

**Pseudo Dynamic Purchasing System**

**for the Provision of**

**CS0877 South West & South Central Flexible Framework for Independent/ Non-Maintained Special Schools**

**Draft Flexible Framework Agreement**

**FLEXIBLE FRAMEWORK AGREEMENT**

**FOR**

**SPECIAL EDUCATIONAL NEEDS AND DISABILITY INDEPENDENT SPECIAL SCHOOL PLACEMENTS (SEND PLACEMENTS)**

Between

**Bristol City Council**

**Bournemouth, Christchurch and Poole County Council**

**Dorset Council**

**Hampshire County Council**

**Isle of Wight Council**

**North Somerset Council**

**Oxfordshire County Council**

**Somerset County Council**

**Swindon Borough Council**

**West Berkshire Council**

**Wiltshire Council** (‘Lead Authority’)

**Wokingham Borough Council**

**Torbay Council**

(‘Participating Authorities ’)

and

**[PROVIDER]**

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**FLEXIBLE FRAMEWORK AGREEMENT FOR SPECIAL EDUCATIONAL NEEDS AND DISABILITY INDEPENDENT SPECIAL SCHOOL PLACEMENTS (SEND PLACEMENTS)**

**AGREEMENT FORM – AUTHORITY COPY**

**PARTIES:**

1. **Bristol City Council** of [xx];
2. **Bournemouth Christchurch and Poole Council** of [xx]
3. **Dorset Council** of [xx]
4. **Hampshire County Council** of [xx]
5. **Isle of Wight Council** of [xx]
6. **North Somerset Council** of [xx]
7. **Oxfordshire County Council** of [xx]
8. **Somerset County Council** of [xx]
9. **Swindon Borough Council** of [xx]
10. **Torbay Council**
11. **West Berkshire Council**
12. **Wiltshire Council** of [xx] **(“Lead Authority”)**
13. **Wokingham Borough Council** of [xx]

together the (‘Participating Authorities’); and

|  |  |
| --- | --- |
| **Name of Provider:** |  |
| **Registered Company Number:** |  |
| **Address:** |  |
| **Contact Name, E-mail and Phone Number:** |  |

("**the Provider**")

**ESTABLISHMENTS:**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Name of Establishment(s)** | **School/College/**  **Children’s Home/Foster Agency Office** | **Address of Establishment** | **Registered Number (DfE/Ofsted/ISI/Estyn)** | **Contact Name, E-mail and Phone Number** |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |

(each an “**Establishment**” for the purposes of this Agreement).

**AGREEMENT COMMENCEMENT DATE:**

*[****DATE TO BE SET OUT HERE****]*

**PROVIDER’S LOTS:**

*[****LIST OF THE PROVIDER’S LOTS TO BE SET OUT HERE AT AWARD****]*

**BINDING AGREEMENT:**

The Flexible Framework Agreement for the provision of special educational needs and disability Independent Special School placements between the Participating Authorities and the Provider consists of this Agreement Form, the attached terms and conditions (including Part A: General Terms and Conditions and Part B: Specific Terms and Conditions) and the attached Schedules (Schedules 1 to 11) (together referred to as "**this Agreement**").

This Agreement is established by the Provider’s signature of this Agreement Form, which confirms receipt and acceptance of the terms and conditions of this Agreement.

The signed and dated Agreement Form document must be returned to the Lead Authority. The completion of this Agreement Form by the Provider shall form a binding contract between the Participating Authorities and the Provider on the terms of this Agreement.

|  |
| --- |
| **Signed for and on behalf of the Provider:**  **Name and Title:**  **Signature:**  **Date:**  *Authorised Signatory* |

**Please fill in the appropriate sections of this Agreement Form where indicated, detach it and return to:**

[INSERT CONTACT NAME]

[INSERT POSITION]

Wiltshire Council

Bythesea Road

Trowbridge

BA14 8JN

**FLEXIBLE FRAMEWORK AGREEMENT FOR SPECIAL EDUCATIONAL NEEDS AND DISABILITY INDEPENDENT SPECIAL SCHOOL PLACEMENTS (SEND PLACEMENTS)**

**AGREEMENT FORM – PROVIDER COPY**

**PARTIES:**

1. **WILTSHIRE COUNCIL** of County Hall, Bythesea Road, Trowbridge, BA14 8JN (“**Lead Authority**”);
2. [XX]; and

|  |  |
| --- | --- |
| **Name of Provider:** |  |
| **Registered Company Number:** |  |
| **Address:** |  |
| **Contact Name, E-mail and Phone Number:** |  |

("**the Provider**")

**ESTABLISHMENTS:**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Name of Establishment(s)** | **School/College/**  **Children’s Home/Foster Agency Office** | **Address of Establishment** | **Registered Number (DfE/Ofsted)** | **Contact Name, E-mail and Phone Number** |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |

(each an “**Establishment**” for the purposes of this Agreement).

**AGREEMENT COMMENCEMENT DATE:**

*[****DATE TO BE SET OUT HERE****]*

**PROVIDER’S LOTS:**

*[****LIST OF THE PROVIDER’S LOTS TO BE SET OUT HERE AT AWARD****]*

**BINDING AGREEMENT:**

The Flexible Framework agreement for the provision of special educational needs and disability Independent Special School placements (‘SEND Placements’) between the Participating Authorities and the Provider consists of this Agreement Form, the attached terms and conditions (including Part A: General Terms and Conditions and Part B: Specific Terms and Conditions) and the attached Schedules (Schedules 1 to 11) (together referred to as "**this Agreement**").

This Agreement is established by the Provider’s signature of this Agreement Form, which confirms receipt and acceptance of the terms and conditions of this Agreement.

The signed and dated Agreement Form document must be returned to the Lead Authority. The completion of this Agreement Form by the Provider shall form a binding contract between the Participating Authorities and the Provider on the terms of this Agreement.

|  |
| --- |
| **Signed for and on behalf of the Provider:**  **Name and Title:**  **Signature:**  **Date:**  *Authorised Signatory* |

**Please fill in this form for your records and keep it as part of your copy of final completed Agreement.**

**INTRODUCTION - PURPOSE OF THIS AGREEMENT**

**Introduction**

The purpose of this Agreement is to:

* ensure that there is an Individual Placement Agreement in place for all Children/Young People/Young Adults placed by the Participating Authorities in Establishments for the provision of education and/or care and health; and
* ensure that there is clarity over the funding arrangements between the Provider and the Participating Authorities.

This Agreement aims to:

* reduce bureaucracy and repetition;
* share good practice;
* improve partnership working;
* improve quality and outcomes by ensuring and safeguarding high standards of education and/or care and health;
* facilitate dialogue; and
* provide a model that both the Provider and the Participating Authorities can sign up to.

**Values and Beliefs**

The relationship between the Parties under this Agreement is one of mutual respect. The Parties have a shared goal to ensure the delivery of quality and effective Services, to work collaboratively and constructively and in a spirit of trust, fairness and mutual co-operation for the benefit of the Children/Young People/Young Adult benefiting from the Services, while acknowledging the requirement for accountable, responsible and effective expenditure of public monies.

The Parties shall support the following key principals under this Agreement:

* Collaborative partnership working between Children/Young People/Young Adult, families, the Participating Authorities and the Provider;
* Being attentive and responsive to the Children/Young People/Young Adult’s individual needs and rights in relation to age, gender, ethnicity, sexuality and disability and specific cultural and religious needs; and
* Promoting transparency between Children/Young People/Yong Adult, families, the Provider, the Establishments and the Participating Authorities.

**PART A: GENERAL TERMS AND CONDITIONS**

**BACKGROUND**

1. The Participating Authorities have agreed to establish a Flexible Framework Agreement which is an electronic purchasing system based on dynamic purchasing principles, utilising the ‘light touch regime’ under the Public Contracts Regulations 2015, allowing for the Participating Authorities to purchase special educational needs and disability Independent Special School placements.
2. The established Flexible Framework Agreement will be managed by the Lead Authority in conjunction with the Participating Authorities who shall use the Flexible Framework to award Call-Off Contracts required during the Agreement Term.
3. The Lead Authority issued an advertisement published as a Contract Notice in the Official Journal of the European Union (OJEU) ([INSERT REFERENCE NUMBER]) on [INSERT DATE] [and on Contracts Finder] seeking Requests to Participate from economic operators for the Flexible Framework .
4. The Provider submitted its Request to Participate in response to the OJEU Contract Notice and the Flexible Framework Establishment Documents.
5. On the basis of the Provider’s Request to Participate, the Participating Authorities have admitted the Provider onto the Flexible Framework for the Provider’s Lots, and the Provider is willing and able to provide the Services to the Participating Authorities on a call-off basis in respect of the Provider’s Lots.
6. New entrants may apply to be appointed to the Flexible Framework at any time during the Agreement Term in accordance with the information contained in the OJEU Contract Notice and the Flexible Framework Establishment Documents.
7. The evaluation and appointment of new entrants shall take place in accordance with clause 8.6.
8. There will be no obligation for the Participating Authorities to award any Call-Off Contracts under the Flexible Framework during the Agreement Term.

**SECTION 1 – PRELIMINARY**

1. **DEFINITIONS AND INTERPRETATION**
   1. In this Agreement, unless the context otherwise requires, the following provisions shall have the meanings given to them below:

**“****Absence” or “Absent”** means a situation where the Child/Young Person/Young Adult is missing from, absconds from or is not present at an Establishment in accordance with their Individual Placement Agreement, including where this is due to hospitalisation or illness or any other authorised leave of absence;

**“Academic Year”** means the twelve (12) calendar month period commencing on the 1st September each year, unless otherwise agreed with the Participating Authorities in writing;

**“Action Plan”** means aremediation/rectification programme to be produced by the Provider which shall:

1. include a clear and detailed outline of the issues/problems identified by the Participating Authorities, to evidence the Provider's self-awareness of the identified issues/problems;
2. specify the actions, objectives, and/or improvements required in order to address the issues/problems identified and define the category which each one falls in - service related, staff related or management related;
3. for each action, objective and/or improvement identified under paragraph (b) above:
4. set out clear outcomes that will be used to determine whether the relevant action, objective and/or improvement has been achieved;
5. identify how each action, objective and/or improvement will be measured and qualified and the person responsible for the same;
6. specify the dates by which such actions, objectives and/or improvements must be achieved and the consequences for failing to achieve such actions, objectives and/or improvements by the dates identified; and
7. evidence that the Provider has the resources, skills and information required to achieve all of the identified actions, objectives and/or improvements. If someone with further knowledge is required, the Provider shall provide the Participating Authorities with details of the name and organisation that it intends to bring in;

**“Additional Fees”** means the agreed fees/charges to be paid by the Participating Authorities to the Provider for the Additional Services, which shall not exceed (but they may be lower than) the relevant fees set out in Part B (The Provider's Pricing) of the Pricing Schedule, where listed. Where fees for any Additional Services are not set out in Part B (The Provider's Pricing) of the Pricing Schedule, such fees shall be agreed between the Provider and the Participating Authorities. The Additional Fees will be detailed in the Individual Placement Agreement;

**“Additional Services”** means any additional services agreed by the Parties over and above the Core Services which are to be provided by the Provider as part of a Call-Off Contract and which are detailed in the relevant Call-Off Contract;

**“Authority Data”** means any data or information processed by or on behalf of the Authority where the Authority is the Data Controller;

**"Authority"** is the Local Authority which has responsibility for the Child/Young Person/Young Adult and shall include its representatives, successors and assignors.

**“Agreement”** has the meaning given in the Agreement Form;

**“Agreement Commencement Date”** means the date on which the Provider is admitted to the Flexible Framework and on which this Agreement become effective in respect of the Provider, being the date set out in the Agreement Form;

**“Agreement Form”** means the form at the start of this Agreement completed by the Provider with one completed copy returned to the Lead Authority;

**“Agreement Term”** means the Initial Period plus any Extension(s) under clause 2 (Agreement Term and Extension);

**“****Block Contract”** means the legally binding agreement between the Participating Authority and the Provider, which is substantially in the form set out in Schedule 2B (Form of Block Contract) and is made pursuant to the terms of this Agreement, under which the Provider agrees to provide a set number of Placements for Children/Young People as and when required by the Participating Authorities for the duration of the Block Contract.;

**“Block Contract Commencement Date”** means thedate on which a Block Contract commences, as detailed in the relevant Block Contract;

**“Block Contract Expiry Date”** means, the date on which a Block Contract is due to end, as detailed in the relevant Block Contract;

**“Bond”** means the bond to be executed in the Participating Authority’s standard form for the value notified to the Provider by the Participating Authority pursuant to clause 5.1;

**“Caldicott Principles”** means the principles which protect patient identifiable data identified in the Department of Health report on the review of Patient Identifiable Information December 1997 (or as updated from time to time). These principles are applicable to any processing of health or social care data;

**“Call-Off Contract”** means either an Individual Placement Agreement or the Block Contract (as the context requires);

**“Call-Off Contract Commencement Date”** means either the Placement Commencement Date or the Block Contract Commencement Date (as the context requires);

**“Call-Off Contract Expiry Date”** means either the Placement Expiry Date or the Block Contract Expiry Date (as the context requires);

**“Change of Control”** means:

1. any change in the ownership/control of the Provider, including a change in the control of the majority of the shares in, or voting rights amongst, its shareholders or members;
2. any constitutional reorganisation, amalgamation or merger of the Provider; or
3. any change in the legal entity responsible for the provision of the Services including (but not limited to) any transfer of the whole or part of the Provider’s business to another organisation;

**“****Child/Young Person/Young Adult”** means a child, young person or young adult up to the age of 25 who receives or may receive the Services which the Provider may be required by the Participating Authority to provide under this Agreement and a Call-Off Contract, which may be more specifically defined in Part B (Specific Terms and Conditions) of this Agreement. The term “**Children**/**Young People/Young Adult**” shall be construed accordingly;

**“Children's Home(s)”** means an Establishment which accommodates and provides care to Children/Young People and is classified as a children’s home under current Laws and registered with the relevant Regulatory Body;

**“College(s)”** has the same meaning as the term Specialist Provision Institution(s);

**“Commercially Sensitive Information”** means any information that if disclosed would, or would be likely to, prejudice the commercial interests of any person;

**“Confidential Information”** means any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed, or on whatever media it is stored) including information the disclosure of which would, or would be likely to, prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights and know-how of either Party and all Personal Data;

**“Core Fees”** means the fees/charges to be paid by the Participating Authority to the Provider for the Core Services to be provided by the Provider under the relevant Call-Off Contract, as detailed in the relevant Call-Off Contract, which shall not exceed (but they may be lower than) the fees set out in Part B (The Provider's Pricing) of the Pricing Schedule. Fees will be detailed in the Individual Placement Agreement;

**“Core Services”** means the Provider’s core services that will be provided for each Call-Off Contract as detailed in the Service Specification and in Part A (What Is Included in the Pricing) of the Pricing Schedule;

**“Data Protection Impact Assessment”** means an assessment carried out pursuant to Article 35 of the General Data Protection Regulation;

**“Data Protection Legislation”** means all legislation and regulatory requirements in force from time to time relating to the use of personal data and the privacy of electronic communications, including, without limitation (i) any data protection legislation from time to time in force in the UK including the Data Protection Act 2018 or any successor legislation, as well as (ii) the General Data Protection Regulation ((EU) 2016/679) and any other directly applicable European Union regulation relating to data protection and privacy (for so long as and to the extent that the law of the European Union has legal effect in the UK);

**“Data Security Breach”** means any breach of security or confidentiality leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Personal Data;

**“Data Sharing Agreement”** means a data sharing agreement between the Participating Authorities and the Provider substantially in the form set out at Schedule 11;

**“Default”** means

1. any breach by the Provider of its obligations under this Agreement and/or any Call-Off Contract (including, but not limited to, fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or negligent statement of the provider or its Staff in connection with or in relation to the subject-matter of this Agreement or a Call-Off Contract; and/or
2. any issue identified by the Participating Authority pursuant to clause 35.1 which, as a result of the investigation carried out by the Participating Authority pursuant to clause 35.1, the Participating Authority has determined merits further action pursuant to the provisions of clause 35 (Remedies in the Event of Inadequate Performance);

**“Default Notice”** has the meaning given in clause 35.2;

**“Disclosure and Barring Service” or “DBS”** means the service established pursuant to the Protection of Freedoms Act 2012 (including any successor body to its functions);

**“Flexible Framework”** means the pseudo dynamic purchasing system/ framework agreement established by the Participating Authorities using the ‘light touch regime’ under the Public Contracts Regulations 2015, being an electronic system of limited duration which:

1. has been established by the Participating Authorities to purchase the Services via Call-Off Contracts; and
2. is open throughout its duration for the admission of economic operators that:
   1. submit a Request to Participate to the Lead Authority which complies with the requirements of the Flexible Framework Establishment Documents; and
   2. satisfy the Selection Criteria specified by the Participating Authorities in the Flexible Framework Establishment Documents;

“**Flexible Framework**  **Lots**” means the Flexible Framework service lots into which the Services are divided as detailed in Part A (Flexible Framework Lots) of Schedule 8 ( Lots and Flexible Framework Suspension Protocol) and the term

**“Flexible Framework** **Lot**” shall be construed accordingly;

**“Flexible Framework Commencement Date”** means [ XX 2019];

**“****Flexible Framework Establishment Documents”** means the documents issued by the Lead Authority for the establishment of the Flexible Framework, including details regarding how Requests to Participate should be submitted by economic operators and the relevant Selection Criteria for appointment to the Flexible Framework;

**“Flexible Framework Provider(s**)” means any of the economic operators, including the Provider, who have been appointed to the Flexible Framework by the Participating Authorities and who is a party to a Flexible Framework agreement for the provision of special educational needs and disability Independent Non Maintained Special School placements with the Participating Authorities. There shall be no limit to the number of Flexible Framework Providers;

**“Flexible Framework Sub- Lots”** means the sub- Lots into which some of the Flexible Framework Lots are divided as detailed in Part B (Flexible Framework Sub- Lots) of Schedule 8 (Lots and Flexible Framework Suspension Protocol) and the term **“Flexible Framework** **Sub-Category”** shall be construed accordingly;

**“Flexible Framework Suspension Protocol”** means the Participating Authorities’ Flexible Framework suspension protocol as set out in Part C (Flexible Framework Suspension Protocol) of Schedule 8 (Lots and Flexible Framework Suspension Protocol);

**“Enhanced DBS Check”** means a disclosure of information comprised in a Standard DBS Check together with any information held locally by police forces that it is reasonably considered might be relevant to the post applied for;

**“Environmental Information Regulations”** means the Environmental Information Regulations 2004 and any guidance and/or codes of practice issued by the Information Commissioner’s Office or relevant government department in relation to such regulations;

**“Equipment”** means the Provider’s equipment and such other items supplied and used by the Provider in the performance of its obligations under this Agreement;

**“Essential Requirements”** means the essential requirements for the Services set out in the Service Specification;

**“Establishment(s)”** means the Provider’s School(s)/College(s)/Children’s Home(s)) named in the Agreement Form from where, pursuant to its Request to Participate, the Provider proposes to provide the Services;

**“****Extension”** means any extension under thisAgreement, including (as relevant) the First Extension Period and the Second Extension Period;

**“Fee(s)”** means the total fee(s)/charge(s) to be paid by the Participating Authority to the Provider in respect of a Call-Off Contract, as set out in each individual Call-Off Contract. The Fees shall be made up of the Core Fees and the Additional Fees, where applicable;

**“Financial Year”** means the twelve (12) calendar month accounting period commencing on the 1st April each year;

**“First Extension Period”** has the meaning given in clause 2.3;

**“FOIA”** means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner’s Office or relevant Government department in relation to such legislation;

**“Force Majeure Event”** means any event or occurrence which is outside the reasonable control of the Party concerned and which is not attributable to any act or failure to take preventative action by that Party, including fire; flood; violent storm; national strikes, pestilence; explosion; malicious damage; armed conflict; acts of terrorism; nuclear, biological or chemical warfare; or any other disaster, natural or man-made, but excluding any strikes or industrial action of whatever nature occurring within the Provider’s (and its associated companies) or any sub-contractor’s organisation or any failure by the Provider to provide adequate Premises, Equipment, materials, consumables, and or Staff or similar matters, which a prudent and diligent Provider could have avoided with the application of reasonable foresight;

**“Fostering Agency”** means a fostering agency falling within section 4(4)(a) of the Care Standards Act 2000 discharging functions of local Participating Authorities in connection with the placing of Children/Young People with Foster Carers;

**“General Data Protection Regulation” or “GDPR”** means Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC;

**“Good Industry Practice”** means standards, practices, methods and procedures conforming to the Law and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking under the same or similar circumstances as are contemplated by this Agreement;

**“Host Local Authority”** means, where a Child/Young Person is placed outside of the administrative boundary of the Participating Authority, the local Participating Authority covering the area in which the Child/Young Person is placed;

**“Individual Outcomes”** means the individual outcomes, based on the Common Outcomes Framework and Measurement Approach, which the Provider is expected to provide and/or achieve for an individual Child/Young Person/Young Adult as detailed in the relevant Individual Placement Agreement;

**“Individual Placement Agreement” or “IPA”** means the legally binding agreement, between the Participating Authority and the Provider otherwise known as the Individual Placement Agreement which is substantially in the form set out in Schedule 2A (Form of Individual Placement Agreement) and is made pursuant to the terms of this Agreement, for the provision of the Services in respect of an individual Placement of a Child/Young Person/Young Adult. An Individual Placement Agreement shall be deemed to incorporate the terms and conditions of this Agreement. The term Individual Placement Agreement shall also include (where the context requires) Individual Placement Agreements called-off from a Block Contract;

**“Information”** has the meaning given under Section 84 of the FOIA, which shall include (but is not limited to) information in any form whether relating to the past, present or future and may in particular consist of data, documentation, programs, (including the source code of any programs which the Participating Authorities has the right to use), computer output, voice transmissions, correspondence, calculations, plans, reports, graphs, charts, statistics, records, projections, maps, drawings, vouchers, receipts and accounting records and may consist of or be stored in any form including paper, microfilm, microfiche, photographic negative, computer software and any electronic medium and references herein to Information shall include reference to the medium on which it is stored;

**“Information Commissioner’s Office”** means the office of the Information Commissioner, being the regulator appointed in the UK as the data protection supervisory authority;

**“Initial Period”** means a period of 5 (five) years from the Flexible Framework Commencement Date, expiring on [INSERT DATE 2024];

**“Insolvency Event”** means in relation to the Provider:

1. any arrangement or composition with or for the benefit of its creditors (including any voluntary arrangement as defined in the Insolvency Act 1986) being entered into (or, in the case of such a voluntary arrangement, being proposed);
2. a supervisor, receiver, administrator, administrative receiver or similar officer taking possession of or being appointed over or any distress, execution or other process being levied or enforced (and not being discharged within seven (7) days) upon the whole or any material part of the Provider’s assets;
3. a court makes an order that the Provider be wound up or a resolution for a voluntary winding up of the Provider is passed;
4. ceasing or threatening to cease to carry on business or being or being deemed to be unable to pay its debts when they become due within the meaning of Section 123 Insolvency Act 1986; or
5. being an individual(s), has a bankruptcy order made against him or compounds with his creditor or comes to any arrangements with any creditors;

**“Intellectual Property Rights” or “IPR”** means logos, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registerable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off;

**“Inter Authority Agreement”** means the agreement establishing the responsibilities of the Participating Authorities towards each other and their responsibilities to the Board in respect of the Flexible Framework;

“**Invitation to Tender**” means an invitation to tender issued by the Participating Authority , to all Qualified Providers in respect of any Call-Off Contract, proposed to be awarded by the Participating Authority under the Flexible Framework, as more particularly defined in Schedule 7A (Call-Off Processes);

“**Joint Local Authority Board**” means the decision-making board of the representatives from each Local Authority, whose Terms of Reference are set out in Schedule 2 of the Inter Authority Agreement;

**“KPIs”** means, if relevant, the key Performance Indicators for the Services set out in Schedule 4 (Monitoring, Contract Management and Compliance);

**“Law(s)”** means any applicable Act of Parliament, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, enforceable community right within the meaning of Section 2 of the European Communities Act 1972, regulatory policy, guidance or industry code and/or Good Industry Practice, judgment of a relevant court of law, or directives or requirements of any Regulatory Body which relate to the provision of the Services;

**“Local Safeguarding Board”** means the multi-agency Local Safeguarding Children Board set up by the Participating Authorities with the task of safeguarding and promoting the welfare of children and young people in the Participating Authorities area;

**“Monitoring Arrangements”** means the arrangements described in Schedule 4 (Monitoring, Contract Management and Compliance);

**“Necessary Consents”** meansall approvals, certificates, authorisations, registrations, permissions, licences, permits, regulations and consents necessary from time to time for the performance of the Services;

“**Notifiable Events**” means the notifiable events detailed in the table headed Notifiable Events in Schedule 5 (Communications);

**“Ofsted”** means the Office for Standards in Education, Children Services and Skills (including any successor body to its functions);

**“Outcomes”** means the Individual Outcomes and also any additional services outcomes that may be detailed in the Service Specification which the Provider is expected to provide and/or achieve under this Agreement;

**“Parent Company”** means an ultimate “holding company” as defined in section 1159 and Schedule 6 of the Companies Act 2006;

**“Parent Company Guarantee”** means a guarantee by a Parent Company of the due performance of the Services carried out by the Provider by way of direct performance guarantees to the Participating Authority in the Participating Authority’s standard form;

**“Parent/Guardian”** means the person(s) having parental responsibility for a Child/Young Person/young adult as defined by the Children Act 1989. The terms “**Parent**” and “**Guardian**” individually shall be construed accordingly;

**“Partner Agreement”** means the Inter Authority Agreement in place between the Participating Authorities setting out how the Participating Authorities will be entitled to use the Flexible Framework, make decisions and detailing what information will be shared between the Participating Authorities ;

**“****Party”** means a Party to this Agreement and the term “**Parties**” shall be construed accordingly;

**“Participating Authority”** has the meaning given in clause 7.1;

**“Performance Indicators”** means, if relevant, the performance indicators for the Services set out in Schedule 4 (Monitoring, Contract Management and Compliance) which will include any Key Performance Indicators;

**“Persistent Breach”** means:

1. a continuing breach or series of breaches which has/have reoccurred four (4) or more times within a six (6) month period after the Participating Authority has informed the Provider by a Default Notice in writing in respect of each continuing breach or series of breaches; or
2. a failure to meet, without reasonable explanation, four (4) or more of KPIs/Performance Indicators in a rolling twelve (12) month period; or

1. the Participating Authority serving six (6) or more Default Notices in a rolling six (6) month period; or
2. the Provider repeatedly breaching any of the terms of this Agreement in such a manner as to reasonably justify the Participating Authority ’ opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Agreement;

**“****Placement(s)”** means the placement of a Child/Young Person/Young Adult with the Provider for the provision of the Services pursuant to the terms of this Agreement;

**“Placement Commencement Date”** means the date on which the Placement of an individual Child/Young Person/Young Adult commences, being the date on which the Child/Young Person/Young Adult is placed with the Provider and admitted to the relevant Establishment, as detailed in the relevant Individual Placement Agreement;

**“Placement Expiry Date”** means, where relevant, the date on which the Placement of an individual Child/Young Person/Young Adult is due to end, as detailed in the relevant Individual Placement Agreement;

**“Placing Authority”** means the Local Authority which has responsibility for placing the Child/Young Person/Young Adult and shall include its representatives, successors and assigns.

