



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

Call-Off Terms and Conditions (COTC)

in relation to the Placement of Children and Young People (CYP) with Special Educational Needs and Disabilities (SEND) in Independent, Non-Maintained Special Schools and Specialist Colleges.

Contract Number: DN635417



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Terms and Conditions

1. Definitions

1.1 In these terms and conditions:

Academic Term means each of the following six periods of an Academic Year: Term 1, Term 2, Term 3, Term 4 Term 5 and Term 6 which the specific dates may vary by the Provider and if unspecified, in any event it shall mean the Authority's published term dates located on its website found [here](#) as updated from time to time;

Academic Year means the 12-calendar month period commencing on the 1st September each year unless a variation is added in the Placement Form;

Agreement means this contract between the Authority and the Provider and includes the Placement Form(s), these terms and conditions and the COTC Schedules;

Agreement Period means the period from the Commencement Date until the earlier of:

- (a) the date specified for termination in section 3.2 of the Placement Form; or
- (b) the date on which this Agreement is otherwise terminated in accordance with its terms:

Alternative Provision means education arranged by Local Authorities for pupils who, because of exclusion from a School, illness or other reasons, would not otherwise receive suitable education; education arranged by schools for pupils on a fixed period exclusion; and pupils being directed by schools to off-site provision to improve their behaviour;

Annual Review means the annual or other review of a CYP's EHC Plan. For looked after children, reviews are meetings held at intervals governed by the Children Act 1989 which are fully recorded and which include consultation with the CYP, Parent/Carer and significant parties (including the Provider);

Applicable Laws means all applicable laws, statutes, regulations (as amended, consolidated or re-enacted from time to time) and any code from time to time;

Arrangements means the standards of care, practices, and operations required of the Provider to comply with the Agreement as set out at COTC Schedule 1 – Specification;

Authorised Signatory on behalf of the Authority means the lead officer specified by the Authority as having the responsibility to authorise the payment of Fees;

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Authority is London Borough of Merton whose registered address is Civic Centre, London Road, Morden, SM4 5DX and is responsible for the CYP and shall include its representatives, successors and assigns;

Authority Contracts Manager means the person or persons appointed by the Authority to oversee and monitor this Agreement and to act as its representative for the purpose of the Agreement;

Care Manager means the person appointed by the Authority to develop a Care Plan to meet the assessed needs of the CYP. In practice this may be a social worker or other appropriate professional;

Care Plan means a document detailing a CYP's specific care needs and requirements for which the Authority is responsible, or a plan drawn up by the responsible Authority for a "looked after Child" under the terms of the Children Act and which may be amended from time to time;

COTC Schedules means the schedules annexed hereto unless expressly stated otherwise;

CYP means:

- (a) Child or Young Person and Children and Young People as set out in the Children and Young Persons Act 1933 where (i) Child means a person under the age of fourteen years and (ii) Young Person means a person who has attained the age of fourteen and is under the age of eighteen years;
- (b) this Agreement extends Young Person to include those who have attained the age of eighteen years and is under the age of twenty-five years; and
- (c) any person(s) whose care and educational needs are the responsibility of the Authority, who is the subject of a Placement and whose fees at the Provider are paid by the Authority, or by those for whom the Authority is acting;

Children's Home means a School which accommodates and provides care to Children and is classified as a Children's Home under current legislation;

Commencement Date means the date of actual admission of the relevant CYP to the Provider as set out in the Placement Form;

Confidential Information means all information, whether written or oral (however recorded), provided by the disclosing party to the receiving party and which:

- (d) is known by the receiving party to be confidential;
- (e) is marked as or stated to be confidential; or

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- (f) ought reasonably to be considered by the receiving party to be confidential;

DAA Schedule means a schedule to the DPS Admission Agreement;

Direct Payments means payment by the Authority to the Parent/Carer or CYP for items approved by the Authority including but not limited to [travel or transport for the CYP], this may be in the form of a personal budget, Merton card or alternative payment method;

DPS Admission Agreement (DAA) means the dynamic purchasing system agreement entered into between the Authority and the Provider from which this Agreement is called off;

ESFA means the education funding agency of the Department for Education;

EHC Plan means the Education, Health and Care Plan outlining the statutory provisions that must be delivered for CYP written for a CYP with SEND by the Local Authority in accordance with Section 37 of the Children and Families Act 2014;

Fees shall mean the Fees so detailed herein in the Placement Form in respect of a CYP which the Provider is to receive from the Authority for the service, as may be varied in accordance with clause 3;

Fee Uplift means an increase in the Fees in accordance with the procedure set out at clause 3.3;

Financial Year means the twelve calendar months accounting period commencing on the 1 April each year;

FOIA means the Freedom of Information Act 2000;

Force Majeure Event means any circumstance not within a party's reasonable control including, without limitation:

- (a) acts of God, flood, drought, earthquake or other natural disaster;
- (b) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
- (c) nuclear, chemical or biological contamination or sonic boom;
- (d) any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition;
- (e) collapse of buildings, fire, explosion or accident;
- (f) any labour or trade dispute, strikes, industrial action or lockouts (other than in each case by the party seeking to rely on this clause, or companies in the same group as that party); and

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(g) interruption or failure of utility service;

Full Time Hours means 25 hours of education provision per week which should be within a wider timetable to include breaks and social time;

Headteacher (Head, Leader, Principal, Proprietor) means the person designated in charge of the Provider and who acts in loco parentis;

IEP or PEP means Individual Education Plan or Personal Education Plan and is the plan for a CYP's educational programme for which the Provider is responsible;

Information has the meaning given under section 84 of the FOIA;

Inspectorates means one, any or all of the Office for Standards in Education (Ofsted), Her Majesty's Inspectorate for Education and Training in Wales (Estyn) and the Care Quality Commission (CQC), Independent Schools Inspectorate (ISI);

Lead Provider means the organisation who the Placement is with and is providing more than 40% of the Services to the CYP;

Location means the location of the Provider's premises from where education, health and care is primarily to be provided;

National Minimum Care Standards for Residential Special Schools means the guidance issued by the government found at: <https://www.gov.uk/government/publications/residential-special-schools-national-minimum-standards>;

Placement Form means the accompanying placement form between the Provider and the Authority for a CYP who is the subject of a Placement and encompassing the arrangements within this Agreement;

Parent/Carer means the person(s) having Parental responsibility for a Child as defined by the Children Act 1989;

Parent/Carer Contribution means a contribution payable directly to the Provider by a Parent/Carer of a CYP who is over the age of 16 (and in accordance with Section 532A Education Act 1996) outside the terms of this Agreement;

