

NATIONAL SCHOOLS AND COLLEGES CONTRACT

**For the Placement of Learners and Young People with High Needs
In Day and Residential Schools and Colleges**

This Contract was developed by;



CONTRACT FOR THE PROVISION OF SERVICES FOR LEARNERS WITH SPECIAL EDUCATION NEEDS, A LEARNING DIFFICULTY OR A DISABILITY.

Introduction

The Schools Standards and Framework Act 1998, The Education Act 1996, the Special Educational Needs and Disability Act 2001, the Children Act 1989, the Learning and Skills Act 2000, the Education and Skills Act 2008 and the Apprenticeships, Skills, Children and Learning Act 2009 and the associated regulations give details of Placement arrangements for Learners in Schools and colleges. Under section 1(6) of the Care Standards Act 2000, a School which accommodates Children and Young People for 295 days or more in one year is also classified as a Children's Home.

The Education Funding Agency (EFA) Contracts directly with Providers for high needs Services (Elements 1 and 2). This Contract covers the arrangements where the Authority provides "top up" funding (Element 3) for Services to meet the requirements of the Learner's Plan. The Services that are supplied through the EFA Contract are therefore materially relevant to this Contract in ensuring the Learners overall needs are met. The intrinsic connection between this Contract and the EFA's Contract means that many decisions that may need to be taken regarding any part of the funding will be taken either jointly or following consultation between the Local Authority and the EFA.

The purposes of this Contract are to:

Ensure that there is a Contract for all Learners placed by Local Authorities in settings primarily identified as schools and colleges to provide Education, Care and Health.

Ensure that there is clarity over the funding arrangements between the Provider and the Authority including any services funded directly by the Education Funding Agency.

This core contract aims to

- Reduce bureaucracy and repetition
- Share good practice
- Improve partnership
- Improve quality and outcomes by ensuring and safeguarding high standards of Education, Health and Care
- Facilitate dialogue
- Provide a model that both providers and placing authorities can sign up to.

Values and Beliefs

All signatories to this Contract agree to adopt and promote values which place Learners and their families at the centre of their respective service provision.

The Provider will work in partnership with the Authority to ensure that Learners receive the opportunities and support they require to succeed in education, live an independent life, gain employment and to achieve the 5 outcomes set out in the Children Act 2004:

1. Being healthy
2. Staying safe
3. Enjoying and achieving
4. Making a positive contribution
5. Economic well being

The Provider will, with the Authority, support Learners in achieving these outcomes through:

Providing a safe, stable and caring environment which supports each Learner's educational and social development.

Ensuring that all Learners are treated as individuals at all times, including through planning and review processes. Learners will be supported to be involved and to have their voices heard during decision making processes.

Safeguarding Learners' welfare by the application of clearly stated operational procedures, established standards of practice and provision, including the use of safe recruitment procedures for staff appointments (as set out in DfES Guidance and the National Minimum Standards for Children's Homes and Residential Special Schools and Sections 157 and 175 of the Education Act 2002).

Promoting the principal of partnership between Learners, families, the Authority and the school/ college. Being attentive and responsive to the Learner's individual needs and rights in relation to age, gender, ethnicity, sexuality and disability and meet specific cultural and religious needs. Promoting transparency between schools and Local Authorities.

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CONTRACT FOR THE PLACEMENT OF LEARNERS WITH HIGH NEEDS IN DAY AND RESIDENTIAL SCHOOLS AND COLLEGES

A. Parties to the Agreement

This Contract is made on the day of 20 between

1.

Name of Provider:	
Registered business address <i>(as per details above)</i>	
Registered Number / Registered Charity Number:	

Name of School or College (if different)	
Address of School/ College	
Registered Number / Registered Charity Number:	

("The Provider")

2.

Name of Local Authority: ("Authority")	
Address	

("Authority")

1. **Definitions**

In this Contract, except where the context otherwise requires, the following expressions shall have the meanings hereby ascribed to them:

