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AGREEMENT FOR THE PLACEMENT OF SECONDARY PHASE LEARNERS IN ALTERNATIVE EDUCATION PROVISION

PLACEMENT FORM

1) TERMS OF AGREEMENT

1.1 This is an Agreement made on (date) between:

(1) School name:

Address:

and

(2) Provider name:

Address:

1.2 This Agreement comprises this Placement Form and the attached terms and conditions.

1.3 In the event that there is any conflict within this agreement, this Placement Form shall take precedence over the terms and conditions.

2) PROGRAMME:

2.1 Individual Learner (Name):

2.2 Year Group:

2.3 The Provider will provide full time education on and between the following dates:

Start date: End date: No. of weeks:

2.4 Part-time provision will be at the following times each week:

If part time education please specify:

	Mon	Tue	Wed	Thu	Fri
No. of Hours					

2.5 The agreed Programme is set out in the table below:

Description of course(s) <i>(eg. English)</i>	Expected Accreditation <i>(eg. GCSE)</i>
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2.6 Any deviation from the agreed qualification(s) listed in 2.5 (above) above must be an accredited qualification on the QCF and must be agreed with the School Representative prior to delivery to the Learner, such agreement not to be unduly withheld or delayed.

3) FINANCE:

3.1 The School agrees to pay the Fee to the Provider in return for the provision of the Services by the Provider. The Fee is £ for the period stated above in section 2.3.

3.2 Fees will be paid monthly in arrears within 30 days of receipt of an invoice, in accordance with the Schedule for Payment below.

Schedule for Payment

Period (month)	Invoice Value	Invoice date
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4) LOCATION OF PROVISION

(insert details of where the individual learner/pupil is to be educated)

5) TRANSPORT ARRANGEMENTS

(insert details of who is responsible for transporting the individual learner/pupil to and from the provider and/or between different locations of the provision)

6) CHECKLIST

6.1 The following documents should be provided by the Provider and verified by the School prior to authorisation:

- Professional Indemnity Insurance Certificate (min £5 million)
- Public Liability Insurance (min £10 million)
- Employers Liability Insurance (min £10 million)
- Statement indicating Safeguarding procedures including the safe recruitment of staff are in place and adhered to .

- 'Statement showing that proprietors have no criminal convictions (including. DBS Checks)' which is required for verification
- 'Statement indicating if organisation has been subject of full L.A. Child Protection Enquiry' which is required for verification.
- Statement indicating Health and safety principles and processes are in place and adhered Statement from Bank stating if organisation is financially sound

7) REPRESENTATIVES OF EACH PARTY

School Representative	
Authorised Representative (name)	
Post held:	
Tel no:	
Fax:	
E mail:	
Provider Representative	
Nominated Representative (name)	
Post held:	
Tel no:	
Fax:	
E mail:	

8) AUTHORISATION:

Authorised to sign for and on behalf of the Provider

Name (print):

Signed by:

Position:

Date:

Authorised to sign for and on behalf of School

Name (print):

Signed by:

Position:

Date:

TERMS AND CONDITIONS

1. Definitions and Interpretation

1.1. In this Agreement, the following terms shall have the meanings given to them below:

Term	Definition
Academic Year	Means the period running 1 September to 31 August, of which 195 days are identified as being school term time. Term dates for each academic year are available on the Local Authority's website. A Year 11 pupil remains on a school register/roll until the last Friday in June.
Agreement	Means this agreement comprising of the Placement Form and these terms and conditions
Alternative Education Provision	Means the provision of an alternative to mainstream education for secondary aged learners who are at risk from exclusion from school to appropriately meet their educational and behavioural needs.
Area Behaviour Partnerships	Means the partnership of local schools or education institutions within an area of Warwickshire who have joined together for the purposes of arranging educational support and provision for Pupils who may be at risk of exclusion or require alternative education (other than mainstream school) within their area.
Complaint	Means an expression of dissatisfaction or disquiet which requires a response.
Concerning Information	Means the arrangements made with the Provider under this Agreement in respect of an individual Pupil for the provision of Services to that Pupil
DBS Check	Means a criminal records check of the most extensive kind allowed by the law provided by the Disclosure and Barring Service (formally known as the Criminal Records Bureau)
Equalities Acts	Means the Equality Act 2010; or any other Act of Parliament or Regulations or statutory modification or re-enactment thereof relating to non discrimination and equal treatment in employment.

Fee(s)	The Fee rates as set out in the Placement Form.
Financial Year	Means a period of twelve (12) months commencing on 1 st April of one year and ending on 31 st March in the following year.
Individual Learning Programme	The document produced by the Provider in accordance with the School's initial assessment
Individual Learning Plan	The Plan developed by the Provider in conjunction with the School setting out how the identified outcomes for the individual Pupil will be achieved
Legislation	Includes any relevant Act, Statutory Instrument, Regulation (including EU Regulations) statutory guidance and case law relating to the Service.
Local Authority	Means Warwickshire County Council or any committee, sub committee or officer thereof
Month	Means calendar month.
Outcome	The impact of a service to the Pupil receiving it.
Parties	Means the Provider and the School and their successors and permitted assignees, and 'party' shall mean either of them as the context permits.
Placement	Means the arrangements made with the Provider under this Agreement in respect of an individual Pupil for the provision of Services to that Pupil
Placement Form	Means the form attached to these terms and conditions that details the requirements for the Placement.
Provider	Means in the case of full-time provision of Services, the organisation registered with the Regulatory Body providing its Services in respect of individual Pupils / groups of Pupils. In the case of part-time provision of Services, the organisation which is providing Services which are equal to the Regulatory Body's standards of 'Good' or 'Outstanding'.
Provider's Representative	Means the Officer appointed by the Provider to be responsible for liaising with the School in relation to this Agreement.

Pupil	The individual learner or group of learners for whom the Service is to be provided.
Registering Authority	Means the Department for Education or its successor government department
Regulatory Body	Means Ofsted or its successor organisation responsible for the regulation of full-time alternative education provision.
Remedial Action Plan	Means a plan to rectify a breach or performance failure under this Agreement.
Safeguarding	Means the protection of vulnerable children to whom the Provider will come into contact.
School Day	Means a day on which school is in session. It is expected that five hours of educational provision will be delivered between the hours of 8.30am and 4pm. Any variation from these times will need to be agreed on an individual basis with the School.
School Representative	Means the person appointed by the School from time to time as the School Representative for the purposes of this Agreement, which shall include such other members of staff who are delegated by the School to carry out the School Representative's tasks.
Service(s)	Means the provision by the Provider of all or any part of the following provisions: (i) Full-time alternative education provision; (ii) Part-time alternative education provision; as specified on the Placement Form.
Service Category	Means the type of Service required for the specific Pupil's needs
Staff	Means all persons employed by the Provider to perform the Services under this Agreement together with the Provider's servants, agents and sub-contractors, volunteers and trainees, where relevant, used in the performance of the Agreement.
Working Day	Means standard office hours during which Providers and the School may be contacted, namely Monday – Friday, 8.30am to 5.00pm excluding Statutory and English Bank Holidays.