**“Plan”** means all necessary plans for the education and/or care and health of an individual Child/Young Person/Young Adult as more particularly defined in Part B (Specific Terms and Conditions) of this Agreement;

**“Premises”** means the location(s) at where the Services are to be supplied, being the relevant Establishments;

**“Pricing Information Spreadsheet”** means the pricing spreadsheet, in substantially the same form as the spreadsheet included in Part B (The Provider's Pricing) of the Pricing Schedule, which if requesting an uplift, the provider is required to submit to the Participating Authorities on an annual basis in accordance with Schedule 6 (Fee Management Schedule);

**“Pricing Schedule”** means Schedule 3 (Pricing Schedule) of this Agreement, consisting of Part A (What Is Included in the Pricing) and Part B (The Provider's Pricing), as the same may be amended pursuant to the terms of this Agreement or by the agreement of the Provider and the Participating Authorities in writing;

**“Prohibited Act**” includes but is not limited to:

1. offering, giving or agreeing to give to anyone any inducement or reward in respect of this or any other contract involving the Participating Authorities (even if the Provider does not know it has been done); or
2. committing any Fraud in connection with this or any other contract involving the Participating Authorities, whether alone or in conjunction with elected members, contractors or employees of the Participating Authorities;
3. committing an offence under the Bribery Act 2010;
4. committing any of the offences listed in regulation 57(1) of the Public Contracts Regulations 2015;
5. offering any improper inducement or exerting unreasonable pressure upon any Children/Young People or their Parents/Guardians, relatives, or others with an interest, to attempt to encourage such parties to use the Provider; or
6. taking unreasonable financial advantage of its relationship with a Child/Young Person and/or their Parents/Guardians;

**“Property”** means the property, other than real property, issued or made available to the Provider by the Participating Authority in connection with this Agreement;

**“Provider”** means the organisation detailed in the Agreement Form which owns and maintains the Establishments, and the term “**Provider**” shall include the named organisation’s representatives, employees (including all Staff), sub-contractors and, subject to the provisions of this Agreement, shall include is successors and assigns;

“**Provider’s Lots**” means the Flexible Framework Lots in respect of which the Provider has been appointed to the Flexible Framework, as identified in the Agreement Form;

“**Qualified Provider**” has the meaning given in clause 9.3;

**“Receipt”** means the physical or electronic arrival of the invoice at the address of the Participating Authority detailed in this Agreement, or at any other address given by the Participating Authority to the Provider for the submission of invoices;

**“Regulated Activity”** in relation to children means as defined in Part 1 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006;

**“Regulated Activity Provider”** means as defined in section 6 of the Safeguarding Vulnerable Groups Act 2006;

**“Regulatory Bodies”** means those government departments and regulatory, statutory and other entities, committees, ombudsmen 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 this Agreement or any other affairs of the Participating Authorities, which may include Ofsted and the term **“Regulatory Body”** shall be construed accordingly;

**“Request for Information”** shall have the meaning set out in FOIA or the Environmental Information Regulations as relevant (where the meaning set out for the term “**request**” shall apply);

“**Request to Participate**” means the selection questionnaire response from an economic operator, submitted in response to the Flexible Framework Establishment Documents, seeking admission onto the Flexible Framework;

**“Required Rating”** means for each Establishment:

1. a minimum Ofsted rating of "Requires Improvement" or "Requires Improvement to be Good" (as applicable); or
2. an equivalent rating awarded by a body approved by the Secretary of State for Education under section 106 of the Education and Skills Act 2008 to carry out inspections of registered independent schools and, if relevant, an equivalent rating awarded by a body approved by the Secretary of State for Education under Section 87A of the Children's Act 1989 to carry out welfare inspections of registered independent schools that provide accommodation.

Where an Establishment is required to be dual registered (for example, a residential school that is also required to be registered as a Children's Home), the Establishment must meet the minimum requirements stated above for both elements;

**“Schedule”** means a schedule attached to, and forming part of, this Agreement;

**“School(s)”** means a school of the type listed in paragraph 3 of the Service Specification;

**“Second Extension Period”** has the meaning given in clause 2.4;

**“Selection Criteria”** means the criteria set by the Participating Authorities to evaluate all Requests to Participate submitted by economic operators seeking admission onto the Flexible Framework, including, but not limited to, for each Establishment the Required Rating. The Selection Criteria are further detailed in the Flexible Framework Establishment Documents;

**“Service Qualities”** means the service qualities detailed in the Service Specification which describe the approach the Provider will take to delivering the services to achieve the Outcomes in the Common Outcomes Framework and Measurement Approach;

**“Service Specification”** means the description of the Services to be supplied by the Provider as set out in Schedule 1 (Service Specification);

**“Services”** means the special educational needs and disability Independent Non Maintained Special School / Special Post 16 Institution(s) placements to be supplied by the Provider under this Agreement and the Call-Off Contracts as specified in the Service Specification;

**“Special Post 16 Institution(s)”** means a special post-16 institution included in the list of approved independent educational institutions, independent schools and special post-16 institutions issued by the Secretary of State under Section 41 of the Children and Families Act 2014;

**“Staff”** means all persons employed by the Provider to perform its obligations under this Agreement together with the Provider’s servants, agents, suppliers and sub-contractors used in the performance of its obligations under this Agreement;

**“Standard DBS Check”** means a disclosure of information which contains certain details of an individual’s convictions, cautions, reprimands or warnings recorded on police central records and includes both ‘spent’ and ‘unspent’ convictions;

“**Tender**” means any tender response submitted by the Provider or any other Qualified Provider to the Participating Authority in response to an Invitation to Tender issued by the Participating Authority for a Placement for Services, as more particular described in Schedule 7A (Call-Off Processes);

**“TUPE”** means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246);

**“Unauthorised Absence”** means a situation where the Child/Young Person/Young Adult’s Absence is without Participating Authority or consent;

**“Variation”** means a variation agreed in writing pursuant to clause 47.8 (Variation);

**“VAT”** means value added tax in accordance with the provisions of the Value Added Tax Act 1994 or any tax of a similar nature which may replace it; and

**“Working Day”** has the meaning given in Part B (Specific Terms and Conditions) of this Agreement.

* 1. Word or phrases that are only used in Part B (Specific Terms and Conditions) of this Agreement or in Schedule 1 (Service Specification) are defined in Part B (Specific Terms and Conditions) of this Agreement.

* 1. The interpretation and construction of this Agreement shall be subject to the following provisions:
     1. reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made from time to time under that statute or statutory provision;
     2. words importing the masculine gender include the feminine gender; words in the singular include the plural and vice versa and words importing individuals shall be treated as importing bodies corporate and vice versa;
     3. any words following the terms “including”, “include”, “includes”, “in particular”, “for example” or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms; and
     4. references to “**this** **Agreement**” shall, where appropriate, be deemed to include the Call-Off Contracts let under it.

1. **AGREEMENT TERM AND EXTENSION**
   1. The Flexible Framework shall commence (or, where relevant, commenced) on the Flexible Framework Commencement Date.
   2. This Agreement shall commence on the Agreement Commencement Date and, unless terminated earlier in accordance with its terms, shall remain in force for the Agreement Term.
   3. No later than three (3) months before the end of the Initial Period the Participating Authorities may extend the Agreement Term by a further period of one (1) year by giving written notice to the Provider of its wish to extend this Agreement (“**the First** **Extension Period**”).
   4. Where this Agreement has been extended by the First Extension Period pursuant to clause 2.3, no later than three (3) months before the end of the First Extension Period the Participating Authorities may extend the Agreement Term by a further period of one (1) year by giving written notice to the Provider of its wish to extend this Agreement ("**the Second Extension Period**”).
   5. The total Agreement Term (including the Initial Period and any Extensions) shall not exceed seven (7) years.
   6. Any Extension of this Agreement pursuant to clauses 2.3 or 2.4 shall be on the same terms and conditions as under this Agreement.
   7. If the Participating Authorities do not wish to extend this Agreement beyond the Initial Period or the First Extension Period (as appropriate) this Agreement shall end on the expiry of the Initial Period or the expiry of the First Extension Period (as appropriate).
2. **CONTRACTUAL DOCUMENTS**
   1. In the event of, and only to the extent of, any conflict or inconsistency between the clauses of this Agreement, any document referred to in the clauses and the Schedules, the conflict shall be resolved in accordance with the following order of precedence:
      1. The Inter Authority Agreement;
      2. the Individual Placement Agreement or Block Contract and the terms in Schedule 7B (Call-Off Terms and Conditions);
      3. the clauses of this Agreement and Schedule 7A (Call-Off Processes);
      4. the Service Specification;
      5. all of the other Schedules; and
      6. any other document referred to in the clauses of this Agreement.
3. **INDIVIDUAL PLACEMENT AGREEMENTS (IPAs)**
   1. This Contract sets out standard terms and conditions under which specific Individual Placement Agreements for Placements can be made by the Participating Authority with the Provider during the Contract Term.
   2. The Provider acknowledges and agrees that the Participating Authority may from time to time, at its absolute discretion, obtain Services from, and conclude Individual Placement Agreements with, the Provider pursuant to this Contract. The Participating Authority gives no guarantee to the Provider that it will make any Placements with the Provider under this Contract.
   3. Each Placement made under this Contract is intended to be made on the case specific terms and conditions of an Individual Placement Agreement, substantially in the form set out at Schedule 2 (Individual Placement Agreements) of this Contract, incorporating the terms and conditions of this Contract, including (but not limited to) those set out in Schedule 7B (Call-Off Terms and Conditions).
   4. The Individual Placement Agreement shall:
      1. Detail the required Services to be delivered for the benefit of a Child/Young Person/Young Adult in accordance with what is stated in the relevant Plan and any other written arrangements agreed by both Parties;
      2. Detail the expected Individual Outcomes to be achieved for the Child/Young Person/Young Adult whilst they are in the Placement, in accordance with the relevant Plan and the Service Specification; and
      3. Specify the Fees payable for the Placement, following agreement between the Participating Authority and the Provider. The Fees shall include all Services to be provided including the Core Services and the Additional Services. A transparent breakdown of the Fees should also be given in accordance with the requirements of the Individual Placement Agreement. The Fees will be payable from the Placement Commencement Date.
   5. The Participating Authority shall complete the Individual Placement Agreement, in consultation with the Provider, and, once complete, the Participating Authority shall send the Individual Placement Agreement to the Provider for agreement.
   6. Where reasonably practicable, the complete Individual Placement Agreement, with all relevant information completed, should be issued to the Provider by the Authority prior to 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 seven (7) Working Days thereafter.
   7. Following receipt of the Individual Placement Agreement, the Provider will (subject to any outstanding issues requiring agreement, which both Parties shall use reasonable endeavours to resolve as soon as possible) sign and return either a hard copy or an electronic copy of the Individual Placement Agreement (as specified by the Participating Authority) to the Participating Authority within seven (7) Working Days of receipt.

* 1. The legally binding agreement between the Parties for a Placement shall be deemed to be formed on the Participating Authority’s receipt of the signed Individual Placement Agreement from the Provider or, if earlier, the Placement Commencement Date.
  2. Each Individual Placement Agreement will commence on the Placement Commencement Date and, where relevant, shall expire automatically on the Placement Expiry Date, unless it is otherwise terminated, or the term is extended pursuant to the provisions of Schedules 8 (Individual Placement Terms).
  3. Where relevant, in the event that a Placement needs to be retained for an agreed period of time prior to the Child/Young Person/Young Adult being placed, the Participating Authority and the Provider may agree a retention fee that will be payable over this retention period. The retention fee and the retention period to which it relates shall be specified in the relevant Individual Placement Agreement.
  4. The first seven days of such retention period shall be at no charge to the Participating Authority. The Participating Authority shall pay the Provider fifty percent of the Weekly Fee as shown in Schedule (Pricing Schedule) for any period of retention period above seven days.
  5. For the avoidance of any doubt Wiltshire Council (as Lead Authority) shall have no liability in respect of any matter whatsoever (including fees) arising under an Individual Placement Agreement entered into by any other Participating Authority.

1. **SECURITY**
   1. On or before the Agreement Commencement Date and/or if at any time during the Agreement Term the Participating Authorities decide that security is required from the Provider (whether pursuant to clause 9.5 or otherwise), then within twenty-eight (28) days of receipt of a written request from the Participating Authorities, the Provider shall procure (at the sole discretion of the Participating Authorities either that a reputable surety which meets with Participating Authorities ’ approval will execute and deliver to the Participating Authorities the Bond (at a reasonable cost to the Participating Authorities) or that the Provider’s Parent Company, if it has one, provides a Parent Company Guarantee to the Participating Authorities.
   2. Where the Participating Authorities requests that the Provider procures a Bond or Parent Company Guarantee pursuant to clause 5.1 (either at the Agreement Commencement Date or at any other time during the Agreement Term), the Participating Authorities shall be entitled to review the sufficiency of such security during the Agreement Term (in particular, in light of the volume of Services awarded to the Provider under this Agreement by way of Call-Off Contracts) and if, at any time, the Participating Authorities believes that the security provided by the Provider is no longer sufficient, the Participating Authorities may request that the Provider makes such changes to the security as the Participating Authorities may request, within twenty-eight (28) days of a written request being issued to the Provider by the Participating Authorities .
   3. If the Provider fails to comply with clauses 5.1 or 5.2, this shall constitute breach of a fundamental term of this Agreement and the Participating Authorities may (without prejudice to any other right or remedy available to it) terminate this Agreement by written notice to the Provider having immediate effect.
   4. Where the Provider is required to provide security to the Participating Authorities by way of a Bond or a Parent Company Guarantee to the Participating Authorities pursuant to clause 5.1, the Participating Authorities will be entitled to inform the Other Participating Authorities Purchasers of such a requirement (and the underlying reasons for such a requirement) in accordance with the Partner Agreement and the Provider will agree to procure a bond or parent company guarantee on substantially similar terms on behalf of any Other Participating Authorities Purchasers who request the same from the Provider. The Participating Authorities shall also be entitled to inform the Other Participating Authorities Purchasers of any changes to the security requested by the Participating Authorities during the Agreement Term in accordance with clause 5.2, along with the underlying reasons for any such changes.

**SECTION 2 – OPERATION OF THE FLEXIBLE FRAMEWORK**

1. **GENERAL**
   1. From the Flexible Framework Commencement Date, the Participating Authorities shall use the Flexible Framework to award Call-Off Contracts during the Agreement Term.
   2. This Agreement:
      1. governs the management of the Flexible Framework;
      2. governs the relationship between the Participating Authorities and the Provider in respect of the commissioning of Call-Off Contracts by the Participating Authorities (and, where relevant, the commissioning of call-off contracts by the Participating Authorities;
      3. governs the provision of the Services by the Provider to the Participating Authorities under the Call-Off Contracts awarded by the Participating Authorities under the Flexible Framework; and
      4. sets out the standard terms and conditions under which specific Call-Off Contracts can be made by the Participating Authorities with the Provider during the Agreement Term. Other than the provisions in Schedule 7B (Call-Off Terms and Conditions), there will not be a separate full set of terms and conditions for the Call-Off Contract awarded under the Flexible Framework. The relevant and applicable terms and conditions of this Agreement (including, but not limited to the terms in Schedule 7B (Call-Off Terms and Conditions)), other than those terms which are expressly or specifically limited or applicable to the establishment or operation of the Flexible Framework, shall be incorporated into the Call-Off Contract by reference and shall apply in addition to any specific requirements of the Participating Authorities for the relevant Call-Off Contract as set out in the relevant Call-Off Contract documents.
   3. For the avoidance of doubt, Flexible Framework Providers shall not be invited to take part in the tendering process described in Schedule 7A (Call-Off Processes) and shall not be awarded any Call-Off Contracts under the Flexible Framework unless and until it has entered into a Flexible Framework agreement for the provision of special educational needs and disability Independent Special School placements with the Participating Authorities, by returning a completed (signed and dated) Agreement Form to the Participating Authorities.
2. **PARTICIPATING AUTHORITY** 
   1. The Parties acknowledge and agree that the Participating Authorities enter into this Agreement for itself and on behalf of each other (as defined in the Public Contracts Regulations 2015) as referenced in the OJEU Contract Notice, being  Bristol City Council, Bournemouth, Christchurch and Poole Council, Dorset Council, , Isle of Wight Council, North Somerset Council, Somerset Council, Swindon Council, , West Berkshire Council, Wiltshire Council (Lead Authority), Wokingham Council…. [xxx] collectively the **(‘****Participating Authorities’**). Any Participating Authority shall be entitled to use the Flexible Framework to award Call-Off Contracts only in respect of the Flexible Framework Lots for which it has been named as a potential purchaser in the OJEU Contract Notice.
   2. In addition to the specific Services expressly required to be provided to the Participating Authorities pursuant to the Flexible Framework, this Agreement and any Call-Off Contracts awarded by a Participating Authority under it, may require the provision by the Provider of additional services under the Flexible Framework, subject to the same or substantially the same terms and conditions contained herein and subject to the additional conditions set out in clause 7.3.
   3. If and to the extent that any such additional services under this Agreement are required to be provided by the Provider to any Participating Authority:
      1. each and every such Participating Authority shall enter into a specific call-off contract with the Provider for such additional services, which shall be substantially in the form set out in Schedule 2A (Form of Individual Placement Agreement) or Schedule 2B (Form of Block Contract) (as relevant) and which shall incorporate (by reference or otherwise) the same or substantially the same terms and conditions contained in this Agreement (but shall not include the terms which are expressly or specifically limited or applicable to the establishment or operation of the Flexible Framework and the provisions of this clause 6); and
      2. any non-substantial amendments to the terms and conditions of this Agreement agreed between the Provider and the Participating Authority shall be clearly set out in such specific call-off contract. Where the Participating Authority makes any non-substantial amendments to the terms and conditions of this Agreement, such amendments will only apply in relation to the specific call-off contract between the Participating Authority and the Provider and will not apply in respect of this Agreement between the Participating Authorities and the Provider or to any Call-Off Contract(s) entered into by the Participating Authority and the Provider.
   4. The Participating Authorities do not guarantee that any Participating Authority will require the Provider to provide any additional services under this Agreement or otherwise and nothing in this Agreement shall give the Provider a right to receive such requirement for additional services.
   5. The Participating Authority will be responsible for managing its own specific call-off contract(s) with the Provider and for enforcing the terms and conditions of the same. The Participating Authorities shall not in any circumstances be liable to the Provider or any Participating Authority for payment or otherwise in respect of any such additional services required to be provided by the Provider to any Participating Authority. For the avoidance of any doubt Wiltshire Council (as Lead Authority) shall have no liability in respect of any matter whatsoever arising under a Call-off Contract entered into by any other Authority.
   6. It shall be the responsibility of any Participating Authority to satisfy itself that entering into any contract with the Provider under clause 7.3 of this Agreement does not breach any relevant public procurement regulations or the general European Union procurement principles. For the avoidance of any doubt, the Participating Authorities reliance on the procurement process conducted by Wiltshire Council is undertaken entirely at each Participating Authority’s own risk. Wiltshire Council does not accept any liability for loss or damage, which may arise from any Participating Authority entering into a Call-Off Contract or reliance upon any documents which comprise the Flexible Framework. For the avoidance of any doubt, the Participating Authorities use of any of such document described in clause 7.6 is undertaken entirely at each Participating Authority’s own risk.
   7. The Participating Authorities will keep all Requests to Participate confidential until the completion of the assessment of the relevant Request to Participate against the Selection Criteria. Where, following the completion of this process:
      1. any bidder is successful and is appointed to the Flexible Framework as a Flexible Framework Provider, the Participating Authorities will be entitled to share the relevant Flexible Framework Provider’s Request to Participate and the outcome of the assessment of the Request to Participate against the Selection Criteria with the all Participating Authority in accordance with the Inter Authority Agreement; or
      2. any bidder is unsuccessful and is not appointed to the Flexible Framework as a Flexible Framework Provider, the Participating Authorities will keep all information about the bidder’s application for the Flexible Framework, including the outcome of the assessment of the bidder’s Request to Participate against the Selection Criteria confidential and will not share any information with the other Authority Purchasers without the relevant bidder’s consent. Notwithstanding the provisions of this clause 7.7.2, if requested by any Authority purchaser the Participating Authorities shall be entitled to confirm whether a particular bidder has a pending application for the Flexible Framework which is in the process of being assessed by the Participating Authorities.
3. **THE FLEXIBLE FRAMEWORK**
   1. This Flexible Framework is a largely electronic system of limited duration which is established for contracting Participating Authorities to purchase commonly used services – in this case, for the provision of special education needs and disability (SEND) independent non maintained special school placements.
   2. This Flexible Framework has been established by, and will be managed by, the Lead Authority in conjunction with the Board. For the avoidance of any doubt, Wiltshire Council as the Lead Authority shall have the ultimate decision on any dispute in relation to the Flexible Framework. The Inter Authority Agreement and Terms of Reference set out the relationship between the Lead Authority, the Board and the Participating Authorities.
   3. From the Flexible Framework Commencement Date, the Participating Authorities shall use the Flexible Framework to award Call-Off Contracts under this Agreement during the Agreement Term.
   4. The Provider submitted its Request to Participate in response to the OJEU Contract Notice and the Flexible Framework Establishment Documents.
   5. Following the evaluation of the Provider’s Request to Participate, the Provider has been admitted to the Flexible Framework to be able to provide the Services to the Participating Authorities on a call-off basis in respect of the Provider’s Lots.
   6. The Flexible Framework shall remain continually open for the duration of the Agreement Term for new entrants, and any new economic operators may apply to be admitted to the Flexible Framework at any time during that period in accordance with the information contained in the OJEU Contract Notice and the Flexible Framework Establishment Documents. Evaluation of new applications to be admitted to the flexible framework may take place at least every six months at the discretion of the Lead Authority (Wiltshire Council), although we reserve the right to amend this throughout the life of the contract. Such potential new entrants may include economic operators who:
      1. have previously applied and failed to become Flexible Framework Providers under a particular Flexible Framework Lot; and

* + 1. were previously Flexible Framework Providers but had the whole of their Flexible Framework agreements for the provision of special educational needs and disability Independent Special School placements terminated in accordance with clause 35.7 (but, for the avoidance of doubt, excluding a provider whose Flexible Framework agreement was terminated for any other reason under clause 34 (Termination of this Agreement)).
  1. All potential new entrants to the Flexible Framework will be required to complete a replica of the documentation issued during the initial invitation to participate process. Requests to Participate from new entrants will be evaluated on the same basis as the original Requests to Participate and new entrants will be required to satisfy the original Selection Criteria specified by the Participating Authorities.
  2. Any new entrants will be appointed to the Flexible Framework for the remainder of the Agreement Term and, from the date of appointment, will be entitled to participate in tender opportunities (carried out in accordance with Schedule 7A (Call-Off Processes)) for the award of Call-Off Contract for the Flexible Framework Lots to which it has been appointed (i.e. the Provider’s Lots).
  3. For the avoidance of doubt, any appointment of new entrants to the Flexible Framework will not affect the Provider’s position on the Flexible Framework nor any of its rights or obligations under this Agreement or any Call-Off Contracts awarded under it.
  4. Any Flexible Framework Provider may also:
     1. reapply to be admitted onto the Flexible Framework to improve its Request to Participate (for the avoidance of doubt, any Requests to Participate from existing Flexible Framework Providers will be evaluated on the same basis as the original Requests to Participate and will be required to satisfy the original Selection Criteria specified by the Participating Authorities ); or
     2. apply for new Flexible Framework Lots; or
     3. apply to add further establishments to the Flexible Framework as a new Establishments. This may include where an establishment has previously been removed from the Flexible Framework in accordance with clause 35.8 (but, for the avoidance of doubt, excluding an establishment which was removed as a result of a termination of part of the Provider's Flexible Framework agreement for any other reason under clause 34 (Termination of this Agreement)),

at any time.

