

**For Publication**

<b>REPORT TO:</b>	<b>Cabinet Member for Children, Young People and Learning</b>
<b>SUBJECT:</b>	<b>Alternative Education – Approved Provider Panel</b>
<b>LEAD OFFICER:</b>	<b>SHELLEY DAVIES – INTERIM DIRECTOR OF EDUCATION</b>
<b>CABINET MEMBER:</b>	<b>Councillor Alisa Flemming - Cabinet Member for Children, Young People and Learning and Councillor Simon Hall - Cabinet Member for Finance and Resources</b>
<b>WARDS:</b>	<b>ALL</b>
<p><b>CORPORATE PRIORITY/POLICY CONTEXT/ AMBITIOUS FOR CROYDON</b></p> <p>The Council's Corporate Plan 2018-2022 includes the following priorities which are relevant to this contract:</p> <p><b>Our children and young people thrive and reach their full potential:</b> Awarding the contract will enable the Local Authority to fulfil their statutory duties under the Children and Families Act 2014 in particular the requirement for Local Authorities to arrange access to suitable education, including alternative provision.</p> <p>Local authorities are legally responsible for arranging suitable education for permanently excluded pupils, and for other pupils who – because of illness or other reasons – would not receive suitable education without such arrangements being made.</p> <p>A disruption or failure in service delivery would have a significant negative impact on the Council's reputation, as well as failing to fulfil the Council's statutory duty.</p>	
<p><b>FINANCIAL IMPACT</b></p> <p>The recommendation is to award a contract to the successful providers for a period of up to 4 (2+1+1) years.</p> <p>There is no guarantee of volume or spend.</p> <p>The anticipated annual spend during this period is:</p> <ul style="list-style-type: none"> <li>• Anticipated volume per year: 230 (based on current annual volume)</li> <li>• Average time spent in alternative education: 1 term</li> <li>• Average annual cost of a provider from this tender: £16,048 (3 terms per year)</li> <li>• Average cost of a placement: £5,349 (annual cost divided by average time)</li> <li>• Anticipated annual spend: <b>£1,230,347</b> (average cost multiplied by volume)</li> </ul> <p>The total anticipated aggregated contract value including all future extensions is expected to be: <b>£4,921,388</b> (annual spend multiplied by 4 years)</p>	

**FORWARD PLAN KEY DECISION REFERENCE NO.: 4520CYPL**

The decision may be implemented from 1300 hours on the 6th working day after the decision is made, unless the decision is referred to the Scrutiny & Overview Committee by the requisite number of Councillors.

The Leader of the Council has delegated to the Cabinet Member for Children's, Young People and Learning the power to make the decisions set out in the recommendations below

**1. RECOMMENDATION**

- 1.1 The Cabinet Member for Children's Young People and Learning in consultation with the Cabinet Member for Finance and Resources is recommended by the Contracts and Commissioning Board to approve, in accordance with Regulation 28c of the Council's Tenders and Contracts Regulations, the award of *the Alternative Education Approved Provider Panel Agreement* to the providers listed in Part B of this report for a period of up to 4 years from 01/09/2020 to 31/08/2024 (2+1+1) for a maximum contract value of **£4,921,388**.

**2. EXECUTIVE SUMMARY**

- 2.1 Local authorities are legally responsible for arranging suitable education for permanently excluded pupils, and for other pupils who – because of illness or other reasons – would not receive suitable education without such arrangements being made.
- 2.2 The establishment of the Alternative Education Provision Approved Provider Panel enables the Local Authority and local schools to commission quality assured alternative education placements (either on a direct award or mini competition basis) in order to meet the needs of these pupils.
- 2.3 The Approved Provider Panel is an agreement with successful providers that will enable the Local Authority and Schools to place orders for services without running lengthy tendering exercises.
- 2.4 Following CCB approval of the procurement strategy in December 2019 (ref CCB1540/19-20) a procurement exercise in line with the Public Contract Regulations Light Touch Regime was conducted.
- 2.5 Providers have now been identified that meet the requirements for appointment to the Approved Provider Panel.
- 2.6 The Approved Provider Panel will be for a duration of 2 years with the option to extend for a further 2x 1 years. 4 years in total: (2 +1+1).