- 1.1 **"Academic Year"** means the twelve calendar month period commencing on the 1st of September each year unless a variation is added in Schedule 2 (Individual Placement Agreement)
- 1.2 **"Admission Date"** means the actual date on which the Learner is admitted to the School or College.
- 1.3 **"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.
- 1.4 **"Appendix/Appendices"** means any document that is mutually agreed by the parties to this Contract and should be appended to the Contract".
- 1.5 **"Arrangements"** means the standards of care, practices, and operations required of the School or College to comply with the Contract as set out at Schedule 1.
- 1.6 **"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.
- 1.7 The **"Authority"** is the Local Authority which has responsibility for the Learner and shall include its representatives, successors and assigns.
- 1.8 **"Authority Contracts Officer"** means the person or persons appointed by the Authority to oversee and monitor this Contract and to act as its representative for the purpose of the Contract.
- 1.9 **Care Manager"** means the person appointed by the Authority to develop a Care Plan to meet the assessed needs of the Learner. In practice this may be a social worker or other appropriate professional.
- 1.10 **"Care Plan"** means a document detailing a Learner'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.
- 1.11 **"Carer"** means a person named by a Authority to care for a Learner for whom the Authority has parental responsibility.
- 1.12 **"Child"** and **"Children"** mean any young 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 School or College are paid by the Authority, or by those for whom the Authority is acting.
- 1.13 **"Children's Home"** means a School which accommodates and provides care to Children and is classified as a Children's Home under current legislation.
- 1.14 The **"College"** shall mean that named in Section A1, and whose offer to provide education or education, health and care has been accepted by the Authority.
- 1.15 The **"Contract"** means this document and includes the Contract, Schedules and Appendices to which reference may properly be made to ascertain the rights and obligations of the School or College and the Authority.

- 1.16 The **“Education Funding Agency”** (**“EFA”**) means the Executive Agency of the Department for Education;
- 1.17 **“Education, Health and Care Plan”** (**“EHC”**) means the plan outlining the statutory provisions that must be delivered for Learners that are planned to be introduced nationally from September 2014.
- 1.18 **‘Element 1’** (core funding) is the funding provided to a School or College based on the applicable funding formula.
- 1.19 **‘Element 2’** (additional needs funding) is the funding provided to a School or College which allows the School or college to meet the costs of providing additional support to Learners with special educational needs up to a fixed amount.
- 1.20 **“Element 3”** funding (top-up funding) is the funding above the core education and additional support funding to meet the total cost of provision required by a High Needs student as assessed by the Authority as agreed by this Contract.
- 1.21 **"Fees"** shall mean the Fees so detailed herein at Schedule 2 (Individual Placement Agreement) in respect of a Learner which the Provider is to receive from the Authority for the service, as may be varied in accordance with Clause 3.
- 1.22 **"Financial Year"** means the twelve calendar months accounting period commencing on the 1st of April each year.
- 1.23 **"Headteacher"** (“Head, Leader, Principal, Proprietor”) means the person designated in charge of the School or College and who acts in loco parentis.
- 1.24 **"IEP"** means Individual Education Plan and is the plan for a Learner's educational programme for which the Provider is responsible.
- 1.25 **“Individual Placement Agreement”** means Schedule 2 (Individual Placement Agreement) (IPA) of this Contract when it refers to the individual arrangements agreed by the Provider and the Authority for a Learner who is the subject of a Placement and encompassing the arrangements within this Contract agreed between the Authority and the Provider.
- 1.26 **“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).
- 1.27 **“Learner”** means any Student whose educational, health and care needs are the responsibility of the Authority who is the subject of a Placement and whose Fees at the School or College are paid by the Authority, or by those for whom the Authority is acting.
- 1.28 **“Learning Difficulty Assessment”** means the assessment carried out by the Authority which defines the needs and provision required for young people with a learning difficulty and/or disability aged 16-25 who expect to leave school to receive Post 16 education, training or higher education. From September 2014 consideration will need to be given to convert a Learning Difficulty Assessment to an Education, Health and Care Plan.
- 1.29 **"Location"** means the location of the Provider's premises from where education, health and care is primarily to be provided.
- 1.30 **"Parent"** means the person(s) having parental responsibility for a Child as defined by the Children Act 1989.
- 1.31 **“PEP”** means the personal education plan which is the plan for the education of a Looked After Child