* 1. All tender opportunities for the award of Call-Off Contracts under the Flexible Framework will be carried out in accordance with Schedule 7A (Call-Off Processes).

1. **NO GUARANTEE AND NON-EXCLUSIVITY** 
   1. Without prejudice to any other provisions of this Agreement, the Provider acknowledges and agrees that:
      1. this Agreement places no obligations on the Participating Authorities whatsoever to purchase any Services from the Provider during the Agreement Term;
      2. the Participating Authorities makes no guarantee that it shall award any Call-Off Contracts to the Provider during the Agreement Term;
      3. in entering this Agreement, no form of exclusivity or volume guarantee has been granted by the Participating Authorities for Services from the Provider (or any of the Flexible Framework Providers);
      4. the Participating Authorities are at all times entitled to enter into other contracts and arrangements with other providers for the provision of any or all services which are the same as (or similar to) the Services and for the avoidance of doubt such arrangements may also include the Participating Authorities in-house service delivery and/or arrangements entered into with other local Participating Authorities; and
      5. no undertaking or any form of statement, promise, representation or obligation shall be deemed to have been made by the Participating Authorities in respect of the total quantities or values of the Services to be procured by it (or any Other Participating Authorities Purchasers) pursuant to the Flexible Framework and this Agreement and the Provider acknowledges and agrees that it has not entered into this Agreement on the basis of any such undertaking, statement, promise or representation.
2. **PROVIDER’S APPOINTMENT**
   1. The Participating Authorities have admitted the Provider to the Flexible Framework for the Provider’s Lots, as a potential provider of the Services falling within the Provider’s Lots and the Provider shall be eligible to be considered for the award of Call-Off Contracts by the Participating Authorities for Services falling with the Provider’s Lots during the Agreement Term in accordance with the terms of this Agreement and the Flexible Framework Establishment Documents.
   2. Schedule 8 (Lots and Flexible Framework Suspension Protocol) details all of the Flexible Framework Lots (Part A - Flexible Framework Lots) and Flexible Framework Sub-Categories (Part B – Flexible Framework Sub-Categories). The Agreement Form details the relevant Provider’s Categories in respect of which the Provider is admitted to the Flexible Framework.
   3. The Provider shall be deemed to be a “**Qualified Provider**” in respect of a particular Invitation to Tender for a Call-Off Contract where:

* + 1. the required Services fall into one of the Provider’s Lots;
    2. the Provider continues to hold the relevant registrations with the relevant Regulatory Bodies and the relevant Establishments have the Required Rating. For the avoidance of doubt, the Participating Authorities shall not be required to consider any Establishment for a Placement or award any Individual Placement Agreement to the Provider in respect of an Establishment or accept an Establishment for inclusion within a Block Contract if the Establishment:
       1. has or is given an Ofsted rating below the Required Rating and need not do so until the rating once again reached the Required Rating and the Provider has informed the Participating Authorities in writing of the change in rating pursuant to clause 35.1.3; or
       2. ceases to maintain or loses any registration with the relevant Regulatory Bodies or any Necessary Consent necessary in order to deliver the Services from such Establishment;
    3. the activity of the Provider under this Agreement and/or Call-Off Contracts does not exceed the Provider’s capacity as determined by the Participating Authorities in relation to its financial standing and/or its technical capability; and
    4. the Provider is not disqualified or otherwise suspended from tendering for or providing the Services under this Agreement, in accordance with the terms of this Agreement or any Call-Off Contracts awarded under it.
  1. The Provider will, at all times during the Agreement Term and during the term of any Call-Off Contracts which extend beyond the end of the Agreement Term, maintain the organisational, financial and technical ability and capacity to provide the Services in accordance with the terms of this Agreement, as and when the Services are required by the Participating Authorities from time to time through the award of specific Call-Off Contracts.
  2. When inviting tenders for any requirements and/or awarding Call-Off Contracts, or at any time throughout the Agreement Term or the term of any Call-Off Contracts, the Participating Authority shall have the right to revisit and challenge any information provided by the Provider as part of its Request to Participate for admittance to the Flexible Framework (and at this stage the Participating Authorities shall be entitled to review such information in light of the volume of Services awarded to the Provider under this Agreement by way of Call-Off Contracts) and the Participating Authority shall be entitled to request from the Provider such confirmation and additional information as it deems necessary to demonstrate the Provider’s ability to provide the Services. Failure to provide such information may lead to the exclusion and removal of the Provider from the Flexible Framework or from the provision of the Services under any Call-Off Contract. If as a result of such a review the Participating Authorities believes that security (or additional security) is required from the Provider, the Participating Authorities shall be entitled to request the same from the Provider pursuant to the provisions in clause 4 (Security).

1. **TENDERING UNDER THE FLEXIBLE FRAMEWORK**

During the Agreement Term, the Participating Authorities shall (at their absolute discretion) award Call-Off Contracts to Qualified Providers representing the most economically advantageous tender for the relevant Call-Off Contract (pursuant to the identified award criteria) through the issuing of an Invitation to Tender in accordance with the procedures detailed in Schedule 7A (Call-Off Processes) of this Agreement.

1. **THE FORMATION AND PERFORMANCE OF CALL-OFF CONTRACTS**
   1. Each call-off arrangement from this Agreement is intended to be made on the case specific terms and conditions of a Call-Off Contract incorporating the terms and conditions of this Agreement, including (but not limited to) those set out in Schedule 7B (Call-Off Terms and Conditions).
   2. The Provider shall perform all Call-Off Contracts entered into with the Participating Authority under this Agreement in accordance with the terms of this Agreement (other than those terms expressly or specifically limited or applicable to the establishment or operation of the Flexible Framework) and the relevant Call-Off Contract, and notwithstanding the expiry of this Agreement, the terms of this Agreement (as well as the relevant Call-Off Contract) shall continue to apply to any Call-Off Contracts surviving the expiry.
   3. The Participating Authority shall complete the Call-Off Contract, in consultation with the Provider, and, once complete, the Participating Authority shall send the Call-Off Contract to the Provider for agreement.
   4. Where reasonably practicable, the Call-Off Contract, with all relevant information completed, should be issued to the Provider by the Participating Authority prior to the Call-Off Contract Commencement Date. In the case of emergency placements, a Call-Off Contract will be issued as soon as possible after Call-Off Contract Commencement Date and, in any event, no later than seven (7) Working Days thereafter.
   5. Following receipt of the Call-Off Contract, the Provider will (subject to any outstanding issues requiring agreement, which both Parties shall use reasonable endeavours to resolve as soon as possible) sign and return either a hard copy or an electronic copy of the Call-Off Contract (as specified by the Participating Authority) to the Participating Authority within seven (7) Working Days of receipt.

* 1. The legally binding agreement between the Parties shall be deemed to be formed on the Participating Authority’s receipt of the signed Call-Off Contract from the Provider or, if earlier, the Call-Off Contract Commencement Date.
  2. Each Call-Off Contract will commence on the Call-Off Contract Commencement Date and the term of the Call-Off Contract shall be the period from the Call-Off Contract Commencement Date to the date of expiry or termination howsoever arsing in accordance with the provisions of Schedule 7B (Call-Off Terms and Conditions).

1. **SUSPENSION UNDER THE FLEXIBLE FRAMEWORK**
   1. Without prejudice to any of the other Participating Authorities’ rights under this Agreement or any Call-Off Contracts awarded under it (including any termination rights), the Provider, or, where relevant, one or more of the Provider's Establishments, may be suspended from the Flexible Framework in the following circumstances:
      1. in accordance with the provisions of clause 35 (Remedies in the Event of Inadequate Performance);

* + 1. in accordance with the provisions of clause 35 (Provider's Registration and Required Rating); and/or
    2. if a right to terminate arises under this Agreement or any Call-Off Contracts awarded under it.
  1. The Participating Authority must adhere to 5.3 of the Terms of Reference in the Inter Authority Agreement and promptly inform and consult the Board before the proposed suspension of a Provider from the Flexible Framework, with the Board’s approval being required before the suspension takes place. Once the Participating Authority has approval from the Board for the suspension of the Provider, they shall act in conjunction with the Lead Authority to implement such a suspension. If the Participating Authorities notify the Provider in writing that the Provider, or, where relevant, one or more of its Establishments, is suspended from the Flexible Framework, the Participating Authorities shall take the steps set out in the Flexible Framework Suspension Protocol and the Provider, or the Provider's relevant Establishment(s), shall be suspended from the Flexible Framework until the Provider has met the Participating Authorities' requirements for re-instatement as set out in the suspension notice issued by the Participating Authorities or as otherwise notified to the Provider by the Participating Authorities .
  2. Where the Participating Authorities suspends the Provider, or, where relevant, one or more of the Provider's Establishments, in accordance with this clause 13 then, without prejudice to the termination provisions of this Agreement or any Call-Off Contract, the Participating Authorities shall have the right (in its absolute discretion) to suspend the provision of the Services under any Call-Off Contract(s) awarded to the Provider. The Provider shall not resume provision of the Services under any suspended Call-Off Contract(s) until the Participating Authorities notifies the Provider that it is satisfied that suspension of the Services is no longer required.
  3. The Participating Authorities will not incur any liability under this Agreement or any Call-Off Contract as the result of any action taken to suspend the Provider, or, where relevant, one or more of its Establishments, from the Flexible Framework in accordance with the terms of this Agreement and the Participating Authorities shall only be liable to pay the Provider an amount that reflects the Services (if any) carried out by the Provider under any Call-Off Contracts during the period of any suspension.

1. **NEW FLEXIBLE FRAMEWORK LOTS**
   1. It is anticipated that the majority of the Participating Authorities’ requirements for Services to be called off from the Flexible Framework will fall into one of the existing Flexible Framework Lots. However, there may be occasions where additional services will be required by the Participating Authorities and these will form a new service lot and (if relevant) sub-categories under the Flexible Framework. Where this is required:
      1. the Participating Authorities will publish a further OJEU Contract Notice advertising the new service lot and (if relevant) sub-categories to be added to the Flexible Framework and the new service lot and (if relevant) subcategories will then become a Flexible Framework Lot and Flexible Framework Sub-Categories within the Flexible Framework;
      2. new entrants will be given an opportunity to apply to participate in the Flexible Framework for the new service Lot (along with any of the other existing Flexible Framework Lots);
      3. all of the existing Flexible Framework Providers will be invited to apply to become a Qualified Provider for the new service lot/sub-category; and
      4. no Invitation to Tender for Services falling within the new service lot/sub-category will be issued by the Participating Authorities, until the Participating Authorities has given new entrants and existing Flexible Framework Providers sufficient opportunity (as will be detailed in the relevant OJEU Contract Notice) to be admitted to the Flexible Framework for the new service lot/sub-category.
2. **EXISTING PLACEMENTS UNDER PREVIOUS AGREEMENTS/CONTRACTS**
   1. Where the Participating Authority and the Provider have been party to a contract or agreement that precedes this Agreement and, as a consequence of the previous contract or agreement, the Participating Authority entered into individual placement agreements, or other ‘spot purchase’ arrangements, with the Provider, the Participating Authority may notify the provider in writing the date upon which it requires any of those pre-existing individual placement agreements or arrangements between the parties to transfer onto the terms and conditions of this agreement.
   2. Upon notice in accordance with clause 15.1 those pre-existing individual placement agreements or arrangements between the Parties shall automatically transfer onto the terms and conditions of this Agreement and then be considered to be Individual Placement Agreements under this Agreement and from that date this Agreement shall supersede all previous contracts/agreements between the Participating Authority and the Provider.

**SECTION 3 - THE SERVICES**

1. **SERVICES**
   1. In consideration of the payment of the Fees under the relevant Call-Off Contract the Provider shall supply the Services required under any Call-Off Contracts during with all reasonable care, skill, prudence and foresight and in accordance with the Participating Authorities’ requirements as set out in the Service Specification, the provisions of this Agreement and the relevant Call-Off Contract.
   2. The Provider shall at all times comply with:
      1. the requirements of this Agreement and the Call-Off Contracts made under it;
      2. the Essential Requirements;
      3. the Service Qualities;
      4. the KPIs/Performance Indicators;
      5. the Outcomes;
      6. the requirements of all Necessary Consents;
      7. Good Industry Practice; and
      8. All reasonable instructions of the Participating Authorities .
   3. The Provider shall be responsible for obtaining and maintaining, at its own cost, all Necessary Consents required in relation to the performance of this Agreement and any Call-Off Contracts.
   4. The Participating Authority may carry out a site visit to inspect and examine the manner in which the Provider supplies the Services at the Premises at any time without notice. The Authority shall use its reasonable endeavours to ensure that any planned or announced visits of a non-urgent nature are undertaken by the Authority in accordance with Schedule 4 (Monitoring, Contract Management and Compliance).
   5. The Provider shall be responsible for obtaining and maintaining, at its own cost, all Necessary Consents required in relation to the performance of this Contract and any Individual Placement Agreements. If a Placement is made by the Authority outside of England (i.e. in Wales, Scotland or Northern Ireland) the Provider shall be responsible for obtaining and maintaining, at its own cost, all Necessary Consents required in relation to the performance of the relevant Individual Placement Agreements in accordance with the relevant Laws in force in the country where the Placement is located.
   6. Any changes to the Provider’s registration status or any change to, or restriction placed upon, the approval of the Provider or any of the Provider’s Establishments by Ofsted, the Secretary of State for the Department for Education and/ or the Department for Business, Energy and Industrial Strategy or any other Regulatory Body/Registration Authority charged with the task of registration, licencing or approval of the Provider or the Provider’s Establishments, must be notified to the Authority immediately by telephone and confirmed in writing within two (2) Working Days.
2. **STATUTORY AND OTHER REGULATIONS**
   1. The Provider shall operate fully in accordance with, and services will meet all minimum standards, regulations and requirements as prescribed by, statutory documents and legislation. This will include, but is not limited to, the following and any subsequent amendments or iterations of the same:
      1. Residential Special Schools National Minimum Standards (April 2015) published by the Secretary of State for Health under section 87(1) and 23 of the 1989 Children Act and as amended by the Care Standards Act 2000 and any future revisions;
      2. Education (Independent School Standards) Regulations 2014 as amended by the Independent Educational Provision in England (Inspection Fees) and Independent School Standards (Amendment) Regulations 2018 and any future revisions;
      3. SEND Code of Practice: 0-25 years (2015);
      4. Children & Families Act 2014;
      5. Children Act 1989;
      6. Children Act 2004;
      7. Care Standards Act 2000;
      8. Education Act 1996;
      9. Education Act 2002;
      10. The Education and Skills Act 2008
      11. Education Act 2011;
      12. Children and Young Persons Act 2008;
      13. Keeping Children Safe in Education Statutory Guidance (September 2018);
      14. Working Together to Safeguard Children Statutory Guidance July 2018.
      15. The Children’s Homes (England) Regulations 2015; and
      16. Guide to the Children’s Homes Regulations, including Quality Standards (April 2015).
      17. All other relevant Acts, Regulations and enabling powers and provisions
      18. Additionally, where the relevant Establishment accommodates or arranges accommodation for any Young Person for more than 295 days a year, or intends to do so, and is required to register as a children’s home with Ofsted, such schools are required to comply with legislation and standards set for children’s homes. This will include, but is not limited to, the following and any subsequent amendments or iterations of the same:
3. **PERSONNEL**
   1. The Provider shall have in place written recruitment and selection policies and procedures that comply with the relevant Laws and also any national and local guidance.
   2. The Provider shall:
      1. ensure that at all times there are sufficient numbers of experienced, competent and suitably qualified, trained and skilled Staff employed to deliver the Services in accordance with the terms of this Agreement and the Call-Off Contracts;
      2. have in place contingency arrangements to ensure adequate available cover in the case of any planned increase in workload and Staff absences with minimal long-term use of agency staff taking account of any relevant KPIs/Performance Indicators in respect of the use of agency staff;
      3. be responsible for the employment, conditions of service, salaries, taxes, national insurance and all levies of any kind relating to the employment of all persons employed by the Provider

* 1. The Provider shall ensure that all Staff:
     1. supplying the Services do so with all due skill, care and diligence;
     2. understand the nature and purpose of the Services that they are providing (including the Provider’s policies and procedures). In order to achieve this all Staff should undertake an induction programme and receive on-going training and development;
     3. have a clear understanding of the Laws, policies and procedures related to the Services and are appropriately trained and perform their duties in accordance with all applicable Laws;
     4. are given the opportunity to develop through performance management and on-going training and development, in accordance with Good Industry Practice, which should take into account any relevant changes in the Laws concerning the provision of the Services;
     5. are appropriately managed and, where appropriate, appropriately supervised; and
     6. are, where relevant, appropriately attired for the duties they are undertaking e.g. Personal Protective Apparel (PPA)
  2. The Provider shall maintain up to date records for all of its members of Staff, which shall include training and development records.
  3. The Parties acknowledge that the Provider is a Regulated Activity Provider with ultimate responsibility for the management and control of the Regulated Activity provided under this Agreement for the purposes of the Safeguarding Vulnerable Groups Act 2006.
  4. The Provider shall:
     1. ensure that all individuals engaged in Regulated Activity are subject to a valid Enhanced DBS Check for Regulated Activity undertaken through the Disclosure and Barring Service, including a check against the adults’ barred list or the children’s barred list (as appropriate);
     2. ensure that all individuals engaged in the provision of the Services are subject to any additional checks required to be carried out by any Regulatory Body;
     3. have appropriate procedures in place to identify any individuals who would be disqualified from the relevant Regulated Activity under the Safeguarding Vulnerable Groups Act 2006;
     4. monitor the level and validity of the checks under this clause 17.5 for each member of Staff;
     5. ensure that no member of their Staff is permitted to provide the Services until all the necessary checks have been undertaken and the checks are satisfactory, unless expressly agreed in writing with the Participating Authority ; and
     6. not employ or use the services of any person who is barred from carrying out, 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/Young People. If any check includes disclosure in relation to a member of Staff, such member of Staff shall not be permitted to provide the Services under this Agreement until the Participating Authority has confirmed to the Provider in writing that it is satisfied that the individual is suitable to provide such Services.
  5. The Provider warrants that at all times for the purposes of this Agreement it has no reason to believe that any person who is or will be employed or engaged by the Provider in the provision of the Services is barred from carrying out Regulated Activity in accordance with the provisions of the Safeguarding Vulnerable Groups Act 2006 and any regulations made thereunder (as amended from time to time).

* 1. The Provider shall immediately notify the Participating Authority of any information that the Participating Authority reasonably requests to enable it to be satisfied that the obligations of clause 17.6 have been met.
  2. The Provider shall refer information about any person carrying out the Services to the Disclosure and Barring Service 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 children and shall notify the Participating Authority of the same.
  3. If any member of Staff is found to be unsuitable as the result of any subsequent checks, such member of Staff shall be immediately removed from access to Children/Young People and a suitable replacement appointed. The Provider shall inform the Participating Authority in the event of any such removal and any actual or possible impact on the Children/Young People.
  4. Any employee of the Provider whose alleged conduct places a Child/Young Person/Young Adult at risk or which may bring the Authority into disrepute will be the subject of immediate investigation by the Provider and dealt with appropriately and the Authority shall be informed immediately of the details of the incident and the actions taken to remedy the situation.

1. **Transport**
   1. The Provider shall undertake all reasonable measures to ensure the safety of Children/Young People when being transported by the Provider and its Staff. The Provider shall ensure that:
      1. all driving licences, insurances and, where appropriate, MOT certificates, are current, all insurances include business use and that members of Staff providing any transport requirements have not received sufficient penalty points to be barred from driving or received a court judgement that bars them from driving. The Provider shall make reasonable arrangements to ensure that the above points are checked on at least an annual basis. The Provider will carry out a risk assessment on any member of Staff who receives penalty points for a motoring offence, or who is involved in an accident;
      2. account is taken of any risk assessments in respect of transporting Children/Young People and that risk assessments for all Placements include risks associated with travel;
      3. all vehicles used to transport Children/Young People (and any additional equipment on the vehicles):
         1. are suitable for the type and condition of users to be carried, including having seatbelts, harnesses or personal restraints which conform to the relevant British Standard, and are both appropriate for the relevant vehicle and fitted in accordance with the manufacturer’s instructions;
         2. are maintained and serviced in accordance with the manufacturer’s instructions, with full records being kept to verify this;
         3. have a valid MOT;
         4. have valid vehicle insurance, which must be appropriate to the Services being provided;
      4. the number of passengers do not exceed the insured or licensed maximum;
      5. vehicles are always driven safely and with consideration to passengers’ needs. This shall include conforming to all road traffic legislation and ensuring that vehicles are never driven whilst the driver is under the influence of alcohol and drugs or excessively tired or otherwise in circumstances of unreasonable risk;
      6. the driver and/or escort have a current Enhanced DBS Check;
      7. drivers are properly trained in handling the type of vehicle and the nature of the passengers to be carried (the latter will not apply if a suitable escort is provided); and
      8. all vehicles will carry a first aid kit that conforms to relevant Laws. Fire extinguishers will also be carried on the vehicles and these will be maintained in accordance with the manufacturer’s instructions.
   2. In the event that the Provider sub-contracts or pays for transport and escort services for Children/Young People, the Provider shall ensure that all such sub-contractor/s comply with the requirements of clause 18.1.
2. **PROVISION AND MAINTENANCE OF PREMISES AND EQUIPMENT** 
   1. The Provider shall provide all of the Premises and Equipment necessary for the supply of the Services.
   2. The Provider shall maintain its Premises in good order and condition (excluding fair wear and tear) and, where relevant, the Premises shall comply with any requirements of the Service Specification or Call-Off Contract.
   3. The Provider shall maintain all items of Equipment within the Premises in a safe, serviceable and clean condition.
3. **MONITORING OF CONTRACT PERFORMANCE AND PERFORMANCE OF THE CALL-OFF CONTRACTS** 
   1. The Provider shall comply with any Monitoring Arrangements set out in Part B (Specific Terms and Conditions) of this Agreement and Schedule 4 (Monitoring, Contract Management and Compliance) in respect of the monitoring of this Agreement and the Call-Off Contracts. The Monitoring Arrangements referred to in this clause 20.1 are additional to any requirements made by the appropriate Regulatory Bodies.
   2. The Provider shall keep records on behalf of the Participating Authorities in such form and containing such information as the Participating Authorities directs (including, but not limited to, providing such data and information as the Provider may be required to produce under this Agreement and/or the Call-Off Contract and/or which is reasonably requested by the Participating Authorities ). Any such records relating to the care of the Child/Young Person/Young Adult must be made available to the Participating Authorities on request.
   3. In accordance with clause 3.5 of the Inter Authority Agreement, the Participating Authorities shall work together where appropriate in order to provide performance monitoring and management information relating to the Services provided by the Provider under this Agreement and any Call-Off Contracts to their fellow Participating Authority in accordance with the Shared Contract Management Process set out in Schedule 3 of the Inter Authority Agreement. If the Authorities wish to work together in the spirit of mutual trust and cooperation in order to share resources in this way, they shall do so following the procedure for shared contract management agreed between the Authorities as set out in Schedule 3.