Performance Indicator/Key Performance Indicator (K/PI) means the performance indicators and/or the key performance indicators as set out in the DAA Schedule 2 – Contract Management;

Personal Adviser means the adviser employed to provide information, advice and guidance to Children and young adults between the ages of 13 and 25 years;

Placement means a specific commitment made by the Authority through the completion of the Placement Form in respect of a CYP and agreed by the Provider for the provision of education, health and care to address a CYP's individual needs in accordance with their EHC Plan, IEP and/or PEP;

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Provider means the organisation or body stated in the Placement Form which maintains the education provision which the CYP must attend and shall include its representatives, employees, sub-contractors, successors and assigns;

Provider Contracts Manager means the person or persons appointed by the Provider to oversee and monitor this Agreement and to act as its representative for the purpose of the Agreement;

Request for Information has the meaning set out in the FOIA or the Environmental Information Regulations 2004 as relevant (where the meaning set out for the term request shall apply);

Seasonal Term means two consecutive Academic Terms which shall be either of the following: (a) Term 1 and Term 2; (b) Term 3 and Term 4; or (c) Term 5 and Term 6;

Serious Breach means circumstances where either party has been shown to have failed to fulfil its obligations in accordance with the requirements set out in this Agreement, being a breach which goes to the root of this Agreement such failure being considered so serious and fundamental to the continuance of the Agreement as to justify immediate termination;

Services means all provision of education, care, work, actions and responsibilities required of the Provider as described in this Agreement and as set out in COTC Schedule 1 – Specification;

SEN or SEND means Special Educational Needs or Special Educational Needs and Disabilities which are the CYP's needs for which they require specialist educational provision;

Supplementary Charges means charges to be paid by the Authority over and above the agreed Fees as set out in the Placement Form which have been negotiated between the Authority and the Provider in order to meet a CYP's additional needs;

Transition Period means the period agreed between the Authority and the Provider when the Placement is made;

VAT means any value added tax as imposed under the Value Added Tax Act 1994 or any similar value added tax;

Voluntary Parent/Carer Contributions has the meaning given in clause 3.4.3; and

Working Day means a day (other than a Saturday or Sunday) on which banks are open for business in the City of London.

1.2 In these terms and conditions, unless the context otherwise requires:

1.2.1 references to numbered clauses are references to the relevant clause in these terms and conditions;

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- 1.2.2 any obligation on any Party not to do or omit to do anything shall include an obligation not to allow that thing to be done or omitted to be done;
 - 1.2.3 the headings to the clauses of these terms and conditions are for information only and do not affect the interpretation of the Agreement;
 - 1.2.4 references to a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity;
 - 1.2.5 any reference to an enactment includes reference to that enactment as amended or replaced from time to time and to any subordinate legislation or byelaw made under that enactment; and
 - 1.2.6 the word **including** shall be understood as meaning including without limitation.
- 1.3 In the event of any conflict between the Placement Form, these terms and conditions and the COTC Schedules to this Agreement, the conflict shall be resolved in accordance with the following order of precedence:
- 1.3.1 Placement Form (including the most recent version(s) of the relevant EHC Plan(s) and variations);
 - 1.3.2 Terms and Conditions (this document);
 - 1.3.3 COTC Schedule 1 – Specification;
 - 1.3.4 Other COTC Schedules; and
 - 1.3.5 The DAA and the DAA Schedules.

2. The Agreement

2.1 Standard of Service

- 2.1.1 The Provider agrees to provide a Service as specified in this Agreement in respect of CYP placed by the Authority in the care of the Provider at the Provider that the CYP is placed as set out in the Placement Form.
- 2.1.2 Subject always to clause 2.2.1(e), the Provider shall not assign or subcontract this whole Agreement or any part of it without the prior written consent of the Authority, such consent not to be unreasonably withheld or delayed.
- 2.1.3 Notwithstanding clause 2.1.2, the Authority consents to the sub-contracting of education, health or care tasks for the purpose of temporarily covering sickness, absence or departure of permanent staff or for dealing with additional workload on a short-term basis, not to exceed 6 consecutive term time weeks. This consent is subject to the Provider being satisfied that any agency has staff vetting procedures including but not limited to Disclosure and Barring checks that fully comply with statutory regulations and any costs

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2.1.4 The Provider shall remain responsible for all acts and omissions of its subcontractors and the acts and omissions of those employed or engaged by the subcontractors as if they were its own. An obligation on the Provider to do, or to refrain from doing, any act or thing shall include an obligation on the Provider to procure that the Provider's personnel shall also do, or refrain from doing, such act or thing.

2.1.5 The Provider will ensure that the Service meets the quality standards detailed in this Agreement and complies fully with the requirements detailed in the EHC Plan, IEP or PEP and/or PEP and Care Plan for the CYP as appropriate to the Placement Arrangements.

2.2 Service delivery:

2.2.1 The Provider shall:

- (a) not off-roll the CYP without the prior written consent of the Authority and must state the following in writing to the Authority when applying for such consent: (i) reasons to off-roll the CYP; and (ii) temporary arrangements, if applicable, until the Authority can find another suitable Placement;
- (b) in the circumstances detailed at sub-clause 2.2.1(a) the Provider shall remain responsible for the CYP's education until the Authority finds another suitable Placement;
- (c) not permanently exclude a CYP without prior notification and discussion of alternative remedies, such as a managed transfer, with the Authority;
- (d) not have CYP on timetables of less than Full Time Hours without the prior written consent of the Authority and an agreed action plan, this excludes any Transition Period which shall be agreed when a Placement is arranged;
- (e) be the Lead Provider for the CYP's education and cannot sub-contract more than 40% of a CYP's education to another provider. If the Provider deems it beneficial to the CYP that they attend another provider's provision for more than 40% of their education, it shall inform the Authority in writing as soon as reasonably possible. The Authority will at its sole discretion determine which provider shall be the Lead Provider and be named on the student's EHC Plan or the Authority will arrange a bespoke package for the CYP;
- (f) not arrange any health or education assessments beyond those reasonably expected to track progress without the prior written

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consent of the Authority. If the Provider arranges or completes an assessment without the Authority's approval, any additional provision recommended as part of the assessment shall be the Provider's responsibility and cost to provide and the Authority shall not be liable for any additional top-up funding or Fees to fund this unless specifically agreed to by the Authority;

- (g) ensure that the Fees agreed in respect of a CYP are spent on the delivery of the Services to that CYP only and associated costs and the Provider shall provide evidence to the reasonable satisfaction of the Authority (in the form of (without limitation) timetables, timesheets, subcontractor invoices and similar); and
- (h) honour the Fees as set out in the Placement Form and if any increase in the Fees requested by the Provider is not agreed or consented to by the Authority, the Provider shall continue to provide the Services in respect of the relevant CYP in accordance with their Placement Arrangements and shall not reduce or suspend those Services or attempt or threaten to off-roll the CYP.