- 1.2 **Headings.** Clause and sub clause headings, clause numbers, and the use of use of bold type or italics are for ease of interpretation only and shall not affect the interpretation of this Agreement.
- 1.3 **Gender, Singular/Plural and Individuals.** Words referring to the masculine gender include the feminine gender, words in the singular include the plural and words referring to individuals shall be treated as including organisations, and vice versa.
- 1.4 **Compliance by Employees or Agents.** References to Acts or Omissions of the Provider shall include its employees, agents or sub contractors and it is the Provider's responsibility to ensure its employees and sub-contractors comply with the provisions of the Agreement.
- 1.5 **English Law.** The Agreement shall be governed in accordance with English Law and subject to Clause 23 (Dispute Resolution) the Parties submit to the exclusive jurisdiction of the English Courts.
- 1.6 **Amendments to Legislation.** A reference to any Act of Parliament Order, Regulation, Statutory Instrument, or Guidance shall include any revised or updated version issued.
- 1.7 **Severance of Clauses.** In the event that any clause in this Agreement shall be declared by a court of law or considered by the School, acting reasonably, to be void, invalid or unenforceable it shall be removed from this Agreement and the parties shall meet to agree an alternative clause which shall so far as reasonably practical give effect to the intentions of the clause which has been deleted.
- 1.8 **Survival of Clauses.** Following termination of this Agreement, clauses which are expressed to survive after the termination of this Agreement shall remain in effect notwithstanding the termination of this Agreement including but not limited to Clause 3.18 (Late Payments), Clause 12 (Data Protection Act), Clause 9.2 (Indemnity) Clause 13 (Warranties), Clause 14 (Insurance), Clause 24 (Dispute Resolution) Clause 25 (Set Off), Clause 28.5 (TUPE Indemnity) and Clause 31 (Notices).
- 1.9 **Waiver.** The decision not to or failure of any party at any time to enforce any provision of this Agreement shall in no way affect its right thereafter to require complete performance by the other party, nor shall the waiver of any breach of any provision be taken or held to be a waiver of any subsequent breach of any such provision or be a waiver of the provision itself.
- 1.10 **Third Party Rights:** The parties do not intend that these terms and conditions shall be enforceable by any third parties and the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement.

2 **The Services**

- 2.1 The Provider shall provide the Services specified in the Placement Form to the School in accordance with this Agreement and the terms of the relevant, if this doc is the placement form will we need the call of contract?
- 2.2 In addition to the Services, the Provider shall provide at no additional cost to the School any services, functions and responsibilities (including any incidental services, functions or responsibilities) not specifically set out in the Placement Form but which are reasonably to be inferred from the Agreement.

2.3 The Provider shall comply with all lawful and reasonable directions of the School or the Local Authority relating to its performance of the Services. Notwithstanding anything to the contrary in this Agreement, the School's discretion in carrying out its statutory duties shall not be fettered or otherwise affected by any provision of this Agreement.

3 Fees & Payment

3.1 In consideration of, and subject to the due performance of the Services by the Provider, the School shall pay the Provider the Fees as set out and described in the Placement Form. The Provider shall invoice the School in accordance with the procedures set out in this Clause 3 and the School shall pay the Provider in accordance with those procedures.

3.2 Unless otherwise expressly provided, the Fees are inclusive of all costs and expenses and all incidental and other services, and expenses and all incidental and other services, functions and responsibilities of the type referred to in Clause 2.

3.3 The Service Provider is not entitled to reimbursement for expenses unless such expenses are specified in a Call-Off Contract or have been incurred with the prior written consent of the School, in which case the Provider shall supply appropriate evidence of expenditure in a form acceptable to the School.

Payment

3.4 The total Fees in respect of each Pupil are based on full performance of the Individual Learning Plan and adherence to the requirements set out in the Placement Form including provision for the duration of the academic year or term identified.

3.5 In the event that a Pupil is withdrawn, pro rata Fees will be paid by the School up to and including the day of withdrawal of the Pupil.

Full-time provision

3.6 For the avoidance of doubt, the unit cost will be per Pupil and will be the Fees the School pays for the Service in accordance with the Schedule for Payment set out on the Placement Form.

Part-time provision

3.7 For the avoidance of doubt, the unit cost will be a baseline cost agreed with the Provider in accordance with the Schedule for Payment set out on the Placement Form. Depending on the needs of an individual Pupil, the cost of the placement will be negotiated with the School, in order to allow for Pupils who may require additional support at an additional cost or reduced support at a reduced cost, whichever is appropriate.

Invoicing Arrangements

3.8 Invoices should be submitted to the School on the last working day of each month. Where both parties agree, payments may be made at half-termly or termly intervals (linked to the academic year). In any event invoices must be submitted by the end of the financial year in which the provision was delivered or within three (3) months of the period in which the provision was delivered (whichever is later). Any invoices submitted outside this timescale will be paid at the discretion of the School.

- 3.9 Payment by the School will be made by Bank Transfer (Bank Automated Clearance System BACS) or such other method that the School may choose from time to time within 30 days of receipt of an invoice in accordance with the schedule of payment in the Placement Form and where there are no outstanding queries.
- 3.10 Invoices will be deemed to be a complete invoice for all Services provided and no additional payments for a service will be paid except in extenuating circumstances and with the prior written agreement of the School.
- 3.11 The School reserves the right to make a reduced payment or not to make a payment where the service is terminated prior to the end of the academic term / year without agreement.
- 3.12 Invoices must be submitted in the correct format with all the information and supporting documentation for variations, previously agreed with the School.
- 3.13 Where the Provider is able to demonstrate to the satisfaction of the School that the Service, or part thereof, constitutes a taxable supply, the School will pay the appropriate amount of VAT to the Provider upon submission of a VAT invoice in accordance with VAT regulations.
- 3.14 In the event of a variation to the Services in accordance with this Agreement that involves the payment of additional charges to the Provider, the Provider shall identify these as a separate item on the invoices.
- 3.15 Any loss or additional expenses incurred by the Service Provider in the correction or re-submission of an invoice shall be at the Service Provider's expense.
- 3.16 No payment made by the School shall indicate or be taken to indicate the School's acceptance or approval of any part of the Services or any act or omission of the Provider, or absolve the Provider from any obligation or liability imposed on the Provider under this Agreement.
- 3.17 No payments made by the School under this Agreement, including the final payment, shall prevent the School from recovering any amount overpaid or wrongfully paid including, but not limited to, payments made to the Provider by mistake of law or fact. The School shall be entitled to withhold such amount from any sums due or which may become due to the Provider or the School may recover such amount as a debt.

Late Payments

- 3.18 In the event of a delay or default by either party in making payment, or refund where such payment or refund is delayed more than 14 days after its due date the Party awaiting the overdue payment shall be entitled to charge interest on any payment overdue at a rate per annum equivalent to 5% above the Bank of England base rate current on the date upon which such payment first becomes overdue.

Recalculation of Payments following a withdrawal

- 3.19 In the event that a Pupil is withdrawn from an Individual Learning Programme the Service in respect of that Pupil will be terminated and the Fees will be paid on a pro rata basis up to and including the day of permanent exclusion.

3.20 In the event of overpayment by the School a refund shall be made by the Provider within 28 days of notification of the overpayment.

4 Variation to Services / Terms and Conditions

4.1 The School may request a variation to the service provision to meet further or changed identified needs of the Pupil and the Provider shall where practical accommodate such change.

4.2 Where the service is varied other than a temporary variation in respect of illness or other unavailability of the Pupil this shall be subject to a revised fee.

4.3 Any variation to the terms and conditions shall not be effective unless agreed by both parties and confirmed in writing.

5 Service Provision

5.1 The Provider will provide the Services to the individual Pupils if requested to do so by the School in accordance with the Placement Form.

5.2 Individual Learning Programmes and Individual Learning Plans for each Pupil are to be implemented by the Provider according to the requirements set out in the Placement Form.

5.3 In agreeing the Individual Learning Programme each Pupil is to be allowed the opportunity to contribute to the Individual Learning Programme.

5.4 If the needs of a particular Pupil change during the provision of the Services by the Provider, the parties will change the Pupil's Individual Learning Programme accordingly.

5.5 The Placement Form will detail the Service to be provided to a Pupil including but not limited to the number of hours and the specific service or outcome requested.

5.6 The School will provide such further information relating to the Placement as is reasonably requested by the Provider, to enable the Provider to carry out the Services.