**KPIs/Performance Indicators**

* 1. Where any elements of the Services are stated in Schedule 4 (Monitoring, Contract Management and Compliance) to be subject to a specific KPI/Performance Indicator, the Provider shall provide that element of the Services in such a manner as will ensure that the performance of that element of the Services is equal to or higher than the stated KPI/Performance Indicator.
  2. In accordance with Schedule 4 (Monitoring, Contract Management and Compliance), the Provider shall provide the Participating Authorities with such reasonable information and data as is reasonably requested by the Participating Authorities to enable it to be satisfied as to whether or not the KPIs/Performance Indicators are being met in relation to the Services.
  3. In the event that any element of the Services which is subject to a KPI/Performance Indicator falls short of the relevant KPI/Performance Indicator then, without prejudice to any other rights the Participating Authorities may have, the provisions of clause 35 (Remedies in the Event of Inadequate Performance) may apply.

**SECTION 4 - PAYMENT AND FEES**

1. **FEES**
   1. In consideration for the Provider carrying out/delivering its obligations under this Agreement and the Call-Off Contracts, the Participating Authority shall pay the Provider the Fees detailed in the relevant Call-Off Contract. Such Fees shall take into account any discounts offered by the Provider for the relevant Call-Off Contract and such discounts shall be applied to the Core Fees and/or the Additional Fees (as applicable).
   2. All amounts due under this Agreement and the Call-Off Contracts are exclusive of VAT except where expressly provided otherwise. The Participating Authority shall pay to the Provider such VAT that may be chargeable by the Provider in connection with the provision of the Services and the Provider shall issue a tax invoice in respect thereof.

21.3 The Core Fees to be paid by the Authority to the Provider in respect of Call-Off Contract shall not exceed the Fees listed in Part B of the Pricing Schedule (as amended pursuant to the terms of this Contract).

21.4 Any Additional Fees relating to Additional Services which the Provider has agreed with the Participating Authorities will be separately identified in the Call-Off Contract. If at any time it is agreed that any element of the Additional Services should be withdrawn in relation to any Call-Off Contract, the Additional Fees (and in turn the Fees) shall be reduced pro-rata accordingly and such change shall be recorded in the Call-Off Contract.

21.5 The frequency of payments to be made to the Provider for each Individual Placement Agreement shall be as detailed in Part B (Specific Terms and Conditions) of this Agreement.

21.6 For the avoidance of any doubt Wiltshire Council (as Lead Authority) shall have no liability in respect of fees or charges or any matter whatsoever arising under a Call-off Contract entered into by any other Participating Authority.

**Fee Management Processes**

* 1. The Inter-Authority Agreement and Schedule 6 (Fee Management Schedule) sets out the processes that will be followed by the Participating Authorities to monitor prices/costs and to deal with any fee review requests.
  2. The Participating Authorities shall be entitled to share information resulting from the processes followed by the Participating Authorities pursuant to Schedule 6 (Fee Management Schedule) with their fellow Participating Authority. Participating Authorities shall also be entitled to share information resulting from any processes followed by the Authority purchaser pursuant to Schedule 6 (Fee Management Schedule) in relation to call-off contracts awarded to the Provider by the Authority purchaser under the Flexible Framework with their fellow Participating Authority.

**Efficiencies**

* 1. Throughout the Agreement Term and for the duration of any Call-Off Contracts, the Provider agrees to ensure continual improvement in the delivery of Services with regards to economy, efficiency and effectiveness.

1. **GENERAL PAYMENT PROVISIONS** 
   1. The Provider shall ensure that each invoice contains all appropriate references (for example the relevant purchase order number), as confirmed by the Participating Authority and that the invoice is supported by any other documentation reasonably required by the Participating Authority to substantiate the invoice.
   2. The Participating Authority shall pay such invoice(s) by BACS (Bank Automated Clearing System) if it so chooses or any alternate means as agreed between the Participating Authority and the Provider.
   3. Where the Provider submits an invoice to the Participating Authority in accordance with clause 22.1, the Participating Authority will consider and verify that invoice within ten (10) days of receipt of the invoice.
   4. Within ten (10) days of the receipt of the invoice the Participating Authority shall advise the Provider in writing of any discrepancy between the amount stated in the invoice and the amount properly due to the Provider, which shall take into account any adjustments made. The Participating Authority shall pay to the Provider such amount as properly due under such invoice no later than a period of thirty (30) days from the date on which the Participating Authority has determined the correct amount to be paid under the invoice. Where the Participating Authority fails to comply with this clause 22.4, the invoice shall be regarded as valid and undisputed seven (7) days after the date on which it was received by the Participating Authority.
   5. Subject to clause 39 (Dispute Resolution), where the Participating Authority fails to settle an invoice in full within thirty (30) days of the date the invoice was verified by the Participating Authority in accordance with clause 22.4, the Provider shall be entitled to charge interest on any amount outstanding in accordance with clause 22.7.
   6. In the event of a dispute of any sum to be paid by the Participating Authority, the Provider may resubmit an invoice for the undisputed amount which shall be paid by the Participating Authority. Any dispute as to the sum that remains unpaid shall be dealt with under the dispute resolution procedure detailed in clause 39 (Dispute Resolution). Interest due on any sums in dispute shall not accrue until the earlier of thirty (30) days after:
      1. resolution of the dispute between the Parties; or
      2. receipt of the decision of the adjudicator in accordance with clause 39 (Dispute Resolution).
   7. If any sum payable under this Agreement is not paid within thirty (30) days (final date for payment) of the Receipt of a correctly submitted and undisputed invoice or a dispute is not raised within such thirty (30) day period that sum will bear interest at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.

**Recovery of Sums Due**

* 1. Wherever under this Agreement any sum of money is recoverable from or payable by the Provider (including any sum which the Provider is liable to pay to the Participating Authority in respect of any breach of this Agreement or any overpayment by the Participating Authority ), the Participating Authority may deduct that sum from any sum then due, or which at any later time may become due, to the Provider under this Agreement or under any other agreement or contract with the Participating Authority. The Participating Authority shall notify the Provider of any such deduction and provide details of how the deduction has been calculated. Any dispute in relation to the same shall be dealt with under the Dispute Resolution Procedure detailed in clause 39 (Dispute Resolution).
  2. The Provider will notify the Participating Authority of any overpayments within thirty (30) days of it becoming aware of the same. Any overpayment by the Participating Authority, whether of the Fees or otherwise, for any reason, shall be a sum of money recoverable by the Participating Authority from the Provider. In the absence of any future payments to be made to the Provider pursuant to clause 22.8, such sums shall be payable to the Participating Authority by the Provider within thirty (30) days of the Provider notifying the Participating Authority of the overpayment or, where the Participating Authority has identified the overpayment within thirty (30) days of the Participating Authority notifying the Provider of an overpayment. Such sums shall be recoverable by the Participating Authority as a debt.
  3. If any advance payments are made by the Participating Authority under this Agreement, on expiry or earlier termination of this Agreement and any Call-Off Contracts, the Participating Authority shall conduct a reconciliation of the payments made to the Provider against the payments due to the Provider in the course of providing the Services up to the date of expiry or termination and:
     1. if a payment remains due to the Provider then it shall make such payment to the Provider in accordance with the provisions of this clause 22; or
     2. if the payments received by the Provider exceed the payments due to be made to the Provider by the Participating Authority under this Agreement and any Call-Off Contracts then any further payments shall be withheld by the Participating Authority, and the Provider shall pay to the Participating Authority the amount of any excess upon notification of the amount to the Provider. Such amount shall be paid by the Provider within thirty (30) days of receipt of such a notification from the Participating Authority.

**SECTION 5 - COMPLIANCE**

1. **ANTI-CORRUPTION** 
   1. The Provider shall ensure that it has in place clear written policies and procedures: relating to probity and this should also form part of the terms and conditions of the Provider’s Staff;

and shall disclose such policies to the Participating Authorities on request.

* 1. The Provider will have in place clear policies and procedures regarding the receipt and/or offering of tips, gratuities, gifts, presents and rewards and shall disclose such policies to the Participating Authorities on request.
  2. Neither the Provider nor the Participating Authorities nor any of their employees or agents shall solicit or accept any gratuity, gifts, tips, any other form of money or reward, collection or charge for any part of the Services other than lawful charges notified to the Participating Authorities. For the avoidance of doubt, the Provider must not charge the Children/Young People/Young Adult (or their Parents/Guardians), and the Children/Young People/Young Adult (or their Parents/Guardians), must not pay for any Services under this Agreement unless otherwise expressly stated in this Agreement or otherwise agreed with the Participating Authorities in writing.
  3. The Authority may terminate this Contract and, notwithstanding any other provision of this Contract, recover all its losses, if the Provider, its Staff or anyone else acting on the Provider’s behalf (whether with or without the knowledge of the Provider) do any of the following things:
     1. offer, give or agree to give to anyone any inducement or reward in respect of this or any other contract involving the Authority (even if the Provider does not know it has been done); or
     2. commit any Fraud in connection with this or any other contract involving the Authority, whether alone or in conjunction with elected members, contractors or employees of the Authority;
     3. commit an offence under the Bribery Act 2010;
     4. commit any of the offences listed in regulation 57(1) of the Public Contracts Regulations 2015;
     5. offer any improper inducement or exerting unreasonable pressure upon any Children/Young People or their Parents/Guardians, relatives, or others with an interest, to attempt to encourage such parties to use the Provider; or
     6. take unreasonable financial advantage of its relationship with a Child/Young Person/Young Adult and/or their Parents/Guardians;

1. **EQUAL OPPORTUNITIES AND HUMAN RIGHTS**
   1. The Provider will comply with the Equality Act 2010 and all other anti-discriminatory Laws (as amended or re-enacted from time to time) and operate an equal opportunities policy for as long as this Agreement and any Call-Off Contracts awarded under it are in force and shall provide the Participating Authorities with a copy of the policy and updates as requested.
   2. The Provider will ensure that their recruitment, employment and equalities policies and its workforce policies, strategies, recruitment, processes and practices fully comply with all statutory obligations.
   3. The Provider will notify the Participating Authorities immediately in writing as soon as it becomes aware of any investigation of, or proceedings brought against, the Provider under equal opportunities legislation, and co-operate fully and promptly in every way required by the person or body conducting such investigation during the course of that investigation.
   4. The Provider recognises that the Participating Authorities has duties under the Human Rights Act 1998 in relation to the Services to be provided. The Provider shall therefore respect the Human Rights of all members of the public as if it were a public Participating Authorities with duties under the Human Rights Act 1998. Without prejudice to its liability for breach of contract, the Provider shall be liable for, and shall indemnify the Participating Authorities against, any liability, loss, costs, expenses, claims or proceedings resulting from the Provider’s breach of the Human Rights Act 1998.
2. **PREVENT DUTY AND MODERN SLAVERY** 
   1. The Provider shall facilitate the Participating Authorities’ compliance with its duty pursuant to the Counter Terrorism and Security Act 2015 (“**CTSA 2015**”) and the Provider shall have regard to the statutory guidance issued under section 29 of the CTSA 2015 and in particular the Provider shall ensure that Staff:
      1. understand what radicalisation means and why people may be vulnerable to being drawn into terrorism;
      2. are aware of extremism and the relationship between extremism and terrorism;
      3. know what measures are available to prevent people from becoming drawn into terrorism and how to challenge the extreme ideology that can be associated with it; and
      4. obtain support for people who may be exploited by radicalising influences.
   2. Where the Provider identifies or suspects that someone may be engaged in illegal terrorist related activity, the Provider must refer such person or activity to the police.
   3. The Provider undertakes, warrants and represents that:
      1. the Provider nor any of its officers, employees, agents or subcontractors:
         1. has committed an offence under the Modern Slavery Act 2015 (an “**MSA Offence**”); or
         2. has been notified that it is subject to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015; or
         3. is aware if any circumstances within its supply chain that could give rise to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015;
      2. it shall comply with the Modern Slavery Act 2015 and its Modern Slavery Policy; and
      3. it shall notify the Participating Authorities immediately in writing if it becomes aware or has reason to believe that it, or any of its officers, employees, agents or subcontractors have, breached or potentially breached any of Provider’s obligations under this clause 25.3 such notice to set out full details of the circumstances concerning the breach or potential breach of Provider’s obligations.
3. **ENVIRONMENT AND HEALTH AND SAFETY**
   1. The Provider shall use reasonable endeavours to ensure that during the performance of this Agreement it uses working methods, equipment, materials and consumables that minimise environmental damage.
   2. In the provision of the Services the Provider shall at all times comply with the requirements of the Health and Safety at Work etc. Act 1974 and of any other provisions of any Laws pertaining to health, safety and welfare applying to the Services. This shall be reflected in the training of Staff, keeping of health and safety records and the provision and maintenance of appropriate equipment.
   3. When performing the Services, the Provider shall, where the Provider is the ‘Responsible Person’ for the purposes of the Reporting of Injuries, Diseases & Dangerous Occurrences Regulations 2013 (“**RIDDOR**”), promptly inform the Participating Authorities if the Provider makes a report as required of it by RIDDOR and the Provider shall keep records of any such reportable incident as required under RIDDOR.
   4. The Provider shall have in place a health and safety policy which complies with all statutory requirements and the Provider shall ensure that its health and safety policy statement is made available to the Participating Authorities on request.
   5. The Provider must inform the Participating Authorities immediately in writing if any action is threatened or taken against them by the Health and Safety Executive.
   6. Subject to their obligations under the Data Protection Legislation, Participating Authorities shall share information about health and safety issues that may have an effect on the **Child/Young Person/Young Adult** receiving provision at the School or College with the Education Funding Agency.

1. **SAFEGUARDING AND WHISTLE BLOWING**
   1. The Provider shall adhere to ensure that it and its Staff and representatives are familiar with the Participating Authorities’ policies and procedures for safeguarding children. The Participating Authorities acknowledges that the Provider is also required to ensure that its Establishments follow the policies and procedures of the Local Safeguarding Board of the local Participating Authorities in which the Establishment is based, and in the event of a conflict between the policies and procedures of the Participating Authorities and the Host Local Participating Authorities, the Host Local Participating Authorities ’ policies and procedures will take precedence.
   2. The Provider shall have in place clear policies and procedures relating to:
      1. safeguarding and such policies and procedures shall comply with the requirements of this Agreement; and
      2. whistle blowing and must have a written procedure for people involved or cared for within Placements This must also include a reference regarding the availability of the Participating Authorities ’ whistle blowing policy.

The Provider shall provide copies of its policies and procedures to the Participating Authorities on request and shall ensure that such policies and procedures are kept under regular review and updated appropriately during the Agreement Term.

* 1. If by reference to the requirements of the policies and procedures referred to in clause 27.2 there are any matters that should be brought to the attention of the Participating Authorities then the Provider shall ensure that this is done in a timely manner.

1. **COMPLAINTS** 
   1. The Provider must have in place, and adhere to, a clear complaints policy and written procedure, which must be easily accessible and comply with the requirements of the Service Specification, any relevant Laws and be to the satisfaction of the Participating Authorities, to enable Parents/Guardians or Children/Young People/Young Adult to make complaints and representations about the Provider and/or the Services provided by the Provider and copies of this policy and procedure should be provided to the Participating Authorities on request.
   2. Where relevant, the Provider must also signpost the complainant to the Participating Authorities’ complaints procedure, so that the complainant is made aware of all potential options for it to make a complaint.
   3. The Provider will ensure that details of how to make a complaint and how to access the available advocacy services are explained to the Child/Young Person/Young Adult and/or Parents/Guardians and other relevant family members at the commencement of a Placement.
   4. The Provider will ensure that any complaint received is acknowledged in line with its complaints policy. At the same time, the complaints process (including the use of a named independent representative) and timescales, as detailed in the Provider’s procedures, will be explained to the complainant.
   5. The Provider will inform the Participating Authorities and, where relevant, any Regulatory Body, of any complaints that are related to safeguarding, in writing, in line with its complaints policy, and, in due course, the outcome of the relevant investigation. In addition to this, where the Provider is required to report any other complaints to any Regulatory Body, the Provider will, at the same time, in writing, in line with its complaints policy, inform the Participating Authorities of such complaint and, in due course, the outcome of the relevant investigation.
   6. Other than complaints referred to in clause 28.3, all other complaints received by the Provider will be recorded by the Provider in a complaints log, along with the outcomes and any steps/actions taken by the Provider to address such complaints. The Provider’s complaints log relating to the Services shall be made available to the Participating Authorities for review on request.
   7. The Provider will ensure that any outcomes from the investigation of a complaint are given to the complainant, with an appropriate explanation, in accordance with the Provider’s complaints procedure or within ten (10) days, whichever is sooner.
   8. The Provider will ensure that, if the complainant is not satisfied with the response from the Provider, the complaint is referred to the identified officer of the Authority responsible for complaints as detailed in the Individual Placement Agreement, who will ensure that any such complaints will be dealt with in accordance with the Authority’s Complaints Procedure and Whistle Blowing Policy. The Provider will be informed of the complaint and outcome of the Authority’s investigation.
   9. Any complaints concerning the Authority received by the Provider should be forwarded to the identified officer of the Authority responsible for complaints promptly and in any event within two (2) Working Days of receipt.

**SECTION 6 - INFORMATION**

1. **NOT USED**
2. **DATA PROTECTION AND DATA PROCESSOR OBLIGATIONS**

For the purposes of this clause 30 (Data Processor Obligations) and this Agreement the terms “**Data Controller**”, “**Data Processor**”, “**Data Subject**” and “**Personal Data**” shall have the meanings prescribed under the Data Protection Legislation.

* 1. Both Parties shall duly observe all their obligations under the Data Protection Legislation, which arise in connection with the performance of this Agreement. The Parties shall perform their obligations under this Agreement in such a way as to ensure that it does not cause the other Party to breach any of its obligations under the Data Protection Legislation.
  2. Both Parties will have a policy on confidentiality which accords with the principles of the Data Protection Legislation and will have mechanisms in place to ensure full compliance.
  3. Both Parties may collect and maintain information which will be processed manually or by computer and used in accordance with their respective needs under the terms of the Data Protection Legislation. Both Parties undertake to fully comply with the requirements and principles of Data Protection Legislation and information held by either Party may be disclosed to other agencies where permitted by law and in accordance with any applicable transparency requirements. To the extent that the parties may share Personal Data under this Agreement and where each Party is using the Personal Data as a Data Controller in its own right the Provider agrees that it shall enter into a Data Sharing Agreement with the Participating Authorities, if required to do so by the Participating Authorities so as to set out the Parties obligations in relation to any Personal Data which may be shared between the Parties including but not limited to the protocols that the Parties will follow to determine exactly what data will be shared, the means of transmission and how the parties will cooperate with one another to ensure compliance with Data Protection Legislation.

* 1. Notwithstanding the generality of clauses 30.1 and 30.3, each Party shall ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting personal data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it), such measures meeting the requirements of the Data Protection Legislation and ensures protection of the rights of individuals under the Data Protection Legislation.
  2. Each Party shall take reasonable steps to ensure that all personnel/representatives who have access to and/or process Personal Data for the purposes of this Agreement are subject to legally binding obligations to keep the Personal Data confidential and ensure that none of their personnel/representatives publish, disclose or divulge any of the Personal Data to any third party unless agreed with the Data Controller of the Personal Data.
  3. Each Party shall give the other reasonable assistance and co-operation, at the requesting Party’s cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under Data Protection Legislation with respect to security, Data Security Breach notifications, Data Protection Impact Assessments and consultations with supervisory Participating Authorities or regulators, including the Information Commissioners Office. Where a Data Subject request is received by a Party, it shall:
     1. notify the other Party within three (3) Working Days;
     2. consult with the other Party in relation to complying with the Data Subject’s rights under the Data Protection Legislation and comply with the Data Controller’s instructions regarding the same.
  4. Each Party shall notify (in writing) the other Party promptly, which in any event shall be no more than forty-eight (48) hours, of any Data Security Breach relating to Personal Data received from or processed on behalf of the other Party under this Agreement or the Party or any sub-contractor engaged by a Party receives any Data Security Breach notification, complaint, notice or communication which relates directly or indirectly to the processing of the Personal Data or to either Party’s compliance with the Data Protection Legislation.
  5. Notwithstanding each Party’s obligations under clauses 28.3, 30.1 and 30.7, to the extent that one Party (the Data Processor) will process Personal Data on behalf of the other Party (the Data Controller) in connection with this Agreement, the Data Processor shall, in relation to any such processing:

* + 1. only process the Personal Data for the purposes of fulfilling its obligations under this Agreement (unless otherwise required/permitted by Law) and in compliance with the written instructions of the Data Controller and shall inform the Data Controller if it considers any of the instructions to infringe the Data Protection Legislation;
    2. at the written direction of the Data Controller, delete or return Personal Data processed solely on behalf of the Data Controller (and copies of such Personal Data) on termination of this Agreement unless required by Law to store the Personal Data, in which case the Data Processor shall notify the Data Controller in writing of the applicable laws which require the Personal Data to be retained;
    3. notify the Data Controller immediately if any instructions of the Data Controller relating to the processing of Personal Data are unlawful;
    4. not transfer such Personal Data outside the European Economic Area for the purposes of the processing without the prior written consent of the Data Controller;
    5. not appoint a third party processor of Personal Data in respect of such processing without the prior written consent of the Data Controller, provided that notwithstanding such consent the Provider shall remain liable for compliance with all requirements of this Agreement including in relation to the processing of Personal Data;
    6. ensure that obligations equivalent to the obligations set out in this clause 30 (Data Processing and Data Processor Obligations) are included in all contracts between the Data Processor and any permitted third party processor who will be processing Personal Data and who have been approved in accordance with clause 30.8.5;
    7. maintain a record of the Provider’s processing activities in accordance with the requirements of the Data Protection Legislation;
    8. upon request provide a written description of the technical and organisational measures employed by the Data Processor and if the Data Controller does not consider such measures are adequate to enable compliance with the Data Protection Legislation, implement such additional measures as may be specified by the Data Controller (acting reasonably) to ensure compliance;
    9. make available to the Data Controller all information necessary to demonstrate compliance with the obligations set out in this clause 30 (Data Protection and Data Processing);
    10. provide information and assistance upon request to enable the Data Controller to notify Data Security Breaches to the Information Commissioner’s Office and/or to affected individuals and/or to any other regulators to whom the Data Controller is required to notify any Data Security Breaches;
    11. provide input into and carrying out Data Protection Impact Assessments in relation to the Data Processor’s data processing activities; and
    12. indemnify the Data Controller from and against all costs, expenses, losses, damages and other liabilities (whether contractual, tortious or otherwise) suffered or incurred by the Data Controller and arising out of or in connection with any breach by the Data Processor or any of its third party processors/sub-contractors.
  1. The Provider must also observe and adhere to the Caldicott Principles when processing health and/or social care data relating to Children/Young People and shall ensure that the following principles are applied in all circumstances where it is necessary for information to be imparted.
  2. The provisions of this clause 30 (Data Protection and Data Processor Obligations) shall apply during the continuance of this Agreement and indefinitely after its expiry or termination.
  3. A description of the Personal Data processed by the Provider and the processing activities undertaken by the Provider is set out in Schedule 9 (Data Processing Activities Schedule), as required by the Data Protection Legislation. If this changes and a different party to this Agreement becomes the Data Processor on behalf of the other, that party acting as the Data Processor will be required to complete the same Data Processing Activities Schedule.
  4. The Provider agrees that it shall enter into a Data Sharing Agreement with the Participating Authorities if required to do so at the Participating Authorities ’ absolute discretion so as to set out the Parties obligations in relation to any Personal Data which may be shared between the Parties.