2.3 Period of Agreement

2.3.1 This Agreement shall take effect on the Commencement Date and will continue for the Agreement Period.

2.4 Scope of Agreement

2.4.1 This Agreement will apply to the CYP named in the Placement Form to be placed and funded by the Authority with the Provider at the Provider specified in the Placement Form during the period of the Agreement.

2.5 K/PI and Performance Monitoring

2.5.1 The Provider agrees to meet the performance indicators and measures set out in DAA Schedule 2 – Contract Management and to comply with its obligations set out in COTC Schedule 1 – Specification.

2.5.2 In the event that the Provider fails to meet any K/PI, the Authority may serve written notice upon the Provider (a **K/PI Improvement Notice**) stating how, in the reasonable opinion of the Authority, the K/PI(s) have not been met and, if able to do so, provide proposals or steps to be taken by the Provider in order to achieve the K/PI(s) going forward (the **K/PI Improvement Steps**). The K/PI Improvement Notice will also set out a reasonable timescale (the **K/PI Improvement Period**) for such K/PI Improvement Steps to be carried

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out and if more regular meetings to monitor the K/PI Improvement Steps are required.

- 2.5.3 The Provider shall respond to the K/PI Improvement Notice (a **K/PI Response**) within ten (10) Working Days of receipt of the K/PI Improvement Notice confirming its agreement to the K/PI Improvement Steps or outlining how, in the Provider's reasonable opinion, the K/PI(s) are being or have been achieved (**Provider Objection**). If the Authority accepts the information contained in the Provider Objection, it shall withdraw the K/PI Improvement Notice within ten (10) Working Days of receipt of the Provider Objection. In the event the Authority remains unsatisfied that the K/PIs are being or have been met, then the parties shall discuss the content of the K/PI Improvement Steps and agree a reasonable timeframe in order for the Provider to put into place such measures agreed between the parties, and shall, if required, agree to extend the K/PI Improvement Period.
- 2.5.4 In the event of any dispute over whether K/PIs have been met the matter shall be referred for dispute resolution as detailed in clause 15.
- 2.5.5 If the K/PI Improvement Steps are not achieved within the K/PI Improvement Period, the Authority shall be entitled to:
- (a) a refund of the Fees which shall be an amount in proportion to the shortfall of the relevant failed K/PI and the Provider shall pay such refund within thirty (30) days of being notified in writing by the Authority; and/or
 - (b) to terminate the Agreement and/or Placement by giving the Provider an Academic Term's notice in writing.
- 2.5.6 For the avoidance of doubt, any expenditure required as part of the K/PI Improvement Steps shall be borne solely by the Provider.

2.6 Placement Variations

- 2.6.1 The Provider may propose, or the Authority may request, during the Agreement, a variation in the manner in which the Service is provided and funded by the Authority for Placements.
- 2.6.2 If minor variations to the Services of a Placement are required, which do not substantially change the EHC Plan or this Agreement's intentions, they may be agreed by authorised persons from both parties and recorded in the IEP or PEP for that individual CYP.
- 2.6.3 If significant variations to the Services of a Placement are required, this shall require an Annual Review. The outcome of the Annual Review and any changes to the EHC Plan shall form part of this Agreement when authorised and processed by the Authority and any changes not already outlined by the changes to the EHC Plan shall be made with the written agreement of both

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parties in the form set out in the COTC Schedule 4 – Placement Form Variation.

- 2.6.4 Where there is a substantial change in the Services, the Provider's Contract Manager and the Authority's Contract Manager will consider whether any variations shall be made in respect of the Fees or any Supplementary Charges. No financial variation can be made without the written agreement of both parties and in the form set out in COTC Schedule 4 – Placement Form Variation.
- 2.6.5 This Agreement may only be amended in writing and signed by the duly authorised representatives of the Provider and the Authority, following prior discussion of the need for proposed alterations and consideration of the time required to implement any agreed changes.
- 2.6.6 Where agreement cannot be reached as to a variation of the Fees resulting in any variation then clause 15 shall apply.

3. Financial Arrangements

3.1 Fees

- 3.1.1 The Fees payable by the Authority to the Provider under this Agreement in respect of a CYP are set out in the Placement Form. Unless otherwise agreed in the Placement Form, the Provider acknowledges that during the Placement the Fees shall not contribute towards the CYP's school trips, food/lunches, equipment such as laptops and other activities not directly linked to education provision.
- 3.1.2 Any other Fees relating to Supplementary Charges and in respect of a CYP which the Authority has agreed to pay will be set out in the Placement Form.
- 3.1.3 The Authority is responsible for all Fees agreed in the Placement Form which are not Parent/Carer Contributions, or the responsibility of the ESFA or the relevant Clinical Commissioning Group/Integrated Care System.
- 3.1.4 All amounts due under this Agreement are exclusive of VAT except where it expressly provides otherwise.

3.2 Payment of Fees

- 3.2.1 Unless stated otherwise in the Placement Form, the Authority's payment arrangements set out in COTC Schedule 3 – Fees Invoicing and clause 3.2.2 shall apply.
- 3.2.2 The Provider shall:
 - (a) be entitled to claim the Fees specified in the Placement Form in respect of a CYP (i) from the date of their admission or (ii) the first day of each subsequent Academic Term or payment period as agreed in advance by the Authority;

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- (b) the Provider shall invoice the Authority in respect of the Fees including supporting information required by the Authority;
- (c) the Authority shall pay each invoice in accordance with the payment dates as set out in COTC Schedule 3 – Fees Invoicing, unless the Authority is not satisfied that the details shown on the invoice are correct, or that the Services provided are not in accordance with the Agreement;
- (d) any payment of the Fees by the Authority shall not imply acceptance by the Authority that the Services have been satisfactorily performed;
- (e) if the Authority fails to make an undisputed payment of a correctly submitted invoice within ninety (90) days after the due date as set out in (a), then the Authority shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 3.2.2 will accrue each day at 1% a year above the Bank of England's base rate from time to time, but at 1% a year for any period when that base rate is below 0%;
- (f) the Authority may, at any time, without notice to the Provider, set off any liability of the Provider to the Authority against any liability of the Authority to the Provider, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under this Agreement. If the liabilities to be set off are expressed in different currencies, the Authority may convert either liability at a market rate of exchange for the purpose of set-off. Any exercise by the Authority of its rights under this clause shall not limit or affect any other rights or remedies available to it under this Agreement or otherwise; and
- (g) the Provider may not, at any time, set off any liability of the Authority to the Provider against any liability of the Provider to the Authority, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under this Agreement.

