organisation, profession or occupation during the Engagement provided that such activity does not cause a breach of any of the Supply Services Business's obligations under this Agreement.

7. CONFIDENTIAL INFORMATION AND CLIENT PROPERTY

7.1 The Supply Services Business acknowledges that in the course of the Engagement it and the Individual will have access to Confidential Information. The Supply Services Business has therefore agreed to accept the restrictions in this clause 7.

7.2 The Supply Services Business shall not, and shall procure that the Individual shall not (except in the proper course of its or their duties), either during the Engagement or at any time after the End Date, use or disclose to any third party (and shall use its best endeavours to prevent the publication and disclosure of) any Confidential Information. This restriction does not apply to:

7.2.1 any use or disclosure authorised by the School or required by law; or

7.2.2 any information which is already in, or comes into, the public domain otherwise than through the Supply Services Business's or the Individual's unauthorised disclosure.

7.3 At any stage during the Engagement, the Supply Services Business will promptly on request return to the School all and any School Property in its or the Individual's possession.

8. DATA PROTECTION

8.1 The Supply Services Business and the School acknowledge that for the purposes of the Data Protection Legislation, the School is the data controller and the Supply Services Business is the data processor.

8.2 The Supply Services Business and the School will comply with the Data Protection Legislation and the terms of any relevant privacy notice.

8.3 The Supply Services Business shall, and shall procure that the Individual shall, in relation to any Personal Data processed in connection with the Engagement:

8.3.1 Process that Personal Data only on written instructions of the School.

8.3.2 Keep the Personal Data confidential.

8.3.3 Comply with the School's Data protection policy.

8.3.4 Comply with the School's reasonable instructions with respect to processing Personal Data.

8.3.5 Not transfer any Personal Data outside of the European Economic Area without the School's prior written consent.

8.3.6 Assist the School at the School's cost in responding to any data subject access request and to ensure compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, privacy impact assessments and consultations with supervisory authorities or regulators.

8.3.7 Notify the School without undue delay on becoming aware of a Personal Data breach or communication which relates to the School's or Supply Services Business's compliance with the Data Protection Legislation.



8.3.8 At the written request of the School, delete or return Personal Data and any copies thereof to the School on the End Date unless required by the Data Protection Legislation to store the Personal Data.

8.3.9 Maintain complete and accurate records and information to demonstrate compliance with this clause 8.

8.4 School agrees that any Substitute appointed under clause 3.3 is a third-party processor of Personal Data under this Agreement. The Supply Services Business confirms that it will enter into a written agreement, which incorporates terms which are substantially similar to those set out in this clause 8, with the Substitute. The Supply Services Business shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this clause 8.

8.5 The Supply Services Business shall have personal liability for and shall indemnify the School for any loss, liability, costs (including legal costs), damages, or expenses resulting from any breach by the Supply Services Business or a Substitute engaged by the Supply Services Business of the Data Protection Legislation, and shall maintain in force full and comprehensive Insurance Policies.

9. INTELLECTUAL PROPERTY

9.1 The Supply Services Business and/or the Individual retains all existing and future Intellectual Property Rights in any works and the Inventions.

10. INSURANCE

10.1 The Supply Services Business shall ensure that the Insurance Policies are taken out with reputable insurers and shall on request supply to the School copies of the Insurance Policies.

10.2 The Supply Services Business shall comply (and shall procure that the Individual complies) with the terms and conditions of the Insurance Policies at all times.

11. ACCEPTANCE OF TERMS

11.1 If the School engages or allows the Individual or Substitute to work at the School (or continues to engage or allow them to work), the School will be deemed to have accepted these Terms of Business.

12. CANCELLATION

12.1 If the School cancels or postpones the delivery of the Services from a date which has previously been agreed between the Supply Services Business and the School, the Supply Services Business reserves the right to require payment of the agreed fee in respect of the cancelled or postponed delivery of the relevant Services on the following scale:

12.1.1 More than 20 days before agreed delivery date – agreed fee waived in full

12.1.2 Less than 15 but more than 10 days before agreed delivery date – 50% of fee payable

12.1.3 Less than 10 days before agreed delivery date – 100% of fee payable

13. TERMINATION

13.1 Notwithstanding the provisions of clause 2, the School may terminate the Engagement with immediate effect without notice and without any liability to make any further payment to the Supply Services Business (other than in respect of amounts accrued before the End Date) if at any time:



- 13.1.1 the Supply Services Business or the Individual commits any gross misconduct or gross negligence affecting the Activities of the School;
 - 13.1.2 the Supply Services Business or, where applicable, the Individual commits any serious or repeated breach or non-observance of any of the provisions of this Agreement or refuses or neglects to comply with any reasonable and lawful directions of the School;
 - 13.1.3 the Individual is declared bankrupt or makes any arrangement with or for the benefit of their creditors or has a county court administration order made against them under the County Court Act 1984;
 - 13.1.4 the Supply Services Business makes a resolution for its winding up, makes an arrangement or composition with its creditors or makes an application to a court of competent jurisdiction for protection from its creditors or an administration or winding-up order is made or an administrator or receiver is appointed in relation to the Supply Services Business;
 - 13.1.5 the Individual does not own all of the issued share capital (from time to time) of the Supply Services Business; or
 - 13.1.6 the Supply Services Business or the Individual commits any serious breach of the School's policies and procedures.
- 13.2 The rights of the School under clause 11.1 are without prejudice to any other rights that it might have at law to terminate the Engagement or to accept any breach of this Agreement on the part of the Supply Services Business as having brought the agreement to an end. Any delay by the School in exercising its rights to terminate shall not constitute a waiver of these rights.

14. OBLIGATIONS ON TERMINATION

- 14.1 On the End Date the Supply Services Business shall, and shall procure that the Individual shall:
- 14.1.1 immediately deliver to the School all School Property and original Confidential Information which is in its or their possession or under its or their control; and
 - 14.1.2 upon request and subject to the School's data retention guidelines and the Intellectual Property Rights, irretrievably delete any information relating to the Activities of the School stored on any magnetic or optical disk or memory and all matter derived from such sources which is in its or their possession or under its or their control outside the premises of the School. This obligation includes requiring any Substitute to delete such data where applicable.

15. STATUS

- 15.1 The relationship of the Supply Services Business (and the Individual) to the School will be that of independent contractor and nothing in this Agreement shall render it (nor the Individual) an employee, worker, agent or partner of the School and the Supply Services Business shall not hold itself out as such and shall procure that the Individual shall not hold themselves out as such.
- 15.2 The Supply Services Business shall be responsible for and shall indemnify the School for and in respect of the following:
- 15.2.1 any income tax, National Insurance and social security;



- 15.2.2 any liability arising from any employment-related claim or any claim based on worker status brought by the Individual or any Substitute against the School arising out of or in connection with the provision of the Services, except where such claim is as a result of any act or omission of the School.

16. ENTIRE AGREEMENT

- 16.1 This Agreement and any covering email sent by the Supply Services Business to the School constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

17. VARIATION

No variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

18. THIRD PARTY RIGHTS

- 18.1 Except as expressly provided elsewhere in this Agreement, a person who is not a party to this Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.
- 18.2 The rights of the parties to terminate, rescind or agree any variation, waiver or settlement under this Agreement are not subject to the consent of any other person.

19. GOVERNING LAW

This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

20. JURISDICTION

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

