

# Stanburn Primary School

Abercorn Road, Stanmore  
Middlesex, HA7 2PJ



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*Headteacher: Ms Elaine D'Souza*

## Hire Agreement

**STANBURN PRIMARY SCHOOL  
AND .....**

# Stanburn Primary School

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Middlesex, HA7 2PJ



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## **INTRODUCTION**

The purpose of this Agreement is to define the service responsibilities of Stanburn Primary School and ....., who will be managing the Services at the School.

## **1. PARTIES TO THE AGREEMENT**

This AGREEMENT is made on .....

### **BETWEEN:**

- 1) **STANBURN PRIMARY SCHOOL** of Abercorn Road, Stanmore, Harrow Middlesex HA7 2PJ  
(hereinafter called "**the School**" of the one part)  
and
- 2) ..... (hereinafter called "**the Service Provider**" of the other part)

## **2. DEFINITIONS**

"Agreement"	the agreement between the School and the Service Provider in respect of the provision of the Services consisting of the following listed documents which shall be read as one document. In the event of ambiguity, conflict or contradictions between these documents the conflict will be resolved according to the following order of priority: a) these Terms and Conditions; b) the Tender documentation
"Authorised Officer"	a person designated as such by the School from time to time as notified in writing to the Service Provider to act as the duly authorised representative of the School for all purposes connected with the Agreement.
"Booking Charge"	the money paid by the Service Provider to the School for use of the Premises in accordance with clause 15 as may be amended from time to time by agreement by the Parties.
"Business Day"	any day other than a Saturday or Sunday or a public or bank holiday in England

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"Commencement Date"	shall commence on the Commencement Date and shall continue unless and until this agreement is terminated by either party giving to the other not less than half a terms written notice or as otherwise provided in this Agreement.
"Contract Period"	
"DCSF"	the Department for Children Schools and Families, or its successor.
"Equipment"	"Equipment" the School's equipment listed in 2.
"Exit Management Plan"	"Exit Management Plan" the plan set out in Schedule 1.
"Force Majeure"	any cause materially affecting the performance by a Party of its obligations under this Agreement arising from any act beyond its reasonable control and affecting either Party, including without limitation: acts of God, war, protests, fire, flood, storm, tempest and national emergencies.
"Party" or "Parties"	any party to the Agreement individually or collectively. A Party shall include all permitted assigns of the Party in question. All persons who are not a Party to the Agreement are third parties.
"Premises"	the location where the Services provided by the Service Provider will be undertaken as set out in Clause 14 below.
"Service(s)"	the services provided by the Service Provider pursuant to and in accordance with the Agreement as set out in Clause 7 to this agreement.
"Session"	Times as set out in Clause 7.1.
"Site Caretaker"	Access time is per the Caretakers working times which are 7.30 am – 6.00 pm. Monday to Friday. Access outside of Term Time would be granted at the discretion of the Head teacher as long as it does not incur any additional costs.

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- 2.1 Any reference to a person shall include any natural person, partnership, joint venture, body corporate, incorporated association, government, governmental agency, persons having a joint or common interest or in any other legal or commercial entity or undertakings.
- 2.2 A reference to any statute, order, regulation or similar instrument shall be construed as a reference to the statute, order, regulation or instrument as amended by any subsequent statute, order, regulations or instrument or as contained in any subsequent re-enactment.

### **3. HEADINGS**

- 3.1 The index and headings to the clauses and schedules of this Agreement are for convenience only and will not affect its construction or interpretation.

### **4. NOTICES**

- 4.1 Any notice required by this Agreement to be given to the other shall be in writing and shall be served personally, by fax or by sending it by registered post or recorded delivery to the appropriate address, fax number or email address notified to each other as set out in the Agreement.
- 4.2 Any notice served personally will be deemed to have been served on the day of delivery; any notice sent by post will be deemed to have been served 48 hours after it was posted; any notice sent by fax will be deemed to have been served 24 hours after it was despatched and any notice sent by email before 5 p.m. will be deemed to have been served on the day of despatch and otherwise on the following day save where the deemed date of service falls on a day other than a Business Day in which case the date of service will be the following Business Day.

### **5. ENTIRE AGREEMENT**

- 5.1 The Agreement constitutes the entire agreement between the Parties relating to the subject matter of the Agreement. The Agreement supersedes all prior negotiations, representations and undertakings, whether written or oral, except that this clause shall not exclude liability in respect of any fraudulent misrepresentation.

### **6 CONTRACT PERIOD**

- 6.1 The Agreement shall commence on the Commencement Date and shall continue unless and until this agreement is terminated by either party giving to the other not less than 6 weeks' prior written notice or as otherwise provided in this Agreement.

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## 7. OVERVIEW OF SERVICES

7.1 The Service Provider will manage the Services at the School as follows:

Run ..... per week from Date, as directed by the Head teacher. The club will run from **Club Timings on** .....

7.2 The major features of the Services include:

- a) An activity programme of a club that offers high quality activities for children from Reception to Year 6;
- b) A programme that offers a safe, well equipped and well supervised environment that is responsive to the needs of the different age groups served;
- c) A programme delivered by qualified and experienced staff that coordinates appropriately with the School ethos and values;
- d) A shared planning process including an exchange of ideas and good practice between the Service Provider and the School to ensure continuity of provision for the children.

## 8. RESPONSIBILITIES

8.1 Within this Agreement both Parties have areas of responsibility to ensure the successful delivery of the Services. These are as follows:

### 8.1.1 **The School is responsible for:**

- a) Ensuring the Service Provider has a suitable area to store equipment (subject to availability)
- b) Providing appropriate Premises to host the Service, ensuring that it is open and ready for use at the beginning of the Session;
- c) Publicising the activity among pupils and parents and providing opportunities for the Service Provider to promote the service within the School-wide events;
- d) Providing information and access to all appropriate whole-School procedures and policies and notifying of any changes or developments;
- e) Providing a representative from the School to sit on and participate as a member of the Service Provider's management committee to ensure that both Parties work together towards a common goal;
- f) Reporting to parents and other stakeholders about the activities to ensure that the work of the Service Provider is recognised and acknowledged.