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- 2.7 The Local Authorities anticipated spend under the Approved Provider Panel is based on historic annual volume 230 and the annual average price submitted as part of the tender process, divided by the average duration a young person would typically spend in alternative education per year.
- 2.8 On this basis Croydon's predicted spend over the anticipated 4 year term is expected to be in the region of (and not exceed) **£4,921,388**. Note: This is funded from the Designated Schools Grant (DSG) funding and not the Council General Fund.
- 2.9 This report seeks approval for the award of contracts for admittance to the Approved Provider Panel for Alternative Education Provision for a **2-year term with the option to extend for a further 2 x 1 years (2+1+1 years)**.
- 2.10 The content of this report has been endorsed by the Contracts and Commissioning Board.

CCB ref. number	CCB Approval Date
CCB1593/20-21	27/07/2020

## 3. DETAIL

### Background

- 3.1 Local authorities are legally responsible for arranging suitable education for permanently excluded pupils, and for other pupils who – because of illness or other reasons – would not receive suitable education without such arrangements being made.
- 3.2 Governing bodies of schools are responsible for arranging suitable full-time education from the sixth day of a fixed period exclusion. Schools may also direct pupils off-site for education, to help improve their behaviour or for provision of respite from a mainstream school setting.
- 3.3 Statutory guidance sets out the Government's expectations of local authorities and maintained schools who commission alternative provision and pupil referral units.
- 3.4 The focus for the proposed new Approved provider Panel is for when the Council needs to commission provision from outside our maintained provision. There are occasions when this is necessary, usually as a result of demand pressures or risk.
- 3.5 The proposed Approved provider Panel will provide the Council and schools with a pool of quality assured providers that can be commissioned as and when required.

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- 3.6 Placements may be short term, e.g. a couple of weeks 'respite', or longer term if it is not possible or appropriate for the pupil to be integrated into full time mainstream education.
- 3.7 Due to the nature of the cohort there is no guarantee of volume or spend under the existing arrangements, this is also applicable to the new proposed Approved Provider Panel.
- 3.8 Irrespective of the nature of need and type of placement made, there is an expectation that the following objectives are achieved as a result of implementing the Approved Provider Panel:
- To provide education provision and timely intervention for pupils who are struggling to manage their learning in a mainstream school setting or for whom a mainstream school place is not appropriate and/or available
  - To provide opportunities for pupils to make social, emotional and academic progress within an appropriate environment in preparation for returning to mainstream school or to progress into suitable post-16 further education or training
  - To work collaboratively with mainstream schools to support and sustain pupils with transition to mainstream provision where and when it is appropriate for the pupil
  - To provide opportunities for pupils to have time to develop the skills to sustain and thrive in a mainstream classroom or into post-16 further education/training
  - To support the reduction in the number of permanently excluded children of school age by providing the right support at the right time
  - Provide greater LA oversight of non-mainstream education placements across the borough
  - Consistency in terms of quality assurance, monitoring and price

### **Procurement process**

- 3.9 The service held an event with providers in the summer of 2019 which attracted 15 individual providers. This included current and new providers who expressed an interest.
- 3.10 A questionnaire was issued to schools in relation to their appetite of accessing an approved panel. From those that responded the uptake was positive. Note: Schools accessing the panel will be managed gradually following the successful implementation (providers were made aware of this during the tender process).
- 3.11 Service and operational leads from within the service provided expertise for the development of the service specification, quality questions, and pricing structure for the Approved Provider Panel.

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- 3.12 The Approved Provider Panel is being established under Regulations 74 to 77 of the Public Contracts Regulations (PCR) 2015 'Light Touch Regime' (LTR). The tender process was aligned to the standard Open Procedure.
- 3.13 The opportunity was made available on The London Tenders Portal on 3<sup>rd</sup> February 2020. This was also advertised on Value Croydon. The service made incumbent providers aware via email and they were encouraged to respond accordingly via the portal.
- 3.14 All tender documents were made electronically available on the London Tenders Portal and accessible to interested parties for 30 days. The tender submission deadline was 3<sup>rd</sup> March 2020.
- 3.15 The tender documents provided clear guidance and instructions to the market setting out how the Approved Provider Panel and call-offs will work. The tender documentation also included the option for the Local Authority to refresh the Approved Panel at any time.
- 3.16 72 expressions of interest were registered on the London Tenders Portal from a range of providers but only 16 providers submitted a completed response document by the tender submission deadline.
- 3.17 Post tender clarifications were issued after the tender submission deadline as a result of a number of providers failing to answer all method statements across the lots/sub lots for which they applied. An equal opportunity was given to all providers in order to ensure that they provided the missing information.
- 3.18 The Approved Provider Panel is divided into 3 Lots with sub-lots as follows;