6 Termination

6.1 This Agreement may be terminated by either Party if there has been a material breach of the Agreement, provided that if the breach is capable of remedy the party claiming the breach shall first have notified the other party of the default, providing details of the default, requesting the default is rectified and allowing a reasonable time to remedy the default.

6.2 The School may terminate this Agreement by giving 3 months notice to the Provider in writing.

6.3 The School may terminate the Agreement without notice if:

6.3.1 The levying of any distress or execution against the Provider or the making by it of any composition or arrangement with creditors or, if a company, the Provider's liquidation (other than a members voluntary liquidation);

6.3.2 the Provider, or the Provider's Staff, with or without its knowledge, has:

6.3.2.1 offered, given or agreed to give any member or officer of the School or the School any gift or consideration of any kind: as an inducement or reward for doing or not doing anything in relation to the obtaining or carrying out of this Agreement or any other Agreement with the the School or for showing or not showing favour or disfavour to any person in relation to this Agreement or any other Agreement with the School; or

6.3.2.2 Committed any offence under the Bribery Act 2010 or given any fee or reward the receipt of which is an offence under Section 117(2) of the Local Government Act 1972.

6.3.3 In the case of Providers who are required to be registered with the Registering Authority, if such Providers cease to be registered; or

6.3.4 In the case of Providers who are required to be inspected by the Regulatory Body, if such Providers cease to be inspected;

6.3.5 In the reasonable opinion of the School the Provider is no longer suitable to provide the Services due to one or more of the following reasons:

6.3.5.1 The Provider or the designated manager has been convicted of an offence which is not a minor offence;

6.3.5.2 The Provider has employed an individual/individuals whom the School regards as unsuitable;

6.3.5.3 The Provider has received an unreasonably high number of complaints/safeguarding incident investigations (which have been upheld at the conclusion of the investigation) in a rolling six month period; or

6.3.5.4 One or more serious safeguarding incidents having occurred.

6.3.6 Any of the following events occur:

6.3.6.1 The death of the Pupil for which the Provider is providing Services;

6.3.6.2 The Pupil for which the Provider is providing Services is permanently excluded (and in those circumstances the date of termination will be the day of permanent exclusion);

6.3.6.3 Following the outcome of any review of the needs of the Pupil or the School and/or Local Authority considers that a Provider has consistently failed to respond to referrals or it is shown to have not been able to meet the Individual Learning Programme.

7 Termination on Notice

- 7.1 Any Notice to be served on either party by the other will be served in accordance with clause 31.
- 7.2 Where the School terminates the Agreement under clause 6.3 it shall reasonably be entitled to recover from the Provider the reasonable costs of making other arrangements for the provision of Services and any other additional costs or expenditure incurred by the School as a result of the termination.
- 7.3 Where the School terminates the Agreement in accordance with clause 6.3 it shall be entitled to suspend payments of any invoices until it has established the final costs of making alternative arrangements. Outstanding invoices and payments will be subject to the Right to Set Off under Clause 24.
- 7.4 Where the School terminates the Agreement under clause 6.3 the School will be liable for any loss damage injury or costs whatsoever arising from the termination.
- 7.5 On termination of this Agreement (or a part of the Services) and on the expiry of this Agreement, the Provider shall for a reasonable period before and after such termination or expiry:
- 7.5.1 co-operate fully with the Local Authority, the School and any successor Provider of the Services (or part thereof) in order to ensure continuity and a smooth transfer of the Services and to avoid any inconvenience or risk to the health and safety of the Pupils;
 - 7.5.2 where necessary and appropriate agree a transition plan with the Local Authority, the School and any successor Provider of the Services (or part thereof);
 - 7.5.3 promptly render all reasonable assistance and information to the extent necessary to effect an orderly assumption of the Services (or part thereof) by any successor Provider;
 - 7.5.4 deliver to the School all materials, papers, documents and the like owned by the School and used by the Provider in the provision of the Services (or part thereof) that have been terminated.
 - 7.5.5 deliver to the School, if requested to do so, copies of the Pupil's records to facilitate the transfer and continuity of education.
 - 7.5.6 where requested provide the School with the TUPE information in relation to its Staff.

8 Suspension of Placements

- 8.1 The School may suspend the Service to a Pupil temporarily upon giving twenty four (24) hours' notice to the Provider where the Pupil will be absent from home for known periods of up to two (2) weeks (or longer if agreed between the School and the Provider), for purposes such as holiday or a short stay in Hospital and no payment shall be made by the School for the period of such suspension if the absence continues for more than four (4) weeks of school term time. Suspensions may be extended where appropriate. The Provider shall resume provision of the Service immediately following any such suspension. The suspension and any subsequent reinstatement of the Services shall be communicated to the Provider in writing by the School.

8.2 The School may suspend the provision of the Services to a Pupil for any reason (other than the circumstances described in clause 8.1 by giving seven (7) days written notice to the Provider.

9 Requirements and legal standards

9.1 The Provider will comply with all relevant Legislation in relation to the provision of the service including generally accepted models of good practice.

9.2 The Provider will ensure that clear quality standards are intrinsic to the design, development, delivery and monitoring of all aspects of service provision.

9.3 The Provider will endeavour to deliver provision that meets Ofsted standards of 'Good' or 'Outstanding'.

9.4 Where a Provider delivers full time education to 5 or more Learners, or 1 Learner who is a looked after child or has a statement of special educational needs, it must be registered with the Department for Education either as an independent school or, if a further education establishment, it must be inspected by Ofsted.

9.5 The School may undertake an inspection of service provision at any time by giving one week's notice.

9.6 The Provider must have written policies and protocols in place to support the delivery of alternative education.

9.7 All policies will have a named person with responsibility for implementation and monitoring and dates for review. Policies will include, but are not limited to:

- Safeguarding children policy (consistent with *Warwickshire Safeguarding Children's Board Inter-Agency Procedures* and subsequent revisions)
- Confidentiality policy
- Data protection and information sharing policy
- Lone working policy
- Health and safety policy
- Equality and diversity policy
- Managing behaviour policy
- Staff discipline, conduct and grievance policy
- Complaints procedure
- Business Continuity Statement

9.8 The Provider will comply with all current and future legislation including (but not exclusive to):

- Education Act 2011
- Education and Skills Act 2008
- Education and Inspections Act 2006
- Children Act 2004
- Learning and Skills Act 2000
- Education Act 1996
- Children Act 1989

9.9 The Provider shall not be relieved of the obligation to provide services or meet standards which have not been specifically listed but can reasonably be expected to be provided under the Agreement.

- 9.10 Where the provision of the Service requires the operation of vehicles the Provider will ensure that it complies with all relevant legislation and any of its own relevant policies in relation to transport.
- 9.11 The Provider will also ensure that all vehicles used in the provision of the Service (whether or not they are owned by the Provider) are adequately serviced and maintained and that management, monitoring and risk management procedures are in place in order to guarantee safe working practices. The Provider will allow access to the School at any reasonable time to inspect documentation and vehicles relating to the obligations in this Clause.
- 9.12 The Provider shall indemnify the School against any liability, loss, claims or proceeding arising out of and/or in connection with any breach by the Provider of its obligations under this Agreement.
- 9.13 The Provider will comply with the provisions of the Human Rights Act 1998 as if it were a public body as defined by the Human Rights Act 1998 as appropriate to the provision of the Services.