# Stanburn Primary School

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## 8.1.2 **The Service Provider is responsible for:**

- a) Setting up, implementing and delivering the Service;
- b) Operating a high quality club for children between ..... ;
- c) Ensuring that the Service is run by a suitably qualified staff;
- d) Managing the recruitment of the Service Provider's staff and all elements of staffing including employment contracts, salaries, DBS, vetting and other relevant checks, payroll and taxes. The only exception to this shall be that a representative of the School shall be included in the selection process when recruiting managerial and senior staff;
- e) Delivering and organising the play activities as defined in Clause 7;
- f) Promoting the Service including producing all promotional materials;
- g) Managing all day to day administration including record keeping, the collection of fees, registration and bookings;
- h) The costs and expenses related to and incurred in connection with the operation of the programme at its own expense, including materials, staff salaries, staff equipment, appliances and supplies required for the provision of the Services to the School's required standard;
- i) Monitoring and ensuring the Service's compliance with Ofsted and government regulations. Currently there are no requirements for Sports Clubs to be registered with Ofsted, if this requirement should change the Service provide will then comply with Ofsted regulations;
- j) Providing regular evaluation and monitoring information to the governing body and external partners including conducting an annual survey of parent satisfaction;
- k) Participating at School events and meetings as agreed with the governing body;
- l) Providing necessary insurance cover at its own expense for the staff, parents, and the children using the Service;
- m) Providing a range of equipment, furniture and resources at its own expense that will provide a range of opportunities for play, recreation and relaxation;

## 9. **PERFORMANCE OF SERVICES**

- 9.1 Under this Agreement, the Service Provider will run a punctual and reliable service.
- 9.2 The School and the Service Provider will co-operate with each other in good faith and will take all reasonable action as is necessary for the efficient transmission of information and instructions and to enable the School to derive the full benefit of the Agreement. At all times in the performance of the Services, the Service Provider will co-operate fully with any other contractors appointed by the School in connection with other services on the School's Premises.
- 9.3 If at any time the Service Provider becomes aware of any act or omission or any proposed act or omission by the School or by any member, official, or employee of the School which prevents or hinders or may prevent or hinder the Service Provider from providing the Services in accordance with the Agreement then the Service Provider shall immediately inform the Authorised Officer.

# Stanburn Primary School

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- 9.4 The School may, where necessary, require the Service Provider to set up and maintain appropriate policies, rules, procedures and quality standards in relation to the employment of its own staff whilst carrying out their duties in relation to this Agreement. This shall include but not limited to, disciplinary and grievance procedures.
- 9.5 The Service Provider will be responsible for providing and maintaining the Services to the School's required standard at all times and will ensure continuity of supply (at no extra cost to the School) in accordance with this Agreement. The Service Provider must, at all times, have in place contingency plans and arrangements which have the prior approval of the School to ensure continuity of Service.
- 9.6 In the event of the Service Provider being unable to maintain the Services to the School's required standard, the Service Provider shall without prejudice to the remedies of the School permit the Authorised Officer and his/her staff, to have access to and unrestricted use of such machinery, equipment and materials which being the property of the Service Provider during industrial action, or any other such occurrence, without additional charge.
- 9.7 The Service Provider shall:
- i) observe, and ensure that all its employees, servants or agents observe, all health and safety rules and regulations and any other security requirements that apply at the School's premises. The School reserves the right to refuse the Service Provider, its employees, servants or agents access to the School's premises which will only be given to the extent necessary for the performance of the Services;
  - ii) notify the School as soon as it becomes aware of any health and safety hazards or issues which arise in relation to the Services; and
  - iii) prior to the Commencement Date, obtain and at all times maintain all necessary licences and consents and comply with all relevant legislation in relation to the Services.

## **10. STAFFING**

- 10.1 The Service Provider shall be entirely responsible for the employment and conditions of service of its staff employed to carry out the Services under this Agreement.
- 10.2 The Service Provider shall ensure that where appropriate any member of its staff not adhering to its employment policies and procedures shall be subject to disciplinary action.
- 10.3 The Service Provider will operate a staffing ratio as outlined in the Ofsted national standards.
- 10.4 The Service Provider shall take all reasonable precautions (including requiring the disclosure of convictions in accordance with the provisions of the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975) to avoid any person convicted of a criminal offence involving an offence



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against the person or an offence involving sexual behaviour being employed by it or any of its subcontractors. The Service Provider shall ensure that staff involved in the delivery of the Services and those of any subcontractor involved in the delivery of this Agreement shall undergo an appropriate enhanced vetting procedure and are suitable to be involved in the provision of the Services.

- 10.5 The Service Provider will ensure all staff employed to work in the clubs will be suitably qualified and experienced. In addition, the Service Provider will ensure its staff have undergone an enhanced Disclosure and Barring Service ("DBS") check within the last three (3) years at its own expense and are therefore deemed suitable by Ofsted and DFES to work with children.
- 10.6 If there are issues arising from the enhanced DBS check, and the Service Provider still intends to employ the individual, the Service Provider will complete a risk assessment and will take full responsibility for the employment of this member of staff. The Service Provider shall provide the School with a copy of the risk assessment as soon as practicably possible and seek the School's approval prior to permitting any such individual(s) on to School Premises.
- 10.7 No adult without DBS clearance can work at the club. Please note this does not apply to those adults who are not in unsupervised contact with the children (i.e. admin staff, volunteers and cleaners). All staff must have undergone an enhanced DBS check within the first two months of employment.
- 10.8 The Service Provider shall ensure that no individuals are knowingly employed whose criminal convictions will have a direct bearing on their ability to carry out their functions effectively and that staff involved in the delivery of the Services and those of any subcontractor involved in the delivery of this Agreement are suitable to be involved in the provision of the Services as defined under this Agreement. The Service Provider shall review the employment of any staff that has brought the Services into disrepute.
- 10.9 No staff will be left alone with a child until all checks (such as those mentioned in this clause 10) have been completed satisfactorily in accordance with current guidance issued by the DCSF and as amended from time to time.
- 10.10 The Service Provider shall ensure that written records pertaining to the recruitment process are kept throughout the Contract Period(s) for its entire staff and that of its subcontractors and that the School are involved in the recruitment panel of management/senior personnel.
- 10.11 The Service Provider shall have an ongoing training programme that ensures its staff are properly trained and qualified to carry out its Services.
- 10.12 The Service Provider shall maintain up to date records on staff such as monitoring, supervision, disciplinary, training and complaints monitoring of incidents/accidents.



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## 11. ACTIVITIES

- 11.1 The Service Provider will be responsible for providing all the activities as set out in Clause 7 and will ensure that all activities to be provided must be appropriately planned and delivered, and a programme of activities provided and published well in advance to parents.
- 11.2 Suitable and sufficient risk assessments must be undertaken for each activity and appropriate resources must be provided. The Service Provider will ask the School if they need to use any of the School resources. Any damage to the School's resources will be paid for by the Service Provider.
- 11.3 The Service Provider will ensure all children are adequately supervised during the Session, ensuring that they attend promptly, remain for the duration and leave the building promptly at the end.