<b>Lot</b>	<b>Service Area</b>	<b>Sub-Lot</b>
<b>Lot 1</b>	Primary Pupils	1a: Primary aged learners with an EHCP who have been excluded or are at risk of permanent exclusion.  1b: Primary aged learners with an EHCP without a school place, for example new to the borough.
<b>Lot 2</b>	Secondary Pupils	2a: Secondary aged learners with an EHCP who have been excluded or are at risk of permanent exclusion.  2b: Secondary aged learners who have been excluded or are at risk of permanent exclusion.  2c: Secondary aged learners with an EHCP without a school place, for example new to the borough.

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<b>Lot 3</b>	Year 11 pupils without a school place	<p>3a: Young people who are new arrivals to the UK in academic year 11 with limited English language.</p> <p>3b: Young people who are new arrivals to the UK in academic year 11 with limited English language and behavioural or emotional needs.</p> <p>3c: Other year 11 young people without a school place, for example new to the borough.</p>
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3.19 There was no deviation from the original RP2 strategy report.

3.20 As a result of the COVID-19 crisis there was an impact on timescales during the moderation and evaluation process.

### Evaluation

3.21 The tender response document was sectioned into three distinct areas; Selection Questionnaire (SQ) Compliance, quality and price.

3.22 An evaluation panel was established with representation from;

- Children & young people (young commissioners)
- Learning access
- Education commissioning
- Special Educational Needs

3.23 Evaluation meetings were held over 3 evenings with the young commissioners asked to evaluate 1 question; Method Statement 2 – Outcomes. The moderated score from the young commissioners was then fed into the overall moderation meeting.

3.24 The standard SQ compliance questions covered the following;

- Ofsted rating
- School registration
- DBS Checks
- Grounds for mandatory or discretionary exclusion.
- Economic and financial standing.
- Insurance requirements.
- Relevant experience and contract examples.
- Requirements under Modern Day Slavery Act 2015.
- Health and safety requirements.
- London Living Wage

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- General Data Protection Regulations (GDPR) and Information Management requirements.
- 3.25 Finance officers conducted the standard financial appraisal, while tender compliance for other requirements was carried out by procurement and project support officers. This approach ensures probity and that the most economically advantageous suppliers are admitted to the Approved Provider Panel.
- 3.26 Providers appointed to the Approved Provider Panel were required to secure a minimum score of 3 out of 5 for all method statements. Method statements were as follows;
- Experience of delivery (5%)
  - Experience of delivery – case study (3%)
  - Outcomes for learning (8%)
  - Workforce capability & capacity (8%)
  - Assessments for learning (8%)
  - Safeguarding & wellbeing (7%)
  - Premises, health & safety (6%)
  - Quality assurance & statutory compliance (8%)
  - Social value (5%)
  - Premier Supplier Programme (2%)
- 3.27 Panel members individually assessed each qualitative submission and all scores were moderated by the panel.
- 3.28 All moderation meetings were chaired by the Category Manager with support from the senior procurement manager to ensure consistency.
- 3.29 As a result of COVID-19 there were delays with holding the moderation meetings, which all had to be held virtually.
- 3.30 All applicants that have passed the Selection Questionnaire and have met the minimum assessment criteria are recommended for admission to the Approved Provider Panel.
- 3.31 Suppliers submitted prices based on academic year, termly and weekly rates for each lot they bid for. The total price weighting of 40% is apportioned to each of the Sub-Lots.
- 3.32 Bidders were instructed to submit tender prices fully inclusive of all costs. There was no maximum or minimum price requirement.
- 3.33 The Quality/Price evaluation ratio is 60%/40% to ensure that providers submit competitive prices without compromising quality.
- 3.34 All providers who met the quality and price criteria as well as the compliance elements of the tender are recommended to be appointed to the Approved

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Provider Panel.