- 1.32 **“Period of the Contract”** means the dates specified in this Contract during which the Service is to be provided (see 2.2 below).
- 1.33 **“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.
- 1.34 **“Placement”** means a specific commitment made by the Authority through the completion of Schedule 2 (Individual Placement Agreement) in respect of a Learner and agreed by the Provider for the provision of education, health and care to address a Learner's individual needs in accordance with their Education, Health and Care Plan, statement, IEP and/ or PEP.
- 1.35 **“Plan”** refers to all necessary plans for the education, health and care of an individual Learner according to current legislation and statutory guidance.
- 1.36 **“Provider”** means the organisation or body which maintains the School or College and shall include its representatives, employees, sub-contractors, successors and assigns.
- 1.37 **“Review”** means the annual or other review of a Learner's Education, Health and Care 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 Child, Parent/ Carer, significant other (including the Provider).
- 1.38 **“Schedules”** means the Schedules annexed hereto.
- 1.39 The **“School”** shall mean that named in Section A1, including Alternative Provision, and whose offer to provide education or education, health and care has been accepted by the Authority.
- 1.40 **“Provider Contracts Officer”** means the person or persons appointed by the Provider to oversee and monitor this Contract and to act as its representative for the purpose of the Contract.
- 1.41 **“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 Contract, being a breach which goes to the root of this Contract such failure being considered so serious and fundamental to the continuance of the Contract as to justify immediate termination.
- 1.42 **“Service”** means all provision of education, care, work, actions and responsibilities required of the Provider as described in this Contract.
- 1.43 **“Statement of Special Educational Need” (SEN)** means statutory provisions that must be delivered for a Learner for which the Authority is responsible. From September 2014 consideration will need to be given to convert a statement to an Education, Health and Care Plan.
- 1.44 **“Supplementary Charges”** means charges to be paid by the Authority over and above the agreed Fees as defined in Schedule 2 (Individual Placement Agreement) which have been negotiated between the Authority and the Provider in order to meet a Learner's additional needs.
- 1.45 **“Undisputed Invoice”** – means an invoice that has been received in the correct format to the named contact and address given in writing by the Authority to the Provider and the invoice is for payment as set out under the terms and conditions in 3.2 and the Authority has not raised concerns about the invoice details or the level of service being provided within 30 days of the invoice being issued and payment becoming due.

- 1.46 “**VAT**” means any value added tax as imposed under the Value Added Tax Act 1994 or any similar value added tax.
- 1.47 “**Parental Contribution** means a contribution payable directly to the Provider by a Parentor by a Learner who is over the age of 16 (and in accordance with Section 532A of the Education Act 1996) outside the terms of this Contract.

2. The Contract

2.1 Standard of Service

- 2.1.1 The Provider agrees to provide a Service as specified in this Contract in respect of Learners placed by the Authority in the care of the Provider.
- 2.1.2 The Provider shall not assign or subcontract this whole Contract or any part of it without the prior written consent of the Authority, such consent not to be unreasonably withheld or delayed. 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. This consent is subject to the Provider being satisfied that any agency has staff vetting procedures that fully comply with statutory regulations. The Authority also consents to the sub-contracting of domestic or other ancillary tasks provided that this does not result in a breach of this Contract.
- 2.1.3. The Provider will ensure that the Service meets the quality standards detailed in this Contract and complies fully with the requirements detailed in the Education, Health and Care plan, Statement, IEP and/ or PEP and Care Plan for the Learner as appropriate to the Placement arrangements.

2.2 Period of Contract

This Contract is effective from the date stated in Section A and will continue until termination by either party in accordance with Clause 13 and cancels and supersedes any previous Contract for Service existing between the parties.

2.3 Scope of Contract

- 2.3.1 This Contract will apply to the Learner named in Schedule 2 (Individual Placement Agreement) to be placed and funded by the Authority with the Provider at the School or College specified in Section A during the period of the Contract.
- 2.3.2 Any pre- existing Individual Placement Agreements/ Schedules will transfer onto this contract at the earliest opportunity as agreed by both parties at the Learner’s next Review.

2.4 Variations

- 2.4.1 The Provider may propose, or the Authority may request, during the Period of the Contract, a variation in the manner in which the Service is provided and funded by the Authority.
- 2.4.2 Where there is a substantial change in the Service the Provider Contracts Officer and the Authority Contracts Officer will consider whether any variations shall be made in respect of the Fees or any Supplementary Charges. No variation should be made without the written agreement of both parties.
- 2.4.3 This Contract may only be amended in writing, signed by the duly authorised representatives of the Provider and the Authority and annexed to this Contract by way of an Appendix, following prior discussion of the need for proposed alterations and

consideration of the time required to implement any agreed changes.

- 2.4.4 Where agreement cannot be reached as to a variation of the Fees resulting in any variation the conditions in section 12 will be applied.

3. Financial Arrangements

3.1 Fees

- 3.1.1 The Fees payable by the Authority to the Provider under this Contract in respect of a Learner are set out in Schedule 2 (Individual Placement Agreement), the Individual Placement Agreement for that Learner.

- 3.1.2 Any other Fees relating to Supplementary Charges and in respect of a Learner which the Provider has agreed to supply will be separately identified within Schedule 2 (Individual Placement Agreement).

- 3.1.3 The Authority is responsible for all Fees agreed in Schedule 2 (Individual Placement Agreement) and any subsequent amendments, which are not Parental Contributions, or the responsibility of the Education Funding Agency or the relevant Clinical Commissioning Group.

- 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 The Authority will specify the payment arrangements which apply. Unless otherwise stated, clause 3.2.2 will apply.