3.3 Fees

- 3.3.1 Subject to any agreed change(s) to the CYP's Plan(s), either party may propose an increase or decrease of the Fees by submission in writing of any proposed change(s). The changes should reflect the actual cost changes incurred by the Provider and if either Party disputes the change(s) then the parties shall discuss and/or escalate according to the Dispute Resolution Procedure.
- 3.3.2 If the Provider proposes to increase the Fees as a result of any agreed change(s) to the CYP's Plan(s), then such increases must be evidenced by the Provider with supporting information or documents as requested by the Authority.

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- 3.3.3 Fee increases relating to wider considerations than agreed change(s) to the CYP's Plan(s) will be considered under the Fee Uplift Process in the DAA Schedule 4 – Fee Uplift Process.
- 3.3.4 The Authority will not be liable to pay the Fees in the following circumstances:
- (a) when a CYP has been permanently excluded, The Authority's liability will cease on the day that the CYP stopped attending the Provider's provision or receiving suitable alternative education as part of the arrangements under clause 2.2.1(a), whichever is latest;
 - (b) when a CYP has been excluded for a fixed term and the Provider is unable to provide suitable alternative education for the period of the exclusion. The Authority will not pay the Fees during that fixed term and will resume paying the Fees on the date that the CYP returns to the Provider;
 - (c) where a CYP is directed not to attend the Provider's provision on safeguarding advice, including as a result of safeguarding matters relating to another CYP which may have implications on the CYP who is the subject of this Agreement, and/or government guidance and the Provider cannot provide suitable alternative education. The Authority will resume paying the Fees from the date that the CYP returns to the Provider;
 - (d) where a CYP is absent on account of illness for a period exceeding 5 consecutive school days and the Provider is unable to provide suitable alternative education (suitable alternative education in this case should reflect the CYP's capacity to learn during their illness). The Authority will resume paying the Fees from the date that the CYP returns to the Provider;
 - (e) if a CYP dies, the Placement Form shall be terminated seven (7) days following the date of death. During this time, the Authority and the Provider shall work together to make appropriate arrangements as required. Any additional costs will be paid by the Authority until the end of the relevant notice period that would have been applicable if the CYP had not died;
 - (f) where there has been a Serious Breach of the Agreement. In this event, the Authority's liability will cease on the date of the letter notifying the Provider of the termination of the Agreement;
 - (g) Liability for Fees shall vary depending on the length of a Placement:
 - (h) where a CYP has been in a Placement for a week or less, the Authority's liability for the Fee will be limited to one (1) additional day;

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- (i) where a CYP is in a Placement more than one week but less than a full Academic Term, the Authority's liability for the Fee will be limited to one (1) additional week; and
- (j) where a CYP is in a Placement for more than a full Academic Term but less than a Seasonal Term, the Authority's liability for the Fee will be limited to two (2) additional weeks.

3.3.5 The Provider shall promptly repay to the Authority any money incorrectly paid to it either as a result of the scenarios described in clause 3.3.4, because it has not been spent on Services for the relevant CYP, due an administrative error or otherwise. Without prejudice to (but without double counting) the Authority's right of set off pursuant to clause 3.2.2(f), to the extent that the Authority pays the Provider a greater amount than is due pursuant to this Agreement the Authority shall issue the Provider with a notice requiring repayment of that amount and the Provider shall repay such amount by no later than thirty (30) days after the service of the notice.

3.4 Parent/Carer Contributions or CYP Contributions

3.4.1 The Provider shall be entitled to request voluntary contributions from a Parent/Carer for any services, activities, materials, or items of clothing provided by the Provider and not included or listed within the Fees detailed in the Placement Form of this Agreement.

3.4.2 Neither a CYP's Placement with the Provider, nor their opportunity to take part in the whole curriculum of the Provider, shall be prejudiced by any unwillingness or inability on the part of the Parent/Carer or CYP to make Voluntary Parent/Carer Contributions.

3.4.3 Voluntary Parent/Carer Contributions shall be met by the Parent/Carer or CYP (if over 18) where they or an authorised person have agreed in writing to do so and, if appropriate, where the Authority has been given prior notification. The Authority accepts no financial responsibility for the payment of such contributions and any failure on the part of the Parent/Carer or CYP to make the Voluntary Parent/Carer Contribution shall not constitute a breach of this Agreement.

3.4.4 Where Direct Payments have been made to either Parent/Carers of beneficiaries who are under 16 or to beneficiaries who are aged over 16 for the purpose of securing:

- (a) special educational provision specified in an EHC Plan;
- (b) transport or anything else that may be subject to arrangements in section 508B(1) (school children), section 508F(1) (adult CYP) or section 509AA(7)(b) (sixth formers) Education Act 1996;
- (c) or any other provision agreed to be part funded in this way by the Authority;

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the Parent/Carer or CYP will agree in writing with both the Provider and the Authority the Services that are subject to the Direct Payments. The Authority accepts no financial responsibility for the payment of such contributions for Direct Payments or for the Services and any failure on the part of the Parent/Carer or CYP to make the Voluntary Parent/Carer Contribution shall not constitute a breach of this Agreement.

3.5 Financial Assurance

The ESFA will undertake financial health assurance functions for all institutions which receive funding directly from the ESFA. The ESFA will provide this assurance to Local Authorities which place CYP with SEND in such institutions.

4. Compliance

4.1 The Provider must inform the Authority immediately by telephone and confirm in writing within two days of any amendment, change to or restriction placed upon the approval of the Provider by the Secretary of State for the Department for Education and/or other government department or agency as applicable, and of any change in status.

4.2 In performing its obligations under this Agreement, the Provider shall comply with the Applicable Laws and guidance notes amended from time to time including but not limited to:

- 4.2.1 the Education Act 1996;
- 4.2.2 the Education Act 2011;
- 4.2.3 the Children Act 1989 and Regulations made under the Act;
- 4.2.4 the Children Act 2004;
- 4.2.5 the School Standards and Framework Act 1998;
- 4.2.6 the Special Educational Needs and Disability Act 2001;
- 4.2.7 The Education (Independent School Standards) Regulations 2014 or the Non-Maintained Special Schools (England) Regulations 2015 (as applicable);
- 4.2.8 Keeping Children Safe in Education 2021;
- 4.2.9 the Education and Training (Welfare of Children) Act 2021;
- 4.2.10 the Children, Schools and Families Act 2010;
- 4.2.11 the Care Standards Act 2000;
- 4.2.12 the Human Rights Act 1998;
- 4.2.13 the Equality Act 2010;

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- 4.2.14 the Children, Schools and Families Act 2014;
- 4.2.15 the National Minimum Care Standards for Residential Special Schools and Children's Homes 2002;
- 4.2.16 The Disability Codes of Practice (Schools and Post 16) 2002;
- 4.2.17 DfES guidance "Inclusive Schooling - Children with Special Educational Needs" 2001;
- 4.2.18 DfES guidance "Access to Education for Children and Young People with Medical Needs" 2001; The Apprenticeships, Skills, Children and Learning Act 2009 (ASCL Act);
- 4.2.19 the Special Educational Needs (Direct Payments) (Pilot Scheme) Order 2012;
- 4.2.20 the Learning and Skills Act 2000; and
- 4.2.21 the Education and Skills Act 2008.