- 3.35 All providers who have had children and young people placed with them, will be subject to regular quality assurance checks and contract monitoring by the Education Commissioning & QA Manager, as well as more in-depth 2-yearly London AP Quality Assurance inspections undertaken by a multi-borough team drawn from neighboring boroughs in line with our sub-regional arrangements.
- 3.36 New providers who have not had young people placed with them before will be subject to a visit prior to any placements being made.

### Results from the Evaluation Process

- 3.37 The number of suppliers applying to be part of the Approved Provider Panel were in line with expectations.
- 3.38 A summary of the results of the evaluation process are set out below;

#### LOT 1 – Primary Pupils

	Total Bids	Total Failed	Total for Admission to APPA
Sub-Lot: 1a	1	1	0
Sub-Lot: 1b	1	1	0

*\*Note: The number of providers who applied for LOT 1 is in line with service expectations. There are very limited providers in the market who provide primary alternative education as LA's tend to manage this limited demand within their own PRU provision due to the pupils age and expectation to return to mainstream education.*

#### LOT 2 – Secondary Pupils

	Total Bids	Total Failed	Total for Admission to APPA
Sub-Lot: 2a	11	6	5
Sub-Lot: 2b	12	6	6
Sub-Lot 2c	11	6	5

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### LOT 3 – Year 11 pupils without a school place

	Total Bids	Total Failed	Total for Admission to APPA
Sub-Lot: 3a	8	2	6
Sub-Lot: 3b	5	2	3
Sub-Lot 3c	8	3	5

#### Awarded providers

- 3.39 The providers who we recommended being awarded are outlined within PART B of this report.

#### Unsuccessful providers

- 3.40 Some providers were not successful with their tender. The providers who will not be able to join the Approved Provider Panel are outlined within PART B of this report.

## 4. CONSULTATION

- 4.1 Existing providers were invited to a meeting in early 2019 where outline proposals were discussed, followed by a Q&A session.
- 4.2 A market engagement event was held in summer 2019 attended by 15 providers, both existing and new.
- 4.3 A questionnaire was issued to Croydon schools via the 'schools bulletin' in relation to the potential use and access of a potential 'framework'.
- 4.4 The future proposal has been raised and discussed with the schools forum.
- 4.5 Once the tender opportunity was made available on The London Tenders Portal all current providers were informed via email.
- 4.6 All communication during the tender process took place on The London Tenders Portal.
- 4.7 Following the outcome and standstill period there will be further engagement including sharing the outcome with schools forum, local parent groups and updates via the 'schools bulletin'.
- 4.8 Any provider who has not had a child/young person placed with them before by Croydon will also be subject to a site visit prior to any placement being made. This will provide a further opportunity for additional clarification. It is envisaged that these visits will take place during the mobilization period.

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- 4.9 Ongoing communication and engagement will take place with the awarded providers throughout the lifetime of the contract via contract management meetings.
- 4.10 Consultation with staff has not taken place. There is no impact on staffing as a result of implementing the Approved Provider Panel.

## 5 FINANCIAL AND RISK ASSESSMENT CONSIDERATIONS

- 5.1 **There is no guarantee of spend or volume under the terms of the Approved Provider Panel.** The following is estimated based on the current demand and volume of placements.
- 5.2 To note that spend on alternative education placements derives from the Designated School Grant (DSG) funding and is not from Council General Fund.

### Revenue and Capital consequences of report recommendations

	Current year	Medium Term Financial Strategy – 3 year forecast		
	2020/21 £'000	2021/22 £'000	2022/23 £'000	2023/24 £'000
<b>Revenue Budget available</b>				
Expenditure – Croydon Council	1,018	1,018	1,018	1,018
Expenditure – Schools	106	212	212	212
Income	NA	NA	NA	NA
<b>Effect of decision from report</b>				
Expenditure	1,124	1,230	1,230	1,230
Income	NA	NA	NA	NA
<b>Remaining budget</b>	<u>NIL</u>	<u>NIL</u>	<u>NIL</u>	<u>NIL</u>

#### The effect of the decision

- 5.3 The funding of Council commissioned alternative education placements of £1.018m is currently from:
- High Needs Block funding £393,000 per annum: Used for placement costs across all key stages for permanently excluded pupils;
  - Dedicated School Grant £625,000 per annum: Agreed by Schools Forum annually to fund Key Stage 4/Year 11 placements, mainly for English as an Additional Language (EAL) pupils;
  - High Needs Block funding (SEN) £variable: For pupils with Education,

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Health and Care Plan (EHCP) pending a suitable permanent education placement.