- 3.2.2 The Provider shall be entitled to claim in respect of a Learner payment of those Fees specified in Schedule 2 (Individual Placement Agreement) in respect of that Learner from the date of his or her admission or the first day of each subsequent academic term or payment period as agreed in advance by the Provider and the Authority.

3.2.2.1 The Provider shall render an invoice in respect of such Fees in accordance with this Contract as soon as reasonably practicable and the Authority shall pay any invoice within 30 days of receipt of the correctly submitted, Undisputed Invoice as specified in Schedule 2 (Individual Placement Agreement), unless the Authority, acting reasonably, is not satisfied that the details shown on the invoice are correct, or that the Service provided has not been in accordance with the contract. Payment made by the Authority shall not imply acceptance by the Authority that the Services have been satisfactorily performed.

3.2.2.2 If any sum payable under this Agreement is not paid within 30 days (final date for payment) of the receipt of a correctly submitted and undisputed invoice that sum will bear interest from the final date for payment until payment is made in full both before and after any judgment in accordance with the Late Payment of Commercial Debts (Interest) Act 1998. In the event of a dispute, the Provider may resubmit an invoice for the undisputed amount or the most recently agreed Fee, the payment of which will not be withheld.

- 3.2.3 Based on agreed changes to the Learner's Plan(s), either Party may propose an increase or decrease of the Fees and Additional Service Fees by submission in writing of any proposed changes.

3.2.4 Having regard to the actual cost incurred by the Provider and if either Party finds the increase or decrease under sub clause 3.2.3 or 3.2.5 too large or small then the Parties shall meet and discuss.

3.2.5 If the Provider proposes to increase the Price and/or Additional Service Fee, then such increases must be demonstrated by the Provider as being justified and the Authority shall be entitled to request the Provider to provide any documents or other information to support the proposed Price increase.

3.2.5.1 Either Party may notify the other of any proposed increase or decrease. The Provider may in assessing their need for an annual, inflationary, fee request consider information derived from a number of sources such as RPI/Teachers Pay award, but at all times must pay due heed to working in partnership with Local Authorities to attain Value for Money and to achieve efficiency improvements. Both parties will have regard to the actual costs incurred by the Provider.

3.2.5.2 The Provider may notify the Authority of any proposed request in the level of Fees for the following financial year, giving a minimum of three months for consideration of the request by the Authority.

3.2.5.3 The Authority shall acknowledge notification of any proposed Fee increase within 30 days of receipt of such notification.

3.2.6 The Authority will not be liable to meet the Fees in the following circumstances:

3.2.6.1 When a Learner has been permanently excluded. The Authority's liability will cease on the day that the exclusion is confirmed by the School or College in accordance with any arrangements for appeals or 15 days after the Headteacher acting expeditiously has notified the Authority of the exclusion whichever is the earlier.

3.2.6.2 When a Learner has been excluded for a fixed term period exceeding 15 days and the school or College is unable to provide suitable alternative education where appropriate, as defined, for the period of the exclusion. The Authority will not meet the Fees beyond 15 days and will resume paying the Fees on the date that the Learner returns to school or College.

3.2.6.3 Where a Learner is directed not to attend the school or College on safeguarding advice and the school or College cannot provide suitable alternative education. In this circumstance the Authority will meet the Fees for a period not exceeding 15 days from the date of the Learner's last day of attendance. If the Authority is having to provide home tuition or alternative education during these fifteen days the cost of this support will be deducted from the fee. The Authority will resume paying the Fees from the date that the Learner returns to school or College.

3.2.6.4 Where the Authority is notified of safeguarding issues relating to another learner(s) which the Authority assesses to have implications in relation to this Learner and the School or College cannot provide suitable alternative education. In this circumstance the Authority will meet the Fees for a period not exceeding 15 days from the date of the Learner's last day of attendance. If the Authority is having to provide home tuition or alternative education during these 15 days the cost of this support will be deducted from the Fees. The Authority will resume paying the Fees from the date that the Learner returns to school or College.

3.2.6.5 Where a Learner is absent on account of illness and the school or College is

unable to continue to provide suitable / appropriate education or if the Authority is having to provide home tuition or hospital school education, after 15 days the Authority will deduct the cost of this support from the Fees, the deduction not exceeding the equivalent of the School or College's daily rate for the Learner.