## 12. PURPOSE OF LET

- 12.1 The Service Provider may use the premises during the agreed period for the purpose of the provision of the Services as set out in Clause 7.
- 12.2 The Service Provider will use the School's Premises only for the activities related to the delivery and planning of the Service (including. training, staff meetings). The Service Provider or School must not sub-let the agreed areas to any other organisations or individuals without consulting the other Party.

## 13. PERIOD OF LETTING

- 13.1 This Agreement will start on the Commencement Date and remain in effect unless and until this Agreement is terminated by either party giving to the other not less than 12 weeks' prior written notice or unless terminated earlier as outlined in clause 51 (Termination).
- 13.2 Initially, the Service Provider will provide Services as set out in Clause 7. Depending upon demand the Service Provider and the School may agree on the introduction of additional services. The Service Provider will use the School's Premises (times to be agreed between the Parties), during term time to allow the staff sufficient time to set up and clean up at the end of each session and host staffing/planning meetings.
- 13.3 The Service Provider acknowledges that the School may need to close the agreed areas for planned maintenance, repair, or for other reasons related to health and safety. The School agrees to provide the Service Provider with a minimum of one (1) months' notice of any planned closure of the space. If the Service Provider wishes to continue operating in the School building during

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these times, the School will take all reasonable steps to identify alternative space within the School's Premises for the Service to operate in.

## **14. AREAS TO BE USED**

14.1 The areas that can be used for the provision of Services at the Service Provider are as follows:

- a) KS2 Hall
- b) Toilets for girls, boys and staff

## **15. FEES AND EXPENSES**

15.1 Upon production of a valid invoice correct in all material particulars from the Service Provider. The School will use its usual payment terms. The School is entitled to deduct from any sums payable to the Service provider any sums that they may owe the School at any time.

15.2 The Service Provider shall bear the cost of their own expenses.

15.3 Upon production of a valid invoice correct in all material particulars from the School two (2) weeks before 1<sup>st</sup> of every month (known as the "Payment Dates"), the Service Provider shall pay the required Booking Charges to the School. Should these dates fall within a scheduled school holiday, the Service Provider shall ensure that the payment is made to the School on the last day the School is open to pupils prior to that holiday.

15.4 The following Booking Charges will apply:

15.4.1 For the Designated area, .....for one 60 mins class (inclusive of VAT) plus 7% public liability insurance if the Service Provider does not hold public liability insurance, plus £250 Security Deposit (refundable). This is subject to change if the numbers significantly increase.

15.5 Payment of any undisputed invoices will be made by the Service Provider no later than twenty-one (21) days from the date of the invoice submitted by the School.

15.6 Any overdue sums will bear interest from the due date until payment is made at 2% per annum over the National Westminster Bank plc base rate from time to time.

15.7 The School will be entitled but not obliged at any time or times without notice to the Service Provider to set off any liability of the School to the Service Provider against any liability of the Service Provider to the School (howsoever arising and whether any such liability is present or future, liquidated or unliquidated). The School's rights under this clause will be without prejudice to any other rights or remedies available to the School under this Agreement or otherwise.

# Stanburn Primary School

Abercorn Road, Stanmore  
Middlesex, HA7 2PJ



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- 15.8 On completion of the Services or on termination of the Agreement, the School shall promptly draw up a final invoice which shall cover all outstanding amounts incurred for the Service no later than thirty (30) days after the completion or termination of the Agreement. If the Service Provider does not agree with the sum payable then it shall inform the School who shall refer the calculation to an independent accountant, to be agreed between the Parties the identity of which will be agreed between the Parties. If the Parties cannot agree upon the identity of an independent accountant, the School will make the final decision.
- 15.9 The Service Provider shall maintain full and accurate accounts. Such accounts shall be provided to the School as required as agreed between the Parties and detailed in this Agreement and must be retained for at least six (6) years after the end of the financial year in which the last payment of Rent was made under this Agreement.

## 16. RECORD KEEPING

- 16.1 A copy of the Service Provider's Ofsted registration certificate and insurance documents will be provided to the Authorised Officer (when relevant).
- 16.2 In order to assist the School in its record keeping and monitoring requirements including auditing requirements, the Service Provider shall keep and maintain for six (6) years (or such longer time period required in accordance with any specific legislation) after the Agreement has been completed.
- 16.3 The Service Provider will at its own cost, provide any information that may be required by the School to comply with the School's procedures for monitoring the Agreement.
- 16.4 All records related to the Service will be maintained, in accordance with the Data Protection Act 1998, by the Service Provider. These records will be made available upon the request of the School within 48 hours. Information to be recorded may include details about children attending the provision (e.g. attendance, medical, emergency contact information and payment information), as well as evidence of accidents/major incidents, health and safety/regulator inspections, licensing changes, risk assessments, insurance details, accreditations, and feedback from parents.
- 16.5 The Service Provider shall be liable for and shall indemnify the School against any expense liability loss claim or proceedings arising as a result of or in connection with any breach by him of this clause 16.

## 17. ADMISSIONS

- 17.1 The Service Provider and the School may agree on admission and pricing arrangements.

# Stanburn Primary School

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## **18. MAXIMUM NUMBER OF CHILDREN**

- 18.1 The total number of children attending the activities as set out in Clause 7 at any one time shall be at the discretion of the Service Provider and dependent upon space. However, the staff to child ratios set by Ofsted will be maintained at all times.

## **19. NOTIFICATION OF PLACEMENTS**

- 19.1 The School shall notify the Service Provider in advance of any information about the children that is deemed necessary. The Service Provider will provide at the beginning of each term a list of children registered at the Sports clubs as set out in Clause 7 and updated when necessary.

## **20. SPECIAL NEEDS CHILDCARE**

- 20.1 Where possible, children with special needs will be accommodated. Parents are ultimately responsible for providing the Service Provider with written documentation, upon registration, that their child(ren) meets the definition of 'special needs or have medical conditions'. If there are any children with medical/special needs, the Service Provider and the parent/guardian will liaise directly and an assessment will be carried out by the Service Provider and where necessary with the assistance of any other organisations. Advice and information about specific needs may be sought from the School to ensure the best possible care is given to the child and family.

## **21. INSPECTIONS**

- 21.1 Safety inspections will be carried out at least annually and health/environment inspections bi-annually.
- 21.2 Ofsted inspections will be carried out as required. All inspections will be the responsibility of the Service Provider. Any actions/feedback from any educational enforcement agency will be forwarded to the School, where necessary. Where critical, the School will work with the Service Provider to implement any actions identified before and after an inspection.
- 21.3 The Service Provider will:
- a) Make available to parents on request a copy of the report of the latest inspection by Ofsted and any actions for improvement arising out of the inspection provided by a regulatory body;
  - b) Publicise the report publicly for a period of at least one (1) month starting from the date it was received;
  - c) Display any action plans for improvement publicly for a period of at least one (1) month after preparation;

# Stanburn Primary School

Abercorn Road, Stanmore  
Middlesex, HA7 2PJ



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- d) Make all complaints received regarding the Service available to Ofsted, the School and any other persons upon request;
- e) Any actions and feedback from enforcement agencies will be provided to the School, where necessary.