- 5.4 Whilst the need for placements is demand led, for example KS4 provision is partly determined by pupil inward migration to the borough, LA spend has remained stable over the last 3 years.
- 5.5 Placements commissioned directly by schools will be funded from individual school budgets.
- 5.6 The establishment of the Approved Provider Panel allows for consistency of pricing and quality assurance of provision. It also provides a mechanism to only pay for places needed rather than block purchase placements which may not all be utilised, thereby providing value for money.

### Risks

- 5.7 There are no direct financial risks associated with the establishment of the Approved Provider Panel. There is no guarantee of spend or volume. It is a demand led service.
- 5.8 There is a risk that due to the relatively small number of specialist SEND providers being recommended for admittance to the Approved Provider Panel from this tender that the service may need to continue to spot purchase for some placements. This could potentially be addressed by a tender refresh, which we reserve the right to do in line with the tender documentation, however, it is thought that the number of providers within the market is relatively low.

### Options

- 5.9 The following options have been considered in relation to the award and implementation of the Approved Provider Panel:
  1. Do nothing; **Not recommended**
  2. Implement the Approved Provider Panel & award to successful providers; **Recommended**

### Future savings/efficiencies

- 5.10 It should be noted that the key intention for this Approved Provider Panel is that the LA places children and young people (who can often be the most vulnerable and challenging) within a quality provision to ensure that their individual outcomes can be met.
- 5.11 As per the RP2 strategy report it is not possible to guarantee that savings will be made as a result of implementing the Approved Provider Panel. However, implementation of agreed rates and potential for running mini competitions when bulk purchase of placements are required will provide a competitive market which may assist with driving placement costs down.
- 5.12 Placements made under the terms of the APPA will only be required when needs cannot be met within the Council's own provision (Saffron Valley).  
**Dependent on capacity & risk this may reduce the reliance on the**

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### **placements required and therefore avoid spend under the terms of the APPA.**

- 5.13 The service has a responsibility to ensure that children and young people can remain and be educated within appropriate local maintained provision whilst working towards reducing the number of exclusions. If successful, this will limit the demand on alternative education placements and potential spend under the APPA.
- 5.14 As a result of implementing the Approved Provider Panel efficiencies can be achieved:
- A more streamlined, standardised and efficient placement sourcing process.
  - A reduction in the number of spot purchases made by the services and schools.
  - Opportunities to address gaps in the market to reduce costs and improve the service offer in the future.
  - Potential of a centralised brokerage model for schools.
- 5.15 As part of contract management, placements will be reviewed regularly. The aim is for children and young people to return to mainstream/full time education as soon as possible and this will be monitored as per statutory guidelines. Less time spent in independent alternative provision will reduce costs and spend under the terms of the APPA. Reviews and transition will be based on the individual circumstances of a child/young person.

Approved by: Kate Bingham, Interim Head of Finance (Children, Families and Education)

## **6. LEGAL CONSIDERATIONS**

- 6.1 There are no additional legal considerations directly arising from this report

Approved by Sonia Likhari, Solicitor, on behalf of the Director of Law and Governance & Deputy Monitoring Officer, Sean Murphy.

## **7. HUMAN RESOURCES IMPACT**

- 7.1 This report concerns the provision of services that will be provided by a third party organisation through a single provider framework. As such, the Council is not the employer of the staff working within the framework and there are no implications for Croydon employees.
- 7.2 This procurement exercise does not propose changes to service delivery beyond what is being undertaken although providers may have to adapt their delivery approach in order to achieve expected service outcomes.

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- 7.3 As a London Living Wage borough, all applicable contracts will include the requirement to pay the London Living Wage. The Living Wage Foundation Living Wage will apply to contracts in other parts of the country.

Approved by: Nadine Maloney, Head of HR on behalf of the Director of Human Resources.