1. **CONFIDENTIAL INFORMATION** 
   1. Except to the extent set out in this clause 31 or where disclosure is expressly permitted elsewhere in this Agreement, each Party shall:
      1. treat the other Party’s Confidential Information as confidential (and safeguard it accordingly); and
      2. not disclose the other Party’s Confidential Information to any other person without the owner’s prior written consent.
   2. Clause 31.1 shall not apply to the extent that:
      1. such disclosure is a requirement of Law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations pursuant to clause 33 (Freedom of Information and Transparency);
      2. such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
      3. such information was obtained from a third Party (who lawfully acquired it) without obligation of confidentiality or restriction as to its disclosure;
      4. such information was already in the public domain at the time of disclosure otherwise than by a breach of this Agreement;
      5. such information is independently developed without access to the other Party’s Confidential Information;
      6. such information is necessary for the safeguarding and welfare of the Child/Young Person/Young Adult, including information shared with the consent of the Child/Young Person/Young Adult and/or an individual holding parental responsibility; or
      7. such information is required to enable a determination to be made under clause 39 (Dispute Resolution).
   3. The Provider may only disclose the Participating Authorities’ Confidential Information to the Staff who are directly involved in the provision of the Services and who need to know the information, and shall ensure that such Staff are aware of and shall comply with these obligations as to confidentiality.
   4. The Provider shall not, and shall procure that the Staff do not, use any of the Participating Authorities’ Confidential Information received otherwise than for the purposes of this Agreement.
   5. Nothing in this Agreement shall prevent the Participating Authorities from disclosing the Provider’s Confidential Information:
      1. for the purpose of the examination and certification of the Participating Authorities ’ accounts;
      2. to any other department, office or agency of the Government or any other contracting Participating Authorities. All government departments, offices, agencies or contracting Participating Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other government departments or other contracting Participating Authorities ;
      3. to any consultant, contractor or other person engaged by the Participating Authorities in providing any services to the Participating Authorities for any purpose relating to or ancillary to this Agreement provided that in disclosing Confidential Information the Participating Authorities discloses only the information which is necessary for the purpose concerned and requires that the information is treated in confidence and that a confidentiality undertaking is given where appropriate; and
      4. for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Participating Authorities has used its resources.
   6. The Participating Authorities shall use all reasonable endeavours to ensure that any government department, contracting Participating Authorities , employee, third Party or sub-contractor to whom the Provider’s Confidential Information is disclosed pursuant to clause 31.5 is made aware of the Participating Authorities ’ obligations of confidentiality.
2. **CALDICOTT PRINCIPLES**
   1. The Provider must also observe and adhere to the Caldicott Principles when processing health and/or social care data relating to Children/Young People and shall ensure that the following principles are applied in all circumstances where it is necessary for information to be imparted:
      1. justify the purpose(s) for using personal information;
      2. only use personal information when absolutely necessary;
      3. use the minimum amount of personal information that is required;
      4. ensure access to personal information is on a strict “need to know” basis;
      5. ensure everyone with access to personal information is aware of his or her responsibilities; and
      6. ensure everyone with access to personal information understands and complies with legislation that governs personal information.
3. **FREEDOM OF INFORMATION AND TRANSPARENCY**
   1. The Provider acknowledges that the Participating Authorities are subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Participating Authorities to enable the Participating Authorities to comply with its Information disclosure obligations.
   2. The Provider shall transfer to the Participating Authorities all Requests for Information that it receives as soon as practicable and in any event within two (2) Working Days of receiving a Request for Information, and shall:
      1. provide the Participating Authorities with a copy of all Information in its possession, or power in the form that the Participating Authorities requires within five (5) Working Days (or such other period as the Participating Authorities may specify) of the Participating Authorities ’ request; and
      2. provide all necessary assistance as reasonably requested by the Participating Authorities to enable the Participating Authorities to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or Regulation 5 of the Environmental Information Regulations.
   3. The Participating Authorities shall be responsible for determining in its absolute discretion, and notwithstanding any other provision in this Agreement or any other agreement, whether the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations.
   4. In no event shall the Provider respond directly to a Request for Information unless expressly authorised to do so by the Participating Authorities.
   5. The Provider acknowledges that (notwithstanding the provisions of clause 33.3) the Participating Authorities may, acting in accordance with the Secretary of State for Justice Code of Practice on the Discharge of the Functions of Public Participating Authorities under Part 1 of the Freedom of Information Act 2000 and the Secretary of State’s Code of Practice (datasets) on the discharge of public Participating Authorities ’ functions under Part 1 of the Freedom of Information Act (“**the Codes**”), be obliged under the FOIA or the Environmental Information Regulations to disclose information concerning the Provider or the Services in certain circumstances:
      1. without consulting the Provider; or
      2. following consultation with the Provider and having taken their views into account,

provided always that where 33.5.1 applies the Participating Authorities shall, in accordance with any recommendations of the Codes, take reasonable steps, where appropriate, to give the Provider advanced notice, or failing that, to draw the disclosure to the Provider’s attention after any such disclosure.

* 1. The Provider acknowledges that the Participating Authorities is subject to transparency obligations which require the Participating Authorities to publish certain contract information and materials. Accordingly, and notwithstanding any other term of this Agreement, the Provider hereby gives its consent for the Participating Authorities to publish this Agreement and its Schedules in its entirety, including from time to time agreed changes to this Agreement (save and except such matters as the Participating Authorities is by law able to exclude as being confidential, commercially sensitive, or otherwise not in the public interest to disclose), to the general public in whatever form the Participating Authorities decides. The Provider shall render such assistance and cooperate with the Participating Authorities to enable such publication, including, if the Participating Authorities so requires, assisting the Participating Authorities at no additional cost to the Participating Authorities in the redaction of such contract documents prior to publication to eliminate material considered confidential, commercially sensitive, or otherwise not in the public interest to disclose.

**SECTION 7 - LIABILITY**

1. **INSURANCE, LIABILITY AND INDEMNITY**

**Insurance**

* 1. The Provider shall, at its own cost, effectively maintain or cause to be maintained the following minimum insurance arrangements with reputable insurers who are authorised by the Financial Conduct Authority to conduct insurance business or equivalent:
     1. employer’s liability insurance, with a minimum limit of indemnity of ten million pounds (£10,000,000) in relation to any one claim or series of claims arising from the Services, covering all employees;
     2. public liability insurance with a minimum limit of indemnity of five million pounds (£5,000,000) in relation to any one claim or series of claims arising from the Services; and
     3. professional indemnity insurance, with a minimum limit of indemnity of two million pounds (£2,000,000) in relation to any one claim or series of claims arising from the Services.
  2. The Provider shall also maintain in force adequate insurance cover with reputable insurers for such other perils as the Provider deems appropriate and at a level of cover commensurate with the potential liabilities of the Provider.
  3. The Provider shall procure that all sub-contractors hold the same levels of insurances as those listed in clause 34.1 where these are applicable to the elements of the Services which the relevant sub-contractor is delivering.
  4. The required insurances must remain in place for the Agreement Term (and for the duration of any Call-Off Contracts extending beyond the Agreement Term) and be effective in each case not later than the date on which the relevant risk commences. The Provider will on request provide to the Participating Authorities documentary evidence that the insurances required by this Agreement have been effected and are being maintained.
  5. Where the Participating Authorities is of the reasonable opinion that the insurances required by this Agreement have not been effected or are not being maintained, or where evidence of consistent and ongoing cover cannot be demonstrated, the Participating Authorities shall be entitled to terminate this Agreement and or any relevant Call-Off Contract. The Participating Authorities may, where the Participating Authorities feels it is appropriate:
     1. give a reasonable period, of no more than fourteen (14) days, to the Provider to allow the Provider to effect such insurances so as to meet the terms and conditions of this Agreement. During such a period, the Provider shall be liable for all and any costs that would otherwise have been met by such insurances as were required; or
     2. make alterative arrangements itself to protect its interests and recover the costs of such arrangements from the Provider.

**Liability and Indemnity**

* 1. Nothing in this Agreement shall be construed to limit or exclude either Party’s liability for:
     1. death or personal injury caused by its negligence or that of its employees, agents or sub-contractors;

* + 1. fraud or fraudulent misrepresentation;
    2. any breach of any obligations as to title implied by statue;
    3. any other act or omission, liability for which may not be limited under any applicable Law;
    4. the Provider’s wilful default
    5. any claim in respect of a Prohibited Act;
    6. any claim under the general indemnity in clause 34.7, the TUPE indemnity in clause 43.2 or the data protection indemnities in clause 30.8.12.
  1. The Provider shall fully and promptly indemnify and keep indemnified the Participating Authorities , its officers, employees, agents and other agencies against all claims, proceedings, actions, losses damages, costs, expenses and any other liabilities whether arising in tort (including negligence) default or breach of contract which may arise out of, or in consequence of:
     1. the supply, or late or purported supply, of the Services or the performance or non-performance by the Provider of its obligations under this Agreement or any Call-Off Contract;
     2. the act, omission or default of the Provider or any sub-contractor or any member of Staff, including in respect of any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by any such party;
     3. any breach of Law or Necessary Consents;
     4. any other loss which is caused directly or indirectly by any act or omission of the Provider; or
     5. any damage (accidental or otherwise) caused directly or indirectly by the Child/Young Person/Young Adult whilst in a Placement.
  2. Subject to clause 34.6, in no event shall either Party be liable to the other (as far as permitted by Law) for indirect special or consequential loss or damage in connection with this Agreement which shall include, without limitation, any loss of or damage to profit, revenue, contracts, anticipated savings, use, goodwill or business opportunities whether direct or indirect.
  3. Each Party shall at all times take all reasonable steps to minimise and mitigate any loss or damage for which the relevant Party is entitled to bring a claim against the other Party pursuant to this Agreement.
  4. Nothing in this Agreement shall impose any liability on the Participating Authorities in respect of any liability incurred by the Provider to any other person, but this shall not be taken to exclude or limit any liability of the Participating Authorities to the Provider that may arise by virtue of either a breach of this Agreement or by negligence on the part of the Participating Authorities or the Participating Authorities’ employees, servants or agents.

**SECTION 8 – DEFAULT AND TERMINATION OF CONTRACT**

1. **REMEDIES IN THE EVENT OF INADEQUATE PERFORMANCE**
   1. Where:
      1. the Participating Authorities have been (i) notified (by parents, members of Staff, the general public, Local Participating Authorities Designated Officers (LADOs) or others) of or (ii) has identified (as a result of a monitoring or quality assurance visit, annual contract compliance returns or otherwise) a complaint or concern about:
         1. the standard of the Services;
         2. the manner in which any of the Services have been provided/supplied;
         3. the procedures or practices used by the Provider;
         4. the way in which the Provider is complying with the terms of this Agreement or a Call-Off Contract;
         5. any defaults or failings (or suspected defaults or failings) of the Provider;
         6. safeguarding; or
         7. any other matter connected with the performance of the Provider’s obligations under this Agreement or any Call-Off Contract (including where the Provider has notified the Participating Authorities that it is unable to meet the conditions of this Agreement or a Call-Off Contract); or

* + 1. in the Participating Authorities ’ reasonable opinion, the Provider has or appears to have failed to perform any of the Services under the Call-Off Contracts in whole or in part in accordance with the terms of this Agreement and the relevant Call-Off Contracts, then the Participating Authorities shall notify the Provider and shall carry out an investigation into the same. Such investigations shall include the Participating Authorities carrying out an assessment as to the risk, impact and severity of the relevant issue (including, where relevant, using the areas of concern/risk scoring table set out in Appendix A (Areas of Concern Leading to Action Plan/Suspension) to Part C (Flexible Framework Suspension Protocol) of Schedule 8 ( Lots and Flexible Framework Suspension Protocol)) and may also include the Participating Authorities meeting with the Provider and/or arranging site visits of the Provider's Establishments.
  1. Following the investigation process carried out under clause 35.1, in the event that the Participating Authorities is of the reasonable opinion that there has been a Default under this Agreement by the Provider, then the Participating Authorities may serve the Provider with a notice in writing (a “**Default Notice**”) specifying:
     1. the type and nature of the Default that has occurred;
     2. whether the Provider, or, where relevant, one or more of the Provider's Establishments, is/are to be suspended from the Flexible Framework (the Participating Authorities shall have the right (in its absolute discretion) to suspend the Provider or, where relevant, one or more of the Provider's Establishments from the Flexible Framework pending successful implementation of any Action Plan) and any terms applicable to such suspension; and
     3. if the Default is one which in the reasonable opinion of the Participating Authorities is remediable:
        1. instructions to the Provider to remedy the Default (and any damage resulting from the same), at its own cost and expense, within a reasonable period of time as determined by the Participating Authorities , which unless otherwise stated shall be within five (5) Working Days of the date of dispatch of the Default Notice; and/or
        2. a request for the Provider to put forward an Action Plan to rectify/remedy the Default within a reasonable period of time as determined by the Participating Authorities .
  2. If the Provider fails to remedy the Default specified in and in accordance with the Default Notice or in the event that the Parties are unable to agree an Action Plan or the Provider fails to carry out an agreed Action Plan within the agreed timescales:
     1. if the Participating Authorities has not already done so, the Participating Authorities may suspend the Provider, or, where relevant, one or more of the Provider's Establishments, from the Flexible Framework; and/or
     2. if appropriate, the Participating Authorities may take action to rectify the Default itself (including instructing an alternative service provider to rectify the same) and recover its additional costs of doing so from the Provider; and/or

* + 1. give notice of the Participating Authority’s intention to, without terminating this Agreement or the relevant Call-Off Contract, itself supply or procure the supply of all or part of the Services until such time as the Provider shall have demonstrated to the reasonable satisfaction of the Participating Authorities that the Provider will once more be able to supply all or such part of the Services in accordance with this Agreement and the Call-Off Contract; and/or
    2. where the failure amounts to a Persistent Breach or is one which materially and adversely affects the performance of the Services or is materially adverse to the interests of the Participating Authorities or prevents the Participating Authorities from discharging a statutory duty the Participating Authorities may exercise its right to terminate this Agreement pursuant to clause 34 (Termination of this Agreement).

* 1. Without prejudice to its rights under clauses 22.8 to 22.9 (Recovery of Sums Due), the Participating Authorities may charge the Provider for any costs reasonably incurred and any reasonable administration costs in respect of the supply of any part of the Services by the Participating Authorities or a third Party pursuant to clause 35.3.3 to the extent that such costs exceed the payment which would otherwise have been payable to the Provider for such part of the Services and provided that the Participating Authorities uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement services.
  2. Once an Action Plan has been agreed by the Parties, the Participating Authorities will provide an ongoing monitoring schedule for the Action Plan to the Provider and will agree a designated officer at the Participating Authorities to be responsible for such monitoring (this may involve more than one officer, according to the areas covered by the Action Plan).
  3. Where a Provider or any of the Provider's Establishments have been suspended from the Flexible Framework pursuant to this clause 35, when the Participating Authorities is satisfied that the relevant Default has been remedies or the relevant Action Plan has been successfully implemented, the Participating Authorities will notify the Provider in writing that it (or, where relevant, the relevant Establishments) is/are to be re-instated on to the Flexible Framework and any terms applicable to the re-instatement.
  4. The provisions of this clause 35 are without prejudice to the Participating Authorities’ right to terminate this Agreement in accordance with clause 34 (Termination of this Agreement).

1. **REMEDIES CUMULATIVE**

Except as otherwise expressly provided by this Agreement, all remedies available to either Party for breach of this Agreement are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

1. **TERMINATION OF THIS AGREEMENT**

**Termination on Expiry**

* 1. For the avoidance of doubt, where relevant, this Agreement shallterminate (in whole) automatically at the end of the Agreement Term or where this Agreement has been extended pursuant to clauses 2.3 or 2.4 the date of expiry of any Extension (without any requirement for either of the Parties to serve any notice), unless it shall have been terminated earlier in accordance with its terms. For the avoidance of doubt, the Provider shall not be entitled to any compensation on expiry.

**Termination on Notice – No-Fault Termination**

* 1. Either Party may terminate this Agreement, (in whole or in part), even though the other Party is not in breach, by giving a minimum of three (3) months’ written notice to the other Party (or a greater or lesser period by mutual agreement of both Parties). For the avoidance of doubt, neither Party shall be entitled to any compensation as a result of a termination carried out pursuant to this clause 34.2.

**Termination by the Participating Authorities**

* 1. The Participating Authorities may terminate this Agreement (in whole or in part) upon giving the Provider such notice as it considers reasonable in the circumstances if it reasonably believes that any of the circumstances set out in regulations 73(1)(a) or 73(1)(c) of the Public Contracts Regulations 2015 apply, such notice to expire at any time. For the avoidance of doubt, the Provider shall not be entitled to any compensation on such termination as a result of a termination carried out pursuant to this clause 34.3.
  2. Where practicable, the Provider will give the Participating Authorities no less than three (3) months’ written notice of any intended closure of an Establishment and, as a result, its intention to terminate this Agreement (in part) in respect of the relevant Establishment at the end of the three (3) months’ notice. For the avoidance of doubt, neither Party shall be entitled to any compensation on such termination as a result of a termination carried out pursuant to this clause 34.4.
  3. The Participating Authorities shall be entitled to terminate this Agreement (in whole or in part) with immediate effect and recover from the Provider the amount of any loss resulting from such a termination in the following circumstances:
     1. in the event of a closure of an Establishment, where the provisions of clause 34.4 do not apply;
     2. where the Provider has Staff that are convicted under Schedule 1 of the Children and Young Persons Act 1933 or of any offence relevant to the welfare of Children/Young People;
     3. where the Provider has a proprietor/director placed on the list prepared under the Protection of Children Act 1999 or the Provider or proprietor/director ceases to be fit to carry on/manage the Services;
     4. where the Provider commits any breach of this Agreement which materially and adversely affects the performance of the Services or which prevents the Participating Authorities from discharging a statutory duty and which the Participating Authorities reasonably believes is a fundamental or material breach given the purpose of this Agreement which justifies immediate termination, provided always that the Participating Authorities shall not act vexatiously or unreasonably in this regard;
     5. where the Provider commits a Default and if:
        1. the Provider has not remedied the Default to the satisfaction of the Participating Authorities within twenty-five (25) Working Days (or any such other period as may be specified by the Participating Authorities ) of receiving a written notice from the Participating Authorities specifying the Default and requesting it to be remedied and informing the Provider that this Agreement will be terminated if such Default is not remedied within this period; or

* + - 1. the Default is not, in the opinion of the Participating Authorities , capable of remedy;
    1. where the Provider commits a breach of any of its obligations under this Agreement that results in material damage to the reputation of the Participating Authorities ;
    2. where the Provider commits a Persistent Breach;
    3. where the provider fails to comply with its obligations under 23, 24, 25, 26, 27, 30 and 32 (which deal with corruption, fraud and inducements) applies;
    4. where the Provider is subject to an Insolvency Event;
    5. where the Participating Authorities reasonably believes that the circumstances set out in regulation 73(1)(b) of the Public Contracts Regulations 2015 apply; or
    6. where the Provider fails to comply with clause 45 (Conflicts of Interest) of this Agreement.

1. **PROVIDER’S REGISTRATION AND REQUIRED RATING** 
   1. The Provider shall immediately notify the Participating Authorities , in writing, if:
      1. there are (i) any changes to the Provider’s registration status with any Regulatory Body or (ii) any changes to, or restriction placed upon, the approval of the Provider or any of the Provider’s Establishments by a Regulatory Body;
      2. it ceases to hold any other Necessary Consents required in order to deliver the Services; or
      3. the rating of any Establishment changes and shall provide details of the relevant change.
   2. The Provider shall also provide the details referred to in clause 35.1 above to all Other Participating Authorities with whom it has entered into any Call-Off Contracts under the Flexible Framework in respect of the affected Establishments. Notwithstanding the requirement for the Provider to provide this information to the Participating Authority, the Participating Authority will also be entitled to provide details of any information provided by the Provider under clause 35.1 to the Participating Authority in accordance with the Partner Agreement.

**Suspension**

* 1. Where the Provider has more than one Establishment included on the Flexible Framework, if (at any time) any Establishment falls below the Required Rating, the Participating Authorities shall automatically suspend that Establishment from the Flexible Framework and the Provider shall be suspended from responding to Invitations to Tender issued under the Flexible Framework in respect of that Establishment until such time as the Participating Authorities receives appropriate confirmation (in writing) that the rating of the relevant Establishment has improved to the Required Rating.

* 1. Where the Provider has only one Establishment included on the Flexible Framework if (at any time) that Establishment falls below the Required Rating, the Participating Authorities shall automatically suspend the Provider from the Flexible Framework and the Provider shall be suspended from responding to any Invitations to Tender issued under the Flexible Framework until such time as the Participating Authorities receives appropriate confirmation (in writing) that the rating of the Establishment has improved to the Required Rating.
  2. For the avoidance of doubt, where an Establishment is required to be dual registered (for example, a residential school that is also required to be registered as a Children's Home), if (at any time) the Establishment falls below the Required Rating for either of the elements then the Participating Authorities shall automatically suspend the Establishment or the Provider from the Flexible Framework in accordance with clauses 35.3 or 35.4 (as appropriate) for both elements, even if one of the elements remains at the Required Rating or above.
  3. Where, as a result of an interim inspection, an Establishment that holds the minimum Required Rating of "Requires Improvement" / "Requires Improvement to be Good" (or equivalent) as applicable, receives an interim inspection grading of "Declined Effectiveness" at any time the Participating Authorities shall have the right (at its absolute discretion) to suspend the Establishment or the Provider from the Flexible Framework in accordance with clauses 35.3 or 35.4 (as appropriate).

**Termination**

* 1. The Lead Authority shall be entitled (at its sole discretion) to terminate this Agreement (in whole) with immediate effect and recover from the Provider the amount of any loss resulting from such a termination:
     1. where the Provider receives notice of the cancellation of its registration by a Regulatory Body or ceases to hold any other Necessary Consents required in order to deliver the Services which affects **all** of its Establishments (including, for the avoidance of doubt, where the Provider has only one Establishment included on the Flexible Framework); or
     2. if at any time the rating of **all** of the Establishments operated by the Provider falls below the Required Rating (including, for the avoidance of doubt, where the Provider has only one Establishment included on the Flexible Framework).
  2. Where the Provider has more than one Establishment included on the Flexible Framework, the Lead Authority shall be entitled to terminate this Agreement (in part by removing the relevant Establishment) with immediate effect and recover from the Provider the amount of any loss resulting from such a termination:
     1. where the Provider receives notice of the cancellation of its registration by a Regulatory Body or ceases to hold any other Necessary Consents required in order to deliver the Services which affects only one of its Establishments; or
     2. if at any time the rating of one of the Establishments operated by the Provider falls below the Required Rating.
  3. If this Agreement is terminated in whole in accordance with clause 35.7 the Provider may reapply to join the Flexible Framework pursuant to clause 7.6.2 once its registration or relevant Necessary Consent has been re-instated or when at least one of its registered establishments has been awarded the Required Rating.
  4. If this Agreement is terminated in part in accordance with clause 35.8 the Provider may apply to re-add the relevant establishments to the Flexible Framework as an Establishment pursuant to clause 7.10.3 once its registration or relevant Necessary Consent for the relevant establishment has been re-instated or when the relevant establishment has been awarded the Required Rating.

1. **CHANGE OF CONTROL** 
   1. In the event of a proposed Change of Control of the Provider, the Provider shall inform the Participating Authorities at the earliest opportunity and in any event before the proposed Change of Control takes place.
   2. The Participating Authorities may at their absolute discretion provide consent (which the Participating Authorities may grant on terms) to the assignment of the benefit of this Agreement or the change in the legal status of the Provider of the Services under this Agreement as a result of the Change of Control. It may be a condition of any such approval that the relevant third party shall enter into a novation agreement with the Participating Authorities including such terms and conditions as the Participating Authorities might reasonably require, at the cost of the Provider (such costs to include all reasonable expenses incurred by the Participating Authorities in connection with the novation whether or not the novation is completed). The Provider shall provide such information as is reasonably requested by the Participating Authorities in order for the Participating Authorities to make an informed decision regarding the proposed Change of Control.
   3. Alternatively, where the Participating Authorities have reasonable grounds to believe that a Change of Control will have an adverse impact on the Provider or on the provision of the Services provided by the Provider and the Provider confirms to the Participating Authorities that the Change of Control will go ahead, the Participating Authorities shall have the right to terminate this Agreement in accordance with clause 36.4.

**Termination for Change of Control**

* 1. Subject to clause 36.5, where the Lead Authority has reasonable grounds to believe that a Change of Control will have (or has had) an adverse impact on the Provider or on the provision of the Services by the Provider, the Lead Authority may terminate this Agreement by notice in writing with immediate effect served within three (3) months of:
     1. being notified that a Change of Control has occurred; or
     2. where no notification has been made, the date that the Participating Authorities becomes aware of the Change of Control.