- 3.2.6.6 When a Learner dies the IPA shall be terminated 7 Days following the date of death. During this time, the Authority and the Provider shall work together to make appropriate arrangements and responses to any coroner inquest, funeral arrangements and transfer of personal belongings. Any additional costs (for example for additional staffing) which the Provider is contracted to continue to pay in respect of the Learner will be paid by the Authority until the end of the relevant notice period that would have been applicable if the Learner had not died.
- 3.2.6.7 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 school or College of the termination of the Agreement.
- 3.2.6.8 Where a learner has been in Placement for a week or less the Authority's liability for the Fee will be limited to one additional day.
- 3.2.6.9 Where a learner is in Placement more than 1 week but less than a full academic half term the Authority's liability for the Fee will be limited to one additional week
- 3.2.6.10 Where a learner is in Placement more than a full academic half term but less than a full academic term the Authority's liability for the Fee will be limited to two additional weeks.
- 3.2.7 In the case of a permanent exclusion, the date of exclusion shall be that date on which, in accordance with the School or College's policy on exclusion, following appropriate notice and consultation, in line with clause 4 of Schedule 1 it is deemed that a return to the School or College will not be possible.
- 3.3 Parental Contributions or Learner Contributions
- 3.3.1 The Provider shall be entitled to request voluntary contributions from a Parent for any services, activities, materials or items of clothing provided by the Provider and not included or listed within the Fees detailed in Schedule 2 (Individual Placement Agreement) of this Contract.
- 3.3.2 Neither a Learner's Placement with the Provider, nor his or her opportunity to take part in the whole curriculum of the School or College, shall be prejudiced by any unwillingness or inability on the part of the Parent or Learner to make Voluntary Parental Contributions
- 3.3.2 Voluntary Parental Contributions shall be met by the Parent or Learner (if over 18) where they or an authorised person have agreed in writing to do so and 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 or Learner to make the Voluntary Parental Payment Contribution shall not constitute a breach of this Contract
- 3.3.3 Where Direct payments have been made to either parents of beneficiaries who are under 16 or to beneficiaries who are aged over 16 for the purpose of securing
- 3.3.3.1 special educational provision specified in a Statement,
- 3.3.3.2 provision identified in a learning difficulty assessment (under section 139A of the

Learning and Skills Act 2000) as required to meet education and training needs, and/or

3.3.3.3 transport or anything else that may be subject to arrangements in section 508B(1) (school children), section 508F(1) (adult Learners) or section 509AA(7)(b) (sixth formers) of the Education Act 1996

3.3.4 the Parent or Learner will agree in writing with both the Provider and the Authority the Services subject to the Direct Payments. The Authority accepts no financial responsibility for the payment of such contributions or for the Services and any failure on the part of the Parent or Learner to make the Voluntary Parental Payment Contribution shall not constitute a breach of this Contract.

3.4 Financial Assurance

3.4.1 The EFA will undertake financial health assurance functions for all institutions which receive funding directly from the EFA. The EFA will provide this assurance to local authorities which place high needs Learners in such institutions, following the Joint Audit Code of Practice (as amended).

4. Approval, Statutory and other Regulations

4.1 The Provider must inform the Authority immediately by telephone confirmed in writing within two days of any amendment, change to or restriction placed upon the approval of the School or College by the Secretary of State for the Department for Education and/or the Department for Business, Innovation and Skills, and of any change in status.

4.2 The Provider shall operate fully in accordance with all relevant Acts of Parliament, amendment or re-enactment of any Act, Statutory Regulation, and other such laws and statutory guidance, as may affect the provision of education, health and care specified under the Contract including relevant parts of:

4.2.1 The Education Act 1996;

4.2.2 The Children Act 1989 and Regulations made under the Act;

4.2.3 The School Standards and Framework Act 1998;

4.2.4 The Special Educational Needs and Disability Act 2001;

4.2.5 Education (Special Educational Needs) (Approval of Independent Schools) (amendment) Regulations (1998; 2002);

4.2.6 Education (Special Educational Needs Code of Practice) Appointed Day (England) Order 2001;

4.2.7 The Care Standards Act 2000;

4.2.8 The Human Rights Act 1998;

4.2.9 Equalities Act 2010

4.2.10 The National Minimum Care Standards for Residential Special Schools and Children's Homes 2002;

4.2.11 The Disability Codes of Practice (Schools and Post 16) 2002;

4.2.12 DfES guidance "Inclusive Schooling- Children with Special Educational Needs" 2001;

4.2.13 DfES guidance "Access to Education for Children and Young People with Medical Needs" 2001; The Apprenticeships, Skills, Children and Learning Act 2009 (ASCL Act).

4.2.14 The Special Educational Needs (Direct Payments) (Pilot Scheme) Order 2012

4.2.15 The Learning and Skills Act 2000.

4.2.16 The Education and Skills Act 2008

4.2.17 Education Act 2011

4.2.18 All other relevant Acts, Regulations and enabling powers and provisions.

4.3 Health & Safety

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

4.3.1 all relevant Health and Safety Acts, Health and Safety Regulations and Codes of Practice approved by the Health and Safety Executive;

4.3.2 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.