4.3 Either Party will inform the other Party as soon as it becomes aware of any changes in the Applicable Laws.

4.4 Health and Safety

The Provider undertakes to take all reasonable steps to secure the health and safety of the CYP and shall at all times fully comply with:

- 4.4.1 all relevant Health and Safety Acts, Health and Safety Regulations and Codes of Practice approved by the Health and Safety Executive;
- 4.4.2 all relevant and appropriate guidance and good working practices, as published by the Health and Safety Executive; its own Health and Safety Policy, systems and procedures.

4.5 The Provider shall ensure that any communication sent to the CYP's home Local Authority regarding the health and safety of any student within the scope of Reporting of Injuries, Diseases and Dangerous Occurrences Regulations (RIDDOR) 2013 and fatal road traffic accidents is also sent to the ESFA as soon as practically possible where applicable.

4.6 Local Authorities shall share information about health and safety issues that may have an effect on CYP receiving provision at the Provider's premises with the ESFA where applicable.

5. Conflict of Interest

In order to prevent conflicts of interest arising and in accordance with the Local Government and Housing Act 1989, Authority officers and councillors cannot participate in the award of any contract to an organisation in which they have an interest. The Provider will, therefore, inform the Authority's Contracts Officer in writing if any elected

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member or employee of the Authority is a member of a governing body or is a trustee of the Provider or the Provider or has a financial interest in the Provider.

6. Indemnity and Insurance

- 6.1 The Provider shall indemnify the Authority in full against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the Authority arising out of, or in connection with any breach by the Provider (including its employees or agents) of any of its obligations under this Agreement.
- 6.2 The Provider will be liable for any accidental or non-accidental damage caused by the CYP apart from wilful damage to their own personal belongings.
- 6.3 The Provider shall have in place the following minimum insurance requirements unless individual circumstances notified and agreed in advance with the Authority have been determined:
- 6.3.1 Employer's liability (a sum to be determined by the Provider commensurate with the potential liabilities of the Provider but at least to the value of £10 million);
 - 6.3.2 Public liability (at least £10 million in respect of any one claim);
 - 6.3.3 Buildings and Contents (including CYP' clothing, personal belongings and money in accordance with any written statement from the Provider concerning loss of personal property);
 - 6.3.4 Directors' and Officers' liability, Trustees' liability, Professional Indemnity Liability or similar as appropriate to the Provider's circumstances (a sum to be determined by the Provider commensurate with the potential liabilities of the Provider but at least to the value of £2 million any one insurance period) which should be in place for a six (6) year period following the termination of the Placement(s) made under this Agreement Placement Form in respect of retrospective claims;
 - 6.3.5 Medical Malpractice to the value of £5 million for each and every claim if offering medical services; and
 - 6.3.6 the Provider shall have in place motor vehicle insurance commensurate with the potential liabilities of the Provider relating to the operation of vehicles used for the transport of pupils by the Provider.

7. Liability

- 7.1 Subject always to clauses 7.2 and 7.3:

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- 7.1.1 the aggregate liability of the Provider to the Authority in respect of all defaults, claims, losses or damages howsoever caused, whether arising from breach of the Agreement, the supply or failure to supply of the Services, misrepresentation (whether tortious or statutory), tort (including negligence), breach of statutory duty or otherwise shall not be limited and will be calculated on direct and tangible losses;
- 7.1.2 the aggregate liability of the Authority in respect of all defaults, claims, losses or damages howsoever caused, whether arising from breach of the Agreement, misrepresentation (whether tortious or statutory), tort (including negligence), breach of statutory duty or otherwise shall in no event exceed a sum equal to the value of the Fees paid or payable to the Provider; and
- 7.1.3 except in the case of claims arising under clauses 6.1, 10.4 and 14.3, in no event shall either party be liable to the other for any:
 - (a) loss of profits;
 - (b) loss of business;
 - (c) loss of revenue;
 - (d) loss of or damage to goodwill;
 - (e) loss of savings (whether anticipated or otherwise); and/or
 - (f) any indirect, special or consequential loss or damage.
- 7.2 Nothing in the Agreement shall be construed to limit or exclude either party's liability for:
 - 7.2.1 death or personal injury caused by its negligence or that of its staff;
 - 7.2.2 fraud or fraudulent misrepresentation by it or that of its staff; or
 - 7.2.3 any other matter which, by law, may not be excluded or limited.
- 7.3 The Supplier's liability under the indemnities at clauses 6.1, 10.4 and 14.3 of this Agreement shall be unlimited.

8. Provider's Employees

- 8.1 The Provider shall at all times during the Agreement ensure that all personnel involved in the provision of the Services have suitable skills and experience to enable them to perform the tasks assigned to them, and that such personnel are in sufficient number to enable the Provider to fulfil its obligations under this Agreement.
- 8.2 The Provider shall ensure that all persons including their staff whose duties involve access to or information about, CYP are subject to enhanced Disclosure and Barring checks by the Provider prior to starting their duties, ensuring full compliance with the Safeguarding Vulnerable Groups Act 2006.

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- 8.3 The Provider shall ensure that no member of their staff or any sub-contractor is permitted to provide Services until all the necessary Disclosure and Barring checks have been undertaken and are satisfactory. Copies of such disclosures must be kept by the Provider and be available for inspection by the Authority from time to time.
- 8.4 The Provider will follow the system for recruitment as set out in Standard 14 of the National Minimum Care Standards for Residential Special Schools and Safer Recruitment in Education as appropriate. The Provider will ensure that there is a satisfactory recruitment process recorded in writing for all employees.
- 8.5 The Provider shall annually review and ensure all driving licences, insurance and where appropriate MOT certificates, are current, insurance includes business use, and that the member of staff has not received sufficient penalty points to be barred from driving or received a court judgement that bars them from driving.