1. **CONSEQUENCES OF EXPIRY OR TERMINATION OF THIS AGREEMENT**
   1. Where this Agreement is terminated in whole for any reason, subject to the provisions of Schedule 7B (Call-Off Terms and Conditions), the Call-Off Contracts shall also terminate with the same period of notice.
   2. Where this Agreement is terminated in part only, subject to the provisions of Schedule 7B (Call-Off Terms and Conditions), the Participating Authorities may, at its sole discretion, decide to terminate any Call-Off Contracts relating to the part of this Agreement that is to be terminated with the same period of notice.
   3. Subject to clause 37.4, termination of this Agreement shall have no effect on the liability of either Party to the payment of any sums arising under this Agreement prior to the date upon which termination takes effect.
   4. Where the Lead Authority terminates this Agreement under clauses 34.5, 35.7 or 36.4:
      1. and then makes other arrangements for the supply of Services, the Participating Authorities may recover from the Provider the costs reasonably incurred in making those other arrangements and any additional expenditure incurred by the Participating Authorities throughout the remainder of the Agreement Term. The Participating Authorities shall take all reasonable steps to mitigate such additional expenditure; and
      2. no further payments shall be payable by the Participating Authorities to the Provider (for Services supplied by the Provider prior to termination and in accordance with the terms of this Agreement but where the payment has yet to be made by the Participating Authorities), until the Participating Authorities has established the final cost of making the other arrangements envisaged under this clause.
   5. Save as otherwise expressly provided in this Agreement:
      1. termination or expiry of this Agreement shall be without prejudice to any rights, remedies or obligations accrued under this Agreement prior to termination or expiration and nothing in this Agreement shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry; and
      2. termination of this Agreement shall not affect the continuing rights, remedies or obligations of the Participating Authorities or the Provider under clause 1 (Definitions and Interpretation), clause 21 (Fees), clause 22 (General Payment Provisions), clause 30 (Data Protection and Data Processor Obligations), clause 31 (Confidential Information), clause 33 (Freedom of Information and Transparency), clause 34 (Insurance, Liability and Indemnity), clause 33 (Remedies Cumulative), clause 37 (Consequences of Expiry or Termination), clause 38 (Recovery Upon Termination), clause 43 (TUPE – Transfer of Undertakings) and clause 47.9 (Governing Law and Jurisdiction).
2. **RECOVERY UPON TERMINATION**
   1. On termination of this Agreement for any reason, at its own cost, the Provider shall (and where relevant shall instruct all its Staff to):
      1. at the Participating Authorities’ discretion, either immediately deliver to the Participating Authorities all Property in its possession or in the possession of any permitted sub-contractors, provided to the Provider by the Participating Authorities or securely destroy or erase the same and provide to the Participating Authorities such proof of destruction as the Participating Authorities may reasonably specify;
      2. assist and co-operate with the Participating Authorities to ensure an orderly transition of the Child/Young Person to a new placement and/or the completion of any work in progress; and
      3. promptly provide all information concerning the provision of the Services which may reasonably be requested by the Participating Authorities for the purposes of adequately understanding the manner in which the Services have been provided or for the purpose of allowing the Participating Authorities or any replacement provider to conduct due diligence.
   2. If the Provider fails to comply with clause 38.1, the Participating Authorities may recover possession thereof and the Provider grants a licence to the Participating Authorities or its appointed agents to enter (for the purposes of such recovery) any Premises of the Provider or any premises of its permitted suppliers or sub-contractors where any such items may be held.
3. **DISPUTE RESOLUTION**
   1. If any dispute arises out of or in connection with this Agreement, the Parties shall attempt in good faith to negotiate a settlement to such dispute between them within fourteen (14) Working Days of either Party notifying the other Party of the dispute.
   2. If the dispute cannot be resolved by the Parties pursuant to clause 39.1 within the timeframe specified, and provided that no right of termination has been exercised, the Parties shall escalate the dispute to the director(s) (or equivalent) of each Party, who shall meet promptly, and in any event within fourteen (14) Working Days of the escalation of the dispute, in good faith to discuss and seek to resolve the dispute.
   3. If within twenty (20) Working Days of the referral of the dispute to the senior representatives of the Parties pursuant to clause 39.2, the dispute is not resolved to the satisfaction of both Parties, either Party may refer the dispute to an adjudicator.
   4. If the Parties are unable to agree the appointment of such adjudicator within seven (7) Working Days of the request by either Party for such an appointment, then an appropriate expert (willing to act in that capacity hereunder) shall be appointed by the President of the Centre for Effective Dispute Resolution and the Parties agree to accept such appointment.
   5. Each Party shall provide the adjudicator with such information as he/she may reasonably require for the purposes of his determination. If either Party claims any such information to be confidential to it then, provided that in the opinion of the adjudicator that Party has properly claimed the same as confidential, the adjudicator shall not disclose the same to the other Party or to any third party.
   6. Disputes shall be decided by such adjudicator in accordance with the latest Rules of Adjudication of the Centre for Effective Dispute Resolution as in place at the time of the dispute being referred to such adjudicator.
   7. The costs of any adjudicator shall be borne in such proportions as the adjudicator may determine to be fair and reasonable in all the circumstances or, if the adjudicator makes no such determination, by the Parties in equal proportions.
   8. Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.
   9. The obligations of the Parties under this Agreement shall not cease, or be suspended or delayed by the reference of a dispute to an adjudicator and the Provider and the Staff shall comply fully with the requirements of this Agreement at all times.
   10. For the avoidance of doubt, the use of the disputes procedure will not delay, or take precedence over, any use of the default or termination procedures.

**SECTION 9 - GENERAL**

1. **SOCIAL VALUE**
   1. The Provider is required to consider social value in all aspects of the business and may be required to provide evidence that it has considered and/or implemented actions flowing from the Public Services (Social Value) Act 2012. This may include, but will not be limited to:
      1. supporting local economic development;
      2. providing training and employment opportunities, including supporting local colleges and schools with work placements or traineeships, internships and apprenticeship schemes;
      3. supporting and working with the local community; and
      4. reducing environmental impact.
2. **BUSINESS CONTINUITY** 
   1. The Provider is required to have in place adequate and appropriate measures to ensure that it is able to continue providing the Services within a predetermined time in the event of service disruption or a state of emergency which partially or completely interrupts the Provider’s business critical functions and which would otherwise impact the Provider’s provision of the Services, and the Provider may be required by the Participating Authorities to provide satisfactory evidence demonstrating compliance with the key principals of the British Standard for Business Continuity (BS25999) or its equivalent, however, certification of the Provider to this standard though desirable is not mandatory.
   2. The Participating Authorities may from time to time require the Provider to demonstrate to the reasonable satisfaction of the Participating Authorities the viability and effectiveness of the Provider’s business continuity arrangements.
3. **FORCE MAJEURE**

Neither Party shall be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this Agreement if such delay or failure result from a Force Majeure Event. If the period of delay or non-performance continues for a period of three (3) consecutive months, the Party not affected may terminate this Agreement by giving seven (7) days’ written notice to the affected Party.

1. **TUPE - TRANSFER OF UNDERTAKINGS**
   1. The Parties agree that TUPE is unlikely to apply in relation to Individual Placement Agreements called-off from the Flexible Framework under this Agreement. However, TUPE may apply in the event the Flexible Framework is being used to source block provision under Block Contracts, where existing staff are involved. Where it is considered that TUPE may apply in relation to a Call-Off Contract, the Parties will comply with the provisions of TUPE. The Provider shall not unreasonably withhold or delay the provision of information requested and shall not knowingly do or omit to do anything that may adversely affect an orderly transfer of responsibility for provision of the Services.

* 1. The Provider shall indemnify the Participating Authorities and/or any successor provider against all costs, expenses and liabilities incurred by the Participating Authorities and/or any successor provider arising from any claim by the Provider’s employees or ex-employees, (and by any claim by any employee or ex-employees of contractors or sub-contractors of the Provider) in respect of his/her employment with the Provider, or any breach of TUPE by the Provider and for any breach of contract, unfair or wrongful dismissal, redundancy or any other claim whether statutory, contractual or otherwise incurred by, or transferred to, the Participating Authorities and/or any successor provider by virtue of TUPE.
  2. Clause 43 shall apply during the Agreement Term and indefinitely after expiry or termination of this Agreement.

1. **SUBCONTRACTING AND ASSIGNMENT/NOVATION**
   1. The Provider shall not assign, novate, transfer, sub-contract, sub-licence or in any other way dispose of the whole or any part of this Agreement or any Call-Off Contract awarded under it without the prior written consent of the Participating Authorities (which consent the Participating Authorities may in its absolute discretion refuse and/or grant on terms). The Provider shall provide such information as is reasonably requested by the Participating Authorities in order for the Participating Authorities to make an informed decision regarding the Provider’s proposed arrangements.
   2. Where the Participating Authorities has consented to the Provider sub-contracting, pursuant to clause 44.1, in the event that the Provider then enters into any sub-contract in connection with this Agreement it shall:
      1. remain responsible to the Participating Authorities for the performance of its obligations under this Agreement notwithstanding the appointment of any sub-contractor and be responsible for the acts omissions and neglects of its sub-contractors;
      2. impose obligations on its sub-contractor in the same terms as those imposed on it pursuant to this Agreement and shall procure that the sub-contractor complies with such terms. As a minimum the sub-contract must include:
         1. the scope of the services to be provided by the sub-contractor and the price agreed for the provision of those services;
         2. the payment terms and timescales - for example the right for the sub-contractor to invoice the Provider weekly/monthly/quarterly (as appropriate);
         3. a provision which requires payment to be made of all sums due by the Provider to the sub-contractor within a specified period not exceeding thirty (30) days from the receipt of a valid invoice and appropriate late payment provisions (as set out in this Agreement);
         4. a clause which states that the Provider is not able to unilaterally vary the scope of the services and/or the price agreed under the sub-contract;
         5. appropriate insurance provisions for the services to be provided by the sub-contractor which comply with the provisions of this Agreement; and
         6. an agreement not vary any of the provisions referred to in clauses 44.2.2.1 to 44.2.2.6 except with the prior written consent of the Participating Authorities; and
      3. provide a copy, at no charge to the Participating Authorities, of any such sub-contract on receipt of a request for such by the Participating Authorities.
2. **CONFLICTS OF INTEREST**
   1. The Provider shall take appropriate steps to ensure that neither the Provider nor any of its Staff is/are placed in a position where, in the reasonable opinion of the Participating Authorities, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Provider or its Staff and the duties owed to the Participating Authorities under the provisions of this Agreement or any Call-Off Contract. The Provider shall adopt clear and well-organised procedures to record significant information about any conflicts, or potential conflicts, of interest.
   2. The Provider shall promptly notify and provide to the Participating Authorities full particulars, if such conflict referred to in clause 45.1 arises or is reasonably foreseeable to arise. This shall include, but shall not be limited to, a situation where any elected member, representative or employee of the Participating Authorities is involved in any way with the Provider (other than in accordance with the requirements of their official duties, which shall include, but shall not limited to, acting as the nominated local Participating Authorities representative on the governing body/board of the Provider) or has a financial interest in the Provider.
   3. The Participating Authorities reserve the right to terminate this Agreement immediately by notice in writing and/or to take such other steps it deems necessary where, in the reasonable opinion of the Participating Authorities, there is or may be an actual conflict between the pecuniary or personal interests of the Provider and the duties owed to the Participating Authorities under the provisions of this Agreement or any Call-Off Contract. The actions of the Participating Authorities pursuant to this clause 45 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Participating Authorities.
3. **NOTICES AND COMMUNICATIONS**
   1. Subject to clause 46.3, any communication, demand or notice which is to be given by either Party to the other Party under this Agreement shall be given in writing and shall be sent by letter (sent by hand or by post by recorded delivery or special delivery), or by facsimile transmission or electronic mail (confirmed in either case by letter).
   2. Such communication, demand or notice shall be addressed to the other Party to the postal address, facsimile number or e-mail address of the Party referred to in this Agreement (or notified by a Party for such purposes), and provided the relevant demand or notice is not returned as undelivered, the demand or notice shall be deemed to have been given:
      1. on the date of delivery when served by hand; or
      2. two (2) Working Days after the day on which the letter was posted; or
      3. one (1) Working Day in the case of electronic mail or facsimile transmission,

or sooner where the other Party acknowledges receipt of such letters, facsimile transmission or electronic mail.

* 1. All Notifiable Events relating to a Call-Off Contract will be reported in writing in accordance with all relevant Laws and will be reported to the Participating Authority in accordance with the timeframes set out in Schedule 5 (Communications).

1. **GENERAL**
   1. The Provider and the Participating Authorities shall be responsible for the accuracy of all documentation and information supplied to the other Party. Each of the Parties hereby confirms that it has not relied on any written or oral representation, warranty or undertaking of the other in entering into this Agreement save for any such representation, warranty or undertaking expressly set out in this Agreement. This clause 47.1 shall not apply so as to restrict the liability of any Party hereunder in respect of any Fraud or fraudulent misrepresentation.
   2. A waiver of any right or remedy under this Agreement or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a Party to exercise any right or remedy provided under this Agreement or by Law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under this Agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.
   3. Save as otherwise expressly provided, the obligations of the Participating Authorities under this Agreement are obligations of the Participating Authorities in its capacity as a contracting counterparty and nothing in this Agreement shall operate as an obligation upon, or in any other way fetter or constrain the Participating Authorities in any other capacity and all rights and duties which the Participating Authorities has a local Participating Authorities or of the Participating Authorities ’s officers as local Participating Authorities officers are reserved to the Participating Authorities and the Participating Authoritie’s officers.
   4. At all times during the Agreement Term the Provider shall be an independent contractor and nothing in this Agreement shall create a contract of employment, a relationship of agency or partnership or a joint venture between the Parties and accordingly neither Party shall be authorised to act in the name of, or on behalf of, or otherwise bind the other Party, save as expressly permitted by the terms of this Agreement.
   5. In the event that any part of this Agreement shall become or be declared void, invalid, illegal or unenforceable for any reason whatsoever including by reason of the provisions of any Law or any decision of any court or Regulatory Body having jurisdiction over the Parties or this Agreement, the Parties hereby expressly agree that the remaining parts and provisions of this Agreement shall continue in full force and effect with such amendments as are necessary to ensure that the balance of obligations remains so far as possible the same as under this Agreement or as may be agreed between the Parties.
   6. Subject to any express provisions in this Agreement (including, for the avoidance of doubt, the transfer of any existing individual placement agreements or arrangements pursuant to clause 14 (Existing Placements Under Previous Agreements/Contracts)) and any Call-Off Contract awarded under it, this Agreement constitutes the entire agreement between the Parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
   7. Unless expressly stated otherwise, this Agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement. This clause 47.7 does not preclude the right of any third person to make a complaint either to the Participating Authorities, the Provider or the Regulatory Body.
   8. Unless expressly stated otherwise in this Agreement, no Variation of this Agreement or any Call-Off Contract shall be effective unless it is in writing (which for the purpose of this clause 47.8 shall exclude e-mails) and is in substantially the form set out in Schedule 10 (Variation Note) and signed by both of the Parties (or their duly authorised representatives).
   9. This Agreement, any Call-Off Contracts awarded under this Agreement and all non-contractual obligations and other matters arising from or connected with it shall be governed by the laws of England and, subject to clause 39 (Dispute Resolution), the Parties submit to the exclusive jurisdiction of the courts of England.

**PART B: SPECIFIC TERMS AND CONDITIONS**

* **SCHOOLS**

1. **DEFINITIONS**
   1. In this Contract, unless the context otherwise requires, the following provisions shall have the meanings given to them below:

**“Annual Review”** means the annualreview of a Child/Young Person/Young Adult’s EHC Plan or Statement;

**“Care Manager”** meansthe person appointed by the Authority to develop the Plan to meet the assessed needs of a Child/Young Person/Young Adult. This may be a social worker or other appropriate professional;

**“Children’s Home”** means an Establishment which accommodates and provides care to Children/Young People and is classified as a children’s home under current Laws;

**“Clinical Commissioning Group” or “CCG”** means the relevant Clinical Commissioning Group established by the Health and Social Care Act 2012 that has been authorised to commission healthcare services for its community;

**“Direct Payment”** means money given to Parents/Guardians or Children/Young People by the Authority, to enable them to buy in support that is assessed as being needed, instead of the Authority providing that support through its services. Children/Young People who have EHC Plans or their Parents/Guardians have the right to request a Personal Budget, which may contain elements of education, social care and health funding, and may be delivered by way of Direct Payments. Under the Children and Families Act 2014, this covers those aged 0-25 having special educational needs and disabilities;

**“Education Funding Agency” or “EFA”** means the Education Funding Agency and executive agency of the Department for Education;

**“EHC Plan(s)”** means an education, health and care plan for children and young people aged up to twenty-five (25) years old who need more support than is available through special educational needs support and which identifies educational, health and social needs and sets out the statutory provisions that must be delivered for Children/Young People in order to meet those needs;

**“Headteacher”** means the head, leader, principal, proprietor or any other person designated by the Provider as the person in charge of a particular Establishment;

**“Independent School”** means a school that is not dependent upon national or local government (the local education authority) for financing its operation but operates via tuition charges, gifts and donations. An Independent School provides full-time education for five or more pupils of compulsory school age, or one or more pupils with a Statement or who is in public care;

**“Independent Special School”** means any Independent School, which in its registration form to the DfE to be included on the Register of Independent Schools has described itself as being specially organised to cater for children/young people with SEN;

**“Looked After Child (LAC)”** means a “looked after child” under the terms of the Children Act 1989 and the term “**Looked After Children**” shall be construed accordingly;

**“LAC Review”** means the reviews for Looked After Children held at intervals governed by the Children Act 1989 which are fully recorded and which include consultation with the Child/Young Person/Young Adult, Parent/Guardians and significant others (including the Provider);

**“Non-Maintained Special School” or “NMSS”** means a school that catersfor pupils with extreme and/or low incidence difficulties and provide veryspecialist schooling. Non-Maintained Special Schools are non-profit making and operate to a level atleast equivalent to state maintained special schools. Non-Maintained Special Schools are approvedunder Section 342 of the Education Act 1996;

**“Personal Adviser”** means the adviser employed to provide information, advice and guidance to Children/Young People between the ages of thirteen (13) and twenty-five (25) years;

**“Personal Budget**” means, in relation to a Child/Young Person/Young Adult who has SEN or a disability, an amount of money identified by the Authority to deliver the provisions set out in an EHC Plan where the Parent/Guardian or the Child/Young Person/Young Adult is involved in securing that provision. The funds can be held directly by the Parent/Guardian or the Child/Young Person/Young Adult via a Direct Payment, or may be held and managed on their behalf by the Authority, school, college or other organisation or individual and used to commission the support specified in the EHC Plan;

**“Plan”** means an EHC Plan or Statement;

**“PPG”** means the pupil premium grant payable to schools and/or local authorities, which provides additional funding for schools to provide extra support to disadvantaged pupils. The PPG is made up of two elements the free school meals element and the looked after children element;

**“Review”** means the Annual Reviews or other review of a Child/Young Person/Young Adult’s Plan and/or LAC Reviews;

**“SEN”** means special educational needs as defined in section 312 of the Education Act 1996;

**“SEND”** means special educational needs and disabilities (SEND);

**“Statement”** means a statement of special educational needs prepared by the relevant local education authority which sets out the statutory provisions that must be delivered for Children/Young People in order to meet those needs and as further defined in section 324 of the Education Act 1996;

**“Voluntary Contribution”** means a voluntary contribution payable directly to the Provider by a Parent/Guardian or by a Child/Young Person/Young Adult who is over the age of sixteen (16), or other third party outside of the terms of this Contract; and

**“Working Day”** means a day (other than a Saturday or Sunday) on which banks are open for general business in the City of London and which are not agreed school closure periods.

1. **EXCLUSIONS**
   1. Exclusion from education, whether fixed-term or permanent, should be the action of last resort and only considered as an option when the Provider can evidence that it has used its best endeavours to avoid making an exclusion.
   2. The Provider shall take all reasonable steps to resolve problems with respect to conduct on the part of a Child/Young Person/Young Adult, including liaison with the Authority, before considering the use of formal education exclusion procedures.
   3. The Provider must inform the placing Authority at an early stage of any situation or developing problem likely to lead to exclusion in order to give the Authority the opportunity to work with the Provider and the Child/Young Person/Young Adult’s Parent/Guardian to resolve the issue/difficulty.
   4. The exclusion period will be kept to a minimum for any one episode. A fixed-term exclusion (or a number of fixed-term exclusions) shall not exceed a total of 45 school days in any Academic Year.
   5. The Provider will notify the Authority of an exclusion by telephone at the earliest opportunity, and confirm the action in writing within twenty-four (24) hours.
   6. During this period if the relevant Child/Young Person/Young Adult is placed in a residential placement at the Establishment:
      1. the Child/Young Person/Young Adult shall remain in the residential unit where it is agreed by both the Provider and the Authority that it is safe and appropriate to do so, and the Provider shall provide work for the Child/Young Person/Young Adult to undertake and/or guidance with regard to activities and occupation of time during the period of exclusion; or
      2. in circumstances where the Provider and the Authority are in agreement that the Child/Young Person/Young Adult cannot, or should not, remain in the residential unit, the Provider will work with the Authority to identify appropriate alternatives and the Provider will provide work for the Child/Young Person/Young Adult to undertake and/or guidance with regard to activities and occupation of time during the period of exclusion.
   7. The Provider will convene a meeting at the earliest opportunity (and in all cases within five (5) days) with the placing Authority, Parent/Guardian and significant others. The outcome of this meeting will be a strategy plan to enable the Child/Young Person/Young Adult’s return to the education site at the earliest opportunity.
   8. In the case of a Child/Young Person/Young Adult who is looked after by the relevant Authority, the Provider will telephone the Authority to discuss the likelihood of exclusion, agree interim arrangements and convene an urgent meeting within forty-eight (48) hours to agree the next steps.
   9. In the event of a proposed permanent exclusion, the Provider will notify the Authority by telephone immediately, with written confirmation provided within twenty-four (24) hours. Permanent exclusion of a Child/Young Person/Young Adult will not be confirmed until both the Authority and the Parent/Guardian have been given an opportunity to attend a meeting with the Provider to discuss the matter within five (5) Working Days. If required, the Provider may take a further ten (10) Working Days to consider any representations made by the parties and to determine whether the exclusion should be upheld.
   10. The exclusion shall be deemed permanent upon expiry of the ten (10) Working Day period referred to in clause 2.9, unless before expiry of that period the Provider shall notify the Authority that the relevant exclusion is not upheld.
2. **ATTENDANCE**
   1. In the event that a Child/Young Person/Young Adult’s attendance drops below 95% the provider will notify the Placing Authority
   2. When notifying the placing Authority, the provider will need to outline the reasons for the lack of attendance, so that the placing authority and provider can work collaboratively if additional support is required.
   3. If a Child/Young Person/Young Adult’s attendance does not improve, then the provider may be expected to return a proportion of fee’s charged to the placing authority.
   4. Where low attendance is as a result of placement breakdown a reduced fee may be implemented as per clause 4.9.1 of this Part B Specific Terms and Conditions
3. **PAYMENT OF FEES**
   1. The Fees payable by the Authority to the Provider in respect of an individual Child/Young Person/Young Adult shall be as set out in the relevant Individual Placement Agreement for that Child/Young Person/Young Adult.
   2. The Placing Authority shall be responsible for the Fees agreed in the Individual Placement Agreement and any subsequent variations or amendments, which are not Voluntary Contributions, or which are not covered by the Education Funding Agency Grant (which is provided to the Provider as institutional funding) or the relevant Clinical Commissioning Group.
   3. The Placing Authority will pay the Provider the Fees for each Child/Young Person/Young Adult termly in advance, from the date of his or her admission or the first day of each subsequent academic term or payment period as agreed in advance by the Provider and the Authority, unless otherwise specified in an Individual Placement Agreement.
   4. The Provider shall be entitled to claim, in respect of a Child/Young Person/Young Adult, payment of the Fees specified in the relevant Individual Placement Agreement from the Placement Commencement Date.
   5. The Provider shall provide an invoice to the Authority detailing the fees breakdown for each Child/Young Person/Young Adult with an Individual Placement Agreement at the start of each term. The Authority reserves the right to request two invoices from the Provider for each Child/Young Person/Young Adult with an Individual Placement Agreement, the first invoice setting out the Core Fee for the term and second invoice setting out the Additional Fees for the term.
   6. Where the Placement Commencement Date for any Placement is halfway through a term, the first invoice(s) issued shall be for the Fees for the period running from the Placement Commencement Date until the end of the current term.
   7. All invoices issued by the Provider shall be paid by the Authority in accordance with the provisions of Section 4 (Payment and Fees), clauses 21 (Fees) and 22 (General Payment Provisions) of Part B (General Terms and Conditions).
   8. The Authority reserves the right to cease paying the Fees in the following circumstances:
      1. where the Child/Young Person/Young Adult has been permanently excluded from the Establishment pursuant to clauses 2.9 and 2.10 of this Part B. Where the Child/Young Person/Young Adult has been permanently excluded, the Authority’s liability will cease on the day that the exclusion is deemed to be permanent pursuant to clause 2.10 of this Part B;
      2. where the Child/Young Person/Young Adult has been excluded for a fixed term period exceeding fifteen (15) days and the Establishment is unable to provide suitable alternative education for the period of the exclusion, the Authority will meet the Fees for the first fifteen (15) days of the exclusion period but reserves the right to cease paying the Fees beyond the fifteen (15) day period. The Authority will only resume paying the Fees on the date that the Child/Young Person/Young Adult returns to the Establishment;
      3. where the Child/Young Person/Young Adult has been directed not to attend the Establishment on safeguarding advice and the Provider cannot provide suitable alternative education. In such circumstances, the Authority will meet the Fees for a period not exceeding fifteen (15) days from the date of the Child/Young Person/Young Adult’s last day of attendance. If the Authority is having to provide home tuition or alternative education during these fifteen (15) days, the cost of this support will be deducted from the Fees. The Authority will resume paying the Fees from the date that the Child/Young Person/Young Adult returns to the Establishment;
      4. where the Authority is notified of safeguarding issues relating to another Child/Young Person/Young Adult which the Authority assesses to have implications in relation to the relevant Child/Young Person/Young Adult and the Establishment cannot provide suitable alternative education. In such circumstances the Authority will meet the Fees for a period not exceeding fifteen (15) days from the date of the Child/Young Person/Young Adult’s last day of attendance. If the Authority is having to provide home tuition or alternative education during these fifteen (15) days, the cost of this support will be deducted from the Fees. The Authority will resume paying the Fees from the date that the Child/Young Person/Young Adult returns to the Establishment; or
      5. where a Child/Young Person/Young Adult is Absent on account of illness, the Authority will meet the Fees for a period not exceeding fifteen (15) days. Where the Establishment is unable to continue to provide suitable / appropriate alternative education or if the Authority is having to provide home tuition or hospital education, after fifteen (15) days the Authority will deduct the cost of this support from the Fees, the deduction not exceeding the equivalent of the Provider’s daily rate for the Child/Young Person/Young Adult; or
      6. where there has been a termination of the Individual Placement Agreement for any other reason in accordance with the provisions of Schedule 7B (Call-Off Contract Terms and Conditions), the Authority’s liability for the payment of the Fees will cease on the date specified in the relevant letter of termination as the date of termination in accordance with the provisions of Schedule 7B (Call-Off Contract Terms and Conditions).
      7. Where the placement has significantly broken down but there is still a reduced attendance the placing Authority reserves the right to pay a reduced fee by only paying for the core placement cost set out in schedule 3 and the individual placement costs will be reduced pro rata according to the level of attendance.
   9. Where a Child/Young Person/Young Adult is eligible for and receives a PPG, such PPG shall not form part of the Fees and shall instead be retained by the Provider in a restricted fund. The Provider will be required to account to the Authority for how the PPG for each eligible Child/Young Person/Young Adult has been spent.
4. **VOLUNTARY CONTRIBUTIONS** 
   1. The Provider shall be entitled to request Voluntary Contributions for any services, activities, materials or items of clothing provided by the Provider and not included in the EHC Plan or Statement, or listed within the Fees detailed in the Individual Placement Agreement of this Contract.
   2. Neither a Child/Young Person/Young Adult’s Placement with the Provider nor his or her opportunity to take part in the whole curriculum of the relevant Establishment shall be prejudiced by any unwillingness or inability on the part of the Parent/Guardian or Child/Young Person/Young Adult to make Voluntary Contributions.
   3. Voluntary Contributions shall be met by the Parent/Guardian or Child/Young Person/Young Adult (if over 16) where they, or an authorised person, have agreed in writing to do so and where the Authority has been given prior notification. The Authority accepts no financial responsibility for the payment of such Voluntary Contributions and any failure on the part of the Parent/Guardian or Child/Young Person/Young Adult to make the Voluntary Contributions (of any element of such contributions) shall not constitute a breach of this Contract
   4. Where Direct Payments have been made to either Parents/Guardians or Children/Young People for the purpose of securing:
      1. special educational provision specified in a Plan; and/or
      2. transport or anything else that may be subject to arrangements in section 508B(1) (school children), section 508F(1) (adult child or young person) or section 509AA(7)(b) (sixth formers) of the Education Act 1996,

the Parent/Guardian or Child/Young Person/Young Adult will agree in writing with both the Provider and the Authority the elements of the Services subject to the Direct Payments. The Authority accepts no financial responsibility for the payment of such contributions or for the Services, and any failure on the part of the Parent/Guardian or Child/Young Person/Young Adult to make the Direct Payment (or any element of it) shall not constitute a breach of this Contract.

1. **FINANCIAL ASSURANCE**

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

1. **REVIEW OF A CHILD/YOUNG PERSON/YOUNG ADULT**
   1. Review meetings shall be arranged by the Provider and will be planned in consultation with the Authority, the Child/Young Person/Young Adult and, where appropriate, the Parent/Guardian and others concerned with a Child/Young Person/Young Adult’s welfare and education.
   2. At least twenty-eight (28) days’ notice of such meetings will be sent to all concerned, including the Authority. Wherever possible, education, social care, health and other statutory reviews shall take place together or, where this is not possible, will be arranged to follow on from one another. The Provider will supply the Authority with all relevant reports and documents at least ten (10) Working Days before the meeting(s).
   3. The Services provided to a Child/Young Person/Young Adult will be reviewed in accordance with the Education Act 1996, SEND Code of Practice (July 2014) and other Department for Education regulations and guidance, and, where appropriate, the Children Act 1989 (s.26), Guidance & Regulation Volume 4 or 5 as appropriate, and any other relevant Laws.
   4. Reviews may be undertaken at more frequent intervals than prescribed in the relevant Laws in the event of an emergency situation arising or upon a reasonable request by a Child/Young Person/Young Adult, Parent/Guardian, Provider or the Authority.
   5. The purpose of the Review will be to:
      1. consider the needs of the Child/Young Person/Young Adult and the extent to which they have changed in any respect;
      2. consider the provision to meet those needs; and
      3. ensure that the provision continues to be appropriate.
   6. Any recommendations/advice relating to changes needed will be considered by the Authority who shall have the responsibility to determine whether and in what respects the relevant Plan needs altering. Where Local Authorities are unable to attend reviews no increases to packages or costs are to be agreed unless a business case is submitted to the relevant Local Authority in advance and agreed.
   7. The Provider shall be responsible for producing and maintaining a written record of Review meetings, with a copy of the record being sent to the Authority within ten (10) days of the meeting. Should the Authority wish to amend or otherwise question the record it will do so within a further ten (10) day period (i.e. within four (4) weeks of the date of the Review meeting).
   8. The parties involved in such Reviews will include the Child/Young Person/Young Adult and, where appropriate, a Parent/Guardian(s), a Provider representative, Care Manager and other such persons as the Authority may consider necessary in line with the Children Act 1989 and other relevant Laws. Normally, at the discretion of the Provider, Staff who are significantly involved in a Child/Young Person/Young Adult’s welfare will attend and contribute to Reviews.

* 1. The Review in year 9 for the purpose of transition planning, to help ensure that the Child/Young Person/Young Adult’s post-statutory school aged options are fully explored and that the needs of the Child/Young Person/Young Adult will be met, should include any relevant assessments under the Disabled Persons (Services, Consultation and Representation) Act 1986, the National Health Service and Community Care Act 1990, the Care Act 2104 and the NICE Guidelines [NG43] “Transition from children’s to adults’ services for young people using health or social care services” (February 2016). Representatives of the relevant social services, local education authority, health authority and connexions (likely to be the Personal Adviser) will be notified of the Review and invited to attend, whether or not the Child/Young Person/Young Adult is in school. Transition planning must then be built into the revised Plan and should result in clear outcomes being agreed that are ambitious and stretching, and which will prepare young people for adulthood. Where relevant, the Provider will also work co-operatively with the Authority’s Adult Services Team to aid the transition of the Child/Young Person/Young Adult to adult services.
  2. The Provider will call an emergency Review if a Placement has suffered, or appears likely to suffer a, breakdown.
  3. Notwithstanding the formal Review process, either Party may reasonably request a review of an Individual Placement Agreement or the Fees agreed under it resulting from significant changes in the needs of the Child/Young Person/Young Adult.
  4. Following a formal Review or any request for a review of an Individual Placement Agreement required pursuant to clause 7.12 of this Part B, the Parties shall consider what amendments (if any) are required to be made to the Individual Placement Agreement resulting from changes in the needs of a Child/Young Person/Young Adult.
  5. Any changes discussed pursuant to clause 7.13 of this Part B regarding the Individual Placement Agreement shall not be implemented until all relevant documentation has been updated and agreed to by both Parties in writing. The updated documentation will reflect the agreed change(s) in assessed need, the fair and reasonable cost implications of such changes including any agreed changes to the Additional Fees following on from the agreed change(s) in assessed need. If the Provider proposes to increase the Additional Fees as a result of such changes then such increases must be demonstrated by the Provider as being reasonable and justified, and the Authority shall be entitled to request the Provider to provide any documents or other information to support the proposed increase. Any variations agreed shall be recorded in accordance with paragraph 3 (Variations to Individual Placement Agreements) of Schedule 7B (Call-Off Contract Terms and Conditions).
  6. If the Parties are unable to agree any variation in the Individual Placement Agreement and/or the Fees under it in accordance with clauses 6.12 and 6.13 of this Part B, any such dispute will be dealt with under the dispute resolution procedure detailed in clause 39 (Dispute Resolution) of Part A (General Terms and Conditions) and if resolution is not achieved, the Authority may terminate the Services in accordance with paragraph 2 (Termination of Individual Placement Agreements) of Schedule 7B (Call-Off Contract Terms and Conditions).

**SCHEDULE 1: SERVICE SPECIFICATION**

**SECTION A: GENERAL**

1. **INTRODUCTION**
   1. The Participating Authorities have statutory duties and responsibilities concerning the education, health and care of Children, Young People and Young Adults to ensure that they are placed in an environment likely to promote and safeguard their welfare and development.
   2. This Service Specification describes the Measurement Approach, the Service Qualities and the Essential Requirements for the Services that shall be delivered for Children, Young People and Young Adults with special educational needs and disabilities (SEND).
   3. This Service Specification takes into account that the Authority is embracing an outcomes-based commissioning model, in that it will not prescribe how the Services will be delivered.
   4. It places an emphasis on the Outcomes that the Services will deliver for individual Children, Young People and Young Adults, as a service overall (the Service Outcomes) and towards lifetime goals that strengthen communities in which Children, Young People and Young Adults, and the adults they become, live (Individual Outcomes).
   5. It also sets out the general background and principles required to underpin the Services and the standards to be met by the Provider.
   6. In the interest of collaboration and best practice, the Consortium of Participating Authorities reserves the right to consult with Providers on further developments and outcome indicators in the future
2. **PRINCIPLES**
   1. The safety of the Children, Young People and Young Adults is paramount. This is the foremost principle and takes precedence over all others.
   2. Parents and Carers are an important influence on outcomes for Children, Young People and Young Adults. In all circumstances, no matter how difficult, all Staff employed by the Provider will work with Children, Young People and Young Adults, their Parents/Guardians, Carers, the Authority and all significant others to deliver the outcomes as detailed in the EHC Plans.
   3. The Provider and where relevant, the wider organisation, will have at its core a focus on high aspirations and on improving outcomes for the Children, Young People and Young Adults who use the service.
   4. The Provider shall deliver the service in such a way as to ensure:
      1. the engagement and participation of Children, Young People and Young Adults and their families is central; and
      2. that Children, Young People and Young Adults and their families feel that they are being listened to and able to influence decisions; and
      3. that any concerns raised by Children, Young People and Young Adults and their families are addressed swiftly as reasonably practicable.
3. **SCOPE OF PROVISION COVERED BY THIS SERVICE SPECIFICATION**
   1. Independent/ Non Maintained Special School (INMSS) and Special Post-16 Institutions (SPI) placements for Children, Young People and Young Adults aged up to 25 who have an Education, Health and Care Plan (ECHP).

3.2 Due to the variety of services that are required, this specification is divided in to two lots. Bidders are able to tender for one or more of the following lots:

3.2.1 Independent/Non Maintained special schools

3.2.2 Special Post-16 Institutions

1. **ESSENTIAL REQUIREMENTS FOR ALL LOTS**
   1. The Provider shall comply and shall require its Staff to comply with all current relevant legislation and statutory guidance.
   2. The Provider will create an environment in which the Services operate that has continuous improvement at its core.
   3. The Provider will provide suitably qualified, experienced and skilled Staff to ensure that a high quality service is delivered to Children, Young People and Young Adults to maximise the opportunities for them to achieve their outcomes.
   4. With the exception of operators of INMSS and SPI who are new providers to this market, the Ofsted ( or an equivalent body approved by the Secretary of State for Education under section 106 of the Education and Skills Act 2008) inspection reports will be used as the primary quality measure for this framework.
   5. An inspection rating awarded by OFSTED as ‘Outstanding’ or ‘Good’ (or an equivalent rating awarded by a body approved by the Secretary of State for Education under section 106 of the Education and Skills Act 2008 to carry out inspections ) will Pass and will be an ‘A’ rating on the framework. An inspection rating awarded by OFSTED as ‘Requires Improvement to be Good’ (or equivalent) will Pass and will be a ‘B’ rating on the framework; An inspection rating awarded by OFSTED as ‘Inadequate’ will Fail and will not be placed on the framework (see the Framework Agreement Terms for details on framework re-opening).
   6. Operators of INMSS and SPI that are registered with the Department for Education (DfE) but have not received an inspection and therefore do not have a quality rating may join the framework as a ‘C’ rated provider. Each of the Participating Authorities shall have discretion to select a Provider from the list of ‘C’ Rating Providers who has capacity to deliver the required Services, that is those registered with the Department for Education (DfE) but not inspected where there are no A or B rated providers
   7. Providers with an OFSTED rating which is less than ‘Good’ (or equivalent) will be asked to submit their OFSTED (or equivalent) Action Plan, to improve their effectiveness in order to work towards a Good or Outstanding rating, which will be monitored by the Lead Contract Management Authority. Certain Local Authorities have a policy that they will not place with Requires Improvement Providers, but this does not exclude such Providers from joining the Framework. In the eventuality that a Provider receives an ‘Inadequate’ rating, the Lead Contract Management Authority will manage the process whereby the provider is suspended from the Framework as set out in schedule 8 Lots And Flexible Framework Suspension Protocol.
   8. The Provider will operate within an environment that encourages and promotes innovation and learns from new research and emerging practice.
   9. The Provider will deliver a high quality service to enable Children, Young People and Young Adults’ ambitions, aspirations, potential and Outcomes to be achieved, as appropriate to their age, ability, aptitude and SEN. This will be in accordance with their EHC Plan and take account of information provided in reviews.
   10. The Provider will have in place a programme of activities which promote the development of the Children, Young People and Young Adults’ social, personal, leisure and life skills and which allows for a positive interaction with the Provider, wider community and family.
   11. The Provider will deliver opportunities for its Children, Young People and Young Adults to participate in mainstream activities and as part of their community
   12. In addition, the Provider will be able to demonstrate how its approach contributes to the Placing Authority’s ability to meet the five components of a successful SEND system identified by the Department for Education:
       1. a person-centred and joined-up approach to identifying and meeting the needs of Children, Young People and Young Adults and their families;
       2. engagement and participation of Children, Young People and Young Adults and families so that they have greater choice, feel they are in control and are being listened to and their concerns are resolved swiftly;
       3. a clear understanding of what support, services and provision are available and how to raise concerns or seek redress when there are concerns;
       4. use of effective practice, data and wider intelligence and independent assessment to drive improvement; and
       5. clearly-defined and understood roles, responsibilities and accountability.

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1. **SAFEGUARDING**
   1. Safeguarding will be effective, pupils will be listened to and feel safe
   2. Leaders and managers will create a culture of vigilance where pupils’ welfare is actively promoted.
   3. Staff will be trained to identify when a pupil may be at risk of neglect, abuse or exploitation and report their concerns.
   4. Leaders and staff work will work effectively with external partners to support pupils who are at risk or who are the subject of a multi-agency plan. Leaders’ will work to protect pupils from radicalisation and extremism, and respond swiftly where pupils are vulnerable to these issues
2. **THE ENVIRONMENT AND ACCOMMODATION**
   1. The Services will be delivered in accommodation and an environment that is advantageous to providing education to achieve the stated Outcomes of Children, Young People and Young Adults (in the EHC Plan). This includes services delivered using third party provision.
   2. The Provider shall have made the necessary arrangements to ensure a healthy and safe environment for its Staff, Children, Young People and Young Adults and third parties in compliance with all relevant legislation.
   3. The property and accommodation shall be fit for purpose, maintained to recognised operational standards and comply with all relevant legislation.
   4. The Provider will be mindful that for some Children, Young People and Young Adults, in exceptional circumstances, the environment and accommodation may need to be adjusted to take account of individual needs. The Provider and Authority will work together to put all necessary provisions in place and to agree how this will be funded.

## SECTION B: DEFINITIONS OF GENERAL OUTCOMES

1. **BASIC NEEDS**
   1. ***Safety:*** *Children, Young People and Young Adults are safe and protected, and moreover feel safe.*

Children, Young People and Young Adults are not only objectively safe (the risk of significant harm has been removed or considerably reduced) but also feel secure and protected within trusted relationships where others are acting in Children, Young People and Young Adults’ best interests and listening to them. Being safe is a positive state of being, not just the absence of harm and neglect. Therefore, Children, Young People and Young Adults also need to be helped to develop the knowledge and skills that will enable them to adopt safe practices in situations at home, at college or in the community.

* 1. ***Health:*** *Children, Young People and Young Adults experience the highest attainable standards of physical and mental health.*

Physical health: In order to achieve this outcome, Children, Young People and Young Adults need to have access to suitable healthcare, and support in learning to make healthy and safe choices.

Mental health: Achieving good mental health for Children, Young People and Young Adults incorporates ensuring appropriate treatment for psychological distress and psychiatric disorder, as well as support to address broader wellbeing issues relating to anxiety and sense of identity.

1. **PERSONAL RESOURCES**
   1. Resilience: Children, Young People and Young Adults have the ability to deal with life’s difficulties.

*When things* go wrong in life, resilience is the personal resource which enables people to get back normal. It involves being able to process and cope with failure and disappointment, and feel a sense of optimism about the future.

* 1. Self-esteem: Children, Young People and Young Adults feel good about themselves.

Self-esteem is an internal sense of competence and worth.It involves both self-confidence (having confidence in one’s abilities) and self-worth (knowing you are intrinsically valuable as a person). When self-esteem is experienced, Children, Young People and Young Adults will place value on their opinions and ideas and will be generally positive about their personality and abilities. Self-esteem can be especially difficult for Children, Young People and Young Adults to maintain during transitions and may experience a dip before returning to normal levels – requiring dialogue between commissioners and the Provider.

* 1. Emotional intelligence: Children, Young People and Young Adults understand their own emotions and the emotions of others.

Emotional intelligence has four broadly defined parts: self-awareness (recognising and understanding one’s own emotions), managing emotions (self-regulation), empathy (recognising and understanding the feelings of others) and social skills (relationships and managing the emotions of others).

1. **FUNCTIONING**
   1. Control: Children, Young People and Young Adults have sufficient control over their own lives.

Experiencing control involves feelings of choice and authenticity about your thoughts and behaviours, a growing sense of independence, and an increasing ability to make good decisions. In early childhood children may lack the ability to make informed decisions on their own behalf and decisions are made for them with concern for their best interests. But this ability grows quickly and the **ethical challenge for caregiving adults is being able to identify when a concern for children’s welfare needs to start giving way to a respect for their choices**. When children experience control, they will feel their choices are respected by adults and others. As they reach young adulthood, they will feel they have freedom to choose to do things they enjoy and to make decisions about how they live their life based on their values.

* 1. Relationships: Children, Young People and Young Adults build and sustain supportive, healthy relationships with family, friends, peers and others.

Having healthy relationships with other people is a recognised psychological need. Children, Young People and Young Adults should experience knowing that people care about them, and feeling close to others. They need to be supported to develop skills to interact with other people, form friendships and sustain good relationships with family/carers and others.

* 1. Achievement: Children, Young People and Young Adults are growing in their learning and in the development of their skills.

Experiencing achievement involves being able to learn, develop and put skills into practice in order to have a meaningful impact on the world. Children, Young People and Young Adults should feel accomplishment from what they do and able to make use of their abilities.

1. **PREPARATION FOR ADULTHOOD**
   1. Participation

Children, Young People and Young Adults will be able to participate fully: making contributions to and receiving support from society, their environment and the local economy. This may involve volunteering, work experience or paid work outside of the education or care setting. Young people who have the capacity to enter paid employment will be supported by the Provider to achieve that outcome, including high quality careers guidance and meaningful work experience

* 1. Independence

Children, Young People and Young Adults will be able to maximise their independence and self-determination in their living conditions and engagement with the wider community. They are supported to develop their independence while protecting themselves from being in unsafe situations or with unsafe people. Independence is promoted and planned in accordance with the needs and maturity of each child.

* 1. Inclusion

Children, Young People and Young Adults will be fully included in the community: both the local community, and communities of interest relating to their skills, aspirations and hobbies. They will be supported to challenge and overcome barriers to opportunity and participation.

* 1. Wellbeing

Children, Young People and Young Adults will have wellbeing: experiencing health, happiness and satisfaction, and functioning well. If the eight core outcomes are being achieved then feelings of wellbeing are highly likely, as described in the dynamic model of wellbeing.

1. **COMMUNITY OUTCOMES TO WHICH THE SCHOOL WILL CONTRIBUTE** 
   1. Strong local economy

A strong local business sector, with high levels of staff retention in jobs, low levels of wasted resources in supply and production systems and robust connections between small enterprise and big business. Local people are supported to become financially strong individuals in terms of income-to-cost-of-living ratios and being able to have savings.

* 1. Inclusive and supportive community

A local community in which all people feel valued, respected and can experience belonging. People are given equal access and opportunity, and are supported to identify and develop their skills, abilities, gifts and talents, as well as to build and sustain friendships.

* 1. Safe and healthy environment

A physical environment which promotes good physical health, for example through green spaces, air quality, and opportunities to be active. Crime is low, and people feel safe and know how to protect themselves from harm.

1. **OUTCOME INDICATORS**
   1. Individual placement indicators will be addressed through relevant Local Authority Annual Review processes for Education, Health and Care Plans.
   2. The Consortium of Participating Authorities will work with the market to develop a Common Monitoring Framework in order to undertake a joint monitoring process.
   3. For further details of monitoring refer to Schedule 4

## **SECTION C: SERVICE QUALITIES**

Service Qualities describe expectations regarding the approach the Provider will take to achieve the Outcomes in the Common Outcomes Framework and Measurement Approach with Children, Young People and Young Adults. Commissioners will not over-prescribe how the Provider works, but they will expect the Provider to evidence that it is working in a way which meets the following criteria.

1. ***Co-production***: The Provider works with Children, Young People and Young Adults as well as Parents/Carers other agencies and the local community, in order to co-design and co-deliver their activities. The Provider seeks ways for each stakeholder to make contributions to the service as equal partners, building on their capabilities - for example the capabilities of Children, Young People and Young Adults, Young Adults and Parents/Carers to support each other and share information.

Commissioners also work with, Children, Children, Young People, Young Adults, Parents/ Carers and the Provider (and other providers in the market) to co-produce their commissioning – gaining further insight on the outcomes people most value and iteratively developing the approach to measurement and evaluation.

1. ***Value for money***: Local Authorities are under a duty of Best Value to make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness. As such, the Provider and commissioners seek the optimal use of resources to achieve the intended outcomes.
2. ***Promoting inclusion***: The Provider plays an active role in promoting the inclusion of the Children, Young People and Young Adults in their care in society and challenge barriers to inclusion in the community or at a national level.
3. ***Collaboration***: The Provider develops links with local communities, work in partnership with other services, and collaborate with other providers. Links with local communities including the child/young person’s originating community where this is consistent with their EHC Plan and feasible (where this is a reasonable expectation e.g. given geographical considerations) support the integration of Children, Young People and Young Adults into the world beyond college and care, and allow the Providers, and the Children, Young People and Young Adults in its care, to make use of local assets such as community groups, clubs, events, green spaces, and cultural and sporting facilities to support the achievement of outcomes. Relationships with other local services, including relevant, adult services provided by local authorities and clinical commissioning groups, facilitate smooth transitions and referrals.

Collaborations with other providers encourage innovation and best practice to be shared, and also developed collectively. The Provider is encouraged to share data collection tools and coordinate training with other providers.

1. ***Contributing additional value***: As is set out in the Public Service (Social Value) Act 2012, commissioners work to maximise wider social, economic and environmental benefits when they commission services. The Provider therefore delivers its services in ways which create additional value for the local area. It makes careful and sustainable use of environmental resources, provide good local employment, training and training opportunities, and support community activities to thrive.