4.4 The Contractor shall ensure that any communication sent to the student's home Authority regarding the health and safety of any student within the scope of Reporting of Injuries, Diseases and Dangerous Occurrences (RIDDOR) 1995 and fatal road traffic accidents is also sent to the Education Funding Agency as soon as practically possible.

4.5 Local authorities shall share information about health and safety issues that may have an effect on Learners receiving provision at the School or College with the EFA.

5. Conflict of Interest

5.1 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 if any elected Member or employee of the Authority is a member of a governing body or is a Trustee of the Provider or the School or College or has a financial interest in the Provider.

6. Indemnity and Insurance

6.1 The Provider shall indemnify the Authority against damages, costs, actions and other loss liability claims suffered or incurred by the Authority arising from this contract including but not limited to any act of neglect or default of the Provider's employees or agents save where the same is due to an act of negligence or an omission of the Authority, its employees or agents.

6.1.1 The Provider will be liable, indemnified and keep indemnified itself and any of its agents for any accidental or non accidental damage caused by the Learner apart from wilful damage to their own personal belongings.

6.2 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.

6.2.1 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 £10,000,000)

6.2.2 Public liability (at least £5,000,000 in respect of any one claim)

6.2.3 Buildings and Contents (including Learners' clothing, personal belongings and money in accordance with any written statement from the Provider concerning loss of personal property)

6.2.4 Directors' and Officers' liability, Trustees' liability, Professional 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 £2,000,000 any one insurance period) which should be

in place for a 6 years period following the termination of the Contract and the IPA in respect of retrospective claims.

- 6.2.5 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 School or College.

7. School or College Employees

- 7.1 The Provider shall at all times during the Contract employ sufficient persons appropriately qualified to successfully deliver the standards of education, health and care required by this Contract.
- 7.2 The Provider shall ensure that all persons including their Staff whose duties involve access to or information about, Learners are subject to enhanced Disclosure and Barring checks/ ISA and checks by the Provider prior to starting their duties, ensuring full compliance with the Safeguarding Vulnerable Groups Act 2006.
- 7.3 The Provider shall ensure that no member of their Staff or any sub-contractor is permitted to provide Services until all the necessary checks have been undertaken and the checks are satisfactory.
- 7.4 The Provider will follow the system for recruitment as set out in Standard 27 of the National Minimum Care Standards for Residential Special Schools, Standard 27 of the National Minimum Care Standards for Children's Homes or Safeguarding Children and Safer Recruitment in Education as appropriate. The Provider will ensure that there is a satisfactory recruitment process recorded in writing for all employees.
- 7.5 The Provider shall make all reasonable arrangements to ensure the annual review of 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

8. Records, Information and Data Protection

- 8.1 The Provider will maintain formal procedures/systems for the keeping of accurate records that fully comply with the relevant Records Regulations and/ or relevant National Minimum Care Standards and for a minimum of 10 years or longer if the Authority specifically requests so in writing.
- 8.2 In addition to 8.1above, the Provider will ensure that the information, records and documentation necessary to effectively monitor the performance of the Contract are accurately maintained at all times and that their validity is checked at regular intervals.
- 8.3 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 Contract and thereby to ensure that the Authority fully meets its statutory obligations in regards to this information.
- 8.4 Full written records must be kept of all complaints including those outstanding received in connection with the Service, 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.
- 8.5 Relevant records will be made available on request to the Authority and to the Parent and/ or Learner subject to clause 9.
- 8.6 The Provider will allow access to Service records to any Learners' Guardian appointed by the Courts to a Learner.

- 8.7 On termination of a Placement the Provider shall ensure that they maintain all files and records, including Learners' individual records, case notes and information held by provider in full compliance with all relevant legislation and guidance. The Provider will ensure that where a learner is placed at a new school or College all relevant files and records shall be forwarded or copied to the learner's new school or College within three (3) weeks of the learner starting their Placement. On request of the Authority, all files and records should be returned to the Authority by the Provider.
- 8.8 Provision must be made for the separate recording and secure storage of confidential files.
- 8.9 A policy of open access for Learners to their own records will be employed, subject to the relevant Regulations in the Data Protection Act 1998 and the relevant Records Regulations.
- 8.10 All Learners have a right to privacy and, therefore, all information and knowledge relating to them and their circumstances will be treated as confidential.
- 8.11 Both parties may collect and maintain information which will be processed manually or by computer and used in accordance with their respective needs under the terms of relevant data protection legislation. Both parties undertake to fully comply with the requirements and principles of the Data Protection Act 1998 and information held by either party may be disclosed to agencies specified in their respective registrations.
- 8.12 The Provider acknowledges the Authority's obligations under the Freedom of Information Act 2000 (FOIA) and in particular that the Authority may be required to provide information relating to this Contract or the Provider to a person in order to fully comply with its obligations under the FOIA.
- 8.13 The Provider will use best endeavours to facilitate the Authority's full compliance, in connection with this Agreement, with the Authority's obligations under the FOIA and fully comply with appropriate and reasonable requests from the Authority for that purpose within 10 working days of the request being made. Any FOIA request made direct to the School or College will be immediately forwarded in writing to the Authority
- 8.14 For the purposes of this Agreement confidential information shall exclude any information that the Authority is obliged to disclose to a person under the provisions of the FOIA and any codes of practice and guidance issued by the Government and the Information Commissioner.