10 Health and Safety and Claims

- 10.1 The Provider shall comply with all relevant Legislation, orders and regulations as may from time to time be in force including any statutory guidance or guidance issued by the School and/or Local Authority, including Health and Safety Regulations and Approved Codes of Practice.
- 10.2 The Provider shall ensure that its health and safety policy has been drawn to the attention of its entire Staff and that its management and supervisory Staff have a working knowledge of this policy.
- 10.3 The Provider will provide to the School Representative any information relating to the Provider's compliance with Health and Safety that the School may reasonably request during the provision of the Services under the Agreement.
- 10.4 The Provider will provide the School Representative, within 7 days of receipt, copies of any communication concerning the health, safety, welfare, environmental or fire safety standards of any equipment, goods or accommodation used in the provision of the Services.
- 10.5 The Provider will comply with The Smoke-free (Premises and Enforcement) Regulations 2006.
- 10.6 In the event that the Provider receives notification of any claim or potential claim in relation to the provision or non provision of the service by or on behalf of any Pupil or third party it shall notify the School Representative as soon as practical and in any event within 48 hours giving details of the Pupil and the Claim. The Provider shall provide such information in relation to the claim as reasonably requested by the School and shall co-operate with the School in relation to any media enquiries in relation to the Claim.

11 Equality

- 11.1 The Provider shall comply with the Equality Act 2010 in promoting equality of treatment and shall:

- 11.1.1 not discriminate in the performance of the Services on the grounds of age, disability, gender reassignment, marriage or civil partnership, pregnancy or maternity, race, religion or belief, sex, sexual orientation or any other non-medical characteristics except as permitted by law;
 - 11.1.2 provide appropriate assistance and make reasonable adjustments for individuals who need assistance understanding the English language or who have communication difficulties or impairments;
 - 11.1.3 have due regard to the obligations contemplated by section 149 of the Equality Act 2010 to promote equality of opportunity, foster good relations and eliminate discrimination, harassment and victimisation; and
 - 11.1.4 provide reasonable assistance and information to the School to monitor equity of access to the Services and fulfil the School's obligations under the Equality Act 2010.
- 11.2 The Provider shall notify the School forthwith in writing as soon as it becomes aware of any investigation or proceedings brought against the Provider under the Equalities Acts or any other legislation relating to non-discrimination in employment.
- 11.3 Where any investigation is undertaken by a person or body empowered to conduct such investigation and/or proceedings are instituted in connection with any matter relating to the Provider's performance of the Agreement being in contravention of the Equalities Acts or any other legislation relating to non-discrimination in employment, the Provider shall, at its own expense:
- 11.3.1 co-operate fully and promptly in any and every way required by the person or body conducting such investigation during the course of that investigation and to attend, and permit any Provider's employees, servants or agents to attend any meetings with the person or body conducting such investigations and to provide all such reasonable assistance or information which that person or body have deemed to be relevant to the investigation within a reasonable timescale.
- 11.4 Where any investigation is conducted or proceedings are brought under the Equalities Acts which arise directly or indirectly out of any act or omission of the Provider, its agents or sub-contractors, or Staff, and where there is a finding against the Provider in such investigation or proceedings, the Provider shall indemnify the School with respect to all costs, charges and expenses (including legal and administrative expenses) arising out of or in connection with any such other financial redress to cover any payment the School may have been ordered or required to pay to a third party.
- 11.5 In the event that the Provider enters into any subcontract in connection with the Agreement it shall impose obligations on its sub-contractor in terms substantially similar to those imposed on it pursuant to this Clause 11.

12 Data Protection Act Confidentiality, Access to Records and Freedom of Information

- 12.1 The Provider must comply with the provisions of the Data Protection Act 1998 throughout the duration of this Agreement and in respect of any personal data which it continues to hold following the expiry or termination of the Agreement.
- 12.2 The Provider is a Data Processor in respect of any Personal Data (including sensitive personal data) provided by the School, the Pupil or third parties such as GPs or relatives in relation to the Pupil and the Provider must:
- 12.2.1 develop, maintain and promote a policy and practical working arrangements in respect of the use, access, transfer, secure storage and destruction of Personal Data to ensure that it is consistent with the Data Protection Act 1998;
 - 12.2.2 provide the School with a copy of its Data Protection Policy (including any updates), where requested;
 - 12.2.3 ensure that a copy of its Data Protection Policy, information in respect of its arrangements for data subjects requests for access to information, its arrangements for amendment of inaccurate information and its Data Protection Complaints process is available to all its Employees, Pupils and their parents/guardians and, where relevant, publish a copy of the policy on the Provider's web site;
 - 12.2.4 ensure that where information has been supplied by third parties including medical professionals, that this is not disclosed without the consent of the third party;
 - 12.2.5 provide training, including refresher training, to all Employees in respect of its Data Protection Policy including reference to its Whistle Blowing Policy;
 - 12.2.6 ensure that where any personal information is being transferred to another person that this is dealt with in a safe and secure way and (where necessary as agreed by the School) that any computers and memory devices or similar are encrypted with secure arrangements for the allocation and use of passwords and secure arrangements are in place where personal information is sent by Fax or relayed over the telephone;
 - 12.2.7 Ensure that the consent of the School is sought prior to any personal information being transferred outside the European Union;
 - 12.2.8 Ensure that any sub contractor (where authorised) who has access to Personal Information in the performance of their sub contract complies with its Data Protection Policy;
 - 12.2.8.1 Ensure that any agent or sub contractor returns any personal information on termination of the sub contract;
 - 12.2.8.2 Monitors its compliance with its Data Protection Policy and takes prompt remedial action where necessary to deal with any non compliance or threatened breach;

12.2.8.3 Allow the School, where requested, to inspect its records (including the relevant personal records of Pupils), storage facilities and to interview Employees for monitoring or investigation purposes;

12.2.8.4 notify the School as soon as practical and in any event within 2 days of any breach or its reasonable suspicion of a breach of the Data Protection Act and any action taken or proposed to be taken to remedy any breach or threat of breach;

12.2.8.5 notify the School in respect of any complaints in relation to the Data Protection Act including any referral to the Information School and the outcome of any complaint investigation.

12.3 In event of a breach of the Data Protection Act any Party may refer the breach to the Information School.

12.4 The Provider shall indemnify the School in respect of any penalties incurred, claims or costs involved in any breach of the Data Protection Act caused by any act or omission of the Provider.

12.5 The Provider shall not, without the prior written consent of the School seek to publicise, advertise or promote the service by making a reference or implied reference to a service being provided to an individual service user. Data which does not identify an individual service user may be used for statistical or analytic purposes.

12.6 On termination of the Placement, the Provider shall arrange for the personal information in respect of that Pupil to be returned to the School, or shall arrange for the personal information in respect of that Pupil to be securely destroyed provided that the Provider may retain personal data in respect of that Pupil where the Provider continues to offer a service to the Pupil, whether or not involving the School.

Freedom of Information

12.7 When required to do so by the School, the Provider shall assist the School in meeting its obligations under the Freedom of Information Act 2000 or any statutory modification or re-enactment thereof or any related guidelines or codes of practice. This shall include providing the School promptly and acting reasonably with such information (including reasons for non disclosure of information) within the timescale required for the purposes of responding to a request for information.

Confidential Information

12.8 The Provider shall keep confidential all information belonging to or provided by the School in connection with this Agreement and shall not further use or disclose it to any third party without the express consent of the School or except to the extent permitted by law.

12.9 The Provider will ensure that it maintains the integrity and confidentiality of all personal information held or known in respect of its past or present Pupils but will disclose such information to the School on request for the purpose of the exercise of, or audit of the School's functions.

12.10 The School shall keep confidential any information obtained under clause 12 and shall not divulge the same to any third party without the express consent of the

individual concerned or save where statute or the public interest otherwise allows it.

- 12.11 The Provider will allow Pupils or their representative access to personal information maintained in respect of them in accordance with the Data Protection Act and the School's Access to Records policies.
- 12.12 The Provider will allow Pupils and their parents/guardians access to their individual educational record under the Education (Pupil Information) (England) Regulations 2005.
- 12.13 The Provider hereby authorises the School to request and obtain information about the Provider from any regulatory body and other local authorities which may be relevant to the exercise of the School's functions.
- 12.14 The obligations in this clause¹² will continue indefinitely after the termination or expiry of this Agreement.

Supply of Information and Audit

- 12.15 The Provider will take such steps as may be reasonable and practicable to afford the School access to information which is reasonably required by the School in connection with any of its statutory duties and responsibilities and for any purposes connected with its rights and obligations under this Agreement or to enable the School to prepare the necessary documentation to appoint another person to provide the Services.
- 12.16 The Provider must give seven days' notice to the School if it proposes to:
 - 12.16.1 merge with another organisation;
 - 12.16.2 transfer any of its business to another organisation;
- 12.17 The Provider must inform the School within seven (7) days if:
 - 12.17.1 there is a change in the control of the majority of the shares in, or the voting rights amongst, its shareholders or members of its organisation;
 - 12.17.2 a Regulatory Body directs an inquiry into or makes an order of any kind in relation to its affairs including: any, requirements or action plans identified from an inspection; any issues raised in relation to registration or re-registration of the Provider (or named individual) or a proposal that the registration is withdrawn or cancelled or is threatened to be withdrawn or cancelled; or
 - 12.17.3 Any investigations are instigated under Safeguarding Adults procedures or Child Protection investigations or procedures.
- 12.18 The Provider shall at all reasonable times (including following termination of this Agreement) afford to any auditor conducting an internal audit or inspection for the School Representative (or its nominee) access to any records, information and data in the possession or control of the Provider which have been used in connection with the provision of the Services including (but without limitation) School data and information stored on a computer system operated by the

Provider including any Pupil records. This shall include permission to copy and remove any copies and remove the originals of such documents.

- 12.19 Following notice of termination of this Agreement, the Provider shall also co-operate with any reasonable requests for information from the future Provider of the Services.

13 Warranties

- 13.1 Without prejudice to any other warranties expressed elsewhere in the Agreement or implied by law, the Provider warrants to the School that throughout the duration of the Agreement:

13.1.1 the Provider has full capacity and authority and all necessary consents (including but not limited to, where its procedures so require, the consent of its parent company) to enter into and to perform this Agreement and that this Agreement is executed by a duly authorised representative of the Service Provider;

13.1.2 the Provider shall maintain all registrations/inspections which are necessary to lawfully provide the Services under the Agreement;

13.1.3 the Provider shall provide the Services in accordance with the Placement Form and the terms of this Agreement and with all due skill, care and diligence as may be expected of appropriately qualified and experienced persons (of a professional level if appropriate) with appropriate skill and experience in providing services of a similar scope, type, nature and complexity to the Services;

13.1.4 the Provider warrants that its Staff will be suitable persons to be employed in the provision of the Service which involves the provision of alternative education of such a kind as to enable the Staff to have access in the normal course of their duties to Pupils;

13.1.5 the Provider is aware of the purposes for which the Services are required and acknowledges that the School is reliant upon the Provider's expertise and knowledge in the provision of the Services;

13.1.6 all materials, equipment and goods used or supplied by the Provider in connection with the Agreement shall be sound in quality and design and fit for their purpose and in accordance with the requirements specified in the Placement Form;

13.1.7 any software, electronic or magnetic media, hardware or computer system used or supplied by the Service Provider in connection with the Agreement:

13.1.7.1 shall be Euro Compliant;

13.1.7.2 shall not have its functionality or performance affected, be made inoperable or be more difficult to use by reason of any date related input or processing in or on any part of such software, electronic or magnetic media, hardware or computer system;

13.1.7.3 shall not cause any damage, loss or erosion to or interfere adversely or in any way with the compilation, content or

structure of any data, database, software or other electronic or magnetic media, hardware or computer system used by, for or on behalf of the School, on which it is used or with which it interfaces or comes into contact;

and any variations, enhancements or actions undertaken by the Provider in respect of such software, electronic or magnetic media, hardware or computer system shall not affect the Provider's compliance with this warranty;

13.1.8 the Provider shall provide the Services in a safe manner and free from any unreasonable or avoidable risk to any person's health and well-being and in an economic, effective and efficient manner;

13.1.9 all documents, drawings, computer software and any other work prepared or developed by the Provider or supplied to the School under the Agreement shall not infringe any Intellectual Property Rights or any other legal or equitable right of any person;

13.1.10 the Provider and all persons (including any sub-contractors employed to provide the Services or any part thereof) shall observe and fully comply with the requirements of the Health and Safety at Work Regulations (including all amendments) in relation to any equipment or materials used to provide the Services.

13.2 For the purposes of construing the warranties in Clause 16.1 reference to the Services include any part of the Services. Each warranty shall be construed as a separate warranty and shall not be limited or restricted by reference to, or reference from, the terms of any other warranty or any other term of this Agreement.

13.3 Without prejudice to the School's rights (whether under this Agreement or otherwise) if the Provider is in breach of any of its warranties, the Provider shall, if required to do so by the School, promptly re-perform the Services or part of them at its own expense to ensure compliance with such warranties.

14 Insurance

14.1 Without prejudice to its liability to indemnify the School under Clause 9.12 or any other provision of this Agreement, the Provider shall arrange and maintain throughout the duration of the Agreement (or any other period stated in the Agreement) insurance of the types and values specified below ("the Insurances") with an insurer or insurers authorised to underwrite such risks in the United Kingdom and on terms approved by the School.

14.2 Where the Insurances contain a care, custody or control exclusion, the relevant policy shall be endorsed so as to delete the exclusion in respect of any School Premises owned by a third party (including contents) that are occupied or visited by the Provider for the purpose of performing the Services.

14.3 The Provider shall ensure that the Insurances cover the Provider's legal liability (including liability assumed under this Agreement), which may arise out of or in the course of or by reason of the Provider's or its sub-contractors' performance, non-performance or part-performance of the Agreement and extend to indemnify the School as principal.

14.4 The Provider shall provide evidence satisfactory to the School prior to the commencement of the Agreement and at each anniversary that the Insurances have been effected and are in force.

14.5 The Provider shall comply with the terms and conditions of the Insurances and all reasonable requirements of the insurers, including (without limitation), in connection with the prosecution, defence and settlement of claims, the recovery of losses and the prevention of accidents. The Provider shall bear the cost of all exclusions and limitations under the Insurances and shall pay for any excess.

14.6 In relation to all the Insurances except employer's liability insurance, the Provider agrees that the School has the right to control and to supervise all dealings with the press and any other media in relation to any incident, event, claim or action arising in connection with the Agreement.

14.7 In the event of a claim being made under any of the Insurances, the proceeds shall be applied in making good the loss or damage in respect of which the claim is made.

14.8 The following insurances shall be arranged and maintained by the Provider in accordance with this Clause:

Type of Insurance:	Cover required and period of cover:
Public Liability	not less than £10,000,000 any one occurrence and shall remain in force throughout the duration of this Agreement
Professional Indemnity	not less than £5,000,000 for any one occurrence any one occurrence to be maintained for 3 years following the termination of this Agreement (however arising)
Employer's Liability	not less than £10,000,000 any one occurrence and shall remain in force throughout the duration of this Agreement
Vehicle	At least Third Party insurance cover where service provided includes use of vehicles

15 Contract Management and Appointment of Authorised Representatives

15.1 The School shall appoint an School Representative whose role shall be to liaise with and give instructions to the Provider and its officers, Staff, agents or sub-contractors in relation to all matters concerning the performance of the Provider of its obligations under the Agreement and to determine any matters or issue any notices as may be the function of the School Representative under this Agreement.

15.2 The Provider shall appoint such senior person/ officer as appropriate from within its organisation as the Provider's Representative to deal with any matter relating to the performance of this Agreement to exercise the rights, functions and obligations of the Provider under the Agreement including the giving and receiving of notices under the Agreement.

- 15.3 The Provider's Representative shall:
- 15.3.1 supervise the performance of the Services;
 - 15.3.2 attend contract meetings (the location, frequency and time of which shall be specified) or when requested by the School Representative; and
 - 15.3.3 be available to the School to resolve any issues arising in connection with the Agreement during any part of a Working Day.
- 15.4 To the extent it is reasonably possible the Provider will not change the identity of the Provider's Representative without first discussing the matter with the School and having reasonable regard to the views of the School in relation to any proposed replacement.
- 15.5 The details of the School Representative and Provider's Representative shall be exchanged prior to the start date of this Agreement.
- 15.6 In the event that the name or contact details of the Provider's representative change's (including temporary cover in respect of absence) this shall be notified to the School as soon as practical and in any event within 24 hours and the School shall ensure that the School Representative is contactable or arrangements are in place for notifications to be forwarded to another appropriate officer.
- 15.7 No act of or omission by or approval from the School in performing any of its respective duties under or in connection with this Agreement shall in any way operate to relieve the Provider of any its duties, responsibilities, obligations or liabilities under this Agreement.

16 Quality Assurance

- 16.1 The Provider shall maintain an efficient, effective and economical programme for quality, planned and developed in conjunction with any other functions of the Provider necessary to satisfy the requirements of this Agreement.
- 16.2 On giving the Provider at least one week's notice the Local Authority or the School may undertake an inspection of the Services at any time.
- 16.3 At the School's request, the Provider shall, at its own expense, prove to the School's satisfaction that the Services are being provided in accordance with this Agreement. The School has the right to reject any part of the Services which in its opinion have not been so provided.
- 16.4 The Provider shall demonstrate to the School that it has in place a formal system of quality assurance which is approved by the School. The quality assurance system should comprise:
- 16.4.1 a service plan which includes a written statement of the purpose, aims, objectives and priorities in relation to the delivery of the Services;
 - 16.4.2 relevant policies and procedures to inform and guide the delivery of the Services;
 - 16.4.3 relevant up to date written information which describes the nature and availability of the Services to Pupils;

- 16.4.4 service and customer care standards which clearly describe what Pupils can expect from the Services;
 - 16.4.5 regular monitoring and evaluation of performance against the requirements of the Specification and the Provider's own internal standards. Monitoring arrangements must include obtaining regular feedback from Pupils and from relevant third parties. The results of monitoring must be recorded and used in the future planning of the Services;
 - 16.4.6 a complaints and compliments procedure which operates within specified timescales and methods of investigation;
 - 16.4.7 Any development of, or alterations to, the quality assurance system shall be undertaken in consultation with the School. For the avoidance of doubt, the School may amend the performance management report and data collection requirements at any point in order to ensure effective monitoring of provision.
- 16.5 The Provider will assist with reasonable requests for performance information and agrees to work with those members of staff of the School engaged in the direct monitoring of this Agreement, including specific performance issues that require the implementation of action plans and recommendations made by the School.

17 Management and Staffing

- 17.1 The Provider undertakes to provide the Staff necessary for the performance of the Services and undertakes that all Staff possess the appropriate skills, qualifications and experience to perform the tasks assigned to them which shall include supervisory skills, and that they shall be available at such times as are necessary to perform the Services. The Provider shall ensure that all its Staff are in possession of valid work permits if they are non-European Community nationals.
- 17.2 For the avoidance of doubt, it is expressly stated that it is not the intention of the Parties that any Staff shall transfer to the School. The Provider is responsible for making appropriate deductions for tax and National Insurance contributions from the remuneration paid to its Staff.
- 17.3 Where training of Staff is reasonably required for the purposes of performance of this Agreement, the Provider shall be responsible for arranging such training and for all costs associated with such training unless otherwise advised by the School. The Provider shall have no claim against the School if this Agreement is terminated due to incomplete training of its Staff.
- 17.4 The School may by written notice to the Provider object to a member of the Provider's Staff if such person is in the School's view incompetent, negligent, dishonest or guilty of misconduct and the Provider shall immediately remove such person from performing the Services and provide a suitable replacement where requested by the School.
- 17.5 The Provider shall provide, and shall ensure its Staff wear at all times when engaged in the provision of the Service, an identity card which identifies them as one of the Provider's Staff.

- 17.6 The Provider shall ensure that, while engaged in the provision of the Services, its Staff are at all times polite, helpful and respectful to the Pupil(s), members of the public and the School's staff.
- 17.7 The Provider shall ensure that its Staff do not use working methods that might endanger the Pupil(s), members of the public, the School's staff, or which might lead to damage to property belonging to the Local Authority, the School, the Pupil(s) or third party or otherwise.
- 17.8 If the Provider's Staff discover any dangerous substance during the course of the Service that gives rise to fear the safety of the Provider's Staff, the Pupil(s), Local Authority staff or members of the public, the Provider shall immediately notify the School Representative and the appropriate emergency services.
- 17.9 The Provider shall immediately report to the School Representative any accident, damage or breach of any statutory provision relating in any way to the provision of or in connection with the Service.

18 Sub-Contracting

- 18.1 The Provider shall not sub-contract all or any part of the Services under this Agreement without the prior written consent of the School which may be refused at the School's sole discretion or granted subject to such conditions as the School deems appropriate.
- 18.2 Where the Provider sub-contracts any part of the Services to a third party, the Provider shall be responsible for payments to that third party.
- 18.3 The appointment of any sub-contractor shall not relieve the Provider from any liability under this Agreement and the Provider shall remain solely responsible and liable to the School for any breach of this Agreement or any performance, non-performance, or part-performance of any of the Services by any sub-contractor to the same extent as if such breach, performance, non-performance, or part-performance had been carried out by the Provider.

19 Safeguarding

- 19.1 The Provider shall have and operate suitable Safeguarding policies and procedures which it shall provide to the School on request and adequately publicise and make available to parents along with sufficient information to enable individuals to identify abuse, raise Safeguarding concerns or complaints in the appropriate way and understand any support that may be available to them, such as independent advocacy services.
- 19.2 The Provider shall inform the School within one working day of any investigations being commenced under the Provider's Safeguarding procedure or Safeguarding concerns which relate to a Pupil or more generally to the Services.
- 19.3 The Provider shall in respect of any investigation being commenced under its Safeguarding procedure at all reasonable times and as far as the law allows afford to any auditor conducting an internal audit or inspection for the School, access to any records, information and data in the possession or control of the Provider which have been used in connection with the provision of the Services including data and information stored on a computer system operated by the Provider. As far as the law allows, this

shall include permission to copy and remove any copies and remove the originals of such documents.

- 19.4 The Provider shall keep a record of all Safeguarding investigations and concerns relating to the Pupil and raised by the Pupil, their parents or carers or any other person concerning the provision of the Services including Safeguarding concerns or investigations raised to any regulatory body and as far as the law allows the Provider shall provide the School with a copy of such records on request.
- 19.5 The Provider shall inform the School of the outcome of any Safeguarding investigation which the Provider should have notified the School about under Clause 22.2 within one working day of the investigation being concluded.
- 19.6 The Provider will ensure that all its Staff engaged in the provision of the Services are fully aware of the Provider's Safeguarding policy and procedure and the Provider shall ensure that at least one member of Staff is nominated to act as Safeguarding manager at all times and the details of such role will be set out in the Provider's Safeguarding procedure.
- 19.7 In accordance with any performance and monitoring requirements under this Agreement, the Provider will complete returns to the School which will include details of all Safeguarding issues and how these have been resolved and how lessons learnt from them can provide opportunities for improving the delivery of the Services.
- 19.8 The Provider must have at least two (unless there is only one member of staff) designated persons who are responsible for child protection matters ("Designated Person") in the provision of the Services. The Provider must ensure that all Designated Persons attend the Warwickshire Safeguarding Children's Board (WCSB) training for Designated Persons and the appropriate WCSB refresher course every two years. The Provider must also ensure that all other staff responsible for supervising young people in the provision of the Services attend WCSB basic child protection training and the appropriate WCSB refresher course every three years (unless the School gives written confirmation that is reasonably satisfied on the information provided to it by the Provider that such staff have already received sufficient equivalent training).

20 Safe Recruiting and Disclosure and Barring Service

- 20.1 The Provider shall, in respect of any of its Staff or volunteers who may come into contact with vulnerable adults or children in performance of the Services, ensure that appropriate checks are carried out to:
- 20.1.1 confirm the entitlement of the person to work in the United Kingdom;
 - 20.1.2 check the identity of such person and their last known address; and
 - 20.1.3 check the relevant qualifications and experience of such person, (including written references from previous employers and copies of qualification certificates, where relevant).
- 20.2 The Provider shall obtain a DBS Check in respect of each member of its Staff, both voluntary and or otherwise, utilised, engaged or employed to provide the Services. The Provider shall confirm and provide written confirmation to the School that such DBS Checks are in operation and will provide adequate evidence to the School that such DBS Checks have been carried out and have not revealed any Concerning Information to the Provider.

- 20.3 The School shall provide reasonable assistance where necessary to secure the obtaining of such DBS Checks where the Provider is unable to obtain such DBS Checks, and the Provider shall reimburse the School's reasonable costs in providing such assistance.
- 20.4 Where it is not possible to obtain a DBS Check prior to a person referred to in this Clause commencing the performance of the Services, the Provider shall:
- 20.4.1 ensure that at all times such person is accompanied by a member of the Provider's or the School's staff who has already undergone a DBS Check; and
 - 20.4.2 conduct a DBS Check as soon as reasonably practicable and provide the confirmation to the School as required under Clause 13.2.
- 20.5 For the avoidance of doubt and without prejudice to the generality of the foregoing, the Provider:
- 20.5.1 shall ensure that no person who appears on any statutory barred list (including but not limited to any list maintained by the Disclosure and Barring Service) shall carry out any work in connection with the Services; and
 - 20.5.2 shall not employ, without the prior written consent of the School, any person in the supply of the Services, when:
 - 20.5.2.1 Concerning Information is revealed about that person following a request for a DBS Check;
 - 20.5.2.2 That person has refused to complete a DBS Check.
- 20.6 If the Provider considers that a DBS Check is not required for a specific post in the provision of the Services due to the nature of the duties required by that post, the Provider shall seek the written consent of the School before engaging that individual in the performance of the Services.
- 20.7 13.7. The Provider shall, during the course of its provision of the Services, keep the School advised of any Concerning Information relating to any of its Staff involved in the provision of the Services that the Provider becomes aware of, or should have reasonably become aware of.
- 20.8 13.8. The Provider shall ensure that all DBS Checks are current and updated in line with its corporate procedures and will renew DBS Checks at the reasonable request of the School and shall at all times keep the School informed of any Concerning Information relating to any of its Staff involved in the provision of the Services that the Provider becomes aware of, or should have reasonably become aware of following a DBS Check.
- 20.9 If the School, acting reasonably, considers that any Concerning Information that the Provider has become aware of or should have reasonably become aware of in respect of any of its Staff has a material bearing upon the suitability of the person concerned in relation to the performance of the Services, it shall inform the Provider and the Provider shall not continue to engage such person in the performance of the Services without the prior written approval of the School.

21 Financial Management

- 21.1 The Provider will ensure the proper management of all revenue finance and also comply with any relevant requirements or guidance issued by the Registrar of

Companies, Charity Commission, FSA Mutuals or the School from time to time. The School may require the Provider to appoint independent qualified auditors and submit annual reports, audited and/or management accounts.

21.2 The Provider will allow reasonable inspection (insofar as it is relevant to the provision of alternative education and the financial stability of the Provider) of financial records and minute books by officers of the School if requested, upon being given reasonable notice in writing.

21.3 The Provider will acknowledge where applicable the School's financial support in the Annual Accounts.

22 Facilities

22.1 The Provider shall at its own cost provide all necessary equipment, materials, personnel and anything else for the proper provision of the Works and Services in accordance with the terms of this Agreement.

22.2 The School is required to provide any facilities, equipment, or materials to the Provider for the purposes of this Agreement.

23 Dispute Resolution

23.1 The School and the Provider shall use their best efforts to negotiate in good faith and settle any dispute or difference that may arise out of or relate to this Agreement before resorting to litigation.

23.2 If any such dispute or difference is not settled through discussion between the School Representative and the Provider's Representative within thirty (30) Working Days, the Parties shall refer the dispute or difference to a Director or Chief Executive (or equivalent) of each of the Parties for resolution.

23.3 If the dispute or difference is not resolved within fourteen (14) Working Days of referral to the Director or Chief Executive (or equivalent), either Party may propose that a structured mediation or negotiation be entered into with the assistance of a mediator.

23.4 If the Parties are unable to agree on a mediator, or if the agreed mediator is unable or unwilling to act, either Party may apply to the Centre for Effective Dispute Resolution ("CEDR") in London to appoint a mediator. The costs of a mediator shall be divided equally between the Parties.

23.5 If the Parties reach agreement on the resolution of the dispute or difference, such agreement shall be recorded in writing and once signed by the Parties' authorised representatives, it shall be final and binding on the Parties.

23.6 If the Parties fail to reach agreement within forty (40) Working Days of the appointment of the mediator, such failure shall be without prejudice to the right of either Party to refer the dispute or difference to litigation.

23.7 The Provider shall continue to provide the Services in accordance with this Agreement and without delay or disruption while a dispute or disagreement is being resolved.

24 Right of Set Off

24.1 Whenever a sum is due to the School from the Provider and shall be unpaid for a period of three months, regardless of which service arrangement or agreement it is due from, the School may set off the sum/deduct such sum from any payment due to the Provider either under this Agreement or under any other agreement or arrangement between the School and the Provider.

24.2 The exercise by the School of its rights under this Clause shall be without prejudice to any other rights or remedies available to the School under this Agreement.

25 TUPE - Conditions relating to the Transfer Of Undertakings (Protection Of Employment) Regulations (the "TUPE Conditions")

25.1 The Parties acknowledge that the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) may apply to this Agreement in the event that all or part of the Services cease to be provided by the Provider for any reason and all or part of the Services continue to be provided by the School and/or a replacement provider, or a Service or part of a service cease to be provided by an existing Provider and, transfer to the Provider.

25.2 Save where the Parties reasonably believe that there will be no relevant transfer for the purposes of TUPE, the Provider shall:

25.2.1 Where reasonably requested, provide the TUPE information, set out in clause 28.3 to the School. Such information may be used by the School for the purposes of a future tender of the Service and may be passed to a replacement service provider appointed to take over the service provision,

25.2.2 Update such information at regular intervals to be specified by the School and in any event no later than 14 days before the date of any TUPE transfer of staff,

25.2.3 Where a replacement service provider has been appointed, co-operate with the School and the replacement service provider in allowing access at reasonable times to the provider's workforce for the purposes of consultations regarding transfer of staff.

25.3 The Provider shall provide not later than 6 months prior to the expiry of this Agreement (or, as soon as practical in the event of an early termination of the Agreement) the School with the following details:

25.3.1 a list of those personnel engaged in the Services (the "Potential Transferring Employees");

25.3.2 the job title, age, length of continuous services, current remuneration, benefits and notice periods of each of the Potential Transferring Employees;

25.3.3 the terms and conditions of employment of the Potential Transferring Employees, including any particulars that the Provider is obliged to give under section 1 of the Employment Rights Act 1996;

25.3.4 any current disciplinary or grievance proceedings ongoing in respect of the Potential Transferring Employees and any such proceedings in the preceding 3 years;

25.3.5 any claims whether current or which the Provider has reasonable grounds to believe will be brought by the Potential Transferring Employees or their representatives or which have been brought in the preceding 3 years;

25.3.6 all benefit schemes or arrangements (whether contractual or not) applicable in respect of the Potential Transferring Employees including any pension entitlements; and

25.3.7 information on any collective agreements which will have effect in relation to the Potential Transferring Employees after the Subsequent Transfer Date pursuant to the TUPE.

25.3.8 information in respect of any Union recognition agreement and details of any employee representatives.

25.4 The Provider shall not without the written consent of the School or in compliance with an existing contractual obligation change the terms and conditions of its Provider's Staff so as to increase the salary or liabilities in relation to the staff that may transfer under TUPE.

Indemnity

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

25.5.1 any claim or demand by any Transferring Employee or a trade union or other body or person representing a Transferring Employee (whether in contract, tort, under statute, pursuant to European law or otherwise) arising from any act, fault or omission of the Provider on or before the subsequent Transfer Date;

25.5.2 any act default or omission of the Provider in relation to the Transferring Employees or Trade union arising after the Transfer date.

25.5.3 any failure by the Provider to comply with its obligations under regulations 13 and 14 TUPE, or any award of compensation under regulation 15 of the TUPE, save where such failure arises from the failure of the School and/or replacement service provider to comply with its or their duties under regulation 13 of the TUPE and/or

25.5.4 a claim by any person who transfers or alleges that they have transferred to the School or the replacement provider, but whose name is not included in the list of Transferring Employees.

25.6 The School shall use its best endeavours to ensure that any Agreement with a replacement service provider includes a provision that they shall indemnify the School and the Provider against any act default or omission by the replacement service provider in relation to the potentially transferring employees.

25.7 Pensions for staff transferring to the Provider:

25.7.1 In the event that the transferring employees were former public sector staff and entitled on transfer to continue to be members of the Local Government Pension Scheme (LGPS), the Provider shall either arrange for the Provider to become an Admitted Body under the LGPS or provide an alternative pension scheme authorised by the Government Actuaries Office to be comparable to the LGPS.

25.7.2 In the event that the Provider seeks to be an Admitted Body to the LGPS it shall enter into such admission agreement as required by the LGPS and provide and maintain throughout the duration of this Agreement such Bond for its admission as the School acting reasonably shall require.

25.7.3 The Provider shall consent to the LGPS or comparable pension scheme manager notifying the School in the event of any non payment of employers pension fund contributions and the in the event that the Provider shall fail to pay the employers contribution to the LGPS or comparable pension scheme or to maintain the Bond the School shall be entitled to pay such contributions or arrange a bond and to set off such sums together with its reasonable administrative costs against any sums due to the Provider.

26 Current Remedies

26.1 All rights and remedies granted to either of the parties under this Agreement shall be cumulative and no exercise by either of the parties of any right or remedy under this Agreement shall restrict or prejudice the exercise of any other right or remedy granted by this Agreement or otherwise available to it.

27 Force Majeure

27.1 For the purpose of this clause, "Force Majeure" means any event or occurrence which is outside the reasonable control of the Provider, and which is not attributable to any act or failure to take preventive action by the Provider, including (but not limited to) governmental regulations, fire, flood, any epidemic or pandemic of any contagious or infectious disease, or any natural disaster. It does not include any industrial action occurring within the Provider's organisation or within any sub-contractors' organisation.

27.2 Neither the School nor the Provider shall be liable to the other party for any delay in or failure to perform its obligations under this Agreement (other than a payment of money) if such delay or failure results from a Force Majeure event. Notwithstanding this, each party shall use all reasonable endeavours to continue to perform its obligations or such part of its obligations as can be completed and to minimise the effect of the Force Majeure on Pupils for the duration of such Force Majeure event.

27.3 Any failure or delay by the Provider in performing its obligations under this Agreement which results from any failure or delay by an agent, sub-contractors or supplier shall be regarded as due to Force Majeure only if that agent, sub-contractor or supplier is itself impeded by Force Majeure from complying with an obligation to the Provider.

27.4 In the event of a Force Majeure event occurring the party claiming the Force Majeure event shall notify the other party as soon as practical giving details of the Force Majeure event, its likely duration and the extent to which it will not be able to provide its

obligations and shall use its reasonable endeavours to bring the Force Majeure event to a conclusion.

28 Business Continuity

28.1 The Provider must ensure that an up-to-date Business Continuity Plan is in place to ensure that its critical service activities can continue to be delivered following any event that causes an interruption to service provision e.g. through flu pandemic or flooding.

28.2 The School reserves the right to inspect the Provider's Business Continuity Plan and in the event that it does not consider it is acceptable may request that the plan be amended and be provided in a specific format within a specific timescale.

29 No assignment or sub-contracting

29.1 Subject to any express provision of this Agreement, the Provider will not without the prior written consent of the School (such consent not to be unreasonably withheld), assign all or any benefit, right or interest under the Agreement or sub-contract the provision of any part of the Services.

29.2 Notwithstanding any sub-contracting permitted hereunder, the Provider will remain responsible for the acts and omissions of its sub-contractors as though they were its own.

30 Publicity

30.1 The text of any press release or other communication to be published by, or in the media concerning this Agreement shall require prior approval of the School.

30.2 The Provider shall promote this work with the School in a positive manner.

31 Notices

31.1 Any Notice to be served on the other Party in this Agreement shall be in writing and shall be sent to the School Representative / Providers Representative at their last known address in the following way:

Method of Service	Time of delivery
By Hand	Day and time of receipt but if delivered after 5PM shall take effect the following day
Recorded Delivery / Registered Post	Day and time signed for but if delivered after 5PM shall take effect the following day
First Class Post	The working day after posting
Fax	By Prior agreement with the Recipient of Notice ONLY, not to be deemed delivered until a delivery receipt by e mail or fax, if relevant, has been received.
E mail	

32 Entire Agreement

32.1 Subject to Clause 32.3, this Agreement and all documents referred to in this Agreement, constitute the whole and only contract between the Parties relating to the subject matter of the Agreement and supersede and extinguish any prior drafts, agreements, undertakings, representations, warranties and arrangements of any nature whatsoever, whether or not in writing relating to the provision of the Services.

32.2 Subject to Clause 32.3 and without prejudice to the Provider's obligations under this Agreement, the Provider is responsible for and shall make no claim against the School in respect of any misunderstanding affecting the basis of the Provider's ability to perform the Services in respect of this Agreement or any incorrect or incomplete information howsoever obtained.

32.3 Nothing in this Agreement excludes any liability for fraudulent misrepresentation.

33 Relationship between the Parties

33.1 There will be an appropriate and agreed exchange of information necessary to achieve the outcomes of the Service and to deal with matters relevant to this Agreement.

33.2 The terms of this Agreement may be amended by mutual consent. Any variation to the terms of this Agreement may only be made in writing and must be agreed by the School Representative and the Provider's Representative.

33.3 Neither the Provider nor its Staff will in any circumstances hold itself or themselves out as being the servant or agent of the School.

33.4 Nothing in this Agreement will be construed as a legal partnership (within the meaning of the Partnership Act 1890) or as an agreement of employment between the School and the Provider.

33.5 In order to protect the interests of the Pupils, as soon as the Provider becomes aware of any circumstance which may disrupt or prevent the Provider from complying with the requirements of this Agreement, the Provider is to immediately give a written notice to the School requesting a meeting at which the parties are to discuss and agree the best way forward to mitigate or overcome the circumstances.