9. Records

- 9.1 The Provider will maintain formal procedures/systems for the keeping of accurate records that fully comply with the relevant National Minimum Care Standards and for a minimum of 10 years or longer if the Authority specifically requests so in writing.
- 9.2 In addition to clause 9 above, the Provider will ensure that the information, records and documentation necessary to effectively monitor the performance of the Agreement are accurately maintained at all times and that their validity is checked at regular intervals.
- 9.3 The Provider undertakes to provide the Authority with information to allow for the monitoring, review and assessment of the Provider's capabilities to provide the standards of education, health and care required by this Agreement and thereby to ensure that the Authority fully meets its statutory obligations in regards to this information.
- 9.4 Full written records must be kept of all complaints including those outstanding received in connection with the Services, whether orally or in writing from any source and shall fully detail all the actions taken by the Provider in respect of each such complaint.
- 9.5 On termination of a Placement the Provider shall ensure that they maintain all files and records, including CYP' individual records, case notes and information held by the Provider in full compliance with all relevant legislation and guidance. The Provider will ensure that where a CYP is placed at a new Provider all relevant files and records shall be forwarded or copied to the CYP's new Provider within three (3) weeks of the CYP starting their Placement. On request of the Authority, all files and records should be returned to the Authority by the Provider.

10. Protection of Personal Data and Security of Data

- 10.1 Definitions:

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Where a term is not already defined in the definitions to the Agreement, the following terms shall have the following meanings:

Authority Correspondence means any correspondence from a Supervisory Authority in relation to the Processing of the Personal Data;

Controller has the meaning set out in the Data Protection Laws;

Data Protection Laws means:

- (a) any law, statute, declaration, decree, directive, legislative enactment, order, ordinance, regulation, rule or other binding restriction (as amended, consolidated or re-enacted from time to time) of the United Kingdom which relates to the protection of individuals with regards to the processing of personal data to which a Party is subject, including the DPA and the UK GDPR; and
- (b) any code of practice or guidance published by a Supervisory Authority from time to time;

Data Subject has the meaning set out in the Data Protection Laws;

Data Subject Request means an actual or purported subject access request or notice or complaint from (or on behalf of) a Data Subject exercising his rights under the Data Protection Laws;

Personal Data means any data relating to any person relevant to this Agreement including but not limited to name, address, contact details, date of birth, salary or any other data in relation to any person, including Sensitive Personal Data;

Processing has the meaning set out in the Data Protection Laws (and **Process**, **Processes** and **Processed** shall be construed accordingly);

Sensitive Personal Data means any sensitive personal data or special categories of personal data as defined as such by the Data Protection Laws;

Supervisory Authority means any local, national or multinational agency, department, official, parliament, public or statutory person or any government or professional body, regulatory or supervisory authority, board or other body responsible for administering Data Protection Laws, including the UK Information Commissioner's Office, or any successor or replacement bodies from time to time; and

UK GDPR means the General Data Protection Regulation (GDPR) (Regulation (EU) 2016/679) as incorporated into UK law by the European Union (Withdrawal) Act 2018 and subsequently amended by the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (SI 2019/419).

10.2 During the term of this Agreement the Provider acknowledges that it shall be the Data Controller in respect of any Personal Data that it Processes in the delivery of the

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Services and has obligations under applicable Data Protection Laws including, without limitation, to:

- 10.2.1 Make due notification to the Supervisory Authority, including in relation to its use and Processing of the Personal Data and comply at all times with the Data Protection Laws.
- 10.2.2 Ensure that all Personal Data disclosed or transferred to, or accessed by, the Authority or the Partners is accurate and up-to-date, as well as adequate, relevant and not excessive to enable them to Process the Personal Data, as envisaged under this Agreement.
- 10.2.3 Ensure that appropriate operational and technical measures are in place to safeguard against any unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data and where requested provide to the Authority with evidence of its compliance with such requirement.
- 10.2.4 Promptly, and in any event within 48 hours of receipt of any Data Subject Request or Authority Correspondence, notify the Customer in the event that it receives such a Data Subject Request or Authority Correspondence in relation to the processing of Personal Data under, or in connection with, this Agreement.
- 10.2.5 Promptly and in no more than 24 hours notify the Authority in writing upon it becoming aware of any actual or suspected breach of clause 10.2.3 in relation to the Personal Data and shall, within such timescale to be agreed by the parties (acting reasonably and good faith):
 - (a) implement any measures necessary to restore the security of compromised Personal Data; and
 - (b) support the Authority to make any required notifications to the Supervisory Authority and affected Data Subjects.
- 10.2.6 Take reasonable steps to ensure the reliability of any of the Provider's staff who have access to the Personal Data.
- 10.2.7 Hold the information contained in the Personal Data confidentially.
- 10.3 The Provider shall assist the Authority to comply with any obligations under the Data Protection Laws and shall not perform its obligations under this Agreement in such a way as to cause the Authority to breach any of its obligations under the Data Protection Laws to the extent that the Provider is aware, or ought reasonably to have been aware, that the same would be a breach of such obligations.
- 10.4 The Provider shall indemnify and keep indemnified the Authority in respect of all data protection losses or damages suffered or incurred by, awarded against or agreed to be paid by, the Authority arising from or in connection with any breach by the Provider of any of its obligations under this clause 10.

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11. Freedom of Information

11.1 The Provider acknowledges that the Authority is subject to the requirements of the FOIA and the Environmental Information Regulations 2004 and shall:

11.1.1 provide all necessary assistance and cooperation as reasonably requested by the Authority to enable the Authority to comply with its obligations under the FOIA and the Environmental Information Regulations 2004;

11.1.2 transfer to the Authority all Requests for Information relating to this Agreement that it receives as soon as practicable and in any event within two (2) Working Days of receipt;

11.1.3 provide the Authority with a copy of all Information belonging to the Authority requested in the Request for Information which is in its possession or control in the form that the Authority requires within five (5) Working Days (or such other period as the Authority may reasonably specify) of the Authority's request for such Information; and

11.1.4 not respond directly to a Request for Information unless authorised in writing to do so by the Authority.

11.2 The Provider acknowledges that the Authority may be required under the FOIA and the Environmental Information Regulations 2004 to disclose Information concerning the Provider or the Services (including commercially sensitive information) without consulting or obtaining consent from the Provider. In these circumstances the Authority shall, in accordance with any relevant guidance issued under the FOIA, take reasonable steps, where appropriate, to give the Provider advance notice, or failing that, to draw the disclosure to the Provider's attention after any such disclosure.

11.3 Notwithstanding any other provision in the Agreement, the Authority shall be responsible for determining in its absolute discretion whether any Information relating to the Provider or the Services is exempt from disclosure in accordance with the FOIA and/or the Environmental Information Regulations 2004.