9. Confidentiality

- 9.1 Both Parties shall preserve confidentiality in respect of any personal information held in relation to a Learner and will not disclose the same without the Parent's or where appropriate, the Learner's written consent except where this is required by law or order of a Court or otherwise in accordance with their notification registered with the Information Commissioner.
- 9.2 Both Parties will have a policy on confidentiality which accords with the principles of the Data Protection Act 1998, and will have mechanisms in place to ensure full compliance.
- 9.3 The Provider will establish a policy on the maintenance and destruction of files which will take into account all relevant legislation and include the need to consider any response to future claims for liability against the Provider.

10. Monitoring of Service Provision

- 10.1 The Provider acknowledges the right of the Authority to monitor the provision made for the care and education of a Learner specified in Schedule 2 (Individual Placement Agreement) placed by the Authority. This will include monitoring all aspects of the

provision provided, irrespective of the Element (Element 1, Element 2 or Element 3) it is delivered through. Monitoring may include visits by the Authority's representatives or agents by prior agreement with the Head-teacher, 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 Learners and minimal disruption to the education of Learners.

- 10.2 Such arrangements shall be in addition to and not prejudice any Statutory Inspection under provision of the appropriate Acts.
- 10.3 The Authority may within 4 weeks of becoming aware of the same reject any Service 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 Contract. The Authority shall in such circumstances be entitled to request the Provider and the Provider shall within 4 weeks of such request agree with the Authority either to provide Services in lieu to the agreed standard, to cancel any invoices raised or to provide the appropriate refund or reduction of a following payment.
- 10.4 Where the Services delivered under this Contract 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 EFA 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 EFA or to terminate the Contract in respect of the whole Services or that part which is assessed as inadequate.
- 10.5 The Authority will carry out an assessment of how the Provider has used the total funding made available to meet the needs of the learner, as described in the Individual Placement Agreement. Due to the linked nature of this Contract and the EFA contract, the Authority may share the outcome of such an assessment with the EFA. The purpose of this assessment will be to inform future contracting and allocation decisions.

11. Corrupt Practices

- 11.1 The following actions on the part of the Provider will constitute a Serious Breach and empower the Authority to terminate this Contract and to recover from the Provider the amount of any loss directly resulting from such cancellation and also to exclude the Provider from future Contracts. The Provider:
- 11.1.1 Offering any gift or consideration as an inducement or reward to any servant of a public body;
- 11.1.2 Offering any improper inducement or exerting unreasonable pressure upon potential pupils or their relatives, or others with an interest, to attempt to encourage the potential Learner, Parent or relative to use the Provider; or
- 11.1.3 Taking unreasonable financial advantage of its relationship with a Learner.
- 11.2 Neither the Provider nor the Authority nor any of their employees or agents shall solicit or accept any gratuity, expensive gifts or tip or any other form of money taking or reward, collection or charge for any part of the Service other than lawful charges notified to the Authority and except where this is compliant with the Trust Deeds of the school or College and other relevant documents.

12. Resolution of Disputes between Parties

- 12.1 If a dispute arises out of this Contract the Parties will use best endeavours to settle the dispute by negotiation. Discussions will take place between the representatives of The Authority and the Provider.
- 12.2 If the dispute cannot be resolved at this level then either Party may request the other to participate in a meeting of their respective senior managers, in order to discuss the dispute and to agree a strategy to resolve it.
- 12.3 In the event that the dispute is not resolved by negotiations within 20 Working Days the Parties shall, before resorting to arbitration proceedings, attempt to resolve the dispute by mediation in accordance with the Centre for Dispute Resolution (CEDR) Model Mediation Procedure.
- 12.4 If the Parties fail to resolve their dispute by mediation, then either Party may serve notice on the other to require the dispute to be referred to arbitration in accordance with the Arbitration Acts 1950 and 1996.
- 12.5 The Parties agree that if an arbitrator is appointed under clause 12.4 then:
- 12.5.1 The decision of the arbitrator will be final and binding on the Parties in the absence of manifest error;
- 12.5.2 The arbitrator will not have exclusive jurisdiction on questions of construction of law;
- 12.5.3 Each of the Parties will bear one half of the costs of the reference to the arbitrator unless the arbitrator directs otherwise.
- 12.6 For the avoidance of doubt, the use of the disputes procedure will not delay, or take precedence over, any use of the default or termination procedures.