## **8. EQUALITIES IMPACT**

- 8.1 The Equality Act 2010 introduced the Public Sector Equality Duty. This requires all public bodies, including local authorities, to have due regard to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act
- Advance equality of opportunity between people who share a protected characteristic and those who do not
- Foster good relations between people who share a protected characteristic and those who do not

- 8.2 The proposed change has at its heart the re-procurement of alternative education services for statutory school aged learners that have newly arrived in the country, and for whom English may be a second language and for those permanently excluded from school, or deemed at risk of permanent exclusion.

- 8.3 Re-procurement supports the Council in meeting its statutory duty to provide suitable and adequate school places for residents as well as providing appropriately suitable education for statutory aged school children from the sixth day following a permanent exclusion. This contract allows the ongoing commission of quality assured alternative education placements that meets pupil needs.

- 8.4 The Approved Provider Panel enables the Council to order requisite services without running lengthy tendering exercises, thus avoiding delay in service provision. The service is a statutory service for children and young people and must be accessible to all those that are entitled to it seamlessly and at all times.

- 8.5 The Equalities Analysis developed in 2019, concludes that there is no negative impact for protected characteristics, and no resulting direct or indirect discrimination. Evidence shows adequate steps are in place to take advantage of opportunities to advance equality and foster good relations, subject to continuing monitoring and review throughout the lifetime of the re-procured contract.

Approved by Barbara Grant on behalf of Yvonne Okiyo, Equalities Manager.

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### 9. ENVIRONMENTAL IMPACT

- 9.1 It is considered that there are no increased or decreased environmental sustainability impacts, from the proposed contract award contained in this report.

### 10. CRIME AND DISORDER REDUCTION IMPACT

- 10.1 It is considered that there are no increased or decreased crime & disorder impacts, from the proposed contract award contained in this report. The contract awards within this report will working towards a reduction in crime and disorder. Through close working relationship, robust quality assurance, regular communications and professional strategies and networks with the providers and their pedagogy strategies, we would expect to see a decrease in the learner's involvement and exposure to criminality and disorder over the course of this panel. Contextual safeguarding is regularly reviewed with the aim to mitigate risk and increase awareness as priorities.

### 11. REASONS FOR RECOMMENDATIONS/PROPOSED DECISION

- 11.1 Admittance to the Approved Provider Panel Agreement is recommended for tenderers which have passed the requirements as set out in the tender documentation.
- 11.2 The establishment of the Approved Provider Panel will give the Council the opportunity to secure placements at a transparent rate in comparison to spot purchasing. By making placements in a standardised way, the Council will be able to better understand and develop the market for Alternative Education provision.

### 12. OPTIONS CONSIDERED AND REJECTED

- 12.1 The appropriate procurement options were fully explored within the RP2 strategy report.
- 12.2 In relation to the award options the following are appropriate:
1. Do nothing; **Not recommended.** The Council has conducted a procurement exercise in line with the regulations and has a pool of providers who are deemed appropriate for admittance to the Approved Provider Panel. Should we do nothing then the service will be required to spot purchase from September 2020 and not benefit from the efficiencies outlined within this report.
  2. Implement the Approved Provider Panel & award to successful providers; **Recommended.** Implementing the Approved Provider Panel and awarding to the preferred suppliers will enable the Council to place with

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quality providers at agreed rates and achieve the efficiencies as outlined within this report.

### 13. DATA PROTECTION IMPLICATIONS

#### 13.1 WILL THE SUBJECT OF THE REPORT INVOLVE THE PROCESSING OF 'PERSONAL DATA'?

Yes

As sensitive data on pupils will be shared, processed and stored by schools, the LA and AP providers, robust and compliant processes will be implemented from the outset. This includes:

- Information Sharing Agreements between the schools and LA (already in place) with a specific schedule to cover requirements of use of AP Provider List;
- All parties having published Privacy Notices;
- Compliance with GDPR included within contracts with providers;
- All information shared securely, e.g. EGRESS
- Agreed protocol for reporting any data breaches associated with operation of the AP Provider List.

#### 13.2 HAS A DATA PROTECTION IMPACT ASSESSMENT (DPIA) BEEN COMPLETED?

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Approved by: Sarah Warman - the Director of Commissioning and Procurement

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**CONTACT OFFICER:** Matt Weeks, Category Manager, Children's families & education ext. 62349

**BACKGROUND DOCUMENTS:** None