12. Confidentiality

12.1 Subject to clause 12.2, each party shall:

12.1.1 treat all Confidential Information it receives as confidential, safeguard it accordingly and not disclose it to any other person without the prior written permission of the disclosing party; and

12.1.2 not use or exploit the disclosing party's Confidential Information in any way except for the purposes anticipated under the Agreement.

12.2 Notwithstanding clause 12.1, a party may disclose Confidential Information which it receives from the other party:

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- 12.2.1 where disclosure is required by applicable law or by a court of competent jurisdiction;
- 12.2.2 to its auditors or for the purposes of regulatory requirements;
- 12.2.3 on a confidential basis, to its professional advisers;
- 12.2.4 to the Serious Fraud Office where the party has reasonable grounds to believe that the other party is involved in activity that may constitute a criminal offence under the Bribery Act 2010;
- 12.2.5 where the receiving party is the Provider, to the staff on a need to know basis to enable performance of the Provider's obligations under the Agreement provided that the Provider shall procure that any staff to whom it discloses Confidential Information pursuant to this clause 12.2.5 shall observe the Provider's confidentiality obligations under the Agreement; and
- 12.2.6 where the receiving party is the Authority:
 - (a) on a confidential basis to the employees, agents, consultants and contractors of the Authority;
 - (b) on a confidential basis to any Central Government Body, any successor body to a Central Government Body or any company to which the Authority transfers or proposes to transfer all or any part of its business;
 - (c) to the extent that the Authority (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions; or
 - (d) in accordance with clause 11,

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Authority under this clause 12.

13. Monitoring of Service Provision

- 13.1 The Provider acknowledges the right of the Authority to monitor the provision made for the care and education of a CYP placed by the Authority (as specified in the Placement Form or otherwise agreed). This will include monitoring all aspects of the provision provided. Monitoring may include the provision of documentation by the Provider to the Authority (as the Authority may reasonably request), visits by the Authority's representatives or agents by prior agreement with the Headteacher, or unannounced visits consistent with the duties provided that upon any such visit taking place the number of visitors at any one time should be no more than necessary for statutory/inspection purposes. Every effort shall be made to ensure the continued privacy of CYP and minimal disruption to the education of CYP.

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- 13.2 Such arrangements shall be in addition to and not prejudice any statutory inspection under any Applicable Laws.
- 13.3 The Authority may within four (4) weeks of becoming aware of the same reject any Services provided which is in the Authority's reasonable opinion not equal in quality and all other respects to the service requirements set out in this Agreement. The Authority shall in such circumstances be entitled to request the Provider and the Provider shall within four (4) weeks of such request either:
- 13.3.1 provide Services in lieu to the agreed standard;
 - 13.3.2 cancel any invoices raised or to provide the appropriate refund; or
 - 13.3.3 reduction of a following payment of the Fees.
- 13.4 Where the Services delivered under this Agreement are subject to inspection by the Inspectorates and the inspection results in the Services, or part thereof, being assessed as inadequate, the Authority may, following consultation with the ESFA where appropriate, in its absolute discretion, take whatever action it deems appropriate, not limited to, the imposition of added conditions of funding by both the Authority or ESFA or to terminate the Agreement in respect of the whole Services or that part which is assessed as inadequate.
- 13.5 Where clause 13.4 is applicable, the Authority shall cease making new Placements with the Provider immediately and request a copy of the Provider's action plan to be provided within one (1) week of the assessment outcome. If the Authority finds the action plan satisfactory, it shall continue current Placements and review the action plan's identified activities to rectify the area(s) assessed as Inadequate regularly, if the Authority deems the action plan to not be satisfactory or there is insufficient progress towards achieving an agreed action plan's targets it may terminate this Agreement and terminate its Placements with immediate effect.
- 13.6 The Authority will carry out an assessment of how the Provider has used the total funding made available to meet the needs of the CYP, as described in the Placement Form. Where applicable, the Authority may share the outcome of such an assessment with the ESFA. The purpose of this assessment will be to inform future contracting and allocation decisions.

14. Prevention of Fraud and Corruption

- 14.1 The Provider shall not offer, give, or agree to give anything, to any person an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of the Agreement or for showing or refraining from showing favour or disfavour to any person in relation to the Agreement.
- 14.2 The Provider shall take all reasonable steps, in accordance with good industry practice, to prevent fraud by its staff and the Provider (including its shareholders, members and directors) in connection with the Agreement and shall notify the Authority immediately if it has reason to suspect that any fraud has occurred or is occurring or is likely to occur.

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14.3 The Provider shall indemnify the Authority in full against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by the Authority arising out of, or in connection with, any breach by the Provider of its obligations under this clause 14.

15. Dispute Resolution

15.1 The parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Agreement and such efforts shall involve the escalation of the dispute to an appropriately senior representative of each party.

15.2 If the dispute cannot be resolved by the parties within one (1) month of being escalated as referred to in clause 15.1, the dispute may by agreement between the parties be referred to a neutral adviser or mediator (the **Mediator**) chosen by agreement between the parties. All negotiations connected with the dispute shall be conducted in confidence and without prejudice to the rights of the parties in any further proceedings.

15.3 If the parties fail to appoint a Mediator within one (1) month or fail to enter into a written agreement resolving the dispute within one (1) month of the Mediator being appointed, either party may exercise any remedy it has under applicable law.

16. Termination of this Agreement

16.1 Subject to clause 16.2, the Authority may terminate the Agreement in whole or in part at any time by notice in writing to the Provider where such notice is given by 1st May to terminate the Agreement on 31st August of the same Academic Year.

16.2 The notice period pursuant to clause 16.1 may be reduced if agreed in writing by the Provider.

16.3 Without prejudice to any other right or remedy it might have, the Authority may terminate the Agreement in whole or in part by written notice to the Provider with immediate effect if the Provider:

16.3.1 (without prejudice to clause 16.3.4), is in material breach of any obligation under the Agreement which is not capable of remedy;

16.3.2 repeatedly breaches any of the terms and conditions of the Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms and conditions of the Agreement;

16.3.3 is in material breach of any obligation which is capable of remedy, and that breach is not remedied within thirty (30) days of the Supplier receiving notice specifying the breach and requiring it to be remedied;

16.3.4 breaches any of the provisions of clauses 4, 7, 10, 11, and 12;

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- 16.3.5 becomes insolvent, or if an order is made or a resolution is passed for the winding up of the Supplier (other than voluntarily for the purpose of solvent amalgamation or reconstruction), or if an administrator or administrative receiver is appointed in respect of the whole or any part of the Provider's assets or business, or if the Provider any composition with its creditors or takes or suffers any similar or analogous action (to any of the actions detailed in this clause 16.3.5) in consequence of debt in any jurisdiction; or
- 16.3.6 fails to comply with legal obligations in the fields of environmental, social or labour law.
- 16.4 The Provider may terminate the Agreement on thirty (30) days' written notice to the Authority if the Authority has not paid any undisputed amounts within ninety (90) days of them falling due provided that if such amounts are paid prior to expiry of that notice the notice shall be deemed to have been withdrawn.
- 16.5 Notwithstanding any other remedy the Authority may have, if the Authority terminates the Agreement for any reason, the Provider will pay a pro-rata refund of any Fees prepaid by the Authority under the Agreement.
- 16.6 Termination or expiry of the Agreement shall not prejudice the rights of either party accrued prior to termination or expiry.
- 16.7 Upon termination or expiry of the Agreement:
 - 16.7.1 Unless otherwise agreed in writing, the Provider will continue to provide the Services until expiry of the Placement which may occur after termination or expiry of the Agreement;
 - 16.7.2 the Provider shall give all reasonable assistance to the Authority and any incoming supplier of the Services;
 - 16.7.3 the Provider shall return all requested documents, information and data to the Authority as soon as reasonably practicable; and
 - 16.7.4 the relevant Placement Form will automatically terminate upon termination or expiry of the Agreement.

17. Termination of a Particular Placement

- 17.1 Where a CYP has been in Placement for more than a Seasonal Term, an individual Placement may be terminated by the Authority giving to the Provider not less than six (6) weeks written notice or, in respect of a CYP permanently excluded, through the arrangements described in clauses 3.3.4, 2.2.1(a) and COTC Schedule 1 – Specification. If the CYP is placed with another provider within the notice period, the Provider's liability will cease when the CYP's new Placement starts.
- 17.2 The Provider shall not be entitled to terminate a Placement without the prior written consent of the Authority (such consent not to be unreasonably withheld or delayed) and must state the following in writing to the Authority: (i) reasons to terminate the

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Placement; (ii) temporary arrangements, if applicable, until the Authority can find another suitable Placement; and (iii) dates to meet with the Authority to discuss alternative arrangements to enable a Placement to continue.

17.3 Changes to a Placement shall be considered as part of the Annual Review process, including holding an Annual Review early if required, and shall be a variation to the Placement Form under this Agreement and not be considered a new Placement nor a termination of Placement unless expressly stated by the Authority in writing.

17.4 No period of notice will be required for short stay residential or assessment Placements where a CYP's admission and leaving dates have been agreed in advance between the Authority and the Provider except where the discharge date has been brought forward by agreement in which case up to seven (7) days' notice will be applicable.

18. Force Majeure

18.1 Provided it has complied with clause 18.3, if a party is prevented, hindered or delayed in or from performing any of its obligations under this Agreement (and in the case of the Authority this shall also apply where it is prevented, hindered or delayed from requiring or receiving the benefit of the Services) by a Force Majeure Event (the **Affected Party**), the Affected Party shall not be in breach of this Agreement or otherwise liable for any such failure or delay in the performance of such obligations (including, in the case of the Authority being prevented, hindered or delayed from requiring or receiving the benefit of the Services, an obligation to make payment). The time for performance of such obligations shall be extended accordingly.

18.2 The corresponding obligations of the other party will be suspended, and its time for performance of such obligations extended, to the same extent as those of the Affected Party. For the avoidance of doubt, where the Provider is subject to the Force Majeure Event, the Authority's obligation to pay shall be similarly suspended.

18.3 The Affected Party shall:

18.3.1 as soon as reasonably practicable after the start of the Force Majeure Event, notify the other party in writing of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under this Agreement (or in the case of the Authority to require or receive the benefit of the Services); and

18.3.2 use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations (and receipt of the benefit of the Services as the case may be).

18.4 If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations (and in the case of the Customer the requirement for or receipt of the benefit of the Services) for a continuous period of more than six weeks, either party may terminate this Agreement by giving two weeks' written notice to the Affected Party.

19. General

- 19.1 Each of the parties represents and warrants to the other that it has full capacity and authority, and all necessary consents, licences and permissions to enter into and perform its obligations under the Agreement, and that the Agreement is executed by its duly authorised representative.
- 19.2 A person who is not a party to the Agreement shall have no right to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of the parties.
- 19.3 The Agreement cannot be varied except in writing signed by a duly authorised representative of both the parties.
- 19.4 The Agreement contains the whole agreement between the parties and supersedes and replaces any prior written or oral agreements, representations or understandings between them and shall not be replaced or superseded by the submission of any terms and conditions by the Provider after the date of the Agreement. The parties confirm that they have not entered into the Agreement on the basis of any representation that is not expressly incorporated into the Agreement. Nothing in this clause shall exclude liability for fraud or fraudulent misrepresentation.
- 19.5 Any waiver or relaxation either partly, or wholly of any of the terms and conditions of the Agreement shall be valid only if it is communicated to the other party in writing and expressly stated to be a waiver. A waiver of any right or remedy arising from a breach of contract shall not constitute a waiver of any right or remedy arising from any other breach of the Agreement.
- 19.6 The Agreement shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the parties other than the contractual relationship expressly provided for in the Agreement. Neither party shall have, nor represent that it has, any authority to make any commitments on the other party's behalf.
- 19.7 Except as otherwise expressly provided by the Agreement, all remedies available to either party for breach of the Agreement (whether under the Agreement, statute or common law) are cumulative and may be exercised concurrently or separately, and the exercise of one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.
- 19.8 If any provision of the Agreement is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from the Agreement and rendered ineffective as far as possible without modifying the remaining provisions of the Agreement and shall not in any way affect any other circumstances of or the validity or enforcement of the Agreement.

20. Notices

- 20.1 Any notice to be given under the Agreement shall be in writing and may be served by personal delivery, first class recorded or, subject to clause 20.2, email to the address of

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the relevant party set out in the Agreement, or such other address as that party may from time to time notify to the other party in accordance with this clause:

20.1.1 Notices served as above shall be deemed served on the Working Day of delivery provided delivery is before 5 pm on a Working Day. Otherwise delivery shall be deemed to occur on the next Working Day;

20.1.2 An email shall be deemed delivered when sent unless an error message is received.

20.2 Notices under clauses 16 and 18 may be served by email only if the same notice is then sent to the recipient by personal delivery or first class recorded delivery in the manner set out in clause 20.1.

21. Governing Law and Jurisdiction

The validity, construction and performance of the Agreement, and all contractual and non-contractual matters arising out of it, shall be governed by English law and shall be subject to the exclusive jurisdiction of the English courts to which the Parties submit.