13. Breach of Contract and Conditions of Termination

- 13.1 The Contract may be terminated forthwith:-
- 13.1.1 by either Party on written notice if the other party is in Serious Breach of the terms of the Contract or,
- 13.1.2 by either Party in the event of a breach capable of being remedied, if the other Party fails to remedy the breach within 28 days of receipt of a written notice to remedy the same. It is agreed that termination arising in relation to this clause relates to the breach of a particular Placement only and not this Contract or any other Placement.
- 13.2 Either Party may terminate the Contract forthwith on written notice if the other Party shall become bankrupt or make an arrangement with its creditors or enter into winding up proceedings.
- 13.3 Termination of the Contract shall not prejudice the rights of either Party or any Learner which have arisen on or before the date of termination.

14. Termination of a Particular Placement

- 14.1 Where a Learner has been in Placement for more than a full academic term, an individual Placement may be terminated by either Party giving to the other not less than 6 weeks' written notice or in respect of a Learner permanently excluded, through the arrangements described in clauses 3.2.6, 3.2.7 and clause 4 of Schedule 1. Where the Provider can justify exceptional extenuating circumstances for instance related to a specific member of staff's contract this period may be extended to 12 weeks by mutual agreement between the Provider and the Authority. If the Learner's place is filled within

the notice period, the Authority's liability will cease when the Learner's Placement starts or at the end of the agreed notice period, whichever is sooner.

14.2 No period of notice will be required for short stay residential or assessment Placements where a Learner'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 7 day's notice will be applicable.

14.3 Due to the linked nature of this Contract and the EFA Contract, where appropriate, the Authority shall notify the EFA of any actions taken pursuant to Clause 13 and Clause 14. Further, where appropriate, the Authority shall consult with other local authorities before taking any actions taken pursuant to, or subsequent to, Clause 13 or Clause 14.

15. Force Majeure

15.1 Neither Party will be liable for delay or failure to perform the obligations of the Contract if the delay or failure result from circumstances beyond their reasonable control including but not limited to Act of God, Government Act or direction, War, Explosion or Civil Commotion or Industrial Dispute (excluding disputes local to the Provider). In the event of delay or failure arising from any such cause the Authority will have the right to make alternative arrangements for the provision of the Service and both parties will have the right to seek to renegotiate the Fee and the terms of the Contract.

16. Waiver

16.1 No delay, neglect or forbearance on the part of either Party in enforcing against the other Party any term or condition of the Contract shall either be or be deemed to be a waiver or in any way prejudice any right of that Party under the Contract.

17. Notices

17.1 All notices required or permitted to be given under this Contract shall be in writing and sent by first class letter or delivered by hand to the other Party at the address stated herein or at such other address as the appropriate Party may from time to time designate and if so sent shall, subject to proof to the contrary be deemed to have been received by the addressee on the second business day after the date of posting or successful transmission.

18. Law

18.1 The Contract shall be subject to, construed, interpreted in accordance with English Law, and, subject always to Clause 12, shall be subject to the jurisdiction of the Courts of England and Wales.

18.2 In this Contract words in the singular number shall include the plural.

19. Third Parties

19.1 A person who is not a party to this Contract may not enforce any of its terms under the Contract (Rights of Third Parties) Act 1999. The EFA may raise requisitions under clauses, 10,13 and 14. The Parties reserve the right to vary any term of this Agreement without the consent of the Education Funding Agency.

20. Complete Contract

20.1 This Contract embodies the complete Contract between the Authority and the Provider and supersedes all other written understanding and Contracts with respect to all matters referred to herein.

21. Signatures of Agreeing Parties to the Contract

21.1 This Contract dated the day of 20 is signed and agreed:

1. Duly Authorised Signatory on behalf of the Provider

Signed by: (PLEASE PRINT NAME)

Designation: (PLEASE PRINT)

Signature:

Dated:

In the presence of: (PLEASE PRINT NAME)

Designation: (PLEASE PRINT)

Signature:

Dated:

2. Duly Authorised Signatory on behalf of the Authority

Signed by: (PLEASE PRINT NAME)

Designation: (PLEASE PRINT)

Signature:

Dated:

In the presence of: (PLEASE PRINT NAME)

Designation: (PLEASE PRINT)

Signature:

Dated: