# SCHEDULE 2

# SERVICE CONDITIONS

**THESE TERMS AND CONDITIONS SHALL APPLY TO ANY CALL OFF AGREEMENT entered into between the Parties.**

# Definitions

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

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| **"Academic Year"** | means the twelve calendar month period commencing on the 1st of September each year unless a variation is added in the Individual Placement Agreement; |
| **"Admission Date"** | means the actual date on which the Learner is admitted to the Out of School, Alternative Education Provision; |
| **“Annual Contract Review Meeting”** | means a meeting to discuss governance of the APL Agreement to be held annually in accordance with clause 15.6; |
| **"Authorised Representative”** | means a representative of each of the Parties, appointed to carry out certain functions in accordance with these Service Conditions; |
| **“Business Days”** | means any day other than a Saturday, Sunday or public holiday in England and Wales. |
| **“Change of Control”****“Council”** | any change in the ownership/control of the Service Provider, including a change in the control of the majority of the shares in, or voting rights amongst, its shareholders or members, any constitutional reorganisation, amalgamation or merger; or any transfer of the whole or part of the Service Provider’s business;

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| means The Cornwall Council of New County Hall, Treyew Road, Truro, Cornwall TR1 3AY; |  |

 |
| **"Learner"** | means any child or young person(s) whose care and educational needs are the responsibility of the Council who is the subject of a placement and whose fees at the Out of School, Alternative Education Provision are paid by the Council, or by those for whom the Council is acting;  |
| **“APL Agreement”** | means the approved provider list agreement entered into by the Council and the Service Provider in respect of the provision of alternative education placements; |
| **"EHC Plan"** | means an Education, Health and Care Plan for which the Council is responsible; |
| **“Education Plan”** | meansthe plan for a Learner’s educational programme specified by the Council for learners without an EHC plan; |
| **“EIR”** | means the Environmental Information Regulations 2004**;** |
| **"Fees"** | shall mean the fees detailed in the Individual Placement Agreement that shall be paid by the Council to the Service Provider in consideration of the provision of the Services; |
| **“Good Industry Practice”** | means using standards, practices, methods and procedures conforming to the law and using that degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled, efficient and experienced special educational needs provider, or a person providing services the same as or similar to the Services, at the time the Services are provided, as applicable; |
| **“Guidance”** | means any applicable local authority, Regulatory Body, education guidance, direction or determination which the Council and/or the Service Provider have a duty to have regard to; |
| **“Indirect Losses”** | means loss of profits (other than profits directly and solely attributable to the provision of the Services), loss of use, loss of production, increased operating costs, loss of business, loss of business opportunity, loss of reputation or goodwill or any other consequential or indirect loss of any nature, whether arising in tort or on any other basis; |
| **“Individual Placement Agreement (IPA)”** | means the form set out at Schedule 3 Part 2 of the APL Agreement and any appendices; |
| **“Law”** | means any statutory provision as amended or replaced from time to time and shall include any subordinate legislation made from time to time under that provision; |
| **“Losses”** | means all damage, loss, liabilities, claims, actions, costs, expenses (including the cost of legal and/or professional services) proceedings, demands and charges whether arising under statute, contract or at common law but, excluding Indirect Losses; |
| **“Operational Contract Review Meeting”**  | means an operational contract review meeting held in accordance with clause 15.3; |
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| **Out of School, Alternative Education Provision** | shall mean the out of school, alternative education provision as set out in the Individual Placement Agreement; |
| **"Parent"** | means the person(s) having parental responsibility for a Learner as defined by the Children Act 1989; |
| **“Personal Education Plan (PEP)”** | means the personal education plan which is the plan for the education of a looked after Child; |
| **“Placement"** | means a specific commitment made by the Council through the completion of the Individual Placement Agreement in respect of a Learner and agreed by the Service Provider for the provision of education and care to address a Learner's individual needs; |
| **“Regulatory Body”** | means those government departments and regulatory, statutory and other entities, communities and bodies which, whether under statute, rules, regulations, codes of practice or otherwise are entitled to regulate, investigate or influence the matters dealt with in the APL Agreement or these Service Conditions; |
| **"Review"** | means the annual or other review of a Learner's EHC Plan or Education Plan or PEP. |
| **“Senior Responsible Officer”** | means an officer or executive of the Service Provider with strategic responsibility for this Contract; |
| **“Service”** | means the Services to be provided as specified in the Specification, the Individual Placement Agreement, the EHC Plan and the Education Plan and/or PEP, as appropriate; |
| **“Service Request”** | means the request by the Council to the Service Provider for Services in accordance with Schedule 4 of the APL Agreement; |
| **“Service Request Response”** | means the Service Providers response to the Service Request |
| **“Specification”** | means the Specification attached at Schedule 1 of the APL Agreement; |
| **“Staff”** | means all persons employed by the Service Provider to provide the Services together with the Service Provider’s servants, agents and sub-contractors;  |
| **“Standard Fee”** | means the price set out in the Service Provider’s Request to Participate is attached to the APL Agreement at Schedule 5 |
| **“Start-Up Meeting”** | a start-up meeting that may be held in accordance with clause 15; |
| **“Successor Provider”** | means any provider of services equivalent to the Services which the Council receives in substitution to for any of the Services on termination or expiry of an Individual Placement Agreement, which the Parties acknowledge may include the Council or any company established by the Council for those purposes; |
| **“Variation”** | Means any addition to, or modification of, any provision of these Service Conditions or Individual Placement Agreement  |
| **“VAT”** | means any value added tax as imposed under the Value Added Tax Act 1994 or any similar value added tax; |

* 1. Reference to any enactment, order, regulation or other similar instrument shall be construed as a reference to the enactment, order, regulations or instrument as amended by any subsequent and any successor enactment, order, regulation or instrument.
	2. Words importing the masculine gender include the feminine gender; words in the singular include the plural and vice versa and wording importing individuals shall be treated as importing bodies corporate and vice versa.
	3. The heading used in these Service Conditions are for ease of reference only and shall not affect the interpretation of any Call Off Agreement
	4. The following clauses contained in the APL Agreement are incorporated within these Service Conditions and shall apply and have effect in relation to the words and expressions and the interpretation and construction of these Service Conditions and any Call Off Agreement

**Clause 4 (Call For Competition Procedure)**

**Clause 8 (Records and Audit Access);**

**Clause 12 (Confidentiality, Data Protection and Freedom of Information);**

**Clause 20 Assignment and Novation**

**Clause 22 Relationship of Council and Service Provider**

**Clause 23 Prevention of Fraud and Bribery**

**Clause 26 (Third Party Rights);**

**Clause 27 (Notices);**

**Clause 28 (Dispute Resolution);**

**Schedule 1 Specification;**

**Schedule 2 Individual Placement Agreement;**

**Schedule 3 Call for Competition Procedure;**

**Schedule 4 Request to Participate**

1. **Commencement and Duration**

The Call Off Agreement shall commence and take effect on the date set out in the Individual Placement Agreement and shall expire automatically on the date set out in the Individual Placement Agreement unless it is otherwise terminated or extended in accordance with these Service Conditions.

# Individual Placement Agreement

* 1. Except where specifically provided to the contrary in an Individual Placement Agreement, each Call Off Agreement will be subject to these Service Conditions, Individual Placement Agreement and the APL Agreement. Insofar as any condition in an Individual Placement Agreement conflicts with the APL Agreement and/or these Service Conditions, the Individual Placement Agreement will to the extent only of such Individual Placement Agreement prevail.
	2. The Service Provider will provide the Services in accordance with the Council’s requirements set out in the Individual Placement Agreement, these Service Conditions, the Specification, the APL Agreement, the Request to Participate, the Service Request and the Service Request Response.
	3. For each Learner placed, an Individual Placement Agreement will be issued by the Council for completion by the Service Provider and the Council. Once complete the Individual Placement Agreement will be signed by both Parties.
	4. The completed Individual Placement Agreement should be issued by the date of commencement of the Placement. In the case of emergencies, an Individual Placement Agreement will be issued as soon as possible after the date of commencement and in any event no later than twenty eight (28) Working Days thereafter.
	5. Variations to any Individual Placement Agreement may only be made in accordance with these Service Conditions and subject to the unqualified agreement of both Parties.
1. **Provision of Services**
	1. The Service Provider shall
		1. provide or procure all resources required in connection with and for the purpose of performing the Services, whether of a temporary or permanent nature, so far as such requirement for the provision of the same is specified in or reasonably implied by the Individual Placement Agreement;
		2. ensure that all activities, operations and other things done, all equipment used, all accommodation, buildings and structures used and all methods adopted in connection with and for the purposes of performing the Services are sufficient, safe, fit for purpose and fully compliant with Law; and
		3. ensure that, where an Individual Placement Agreement does not specify a time period or deadline for performance of an obligation, that the Service Provider performs such obligation as soon as reasonably practicable, having regard to the interests and requirements of the Council, the Learner and interested third parties.
		4. The Service Provider shall ensure that the Services comply in all respects with the requirements set out these Service Conditions, the APL Agreement, the Specification and the Individual Placement Agreement.
		5. The Service Provider will ensure that the Services meets the quality standards detailed in these Service Conditions, any Individual Placement Agreement and the APL Agreement and complies fully with the requirements detailed in the EHC Plan, the Education Plan and/ or PEP, as appropriate to the placement arrangements.
	2. The Service Provider shall perform its obligations under an Individual Placement Agreement and the APL Agreement, in accordance with:

4.2.1 the Specification;

4.2.2 the Request to Participate;

4.2.3 Law;

4.2.4 Good Industry Practice; and

4.2.5 all Consents.

* 1. The Service Provider shall inform the Council’s Representative promptly and confirm in writing if the Service Provider is unable to or fails to provide any part of the Services in accordance with the Call Off Agreement excuse the Service Provider from any of its obligations under an Call Off Agreement.
	2. The Service Provider shall co-operate, liaise with and co-ordinate its activities under an Individual Placement Agreement with those of the Council and shall provide the Services in harmony with and at no detriment to other similar services provided by or on behalf of the Council.

4.5 The Service Provider acknowledges and agrees that it is appointed to provide the Services on a non-exclusive basis and, as such, the Council is freely entitled to procure services similar or equivalent to the Services from third parties or perform services similar or equivalent to the Services itself during the term of the APL Agreement

1. **VARIATIONS TO A CALL OFF AGREEMENT**
	1. Variations to any Cal Off Agreement shall be made in writing and signed and dated by both the Service Provider and the Council and recorded in the Call Off Agreement.
	2. Either Party may reasonably request a Review and consider what variations (if any) are required to be made resulting from changes in the needs of the Learner.
	3. Urgent Reviews shall normally be convened within five (5) Business Days of such a request and the Parties shall use their reasonable endeavours to achieve this.
		1. The Individual Placement Agreement shall be reviewed as a minimum in accordance with the statutory requirements and not less than once in any twelve (12) month period. Wherever possible, education, social care, health and other reviews shall take place on the same day.
		2. Following a Review any changes discussed regarding the Individual Placement Agreement shall not be implemented until all relevant documentation has been updated and agreed to by both Parties in writing.
		3. As provided for in the APL Agreement the Fees set out in the Individual Placement Agreement shall be based upon the Standard Fee for the Services. If following a Review, there is a change in the Services required which effects the Fees set out in the Individual Placement Agreement, the Parties will agree the revised Fees.

5.3.4 Any change(s) to the Service and the Fees, shall not be implemented until the amended Individual Placement Agreement is signed by both Parties. In circumstances where this is not practically possible, both Parties shall confirm in writing the Services, the revised Fees and the date of that these will come into effect.

5.3.5 Invoices must only be reflective of changes in the Services and Fees which have been agreed by the delegated authority of both parties in accordance with clause 5.3.4 above.

1. **Sub-Contracting, Assignment and Change of Control**

6.1 The Service Provider shall not assign or sub-contract any Call Off Agreement or any part of it, without the prior written consent of the Council. Such consent will not be unreasonably withheld or delayed.

6.2 Where the Council has consented to the Service Provider sub-contracting any part of the Service, the Service Provider will remain responsible for any acts, defaults and neglect of any sub-contractor.

6.3 Where in agreement with the Council the Service is sub-contracted to individuals who are self-employed, the Service Provider is wholly responsible for ensuring that the obligations under the APL Agreement and any Call Off Agreement(s) are fulfilled.

6.4 In the event of a Change of Control, the Service Provider shall give immediate notification to the Council and seek consent to assignment of the benefit of an Call Off Agreement. The Council will act reasonably and in good faith when considering the proposals, (subject to clause 6.6).

* 1. The Council shall maintain the confidentiality of any information provided under 6.4 and shall not release it to a third party without the consent of the Service Provider unless required at law by a court of competent jurisdiction.
	2. It may be a condition of any approval to any assignment of the benefit of a Call Off Agreement, or any substantive sub-contracting of obligations under a Call Off Agreement, or any Change of Control involving a change in the legal status of the Service Provider of Services under a Call Off Agreement, that the relevant third party shall enter into a direct and/or novation agreement with the Council including such terms and conditions as the Council might reasonably require, at the cost of the Service Provider.
	3. In the event that there is reason for an emergency takeover of service delivery from the Service Provider, both Parties will ensure all necessary procedures are undertaken to ensure the safety and well-being of any Learner placed with/through the Service Provider.

# Financial Arrangements

* 1. Fees
		1. The Fees payable by the Council to the Service Provider in respect of a Learner are set out in the Individual Placement Agreement for that Learner.
		2. Any other Fees relating to any additional services and in respect of a Learner which the Service Provider has agreed to supply will be separately identified within the Individual Placement Agreement.
		3. The Council is responsible for all Fees agreed in the Individual Placement Agreement and any subsequent amendments.
	2. Payment of Fees
		1. Subject to any provision of these Service Conditions to the contrary (including without limitation those relating to withholding and/or retention), in consideration of the provision of the Services in accordance with the Call Off Agreement the Council shall pay the Fees.
		2. The Service Provider shall submit Invoices to the Council for payment and Council shall pay the undisputed element of such Invoices within thirty (30) days of receipt. Each Invoice shall contain appropriate references and a detailed breakdown of the Services provided and shall be supported by any other documentation reasonably required by the Council’s Authorised Representative to substantiate the entitlement of the Service Provider to the amounts claimed in the Invoice.
		3. The Fees are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Council if applicable following delivery of a valid VAT invoice.
		4. Any VAT payable by the Council shall be payable at the rate and in the manner for the time being prescribed by law. All VAT charges must be shown separately in any Invoice clearly identifying what it relates to.
		5. The Service Provider shall indemnify the Council on a continuing basis against any liability, including any interest, penalties or costs incurred, that is levied, demanded or assessed on the Council at any time in respect of the Service Provider's failure to account for or to pay any VAT relating to payments made to the Service Provider under any Call Off Agreement. Any amounts due under this clause 7.2.5 shall be paid in cleared funds by the Service Provider to the Council not less than five (5) Business Days before the date upon which the tax or other liability is payable by the Council.
		6. Where the Service Provider enters into a sub-contract with a contractor with the agreement of the Council for the purpose of performing its obligations under an Call Off Agreement, it shall ensure that a provision is included in such sub-contact which requires payment to be made of all undisputed sums by the Service Provider to the sub-contractor within a specified period not exceeding twenty (20) Business Days from the receipt of a valid invoice.
		7. If a Party, acting in good faith, contests all or any part of any payment calculated in accordance with this clause 7:
1. the contesting Party shall within ten (10) Business Days notify the other Party, setting out in reasonable detail the reasons for contesting the requested payment, and in particular identifying which elements are contested and which are not contested; and
2. any uncontested amount shall be paid in accordance with these Service Conditions.
	* 1. If a Party contests a payment under clause 7.2.7 and the Parties have not resolved the matter within twenty (20) Business Days of the date of notification under clause 7.2.7, the contesting Party may refer the matter to the dispute resolution provisions set out in clause 16 of the APL Agreement and following the resolution of any dispute referred to dispute resolution, where applicable, the relevant Party shall pay any amount agreed or determined to be payable in accordance with clause 7.2.2.
		2. Subject to any express provision of these Service Conditions to the contrary each Party shall be entitled, without prejudice to any other right or remedy it has under the APL Agreement or Service Conditions, to receive interest at the Default Interest Rate on any amount due and payable in accordance with these Service Conditions and not paid with effect from the day after the date on which payment was due up to and including the date of payment, whether before or after judgment.
		3. The Council may retain or set off any sums owed to it by the Service Provider against any sums due to the Service Provider under any Call Off Agreement or any other contract between the Council and the Service Provider.
		4. The Service Provider shall make any payments due to the Council without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise, unless the Service Provider has a valid court order requiring an amount equal to such deduction to be paid by the Council to the Service Provider.
		5. The Council will not be liable to meet the Fees in the following circumstances:
3. Where the Council is notified of safeguarding issues relating to another child/ children which the Council assesses to have implications in relation to this Learner and the Out of School, Alternative Education Provision cannot provide suitable education. In this circumstance the Council will meet the Fees for a period not exceeding ten (10) Business Days from the date of the Learner’s last day of attendance. If the Council is having to provide home tuition or alternative education during these ten (10) Business Days the cost of this support will be deducted from the Fee. The Council will resume paying the Fees from the date that the Learner returns to Out of School, Alternative Education Provision;
4. Where a Learner is absent on account of illness and the Service Provider is unable to continue to provide suitable / appropriate education or if the Council is having to provide home tuition or hospital school education, after ten (10) Business Days the Council will deduct the cost of this support from the fee, the deduction not exceeding the equivalent of the Out of School, Alternative Education Provision daily rate for the Learner;
5. When a Learner dies the Call Off Agreement shall be terminated five (5) Business Days following the date of death. During this time, the Council and the Service Provider shall work together to make appropriate arrangements and responses to any coroner inquest, transfer of personal belongings and the Service Provider shall agree any associated communications with the Council prior to their publication.
6. Where there has been a serious breach of the APL Agreement or an Call Off Agreement. In this event, the Council’s liability will cease on the date of the letter notifying the Service Provider the termination of the APL Agreement or Call Off Agreement;
	* 1. In the event of an exclusion the Council shall have the right to withhold the Fees

# 8. Approval, Statutory and other Regulations

8.1 The Service Provider must inform the Council immediately by telephone and confirm in writing on the same day, of:

8.2 The Service 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 and care specified under these Service Conditions including relevant parts of:

(i) The Children and Families Act 2014;

(ii) The Education Acts 1996 and 2011 and The Academies Act 2010

1. The Children Act 1989 and Regulations made under the Act;
2. The Education and Inspections Act 2006 and Regulations made under the Act;

(iv) The School Standards and Framework Act 1998;

(v) The Education (Non-Maintained Special Schools) (England) Regulations 1999;

(vii) Independent School Standards 2019);

(viii) The SEND Code of Practice 0 to 25  2015

 (x) The Human Rights Act 1998;

(xiii) The Equality Act 2010;

(ix) All other relevant Acts, Regulations and enabling powers and provisions.

8.3 Health & Safety

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

1. all relevant Health and Safety Acts, Health and Safety Regulations and Codes of Practice approved by the Health and Safety Commission;
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.

##### **9. Warranties and Representations**

* 1. The Service Provider warrants, represents and undertakes to the Council that on entering into any Call Off Agreement with the Council:
		1. it has full capacity and authority to enter into and perform its obligations under the Call Off Agreement;
		2. it is validly authorised and the obligations expressed as being assumed by it under the Call Off Agreement constitute valid and binding obligations on its part enforceable against it in accordance with its terms;
		3. neither the execution of the Individual Placement Agreement by the Service Provider nor the performance or observation of any of its obligations under it will:

(i) conflict with or result in any breach of any law or enactment or any deed, agreement or other instrument, obligation or duty to which the Service Provider and its assets are bound; or

(ii) cause any limitation on any of the powers whatsoever of the Service Provider or on the right or ability of any directors of the Service Provider to exercise such powers, to be exceeded;

* + 1. it is not in default of:

(i) any law or enactment; or

(ii) any deed, agreement or other instrument or obligation by which it is bound so as to affect adversely its ability to perform its obligations under the Call Off Agreement;

* + 1. it has all of the Consents in place to provide the Services and the Council shall not (unless otherwise agreed) incur any additional costs associated with obtaining, maintaining or complying with the same;
		2. it has obtained all consents required in connection with execution, delivery, issue, validity or enforceability of the Call Off Agreement and none have been withdrawn;
		3. all material information supplied by the Service Provider to the Council is, to the best of its knowledge and belief, true and accurate and it is not aware of any material facts or circumstances which have not been disclosed to the Council which would, if disclosed, be likely to have an adverse effect on a reasonable public sector entity’s decision whether or not to contract with the Service Provider substantially on the terms of the Call Off Agreement;
		4. to the best of the Service Provider's knowledge, there is no litigation or administrative or arbitration proceeding before any court, tribunal, government authority or arbitrator presently taking place in any country, pending or (to its knowledge, information and belief) threatened against, or against any of the Service Provider's assets which might have a material adverse effect on either of its business, assets, condition or operations or might affect adversely its ability to perform its obligations under the Call Off Agreement;
		5. there has been no material adverse change in the Service Provider's business, assets, operations, data security policies and controls or prospects since the Service Provider entered into the Call Off Agreement;

9.1.10 to the best of the Service Provider's knowledge, nothing will have, or is likely to have, a material adverse effect on its ability to perform its obligations under the Call Off Agreement;

* + 1. no order has been made and no resolution has been passed for the winding up of the Service Provider or for a provisional liquidator to be appointed in respect of the Service Provider and no petition has been presented and no meeting has been convened for the purpose of winding up the Service Provider;
		2. no administration order has been made and no petition for such an order has been presented in respect of the Service Provider, nor has any administrator been appointed in respect of the Service Provider, nor has any notice of intention to appoint any such administrator been given, nor have any steps been taken by any person (including the Service Provider, or any directors) to appoint any such administrator;
		3. no person has appointed or threatened to appoint a receiver (including any administrative receiver) in respect of the Service Provider's assets.
		4. the Service Provider is not insolvent or unable to pay its debts within the meaning of section 123 Insolvency Act 1986 and has not stopped payment of its debts as they fall due;
		5. no voluntary arrangement has been proposed under section 1 Insolvency Act 1986 in respect of the Service Provider;
		6. no circumstances have arisen (so far as the Service Provider is aware) which are likely to result in:

(i) a contract or transaction to which the Service Provider is party being set aside; or

(ii) a third party claim involving any asset owned or used by the Service Provider being made under sections 238 or 339 (transactions at undervalue) or 239 or 340 (preferences) of the Insolvency Act 1986; and

* + 1. all Staff assigned to the provision of the Services possess and exercise such qualifications, skills and experience as are necessary for the proper performance of such services.

# 10. Safeguarding and Employees

Safeguarding

* 1. The Service Provider shall develop and maintain awareness and understanding of safeguarding issues with vulnerable adults, children and young people.
	2. The Service Provider shall ensure that all allegations, suspicions and incidents of abuse, harm or risk of harm to children and/or vulnerable adults or where there is concern about the behaviour of an individual are reported immediately to the Multi Agency Referral Unit (MARU) 0300 123 1116 and contact for the individual Learner at the Council. The Service Provider’s safeguarding policies and procedures should include active encouragement to Staff in whistle blowing if aware of suspected abuse.
	3. The Service Provider shall ensure that children and/or vulnerable adults are safeguarded from any form or exploitation including physical, financial, psychological and sexual abuse, neglect, discriminatory abuse or self-harm or inhumane or degrading treatment through deliberate intent, negligent acts or omissions.
	4. The Service Provider shall comply with all statutory obligations and the Council’s and Government policies (including but not limited to the Council’s Safeguarding Policy, Safeguarding Guidance for Service Providers and the South West Safeguarding Procedures) in respect of safeguarding as applicable and amended from time to time.
	5. The Service Provider shall immediately notify the Council of any information that it reasonably requests to enable it to be satisfied that the obligations of this clause 10 have been met.
	6. The Service Provider must comply with any instruction given by the Council in respect of this clause 10.

Service Provider Staff

* 1. The Service Provider will comply with the Keeping Children Safe in Education Guidance 2019 and any other relevant Guidance or Law as appropriate. The Service Provider will ensure that there is a satisfactory recruitment process recorded in writing for all employees.
	2. The Staff shall be properly and suitably qualified, competent, skilled, instructed, trained, and supervised and shall at all times exercise due care in the execution of their duties. The Service Provider shall ensure that all Staff are:
		1. suitably qualified and experienced in accordance with the Learner’s Care EHC Plan or agreed education plan and the Service Specification;
		2. are capable of responding in a sensitive and caring way to the needs of the individual Leaners; and
		3. where applicable, Staff are registered with the appropriate professional regulatory body e.g. have qualified teacher status.
	3. The Service Provider must have in place systems for seeking and recording specialist professional advice and must ensure that every member of Staff involved in the provision of the Services receives:

10.9.1 proper and sufficient continuous professional and personal development, training and instruction; and

10.9.2 full and detailed appraisal (in terms of performance and on-going education and training),

 each in accordance with Good Industry Practice and the standards of any applicable Regulatory Body and/or professional body.

* 1. The Service Provider shall ensure that all their Staff understand the nature and purpose of the Service that they are providing (including the Service Provider’s policies and procedures). In order to achieve this all their Staff must undertake an induction programme and receive on-going training/development and supervision.
	2. The Service Provider shall comply with all relevant legislation in relation to the delivery of the Services. The Service Provider shall use all reasonable endeavours to keep abreast of all relevant legislative changes and re-enactments issued.
	3. The Service Provider shall ensure that any Staff employed by the Service Provider or its Sub-Contractors in connection with the performance of its obligations under the Call Off Agreement will be paid no less than the Living Wage.
	4. The Service Provider shall introduce and/or keep in place training and development programmes that ensure their Staff fulfil the aims of the Service and meet the changing needs of the Learner. The training and development programme should take into account any relevant change in legislation, regulation or guidance concerning the provision of the Services.
	5. The Service Provider must use reasonable endeavours to ensure that an appropriate infrastructure is in place and maintained to ensure that all requirements of the Call Off Agreement under it are met and developed.
	6. The Service Provider shall:

10.16.1 ensure that each member of Staff has a clear and up to date enhanced DBS check (at the Service Provider's cost) prior to commencing work in relation to the Services and that an enhanced DBS check is re-performed (at the Service Provider's cost) in respect of each member of Staff at least once every three (3) years, or such shorter period as may be prescribed by Law; and

10.16.2 not employ or use the services of any person who is barred from, or whose previous conduct or records indicate that he or she would not be suitable to carry out Regulated Activity or who may otherwise present a risk to Children or vulnerable adults.

* 1. The Service Provider shall refer information about any person carrying out the Services to the DBS where it removes permission for such person to carry out the Services (or would have, if such person had not otherwise ceased to carry out the Services) because, in its opinion, such person has harmed or poses a risk of harm to the Children or vulnerable adults.
	2. Any Service Provider member of Staff, carer or sub-contractor who is found to be unsuitable, as the result of any subsequent checks, shall be immediately removed from access to children or other vulnerable persons and a suitable replacement appointed. The Service Provider shall inform the Purchaser’s Authorised Representative in the event of any such removal and any actual or possible impact on the Learner.

##### **11. Complaints**

11.1 The Service Provider shall at all times comply with its published Complaints policy.

11.2 The Service Provider shall report all complaints received about the standard of the provision of the Services or about the manner in which any of the Services have been supplied or performed or about the procedures used or about any other matter connected with the performance of the Service Provider’s obligations under these Service Conditions, the APL Agreement or any Individual Placement Agreement, to the Council within five (5) Business Days.

11.3 If a complaint is received about the standard of the provision of the Services or about the manner in which any of the Services have been supplied or performed or about the procedures used or about any other matter connected with the performance of the Service Provider’s obligations under these Service Conditions, the APL Agreement or any Individual Placement Agreement, then the Council may take any steps it considers reasonable in relation to that complaint, including investigating the complaint and discussing the complaint with the Service Provider and any Regulatory Body. Without prejudice to any other rights the Council may have under these Service Conditions, the Council may, in its sole discretion, uphold the complaint and take any action provided for under these Service Conditions.

# 12. INDEMNITIES, INSURANCE AND LIABILITY

* 1. Subject to clause 12.2 and 12.3 the Service Provider shall indemnify and keep indemnified the Council against all actions, claims, demands, proceedings, damages, costs, fees and expenses whatsoever and howsoever arising in respect of, or in any way arising out of, the provision of the Services, in relation to the injury to, or death of, any person, and the loss of, or damage to, any property including property belonging to the Council except and to the extent that it may arise out of the act, default or negligence of the Council, its employees or agents not being the Service Provider or its personnel.

12.2 Subject to Clause 12.3 below, the Service Providers liability under or in connection with the APL Agreement or any Call Off Agreement, shall in no event exceed £5,000,000 (five million pounds) for any one occurrence or series of occurrences arising out of one event.

Nothing in these Service Conditions will exclude or limit the liability of either Party for:

12.2.1 death or personal injury caused by its negligence;

12.2.2 fraud or fraudulent misrepresentation;

12.2.3 any liability to the extent it cannot be excluded or limited by Law; or

12.2.4 a breach of the Information Governance Clauses

12.3 Any personal clothing and other personal possessions damaged or lost by the Service Provider or resulting from the actions or inactions of the Service Provider must be replaced by the Service Provider within a reasonable time and to the satisfaction of the Council in the interests of the Learner.

12.4 Without prejudice to its obligation to indemnify the Council in the event of any one occurrence or series of occurrences arising out of one event, the Service Provider will insure and will maintain for a period of six (6) years following termination or expiry of the Call Off Agreement such insurance and pay any resulting premiums, in the minimum sum insured of:

12.4.1 Public liability – a minimum of five million pounds (£5,000,000) in respect of any one claim unlimited in the aggregate;

12.4.2 Employer’s liability – a minimum of five million pounds (£5,000,000) in respect of any one claim, covering all employees

12.4.3 Professional indemnity – a minimum of five hundred thousand pounds (£500,000) in respect of any one claim;

12.4.5 Vehicle Insurance Cover- the Service Provider and its Staff shall have in place motor vehicle insurance commensurate with the potential liabilities of the Service Provider relating to the operation of vehicles used for the transport of Children and their visitors.

12.5 The provision of any insurance or the amount or limit of cover will not relieve or limit the Service Provider’s liabilities under the APL Agreement, a Call Off Agreement or these Service Conditions.

12.6 The Service Provider shall ensure that in respect of any holidays whether in the UK or worldwide adequate insurance cover as set out by the Outdoor Education Advisory Panel https://oeapng.info/3893-public-liability-insurance-for-Service Providers/ is in place for every the Learner.

12.7 The Service Provider will on request provide to the Council documentary evidence that the insurances required by this clause have been effected and are being maintained. Where the Council is of the opinion that this is not the case, or where evidence of consistent and ongoing cover cannot be demonstrated, the Council shall, be entitled to terminate any relevant Call Off Agreement and may where the Council feels appropriate, give a reasonable period of no more than twenty eight (28) days to the Service Provider to undertake and effect such insurances as to meet these Service Conditions and in adherence to clause 12.4. During such a period, the Service Provider shall be liable for all and any costs that would otherwise have been met by such insurances as were required.

12.8 Regardless of any other provision of the Call Off Agreement, neither Party excludes or restricts its liability under the Call Off for death or personal injury caused by its own negligence or negligence of its employees or agents acting in the course of their employment or agency or to any extent not permitted by law.

12.9 The Service Provider will take up any other appropriate insurance(s) reasonably required by the Council under an Call Off Agreement as made known to the Service Provider, or that the Service Provider could reasonably be aware of and shall maintain as a minimum, the levels of cover where specified within this clause 12.

# Conflict of Interest

In order to prevent conflicts of interest arising and in accordance with the Local Government and Housing Act 1989, local authority officers and Councilors cannot participate in the award of any contract to an organisation in which they have an interest. The Service Provider will, therefore, inform the Authority's Contracts Officer if any elected Member or employee of the Council is a member of a governing body or is a Trustee or Director of the Service Provider or has a financial interest in the Service Provider.

1. **NOT USED**

#  15. Monitoring of Service Provision

 15.1 Performance Improvement Plan

15.1.1 In the event that the Service Provider commits a breach of the APL Agreement, these Service Conditions or a Call Off Agreement which is capable of remedy, the Council may (without prejudice to any other rights or remedies that it may have under these Service Conditions, including terminating the APL Agreement or Call Off Agreement for Default) serve a written notice on the Service Provider requiring the Service Provider to submit a draft Performance Improvement Plan to the Council detailing why the breach has occurred and how it will be remedied within ten (10) Business Days of receipt of Council's notice.

15.1.2 The Council shall confirm whether the draft Performance Improvement Plan is approved or rejected within ten (10) Business Days of receipt and, if rejected, shall provide reasons for the rejection. If the Council rejects the proposed draft Performance Improvement Plan, the Service Provider shall promptly amend the draft Performance Improvement Plan to take account of the Council's reasons for rejection and resubmit to the Council for approval. Thereafter, the procedure set out in this clause 15.1.2 shall be reapplied until the draft Performance Improvement Plan is approved by the Council. Once the draft Performance Improvement Plan has been approved by the Council, it shall be implemented by the Service Provider in accordance with its terms.

15.1.3 If the Service Provider fails to implement an approved Performance Improvement Plan in accordance with its terms or fails to produce a Performance Improvement Plan with 15.1.2 that is acceptable to the Council, this will constitute a breach for the purposes of clause 17.5 (Termination for Defualt).

15.2 Start-Up Meeting

15.2.1 Where required by the Council, prior to the commencement of the APL Agreement and/or any Call Off Agreement, the Service Provider and the Council shall arrange a Start-Up Meeting.

15.2.2 The Start-Up Meeting shall take place at a time, date and venue to be agreed between the Parties.

15.3 Operational Contract Review Meetings

15.3.1 The Service Provider acknowledges and accepts that the Council may, at its absolute discretion, visit the Service Provider or require the Service Provider to attend Operational Contract Review Meetings to review and monitor performance of the APL Agreement and any Call Off Agreements and consider any other matters reasonably required by either Party, at a frequency determined by the Council. When the Council visits a Service Provider a record of activity and any requirements or developments discussed will be written by the Council and sent to the Service Provider.

15.4 Not Used

15.5 EHC Plan or Education Plan Reviews

15.5.1 The Service Provider acknowledges and accepts that the Council requires the Service Provider to lead reviews for Learners, and that the Council will be invited to attend the review meetings. For Learners with an agreed PEP as well as those with an EHC Plan the arrangements for reviews will be as set out in the SEND Code of Practice: 0 to 25 section 9.

15.5.2 The Service Provider acknowledges and accepts that as part of an EHC Plan or Education Plan Review or general monitoring of a Service Provider the Council may require the Service Provider to:

* + - 1. allow access the Service Provider’s premises to observe the teaching delivered;
			2. review the Service Provider’s policies and procedures;
			3. provide copies of any progress or assessment reports;
			4. meet with its staff to discuss any Placement(s);
			5. meet with a Learner to discuss their Placement;
			6. 6.provide copies of any communication with the Learner’s Carer and
			7. provide any other relevant documentation relating to the Placements it provides to the Council under this Call Off Agreement.

15.6 Annual Contract Review Meetings

15.6.1 The Service Provider acknowledges and accepts that the Council may, at its absolute discretion, require the Service Provider to attend Annual Contract Review Meetings at the Council’s premises (or as otherwise agreed) at a time and date to be agreed between the Parties. The Parties shall be represented by a Senior Responsible Officer at all Annual Contract Review Meetings.

15.6.2 The agenda for a Contract Review meeting will be confirmed in writing prior to the meeting.

15.7 Outcomes

15.7.1 The Service Provider shall use its best endeavors to enable the Learner to achieve the outcomes set out in the Learner’s EHC Plan or agreed Education Plan and the Individual Placement Agreement.

15.7.2 The Council shall monitor the Service Provider’s performance against the outcomes on at least an annual basis.

15.6.3 The Service Provider shall, on the Council’s request, provide to the Council a report detailing performance of its obligations in accordance with this Call-off Agreement and the Individual Placement Agreement in respect of all Children placed with the Service Provider.

15.8 Reporting

15.8.1 The Service Provider agrees that it shall meet, and continue to meet the reporting requirements as detailed in the Service Specification. The Service Provider shall co-operate with the Council’s Authorised Officer when carrying out monitoring and evaluation of activities in relation to the Call-Off Agreement.

15.8.2The Service Provider shall be responsible for monitoring the Learner in Placement and use all reasonable endeavours to ensure that the services provided are meeting the Learner’s needs and fulfilling their individual outcomes. This shall include ascertaining information on the views of the Learner in Placement, and their Parents or carers.

15.8.3 The Service Provider shall have in place, to the Council’s reasonable satisfaction, internal quality monitoring and quality assurance policies and procedures to ensure the Services are of the quality and standard required by this Service Agreement.

15.8.4 The Service Provider undertakes to use its reasonable endeavours to provide additional information in respect of Placements where required by the Council.

# Corrupt Practices

16.1 The following actions on the part of the Service Provider will constitute a serious breach and empower the Council to terminate a Call Off Agreement and to recover from the Service Provider the amount of any loss directly resulting from such cancellation and also to exclude the Service Provider from future Call Off Agreements.

16.2 Neither the Service Provider nor the Council 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 Council and except where this is compliant with its governing documents.

# 17 Termination

17. Termination of a Call Off Agreement

**Termination of Call Off Agreements**

* 1. The Parties shall act at all times in relation to any Call Off Agreement in good faith in order to meet the needs of the Learner. When a placement is to be terminated, both parties shall support a smooth transition of the arrangements for each affected Learner. Any notice periods may be reduced or waived with the agreement of both parties.
	2. TERMINATION WITHOUT CAUSE

17.2.1 Either Party may terminate a Call Off Agreement by providing the other Party with no less than six (6) weeks notice in writing whilst acting within the requirements of the Children and Families Act 2014 for learners with an Education and Health Care Plan. If the Learner’s place is filled within the six week notice period, the Council’s liability will cease when the new learner’s placement starts or at the end of the agreed notice period, whichever is sooner.

* + 1. The Council may terminate a Call Off Agreement with a lesser period of notice or with immediate effect following review by the Council of the Placement in question, in the following circumstances:
1. the Placement’s continuation puts the Learner, or any other learner or person at risk of harm;
2. a risk assessment has concluded that significant risk cannot be adequately managed within the Placement;

(v) as recommended by the Local Safeguarding Board; or

 (vi) where mutually agreed in writing.

* + 1. Where a Learner has died, the Call Off Agreement shall be terminated 10 Business Days following the date of death.

17.2.4In all such circumstances the Parties will work together to safeguard the interests of the Child until such time as an alternative arrangement can be made. Any varied Services provided and changing costs incurred to maintain a Placement will be agreed at an IPA Review meeting.

17.2.5 During the notice period provided in accordance with clause 15.1.1 or 15.1.3, the Service Provider and the Council shall make all reasonable effort to assist, facilitate and enable any actions required in respect of the Council’s own change management measures and the continuity of Services to Children, cooperating to ensure that the interests of Children are met under whatever new arrangements may be proposed.

17.2.6During the period of notice both Parties will co-operate to ensure that the interests of Children are met under whatever new arrangements may be proposed. Should it reasonably foresee that this may not be practicable, the Council will seek to extend the notice period with mutual consent such consent not to be unreasonably delayed or withheld. If the notice period is extended the Council will pay for the Placement until discharge. The Service Provider shall not be entitled to any additional costs unless agreed in writing.

* + 1. Termination of a Call Off Agreement under this clause 17.2 will have no effect on the liability of either Party to the payment of any sums arising under a Call Off Agreement prior to the date upon which termination takes effect.

17.3 TERMINATION DUE TO STATUS OF SERVICE PROVIDER

17.3.1 The Council may terminate a Call Off Agreement by notice in writing with immediate effect where:

* + - * 1. the Service Provider undergoes a change of control, within the meaning of section 416 of the Income and Corporation Taxes Act 1988, which impacts adversely and materially on the performance of the Services;

(ii) the Service Provider is a company, if the company passes a resolution for winding up or dissolution (otherwise than for the purposes of and followed by an amalgamation or reconstruction) or an application is made for, or any meeting of its directors or members resolves to make an application for an administration order in relation to it or any party gives or files notice of intention to appoint an administrator of it or such an administrator is appointed, or the court makes a winding-up order, or the company makes a composition or arrangement with its creditors, or an administrative receiver, receiver, manager or supervisor is appointed by a creditor or by the court, or possession is taken of any of its property under the terms of a fixed or floating charge;

(iii) the Service Provider has a provisional liquidator, receiver or manager of its business or undertaking duly appointed;

1. the Service Provider has an administrative receiver, as defined in the Insolvency Act 1986, appointed;
2. the Service Provider is in circumstances which entitle the Court or a creditor to appoint, or have appointed, a receiver, a manager or an administrative receiver, or which entitle the Court to make a winding-up order;
3. the Service Provider receives notices of proposed cancellation of their registration;
4. where the Service Provider is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
5. or any similar event occurs under the law of any other jurisdiction within the United Kingdom.15.2.2 If the Service Provider, being an individual, shall die or be adjudged incapable of managing his or her affairs within the meaning of Part VII of the Mental Health Act 1983, the Council shall be entitled to terminate an Call Off Agreement by notice to the Service Provider with immediate effect.

17.4 TERMINATION DUE TO SERVICE PROVIDERS ACTIONS

 17.4.1 The Council shall be entitled to terminate a Call Off Agreement with immediate effect and recover from the Service Provider the amount of any loss resulting from such a termination, if the Service Provider, or any Director or officer of the Service Provider:

(i) has been convicted of an offence or disqualified under the provisions of the Legislation and associated regulations specified at clause 8 (Approval, statutory and other regulations) and any subsequent amendments and additions;

(ii) has committed any offence under the Bribery Act 2011;

(iii) any of the Staff employed in connection with the Services are convicted under the 1st Schedule of the Children and Young Persons Act 1933;

(iv) has offered any gift or consideration as an inducement or reward to any servant of a public body;

(v) has offered any improper inducement or exerting unreasonable pressure upon potential Learners or their relatives, or others with an interest, to attempt to encourage the potential Learner, Parent or relative to use the Service Provider;

(vi) has taken unreasonable financial advantage of its relationship with a Learner; or

(vii) are identified as posing a risk, or potential risk, to children.

17.5 TERMINATION FOR DEFAULT

17.5.1 The Council shall be entitled to terminate a Call Off Agreement by giving written notice to the Service Provider with immediate effect and recover from the Service Provider the amount of any loss resulting from such termination, if:-

(i) the Service Provider has favoured, or maliciously disfavoured, any person in relation to an Individual Placement Agreement, or any other contract with the Council;

(ii) the Service Provider, or any person employed by the Service Provider or acting on the Service Provider’s behalf, committed any offence under the Prevention of Corruption Acts of 1889, 1906 and 1916 in relation to an Individual Placement Agreement or any other contract with the Council;

(iii) the Service Provider committed a material irremediable breach of any of its obligations under a Call Off Agreement;

(iv) in the case of a breach which is capable of being remedied the Service Provider fails to remedy such a breach within ten (10) Business Days, or such other period as may be specified by the Council, after issue of a written notice specifying the Default and requesting it to be remedied;

1. the Service Provider fails to comply with a Performance Improvement Plan in accordance with clause 15;
2. the default is not, in the opinion of the Council, capable of remedy;
3. the Service Provider is in persistent breach of any one of its obligations under the APL Agreement or Call Off Agreement;
4. the Service Provider fails to meet the reasonable requirements of any relevant Regulatory bodies, and unreasonably fails to put in place an agreed action plan between the Service Provider and the Regulatory bodies to put this right, or the Service Provider unreasonably fails to meet the requirements of the agreed action plan within a reasonable period of time; or
5. the APL Agreement is terminated in accordance with clause 20.1 (Council’s Termination Rights), clause 20.3 (Termination due to Status of Service Provider) or clause 20.4 (Termination due to Service Provider’s Actions).

17.6 Termination of the APL Agreement shall not automatically terminate the Call Off Agreements entered into by the Parties under it unless otherwise agreed by the Parties.

**18. Consequences of Termination or Expiry of a Call Off Agreement**

18.1 The Service Provider shall give notice to the Council as soon as reasonably possible if it finds it is unable permanently or temporarily to meet these Service Conditions and an action plan with timescales shall be agreed by both Parties.

18.2 The Council may assist the Service Provider in continuing to provide the Services to the Learner in order to meet the best interests of the Learner or where the Service Provider’s inability is of a temporary nature. Such assistance by the Purchaser shall not be regarded as a waiver of any breach of the Service Provider’s obligations under these Service Conditions. The Fees for the Services, during this period shall be negotiated and any reduced Fees shall be agreed to in good faith by both the Council and the Service Provider.

18.3 Expiry or termination of a Call Off Agreement, or termination of any Service, will not affect any rights or liabilities of the Parties that have accrued before the date of that expiry or termination or which later accrue.

18.4 The Service Provider shall develop an outline succession plan which describes the procedure for ensuring an orderly transfer of the Services to a Successor Service Provider following expiry or termination of a Call Off Agreement and shall submit the same to the Council for approval no later than twenty (20) Business Days prior to the Commencement Date. The succession plan shall provide the following:

18.4.1 if applicable, confirmation of any transferring assets (including but not limited to hardware, software and leases);

18.4.2 details of any outstanding Services that have not yet been delivered by the Service Provider; and

18.4.3 confirmation of any final reconciliation of the Fees due to the Council.

18.5 On the service of a termination notice or forty (40) Business Days prior to expiry (as appropriate), the Service Provider will make any updates to the Succession Plan which may be required to take into account the identity of the Successor Service Provider and the Council's preferred transition arrangements (as notified to the Service Provider by the Council) and shall provide the updated succession plan to the Council for approval. Following approval of the updated succession plan by the Council, the Parties shall implement the succession plan in accordance with its terms.

18.6 On the expiry or termination of a Call Off Agreement the Service Provider must co-operate fully with the Council to migrate the Services in an orderly manner to the Successor Service Provider.

18.7 In the event of termination or expiry of a Call Off Agreement, the Service Provider shall cease to use the Council’s Confidential Information and on the earlier of the receipt of the Council’s written instructions or twelve (12) months after the date of expiry or termination, either return all copies of the Confidential Information to the Council or destroy all copies of the Confidential Information, as required by the Council.

18.8 The Parties acknowledge and agree that any clauses, paragraphs or other provisions of these Service Conditions which are stated to, or by implication are intended to, survive the termination or expiry of a Call Off Agreement shall continue to have effect and bind the parties until the date specified in the relevant clause, paragraph or other provision or (if not date is specified) the date which is twelve (12) years following the date of termination or expiry of the Call Off Agreement.

# 19 Force Majeure

Neither Party will be liable for delay or failure to perform the obligations of a Call Off Agreement 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 Service Provider). In the event of delay or failure arising from any such cause the Council 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 terms of the Call Off Agreement.

# 20. Waiver

No delay, neglect or forbearance on the part of either party in enforcing against the other party of any of these Service Conditions shall either be or be deemed to be a waiver or in any way prejudice any right of that party under the Call Off Agreement.

# 21. Law

 These Service Conditions and any Call Off Agreement shall be subject to, construed, interpreted in accordance with English Law, and shall be subject to the jurisdiction of the Courts of England.

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