## 22. PREMISES - DAY TO DAY MANAGEMENT

- 22.1 The Parties shall undertake to carry out a review of the procedures for day to day management of the facilities, every term on a date to be agreed between the Parties, unless the Parties mutually agree that such a review is not necessary at that time.

## 23. MAINTENANCE

- 23.1 The School will provide all utilities and perform all maintenance and custodial service necessary to keep the School building in good repair. The School shall make repairs, in a timely manner and at its own expense, of defects posing a risk to the health and safety of children and staff members while undertaking PPA cover, lunchtime clubs and after school clubs.
- 23.2 The School is responsible for the maintenance of fabric, internal plumbing and electrical systems (that is systems within the walls, floors, etc.) and permanent fittings (i.e. sinks, toilets, etc.).
- 23.3 The School is responsible for the maintenance of the landscape adjoining the School, kitchen, playground equipment, fences or other items which will remain the responsibility of the School.
- 23.3 The Parties hereto shall not less than once a year jointly review the facility in terms of maintenance repair and decoration and shall (where practicable) agree works to be carried out.

## 24. CLEANING

- 24.1 The Service Provider will ensure that the Premises are restored to a condition consistent with that of the School following the departure of all the children and staff at the end of each session. **The Service Provider will ensure that toilet areas are checked and left in a satisfactory manner at the end of each Session.**

## 25. CARETAKING ARRANGEMENTS

- 25.1 The School is responsible for the maintenance of the school landscape adjoining the School, outdoor play structures and equipment, maintenance of the gardens and grounds within the School grounds. During the operation of the Services continuous caretaking presence is not needed. During the absence of the Site Manager, if necessary, the School will need to inform the Service Provider about any daily duties the Site Manager usually undertakes to ensure they are still carried out or provide suitable cover.

# Stanburn Primary School

Abercorn Road, Stanmore  
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## **26. OPENING AND CLOSING OF PREMISES**

26.1 The School is responsible for the opening and closing of the Premises.

## **27. RIGHTS OF ACCESS**

27.1 Staff employed by the Service Provider shall only have access to the School building unsupervised. All other visitors shall report to the School's reception office on arrival and follow the School's procedure for visitors on the School site.

## **28 HEALTH AND SAFETY**

28.1 The Service Provider shall use its reasonable endeavours at all times to comply and shall ensure that its staff comply with the relevant requirements of health and safety law including, but not limited to the Health and Safety at Work etc Act 1974 and the Management of Health and Safety at Work Regulations 1999 and all its regulations, orders, guidance notes, approved codes of practice and any other circulars, supplements, guidance or legislation made or issued pursuant thereto and with the School's health and safety procedures and policies, copies of which will be provided to the Service Provider by the School to enable the Service Provider to comply with this clause 29.

28.2 The Service Provider must have an adequate health and safety policy in place and a named person who is responsible for it and its renewal.

## **29. RESPONSIBILITIES**

29.1 Under provision contained in the Occupier Liability Act 1957, the School has a duty to ensure that the Premises are kept safe and the Service Provider has a duty to ensure care that visitors, children and staff using its Service will be safe.

29.2 The Service Provider shall be responsible for ensuring:

- a. that the permitted number of persons using the Premises is not exceeded;
- b. facilities and equipment are used in a responsible manner, an orderly way and for the purposes for which they are hired and do not compromise the safety of staff, the children, the Premises and equipment;
- c. all doors giving entrance/exits from the Premises are kept unobstructed and no obstruction is placed or allowed to remain in any corridor giving access to the Premises;

# Stanburn Primary School

Abercorn Road, Stanmore  
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*Believe Achieve Succeed - Learning without limits*

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- d. all proper safety measures are taken for the protection of the staff and children in the care of the Service Provider;
- e. an out of hours emergency evacuation procedure is established and practised regularly;
- f. all staff, children and other relevant stakeholders are familiarised with the fire-alarm positions, the locations of the fire-fighting equipment, and the exit routes and ensuring fire practice is undertaken on a half-termly basis;
- g. a suitable first-aid kit provided with all necessary contents;
- h. that a no smoking and alcohol policy is enforced;
- i. gas cylinders or canisters are not used inside the Premises or on the School grounds or combustible materials placed adjacent to heat sources;
- j. all equipment is used for the purpose for which it was designed and any electrical equipment is PAT tested and complies with the British Standards applicable;
- k. no open fires, candles or unauthorised electrical equipment are used on the Premises.

29.3 Each Party shall at all times during the Agreement have in place and operate lawful health and safety policies related to the use of the facilities with children and shall communicate the same to the other Party herein (together with any amendments properly made). The Service Provider's health and safety policy shall not conflict with the policies of the School.

## **30. FIRE SAFETY**

30.1 The School will ensure that all fire alarms and fire safety systems for the facilities will be maintained in accordance with regulatory requirements. The Service Provider shall ensure that adequate means of escape shall be marked and maintained at all times when the Premises are in use, that adequate instructions on escape routes are posted in each room or area of the facility. The Service Provider is responsible for organising monthly fire drills and for the instruction in the use of fire equipment for its employees and users. Site drills will be conducted on Friday day of each week.

## **31. RISK ASSESSMENT**

31.1 The Parties shall record and not less than every six (6) months review risk assessments of any significant risk related to equipment, Premises, activities, and procedures undertaken at the Premises (as required under regulation 3 of the Management of Health & Safety at Work Regulations 1992 or any succeeding legislation thereto) and shall communicate such risk assessments with each other (as required under regulation 9 of the Management of Health & Safety at Work Regulations 1992) and shall act upon such risk assessment and apply appropriate procedures during the term of this Agreement. A copy of any risk assessments carried out for the



# Stanburn Primary School

Abercorn Road, Stanmore  
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relevant areas, by either the School or Service Provider, will be provided to each party within seven working days of completion.

## **32. DAMAGE TO PROPERTY**

- 32.1 The Service Provider undertakes either to directly replace or to reimburse the School for the cost of any damage to the property of the School caused by the Service Provider, their staff, children or visitors as soon as reasonably possible.
- 32.2 Both Parties shall report all faults or damage discovered of equipment or to the School's Facilities Department. In the event that any damage or faults could cause a danger to other users the damaged or faulty equipment or part of the facilities must be secured out of use (by locking the Premises, isolation, locking or chaining the equipment or whatever steps are required to physically prevent its use) by the Party discovering the fault or damage at the earliest possible opportunity marked with a suitable sign to inform other potential users of the hazard.

## **33. SECURITY**

- 33.1 Security procedures will be regularly reviewed to ensure the systems in place are effective.

## **34. INSURANCE**

- 34.1 The Service Provider shall maintain appropriate public liability, employer's liability and equipment insurance to cover any liability arising under the Agreement, at its own expense, and include coverage necessary for the operation and delivery of the Services within the School. The Service Provider will be responsible for insuring its personal property at the School.
- 34.2 The Service Provider shall prior to the Commencement Date and on each anniversary of the Commencement Date and/or upon request provide evidence that all premiums relating to such insurances have been paid.
- 34.3 If the Service Provider does not maintain the necessary insurances under the Agreement the School may insure against any risk in respect of the default and may charge the Service Provider the cost of such insurance together with a reasonable administration charge.

## **35. INDEMNITY AND LIABILITY**

- 35.1 Neither Party seeks to exclude or limit its liability for:
  - a) death or personal injury caused by its negligence (but will not be liable for death or personal injury caused by the other party's negligence)

# Stanburn Primary School

Abercorn Road, Stanmore  
Middlesex, HA7 2PJ



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b) fraudulent misrepresentation; or

c) any other matter in respect of which, as a matter of Law, liability cannot be excluded or limited.

## **36. HANDOVER PROCEDURE**

36.1 Each Party agrees to inspect the areas to be used, fittings and equipment at the commencement and end of each term and a log of such inspection shall be kept by the Parties. The log should include a checklist of the condition of the Premises, fittings and equipment together with a note of any matters found to be defective and a record of any action taken or agreed.

## **37. EQUIPMENT**

37.1 The School will provide, as far as possible, arrange appropriate storage facilities for the Service Provider's equipment, which must be put away and secured at the end of each day by the Service Provider staff.

37.2 The School will not be liable for any loss of or damage to the Service Provider equipment, subject to any such loss or damage not arising as a direct consequence of the School's negligence.

37.3 The Service Provider will not be liable for any loss of or damage to the School's equipment, subject to any such loss or damage not arising as a direct consequence of the Service Provider's negligence.

37.4 Both Parties agree that, in the event of damage to any of the facilities or equipment, either Parties' property that is damaged, stolen or missing will be repaired or replaced to the satisfaction of the injured Party. Any repairs will be arranged by the Party causing the damage unless agreed by both Parties. Invoices and proof of payment must be provided to the Party causing the damage.

## **38. OTHER ON-SITE SERVICES**

38.1 Any other on-site external service providers providing after-school activities will be the responsibility of the School.

## **39. CHILD PROTECTION**

39.1 The Service Provider specifically undertakes to ensure suitable policies and procedures are in place in regard to safeguarding children and child protection.

# Stanburn Primary School

Abercorn Road, Stanmore  
Middlesex, HA7 2PJ



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*Headteacher: Ms Elaine D'Souza*

39.2 In any situation where a Service Provider becomes aware of an issue that concerns a pupil's safety or well-being, particularly in relation to child protection issues, the partner organisation is required to inform the School immediately.

39.3 If the Service Provider becomes aware of significant issues concerning the child's experience at School or home, the Service Provider will follow their own organisation's procedures and will notify the School of any information reported to the LEA or external organisations.

## **40. CHILDREN**

40.1 The Service Provider will ensure that children's behaviour is within expectations as outlined in the School's own policies. Where, children fail to follow the rules and the expectations as expected during School, the Service Provider will:

- a) Have an informal discussion with parent/guardian;
- b) Arrange a formal meeting with the parent/guardian if poor behaviour continues and informally notify the Head teacher;
- c) Discuss with both the parent (if necessary the Head teacher) the possible exclusion of the child(ren) from the after school activities.

40.2 The Service Provider will be responsible for children who are not collected on time and administer a penalty on the parent/guardian for late collection.

40.3 During the times the children are in attendance at the after school clubs they are the sole responsibility of the Service Provider.

40.4 The School will notify the Service Provider if any of the children who attend the after school club have left the School throughout the day owing to illness, family emergency, etc.

## **41. CONFIDENTIALITY**

41.1 The Service Provider will adhere to the School's confidentiality procedure. If a child reveals any information relating to their own safety or that of any other young person, the Head teacher will be informed promptly.

41.2 Any documents provided by the School and information which the Service Provider may acquire as a result of the Agreement shall to the extent that they are not in the public domain or required to be disclosed by operation of Law remain confidential to the School and shall not be disclosed disposed of or used for any purpose without prior written consent from the School.

41.3 All confidential information provided by the School to the Service Provider shall be returned to the School at the end of the Agreement.

# Stanburn Primary School

Abercorn Road, Stanmore  
Middlesex, HA7 2PJ



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Headteacher: Ms Elaine D'Souza

## **42. FREEDOM OF INFORMATION**

- 42.1 The School is subject to the Freedom of Information Act 2000 ("FOIA") and the Environmental Information Regulations 2004 ("EIR"). As part of the School's duties under the FOIA and EIR, it may be required to disclose information forming part of the Agreement to anyone who makes a reasonable request. The School has absolute discretion to apply or not to apply any exemptions or exceptions under both the FOIA and EIR.
- 42.2 The Service Provider shall assist and cooperate with the School (at the Service Provider's expense) to enable the School to comply with the information disclosure requirements under both the FOIA and EIR and in so doing will comply with any timescale notified to it by the School.

## **43. DATA PROTECTION ACT 1998 (the "DPA")**

- 43.1 The Service Provider shall (and shall procure that any of its employees involved in the provision of the Services) comply with any requirements under the DPA.

## **44. COMPLAINTS**

- 44.1 It is expected that the School will highlight any minor concerns to the Service Provider so that this can be resolved quickly.
- 44.2 Complaints regarding the Service Provider will be addressed through the Service Provider's complaints process, which includes notification to local government and Ofsted, exploration of the concern, and corrective action within the specific time frames. A copy of this complaints process is available from the School upon request.

## **45. PUBLICITY**

- 45.1 The School will ensure that all materials provided by the Service Provider are publicised and distributed effectively and quickly within the School. Where possible, the Service Provider will give advance notice at least two (2) weeks before the event.
- 45.2 The School will allow the Service Provider to communicate the Services via any internal School communications including:
- Newsletters distributed to all children at the School
  - A notice board for parents in the School entrance
  - Open days for parents to attend, observe and join in
  - Ad hoc informal chats for parents

# Stanburn Primary School

Abercorn Road, Stanmore  
Middlesex, HA7 2PJ



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*Headteacher: Ms Elaine D'Souza*

- 45.3 The Service Provider will produce a Parent Information Leaflet and Booking Pack aimed directly at new parents and includes information about the way the after school club is organised and what children and parents can expect.
- 45.4 The School will ensure that the Service Provider is given opportunities to promote the Service at any open days, parent evenings, School fairs, PTA meetings and within the School's brochure and newsletter.
- 45.5 The Authorised Officer will check any publicity materials that the Service Provider wishes to produce to gain publicity about the Service to be used both within and outside the School.
- 45.6 Without prejudice to the School's obligations under the FOIA and EIR, neither Party shall make any press announcements or publicise the Agreement or any part thereof in any way, except with the written consent of the other Party (such consent not to be unreasonably withheld or delayed).
- 45.7 Both Parties shall take all reasonable steps to ensure the observance of the provisions of this clause by all their staff, sub-contractors, agents, professional advisors and consultants.

## **46. COMMUNICATION AND PARENTAL INVOLVEMENT**

- 46.1 Parents will be consulted each term about their views and suggestions to improve the Service offered by the Service Provider. These consultations will be organised by the Service Provider and a copy of the results and an outline of actions to be taken will be provided to both parents and the School.

## **47. MANAGEMENT OF AGREEMENT**

- 47.1 Both Parties will jointly supervise this Agreement. Both Parties will agree to all changes to the Agreement in writing before any amendments to the document are made.

## **48. PROTOCOLS**

- 48.1 The Service Provider will be contacted and consulted by the School, before any maintenance commences in the buildings, to ensure the project is well planned and coordinated to:
- Reduce the potential for conflict to arise;
  - Ensure the contractors are aware of the potential danger, disruption or interruption of their work before commencement;
  - Ensure the safety and security of the Service Provider's staff and children in attendance
- 48.2 The Service Provider will be included in any discussions relating to change and improvements to the facilities to enable all implications of any proposed changes to be considered prior to any decision making.

# Stanburn Primary School

Abercorn Road, Stanmore  
Middlesex, HA7 2PJ



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Headteacher: Ms Elaine D'Souza

## 49. **LIAISON**

49.1 In terms of liaison arrangements between both Parties for the provision of after school services this will be as follows:

### **a) From the School:**

For broad planning and other issues: Head teacher and Governors

Day to day operational issues – Authorised Officer and Head-teacher (or otherwise appointed person)

### **b) From the Service Provider:**

For broad planning and other issues: Club Director

Day to day operational issues – Director or Club Manager

Each Party to this Agreement will notify the other in writing of any changes to the personnel of the authorised representatives.

## 50. **TERMINATION:**

50.1 Should the School be concerned with the standard of provision, notification of reasons should be submitted in writing to the Service Provider; if action is not taken to resolve the situation within thirty (30) days of the Service Provider receiving the notification the School has the right to terminate this Agreement.

50.2 In the event of the Service Provider giving six weeks' notice of its intention to terminate this Agreement, the School has the right to immediately advertise the provision to another Service Provider.

50.3 In the case of the Service becoming unsustainable, the notice period can be renegotiated depending on the severity of the financial situation.

50.4 All notices regarding either breach or termination of this Agreement shall be given in writing by recorded post, to the Authorised Officer and Service Provider. Notices shall be deemed received five (5) working days after being sent by recorded post.

50.5 The School may terminate this Agreement without notice if the Service Provider:

(a) Commits a breach of its obligations under the Agreement;

# Stanburn Primary School

Abercorn Road, Stanmore  
Middlesex, HA7 2PJ



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Headteacher: Ms Elaine D'Souza

- (b) Breaches any condition of its registration under the Children Act 1989 or fails to comply with the terms of the Children Act 1989 whether or not its registration is terminated as a result;
  - (c) Persistently fails, after reasonable notice has been given, to provide the Services in accordance with this Agreement;
  - (d) Does not have any registration, license or other permission to operate which is required by this Agreement, by Ofsted (when applicable) or by any law or regulation;
  - (e) Has a receiver appointed or goes into liquidation (other than for reconstruction or amalgamation), or passes a resolution for voluntary winding up or becomes bankrupt or apparently insolvent or signs a trust deed for creditors;
  - (f) The Service Provider is convicted of a criminal offence;
  - (g) The Service Provider ceases or threatens to cease to carry on its business;
  - (h) The Service Provider has a change in control which the School believes will have a substantial impact on the performance of the Agreement;
  - (i) There is a risk or a genuine belief that reputational damage to the School will occur as a result of the Agreement continuing.
- 50.6 The School shall have the right to terminate the Agreement in the event that any undisputed amounts of Rent or other monies remain unpaid by the Service Provider for more than sixty (days) after the due date for payment.
51. **DISPUTE RESOLUTION PROCEDURE**
- 51.1 If a dispute arises between the School and the Service Provider in connection with the Agreement, the Parties shall each use reasonable endeavours to resolve such dispute by means of prompt discussion at an appropriate managerial level.
- 51.2 If a dispute is not resolved within fourteen (14) days of referral under clause 52.1 then either Party may refer it to the chief officer or appropriate nominated officer of each Party for resolution who shall meet for discussion within fourteen (14) days or longer period as the Parties may agree.
- 51.3 Provided that both Parties consent, a dispute not resolved in accordance with clauses 52.1 and 52.2 above, shall next be referred at the request of either Party to a mediator appointed by agreement between the Parties within fourteen (14) days of one Party requesting mediation with the costs of mediation determined by the mediator.
- 51.4 Nothing in this clause shall preclude either Party from applying at any time to the English courts for such interim or conservatory measures as may be considered appropriate.



# Stanburn Primary School

Abercorn Road, Stanmore  
Middlesex, HA7 2PJ



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Headteacher: Ms Elaine D'Souza

## 52. **INTELLECTUAL PROPERTY**

- 52.1 All Intellectual Property Rights in any specifications, instructions, plans, data, drawings, databases, patents, patterns, models, designs or other material:
- (a) provided to the Service Provider by the School shall remain the property of the School;
  - (b) prepared by or for the Service Provider specifically for the use, or intended use, in relation to the performance of the Agreement shall belong to the School.
- 52.2 The Service Provider shall obtain necessary approval before using any material, in relation to the performance of the Agreement which is or may be subject to any third party Intellectual Property Rights. The Service Provider shall procure that the owner of the Intellectual Property Rights grant to the School a non-exclusive licence, or if the Service Provider is itself a licensee of those rights, the Service Provider shall grant to the School an authorised sub-licence, to use, reproduce, and maintain the Intellectual Property Rights. Such licence or sub-licence shall be non-exclusive, perpetual and irrevocable, shall include the right to sub-license, transfer, novate or assign to any replacement Service Provider or to any other third party providing Services to the School, and shall be granted at no cost to the School.
- 52.3 It is a condition of the Agreement that the Services will not infringe any Intellectual Property Rights of any third party and the Service Provider shall during and after the Contract Period on written demand indemnify and keep indemnified without limitation the School against all liabilities which the School may suffer or incur as a result of or in connection with any breach of this clause, except where any such claim relates to the act or omission of the School.
- 52.4 At the termination of the Agreement the Service Provider shall at the request of the School immediately return to the School all materials, work or records held in relation to the Services, including any back-up media.

## 53. **LAW AND CHANGE IN LAW**

- 53.1 The Service Provider shall comply at all times with the Law in its performance of the Agreement.
- 53.2 On the occurrence of a Change in Law which has a direct effect upon the Rent and the provision of regulated activity to children on school premises, the Parties shall meet within fourteen (14) days of the Service Provider notifying the School of the Change in the Law to consult and seek to agree the effect of the Change in Law and any change in the Rent.

## 54. **VARIATION**

- 54.1 No variation or modification to the Agreement is valid unless it is in writing and signed by the School and the Service Provider.

# Stanburn Primary School

Abercorn Road, Stanmore  
Middlesex, HA7 2PJ



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Headteacher: Ms Elaine D'Souza

## 55. **THIRD PARTY RIGHTS**

- 55.1 This Agreement is enforceable by the original Parties to it, by their successors in title and permitted assignees. Any rights of any person to enforce the terms of this Agreement Pursuant to The Contracts (Rights of Third Parties) Act 1999 are excluded.

## 56. **NO WAIVER**

- 56.1 Failure by either Party at any time to enforce any one or more of the provisions of this Agreement or to require performance by the other Party of any of the provisions shall not constitute or be construed as a waiver of the provision or of the right at any time subsequently to enforce all terms and conditions of this Agreement nor affect the validity of the Agreement or any part of it or the right of the Parties to enforce any provision in accordance with its terms.
- 56.2 No waiver of any of the provisions of this Agreement shall be effective unless it is expressed to be a waiver in writing.

## 57. **SEVERANCE**

- 57.1 If any provision of the Agreement shall become or shall be declared by any court of competent jurisdiction to be invalid or unenforceable in any way, such invalidity shall not impair or affect any other provision all of which shall remain in full force and effect.

## 58. **ASSIGNMENT, SUB-CONTRACTING AND RESPONSIBILITY**

- 58.1 Subject to any express provision of this Agreement, the Service Provider shall not without the prior written consent of the School, assign all or any benefit, right or interest under this Agreement or sub-contract the provision of the Services.

## 59. **FORCE MAJEURE**

- 59.1 Neither Party shall be liable for failure to perform its obligations under the Agreement if such failure results from Force Majeure.
- 59.2 If the School's premises are affected by circumstance of Force Majeure, the School shall be entitled to, totally or partially, suspend the date or dates for delivery of the Services until the circumstances of the Force Majeure have ceased. The suspension shall not give rise to any claim by the Service Provider against the School nor entitle the Service Provider to terminate the Agreement.
- 59.3 Industrial action by, or illness or shortage of the Service Provider's staff, agents or subcontractors, failure or delay by any of the Service Provider's suppliers to supply goods, components, services or materials shall not be regarded as an event of Force Majeure.

# Stanburn Primary School

Abercorn Road, Stanmore  
Middlesex, HA7 2PJ



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Headteacher: Ms Elaine D'Souza

- 59.4 If the event of Force Majeure continues for more than two (2) months either Party may give written notice to the other to terminate the Agreement immediately or on a set termination date.
- 59.5 If the Agreement is terminated in accordance with clause 61.4 neither Party will have any liability to the other except that any rights and liabilities which accrued prior to termination will continue to exist.
60. **NO AGENCY OR PARTNERSHIP**
- 60.1 Nothing contained in this Agreement, and no action taken by the Parties pursuant to this Agreement, will be deemed to constitute a relationship between the Parties of partnership, joint venture, principal and agent or employer and employee. Neither Party has, nor may it represent that it has, any authority to act or make any commitments on the other Party's behalf.
61. **COSTS AND EXPENSES**
- 61.1 Each of the Parties will pay their own costs and expenses incurred in connection with the negotiation, preparation, execution, completion and implementation of this Agreement.
62. **NON-SOLICITATION AND OFFERS OF EMPLOYMENT**
- 62.1 The Service Provider agrees that it will not, without the prior written consent of the School, whether directly or indirectly, and whether alone or in conjunction with, or on behalf of, any other person and whether as a principal, shareholder, director, employee, agent, consultant, partner or otherwise during the Agreement or for a period of twelve (12) months following termination of this Agreement:
- a) solicit or entice, or endeavour to solicit or entice, away from the School, any person directly related to the Services employed in a senior capacity in a managerial, supervisory, technical, sales or administrative capacity by, or who is or was a consultant to, the School at the date of the termination of this Agreement or at any time during the period of one month immediately preceding the date of termination; or
  - b) attempt, or knowingly assist or procure any other person to do the above.
  - c) in the event of the engagement by the School of a Staff member of the Service Provider either (1) directly or (2) pursuant to being supplied by an employment business or agency, within either a) the duration of the Service Agreement with the Service Provider, or b) six months from the end of the Service Agreement or the individual's employment with the Service Provider – the School shall be liable to pay to the Service provider an engagement fee equivalent to the agreed hourly charge for the relevant individual multiplied by 120.
- No refund of the fee will be paid in the event that the engagement subsequently terminates. VAT is inclusive of any fee due".

# Stanburn Primary School

Abercorn Road, Stanmore  
Middlesex, HA7 2PJ



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Headteacher: Ms Elaine D'Souza

## 63. GOVERNING LAW

63.1 This Agreement shall be governed by the laws of England and shall be subject to the exclusive jurisdiction of the English courts.

**IN WITNESS WHEREOF** the Parties have executed this Agreement the day and year first above written

For and on behalf of the School

For and on behalf of the Service Provider

Name: Ms Elaine D'Souza

Name:

Position: Headteacher

Position: Managing Director

Signature:

Signature:

Date:

Date:

# Stanburn Primary School

Abercorn Road, Stanmore  
Middlesex, HA7 2PJ



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Headteacher: Ms Elaine D'Souza

## Schedule 1 Exit Management Plan

### 1. GENERAL OBLIGATION

On termination of this agreement for any reason, the Service Provider will provide all reasonable assistance to the School to facilitate the orderly transfer of the Services back to the School or to enable another party chosen by the School (in this Schedule, a **New Service Provider**) to take over the provision of all or part of the Services. The remaining provisions of this Schedule will not prejudice or restrict the generality of this obligation.

### 2. PLANS AND PROCEDURES

On signature of this agreement, the Service Provider will produce and maintain plans and procedures demonstrating the manner in which it will fulfil its obligations under this Schedule, which plans and procedures shall be subject to the reasonable approval of the School from time to time.

### 3. CONTINUATION OF THE PROVISION OF SERVICES

The School shall be entitled to require the Service Provider to continue to provide the Services for one school term after termination of this agreement upon the same payment terms if, in the opinion of the School, such continuation is required in order to allow for the orderly transfer of the Services to the School or a New Service Provider.

### 4. DUTY TO DOCUMENT THE SERVICES

- 4.1 The Service Provider shall prepare the Documentation within one month of Cut-Over and shall thereafter ensure that it is kept up to date.
- 4.2 The Service Provider shall promptly and fully answer all reasonable questions about the Services which may be asked by the School for the purpose of adequately understanding the manner in which the Services have been provided or for the purpose of allowing any New Service Provider (or potential New Service Provider) to conduct 'due diligence'.

### 5. ASSETS

- 5.1 Equipment

# Stanburn Primary School

Abercorn Road, Stanmore  
Middlesex, HA7 2PJ



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*Headteacher: Ms Elaine D'Souza*

On ceasing to provide the Services hereunder, the Service Provider shall make available to the School, or deliver as the School shall specify, all the Equipment.

## 5.2 Shared equipment

Where the Services provided to the School are dependent on equipment which is not used exclusively for the provision of the Services to the School (and which is not owned by the School) the Service Provider will ensure the necessary migration of programs, data and other materials from such equipment to similar equipment owned by the School or a New Service Provider. Implementation of the change shall be carried out by the Service Provider in such a way as to cause the minimum possible disruption to the supply of the Services [and the School will pay the Service Provider's reasonable costs of the migration].

## 6. **CONTRACTS, SOFTWARE, AND KNOW-HOW**

- 6.1 Upon the Service Provider ceasing to provide the Services its rights and obligations in respect of the Support Contracts shall cease (but without prejudice to any liability accrued at the date of such cessation) and it will, at the request of the School, do all acts and things necessary so to notify the other parties to the Support Contracts. Where contracts similar to the Support Contracts have been entered into by the Service Provider for the sole purpose of providing the Services to the School, the School may require the Service Provider to use all reasonable endeavours to procure that those contracts are assigned to the School or a New Service Provider.
- 6.2 The Service Provider shall, to the extent that it has not done so prior to termination, fully comply with the provisions of this agreement as to the licensing of Intellectual Property and the delivery of source code and Documentation.
- 6.3 The School shall be entitled to use (and to authorise any New Service Provider to use), free of charge but on a non-exclusive basis, all know-how and other information acquired by the Service Provider in the course of providing the Services or otherwise used by the Service Provider in the provision of the Services, whether or not such know-how or information was produced specifically or used exclusively to provide the Services.

# Stanburn Primary School

Abercorn Road, Stanmore  
Middlesex, HA7 2PJ



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Headteacher: Ms Elaine D'Souza

## 7. PREMISES

All rights of access and occupation granted to the Service Provider in respect of premises owned or occupied by the School will cease when the provision of Services ceases in accordance with this agreement.

## 8. PERSONNEL

- 8.1 The parties acknowledge and agree that where all or part of the Services cease to be provided by the Service Provider for any reason and where all or part of the Services continue to be provided by the School and/or the New Service Provider, there may be a relevant transfer of the Returning Employees to the School and/or the New Service Provider for the purposes of TUPE. If there is such a transfer, the employment of the Returning Employees shall transfer to the School and/or the New Service Provider in accordance with TUPE with effect from the Subsequent Transfer Date.
- 8.2 Save where the parties reasonably believe that there will be no relevant transfer for the purposes of TUPE, the parties shall co-operate in agreeing a list of Returning Employees prior to the Subsequent Transfer Date, and shall co-operate in seeking to ensure the orderly transfer of the Returning Employees to the School and/or the New Service Provider.
- 8.3 The Service Provider shall no later than [six] months prior to the expiry of this agreement (or, if earlier, within [56] days of notice being given of termination of this agreement) to the extent lawfully permitted provide the School with the following details:
- (a) a list of those personnel engaged in the Services (the "Potential Returning Employees);
  - (b) job title, age, length of continuous services, current remuneration, benefits, and notice periods of the Potential Returning Employees;
  - (c) terms and conditions of employment of the Potential Returning Employees, including any particulars that the Service Provider is obliged to give under section 1 of the Employment Rights Act 1996;
  - (d) any current disciplinary or grievance proceedings ongoing in respect of the Potential Returning Employees and any such proceedings in the preceding two years;
  - (e) any claims, current or which the Service Provider has reasonable grounds to believe will be brought by the Potential Returning Employees or their representatives or which have been brought in the preceding two years;



# Stanburn Primary School

Abercorn Road, Stanmore  
Middlesex, HA7 2PJ



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Headteacher: Ms Elaine D'Souza

- (f) all benefit schemes or arrangements (whether contractual or not) applicable in respect of the Potential Returning Employees;
- (g) information on any collective agreements which will have effect in relation to the Potential Returning Employees after the Subsequent Transfer Date pursuant to TUPE.

The Service Provider shall provide updates of the details listed above at regular intervals to be specified by the School.

8.4 The Service Provider shall indemnify the School (both for itself and a New Service Provider) against all costs, claims, liabilities and expenses (including reasonable legal expenses) incurred by the School and/or a New Service Provider in connection with or as a result of:

- (a) any claim or demand by any Returning Employee or a trade union or other body or person representing a Returning Employee (whether in contract, tort, under statute, pursuant to European law or otherwise) arising from any act, fault or omission of the Service Provider on or before the Subsequent Transfer Date;
- (b) any failure by the Service Provider to comply with its obligations under regulations 13 and 14 of TUPE, or any award of compensation under regulation 15 of TUPE, save where such failure arises from the failure of the School and/or New Service Provider to comply with its or their duties under regulation 13 of TUPE;
- (c) a claim by any person who transfers or alleges that they have transferred to the School or the New Service Provider but whose name is not included in the list of Returning Employees.

8.5 If TUPE applies to transfer the employment of any person employed by the Service Provider to the School or any New Service Provider then if the School or such New Service Provider shall serve a notice terminating the employment of such person within [six months] after the date of such transfer, the Service Provider shall indemnify the School (for itself and a New Service Provider) in respect of any statutory or contractual redundancy payment payable in respect of such person, and any compensation or damages which the School is obliged to pay to such person for unfair and/or wrongful dismissal or as a reasonable settlement of a claim for such compensation or damages.