**SCHEDULE 2A: FORM OF INDIVIDUAL PLACEMENT AGREEMENT (IPA)**

**BETWEEN:**

(1) (“**the Authority**”); and

(2) **[INSERT NAME OF SUCCESSFUL PROVIDER]** (Registered Company Number: [INSERT NUMBER]) of [INSERT REGISTERED COMPANY ADDRESS](“**the Provider**”).

**WHEREAS:**

1. The Authority and the Provider are parties to a Flexible Framework agreement dated [                      ] 20[ ] for the provision of Independent and Non-Maintained Special School placements (“**the Flexible Framework Agreement**”).
2. This IPA is the individual placement agreement awarded in accordance with the Flexible Framework agreement for the provision of Independent and Non-Maintained Special School placements between the Authority and the Provider for the provision of education and care of children and young people (“**the Flexible Framework Agreement**”) in respect of the placement, with the Provider with the child/young person detailed in this IPA.

**IT IS AGREED BY THE PARTIES THAT:**

1. All words, terms and expressions used in this IPA shall, unless the context otherwise requires, be given the meaning ascribed to them in the Flexible Framework Agreement.
2. The terms and conditions of the Flexible Framework Agreement (other than those terms expressly or specifically limited or applicable to the establishment or operation of the Flexible Framework) shall be incorporated into this IPA, except where expressly amended by this IPA. In the event of any conflict between the provisions of this IPA and the provisions of the Flexible Framework Agreement, the provision of this IPA shall prevail.
3. This IPA brings the Placement of the Child/Young Person named below within the scope of the Flexible Framework Agreement and this IPA it will supersede all other agreements between the Authority and the Provider in respect of the placement of the named Child/Young Person with the Provider.
4. The IPA shall commence on the stated Placement Commencement Date and shall terminate on Placement Expiry Date, unless terminated earlier in whole or in part in accordance with the terms of this IPA or the Flexible Framework Agreement.
5. The named Child/Young Person may not be moved by the Provider to another Establishment or to another placement either within or outside of the Provider’s organisation without prior written agreement of the Authority.
6. Variations to this IPA, including any change to Fees (including the Core Fees and/or the Additional Fees), agreed in accordance with the terms of the Flexible Framework Agreement, will be recorded on a variation note substantially the form set out in Schedule 10 (Variation Note) of the Flexible Framework Agreement and, once agreed by the Parties, will become an addendum to this IPA.
7. The Provider shall deliver the Services required as part of the Placement in accordance the requirements of this IPA and the Flexible Framework Agreement.
8. The Provider acknowledges that it has been provided with sufficient information about the Services required to be provided as part of the Placement and that it has made all appropriate and necessary enquiries to enable it to perform the Services under this IPA. The Provider shall neither be entitled to any additional payment nor excused from any obligation or liability under this IPA due to any misinterpretation or misunderstanding by the Provider of any fact relating to the Services to be provided.
9. In consideration of the provision of the Placement by the Provider pursuant to this IPA, the Authority shall pay the Provider the Fees prescribed in this IPA.
10. This IPA shall be governed by and construed in accordance with English law and the Parties irrevocably submit to the exclusive jurisdiction of the courts in England and Wales.

|  |  |
| --- | --- |
| **Signed for and on behalf of the Authority:**  **Name and Title:**  **Signature:**  **Date:**  *Authorised Signatory* | **Signed for and on behalf of the Provider:**  **Name and Title:**  **Signature:**  **Date**  *Authorised Signatory* |

**SUMMARY PLACEMENT DETAILS**

**Child/Young Person name:** Click here to enter text.

**Authority reference number (if relevant):** Click here to enter text.

**Date IPA issued:** Click here to enter a date.

**Placement Commencement Date:** Click here to enter a date.

**Placement Expiry Date:**

**Establishment (name and address):**

**MAIN CONTACT DETAILS FOR PLACEMENT**

**The Authority:** Click here to enter text.

Name:

Address (if different from above): Click here to enter text.

Telephone: Click here to enter text.

Email address: Click here to enter text.

**The Provider:**

Name:

Address (if different from above): Click here to enter text.

Telephone: Click here to enter text.

Email address: Click here to enter text.

**KEY PLACEMENT CONTACTS**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  | **Name** | **Position** | **Telephone** | **Email** |
| **Authority:** | | | | |
| **SEN** |  |  |  |  |
| **Social Care** |  |  |  |  |
| **Contract** |  |  |  |  |
|  | | | | |
| **Provider:** | | | | |
| **Education** |  |  |  |  |
| **Care** |  |  |  |  |
| **Contract** |  |  |  |  |

Please refer to Schedule 5 Communications of the Flexible Framework contract for full contact details.

**CHILD/YOUNG PERSON’S DETAILS**

Surname: Click here to enter text.

First name: Click here to enter text.

Known as: Click here to enter text.

Family name (where different to C/YP surname): Click here to enter text.

Date of Birth: Click here to enter text.

Gender: male  female

NHS number: Click here to enter text.

**PLACEMENT DETAILS**

Type of provision: Choose an item.

Where “Other” has been selected, describe: Click here to enter text.

Description of any Additional Services to be provided (where relevant):

1. Click here to enter text.
2. Click here to enter text.
3. Click here to enter text.
4. Click here to enter text.
5. Click here to enter text.

**AGREED FEES**

**The Core Fees will include all items listed in the relevant sections of Schedule 3 (Pricing Schedule) of the Flexible Framework Agreement.**

**The Fees will be paid to the Provider by the Authority in accordance with the payment provisions detailed in the Flexible Framework Agreement.**

The total Core Fees payable by the Authority per term (this must **not** include any EFA place grant funding but should include all % contributors, e.g. social care, health): Click here to enter text.

Number of terms per Academic Year: Click here to enter text.

Additional Fees: the agreed fees for the provision of the Additional Services:

1. Service: Click here to enter text.

Start date: Click here to enter a date.

Review date: Click here to enter a date.

End date (if known): Click here to enter a date.

Fee agreed: Click here to enter text.

1. Service: Click here to enter text.

Start date: Click here to enter a date.

Review date: Click here to enter a date.

End date (if known): Click here to enter a date.

Fee agreed: Click here to enter text.

1. Service: Click here to enter text.

Start date: Click here to enter a date.

Review date: Click here to enter a date.

End date (if known): Click here to enter a date.

Fee agreed:Click here to enter text.

1. Service: Click here to enter text.

Start date: Click here to enter a date.

Review date: Click here to enter a date.

End date (if known): Click here to enter a date.

Fee agreed: Click here to enter text.

1. Service: Click here to enter text.

Start date: Click here to enter a date.

Review date: Click here to enter a date.

End date (if known): Click here to enter a date.

Fee agreed: Click here to enter text.

**For all Placements, complete the checklist below which indicates the financial responsibility. For all looked after children placed on 52 week placements the provider will be responsible for funding the weekly allowance (i.e. pocket money and clothing) of each looked after child. Where it is the financial responsibility of the Provider or the Authority, specify the amount as indicated:**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Item** | **Provider/School** | **Parent** | **Authority** | **N/A** |
| Pocket money  **Amount pw:** Click here to enter text. |  |  |  |  |
| Long term savings  **Amount saved pw:** Click here to enter text. |  |  |  |  |
| Festival and birthday allowance  **Amount per term:** Click here to enter text. |  |  |  |  |
| Basic clothing (all seasons) – underwear, nightwear, outerwear, sufficient changes of clothing to allow for timely laundering and replacements due to normal wear & tear and growth  **Amount per term:** Click here to enter text. |  |  |  |  |
| School uniform and replacement as required due to normal wear & tear and growth  **Amount per term:** Click here to enter text. |  |  |  |  |
| General shoes and other footwear (i.e. excludes specialist) as reasonable, relevant and appropriate  **Amount per term:** Click here to enter text. |  |  |  |  |
| General sports activity clothing and footwear (e.g. swimming costume, basic trainers)  **Amount per term:** Click here to enter text. |  |  |  |  |
| Individual sports and hobby equipment (e.g. tennis racket, guitar) of a reasonable and appropriate type |  |  |  |  |
| Holiday (or days out specific to a child’s individual interests where more appropriate) of one week in each twelve (12) month period, to include all necessary staff support and travel arrangements  **Amount included in fee per term:** Click here to enter text. |  |  |  |  |
| Toiletries  **Amount per term:** Click here to enter text. |  |  |  |  |
| Transport between home and school at the beginning and end of term  **Agreed charge:** Click here to enter text. |  |  |  |  |

**Total amounts payable per term:**

**Invoice No. 1:** Click here to enter text.

**Invoice No. 2 for Additional Fees (if relevant):** Click here to enter text.

**AGREED INDIVIDUAL OUTCOMES EXPECTED TO BE ACHIEVED BY THE PLACEMENT**

*These are in addition to the General Outcomes specified in Schedule 1 (Service Specification) and which are applicable to all Placements*

Copy of EHC Plan is attached to this IPA: Yes

Date of issue of EHC Plan: Click here to enter a date.

Outcome 1: Click here to enter text.

Outcome 2: Click here to enter text.

Outcome 3: Click here to enter text.

Outcome 4: Click here to enter text.

Outcome 5: Click here to enter text.

**TERMINATION OF THE PLACEMENT**

The termination of this IPA shall be subject to paragraph 2 of Schedule 7B (Call-Off Term and Conditions) of the Flexible Framework Agreement.

**SCHEDULE 2B: FORM OF BLOCK CONTRACT**

**THIS BLOCK CONTRACT IS MADE ON** **[ ] 20****[ ]**

**BETWEEN:**

(1) [INSERT NAME] (“**the Participating Authority**”); and

(2) **[INSERT NAME OF SUCCESSFUL PROVIDER]** (Registered Company Number: [INSERT NUMBER]) of [INSERT REGISTERED COMPANY ADDRESS](“**the Provider**”).

**WHEREAS:**

1. The Participating Authority and the Provider are parties to a Flexible Framework agreement dated [                      ] 20[ ] for the provision of special educational needs and disability Independent Non Maintained Special School placements (“**the** **Flexible Framework Agreement**”).
2. The Participating Authority requires the Provider to reserve a block of places for Children/Young People under the provisions of a call-off block contract entered into pursuant to the Flexible Framework Agreement in respect of which the Participating Authority (identified in this Block Contract) together referred to as “**the Purchasers**” in this Block Contract may from time-to-time enter into one or more Individual Placement Agreement for the provision of Services and to this the Provider has agreed.

**IT IS AGREED BY THE PARTIES THAT:**

1. All words, terms and expressions used in this Block Contract and in any Appendices to this Block Contract shall, unless the context otherwise requires, be given the meaning ascribed to them in the Flexible Framework Agreement.
2. The Appendices form part of this Block Contract. The terms and conditions of the Flexible Framework Agreement (other than those terms expressly or specifically limited or applicable to the establishment or operation of the Flexible Framework) shall be incorporated into this Block Contract except where expressly amended by this Block Contract. In the event of any conflict between the provisions of this Block Contract and the provisions of the Flexible Framework Agreement, the provision of this Block Contract shall prevail.
3. The Provider shall reserve for the Purchasers such Placements as are set out in Appendix A (Block Contract Details) for the duration set out in Appendix A (Block Contract Details), and shall deliver the Services in respect of the reservation in accordance with the requirements of this Block Contract and the Flexible Framework Agreement. The Provider shall enter into such Individual Placement Agreements as the Purchasers may require, in respect of the Placements reserved pursuant to this Block Contract, in accordance with the Flexible Framework Agreement.
4. The Provider acknowledges that it has been provided with sufficient information about the Purchasers and the Services to be provided and that it has made all appropriate and necessary enquiries to enable it to perform the Services under this Block Contract. The Provider shall neither be entitled to any additional payment nor excused from any obligation or liability under this Block Contract due to any misinterpretation or misunderstanding by the Provider of any fact relating to the Services to be provided.
5. This Block Contract commences on the Block Contract Commencement Date and shall terminate (Block Contract Expiry Date) (as stated in Appendix A (Block Contract Details)), unless terminated earlier in whole or in part in accordance with the terms of this Block Contract or the Flexible Framework Agreement.
6. In consideration of the reservation of the Placements by the Provider pursuant to this Block Contract the Purchasers shall pay the Provider the Fees prescribed in Appendix A (Block Contract Details).
7. This Block Contract shall be governed by and construed in accordance with English law and the Parties irrevocably submit to the exclusive jurisdiction of the English courts.

|  |  |
| --- | --- |
| **Signed for and on behalf of the Participating Authority:**  **Name and Title:**  **Signature:**  **Date:**  *Authorised Signatory* | **Signed for and on behalf of the Provider:**  **Name and Title:**  **Signature:**  **Date**  *Authorised Signatory* |

**APPENDIX A – BLOCK CONTRACT DETAILS**

|  |
| --- |
| **1. REQUIREMENTS** |
| **Details of the Block Contract:**  **as the same may be further detailed in Appendix B (Block Contract Specification) and/or Appendix C (****Provider’s Tender for the Block Contract) (if applicable).**  *Include a description of the Services required under the Block Contract, including the Participating Authority for the Block Contract (if relevant), the number and type of Placements to be reserved etc.* |
| **Block Contract Commencement Date:** |
| **Block Contract Expiry Date:** |
| **Fees:**  *The fees/charges payable by the Purchasers for the Services (including any applicable discount) and the relevant payment profile. This may include the rates when Placements are unoccupied and when they are occupied and any other applicable rates. You can insert the full details here or include a reference to the document which specifies the Fees and relevant payment profile if applicable.* |
| **2. ADDITIONAL REQUIREMENTS** |
| **Any Variations to the Call-Off Terms and Conditions for the relevant Block Contract:** |
| **Any supplemental requirements in addition to the Call-Off Terms and Conditions for the relevant Block Contract:** |

**APPENDIX B – BLOCK CONTRACT SPECIFICATION**

[Relevant call-off specification to be included if required]

**APPENDIX C - PROVIDER’S TENDER FOR THE BLOCK CONTRACT**

[Relevant tender to be included before signature]

**SCHEDULE 3: PRICING SCHEDULE**

**PART A: WHAT IS INCLUDED IN THE PRICING**

Section 1A: Core Fixed Overhead including:

1. All costs relating to core staffing & salary (excluding teaching, support and therapeutic) including:
   1. Senior Management
   2. Estates & Maintenance
   3. Finance
   4. HR
   5. IT
   6. Marketing
   7. Residential & catering
   8. Admin
2. All costs relating to Core Staffing costs including:
   1. Attendance at meetings/reviews
   2. Contingency agency staff
   3. DBS check
   4. External consultants
   5. Recruitment
   6. Staff uniform (where relevant)
   7. Training
   8. Travel
   9. Volunteer
3. All costs relating to operating costs including:
   1. Bank Charges
   2. Cleaning
   3. Council Tax
   4. Depreciation
   5. Furniture, furnishings/white goods
   6. Healthcare
   7. House and catering
   8. Hydro/swimming pool maintenance (where relevant)
   9. Insurance
   10. IT
   11. Legal / Prof fees
   12. Maintenance (including Grounds)
   13. Marketing
   14. Outdoor facilities
   15. Play/sensoary equipment for general use
   16. Rent/Mortgage
   17. Subscriptions/Registration fees
   18. Utilities
4. All costs related to vehicles including:
   1. Vehicles
   2. Vehicle maintenance
   3. Vehicle fuel (only where this is related to core costs (e.g. general school business or known travel plans (excluding education excursions). Costs relating to an individual child’s travel will need to be outlined in section 12)
   4. Vehicle insurance
   5. Vehicle tax
5. All costs related to supplies and services including:
   1. Food (all meals and snacks as appropriate to the placement type)
   2. Household items
   3. Laundry
   4. Clinical waste disposal
   5. Office supplies
   6. Equipment including photocopiers, printers, IT equipment and depreciation
   7. Inspection and Registration fees
   8. Insurance
   9. Stationery/Postage/Printing
   10. Telephone
6. All costs related to Children, Young People and Young Adults including:
   1. Planned Leisure activities
   2. Day to day costs related to health needs (as appropriate to the setting and not specific to an individual Child/Young Person’s needs)
   3. Therapeutic equipment/materials that are generally available and suitable for the designated needs of Children/Young People expected to attend the Establishment
   4. IT equipment
   5. General equipment that is considered to be necessary and suitable for the designated needs of Children/Young People expected to attend the Establishment
   6. Access to independent advocacy services, when a child/young person/young adult is not accessing services available from placing authority (excluding specific advocacy arrangements for an individual Child/Young Person)
   7. Requirements to makes reasonable arrangements to ensure that a Child/Young Person can practise their chosen faith and maintain cultural links that are agreed in advance with the placing
7. The following will be included in the Core Fees for ALL WEEKLY, FORT NIGHTLY AND TERMLY RESIDENTIAL Placements:
   1. Care and accommodation in the residential premises
   2. Essential toiletries for personal hygiene – soap, shower/bath wash, deodorant, shampoo, conditioner, toothpaste, sanitary wear
   3. Access to leisure activities during non-school hours (including at week-ends for termly placements), including travel costs where these are off-site
   4. Access to and use of a computer with internet connection (with appropriate safeguards)
   5. Access to and use of a telephone and/or Skype.
   6. Emergency support in a hospital for the first 24 hours of stay
8. In addition to all the costs covered in subsection 7, the following will be included in the Core Fees for ALL 38-52 WEEK RESIDENTIAL PLACEMENTS- (i.e. a Looked After Child):
   1. Support in hospital for planned admissions for the first 72 hours and thereafter as agreed in advance with the placing authority
   2. Access to and use of community-based clubs and activities, including travel, staff support and subscriptions
   3. Access to all primary health and medical services (dentist, GP, optician and others identified as relevant)
   4. All costs associated with homework assignments
   5. The cost of a haircut at reasonable frequency and as appropriate to the style preferred by the Child/Young Person
   6. For all looked after children placed on 52 week placements the provider will be responsible for funding the weekly allowance (i.e. pocket money and clothing) of each looked after child.

Section 1B: All costs related to large scale maintenance programmes

1. Major Capital Costs
2. Large Scale Maintenance Programmes

Section 1C – Other income

1. Place based funding/element 1 & 2
2. Top up funding/element 3

Section 2: All costs related to the Core Teaching and Programme including

1. All costs related to teaching staff
2. All costs related to programme support staff
   1. Quality, curriculum lead
   2. Transition lead
   3. Work experience lead
   4. Leisure and community lead
3. All costs related to core therapy support, where offered. (this support must be available to all Children, Young Adults and Young people at the setting and be part of the core programme, e.g. blended curriculum)
   1. Positive Behaviour Support
   2. Speech & Language Therapy
   3. Occupational Therapy
   4. Physio therapy
4. All costs related to programme delivery including:
   1. Materials (e.g. books, paper, craft)
   2. Exam fees
   3. Education excursions including travel
   4. Alternative, assistive and augmented communication aids that are generally available and suitable for the designated needs of Children/Young People expected to attend the Establishment
   5. Sensory equipment to access the curriculum including technical aids that is generally available and suitable for the designated needs of Children/Young People expected to attend the Establishment
   6. Depreciation

Section 3 – Individual support and EHCP variables

1. Additional staffing:
   1. Learning support assistant
   2. Additional Care Support Staff
   3. Nurse
2. Travel escort
3. Support worker (residential)
4. Night Staff (residential)
5. Health staff (physio, OT, S%LT, therapists) where support is mandated in the EHCP
6. Multi-disciplinary staff (psychiatrist, psychologist etc.) where support is mandated in the EHCP
7. Additional bespoke equipment which is mandated in the EHCP

Details relating to the Payment Schedule can be found in Clause 4, PART B: SPECIFIC TERMS AND CONDITIONS of the Flexible Framework Terms and Conditions

**PART B: THE PROVIDER'S PRICING SCHEDULE**

**[*FINAL DOCUMENT SUBMITTED BY THE RELEVANT PROVIDER AS PART OF IT'S APPLICATION TO BE APPOINTED TO THE FLEXIBLE FRAMEWORK TO BE INCLUDED AT AWARD*]**

**SCHEDULE 4: MONITORING, CONTRACT MANAGEMENT AND COMPLIANCE**

**GENERAL**

1. The Authority will seek to assure itself that the service being delivered under this Contract is of a sufficient quality and standard to keep the Children/Young People/Young Adults it has placed safe and protected from harm, maintain good physical and mental health and well-being, enable them to progress and achieve their potential, develop independence and assist them in preparation for adulthood.
2. This Schedule sets out the manner in which that assurance will be achieved in two parts:
   1. Part A – the monitoring of the individual Placements; and
   2. Part B – the monitoring and management of the Services against this Contract, and compliance with the terms and conditions of this Contract.
3. Additionally, the Authority will agree with the Provider the indicators and methods to be used to evidence progress and achievement of Outcomes (both the Service Outcomes and the Individual Outcomes)

**PART A: MONITORING INDIVIDUAL PLACEMENTS**

1. The aim of monitoring individual placements is to:
   1. Strengthen our approach to children ,young people and young adults’ learning and guide where Local Authorities can offer support; whether this is to the child/young person/young adult, their family and/or school/college or other support agencies
   2. Demonstrate, throughout the academic year, a joint commitment in ensuring children and young people’s continuing access to a full time education and high quality provision that engages children and young people in their learning
   3. Demonstrate throughout the academic year, a joint commitment in ensuring children and young people’s progress in achieving education, health and/or social outcomes
2. Individual placement indicators will be addressed through relevant Local Authority Annual Review processes. Individual Placement Outcomes will be specified in each Child / Young Person / Young Adult’s EHC Plan.
3. **ANNUAL REVIEWS**
   1. The SEND Code of Practice states that “where a pupil has an EHC Plan, the local authority must review that plan as a minimum every twelve months. Schools must co-operate with the local authority in the review process and, as part of the review, the local authority can require schools to convene and hold annual review meetings on its behalf.”
   2. Both the Authority and the Provider should undertake this process in the most efficient way possible and in line with the Code of Practice and Children and Families Act, by for example:
      1. by agreeing an annual schedule of dates for Annual Reviews as soon as reasonably possible after the start of each Academic Year;
      2. ensuring that the focus of the Annual Review is on the effectiveness of provision, the strengths and needs of the Child/Young Person/Young Adult and their progress towards achieving outcomes specified in the EHC Plan, including how effectively the Child/Young Person/ Young Adult is being prepared for adulthood; The review must also consider whether these outcomes and supporting targets remain appropriate.
      3. ensuring that all necessary documents and evidence is prepared and shared in advance of the Annual Review meeting; The school must seek advice and information about the child or young person prior to the meeting from all parties invited, and send any advice and information gathered to all those invited at least two weeks before the meeting.
      4. issuing timely invitations giving at least two weeks’ notice to all necessary parties, including the Child/Young Person or Young Adult wherever possible, to ensure they are present at the Annual Review;
      5. Where the Authority has more than one Child/Young Person placed with the Provider, that the Annual Reviews are scheduled on the same day wherever possible.
      6. Focus on promoting independence and preparation for adulthood
      7. Each Local Authority shall have an appointed person to whom post-review paperwork will be sent to following the review, in-line with timescales set out in the SEND code of practice
   3. Each Local Authority will, wherever possible, commit to attend reviews where there has been a change of placement, there is a risk of placement breakdown or is a contentious review.
      1. Where Local Authorities are unable to attend reviews no increases to packages or costs are to be agreed unless a business case is submitted to the relevant Local Authority in advance and agreed.
4. **LOOKED AFTER CHILD REVIEWS**
   1. Where the Child/Young Person placed at the Establishment is a Looked After Child, the Provider will provide reports, including their contribution to the Child/Young Person/ Young Adult’s Personal Education Plan (PEP) and relevant staff attendance at PEP and LAC Review meetings.
   2. LAC Review meetings may be held at the Establishment, offices of the Authority or other venues as directed by the Authority and which takes into account the opportunity for the Child/Young Person/Young Adult to have the most meaningful input.
   3. Wherever possible and practical, the Provider will work with the Authority to ensure that the Child/Young Person’s Annual Review and LAC Review and/or PEP will be held on the same date at the same venue.
5. **REPORTING**
   1. Interventions and progress should be clearly linked to the outcomes identified in the EHC Plan and, where relevant, outcomes identified between reviews. Reports, interventions and assessments should be clearly linked to progress towards identified outcomes to be of value as evidence.
   2. For progress towards outcomes to be meaningful there must be evidence of sustainability, resilience and transferability i.e. evidence sourced from different settings, scenarios and points in time, demonstrating a continuum of progress that cyp, parents and the LA can place confidence in.
   3. The Provider will provide reports and updates concerning any individual Child/Young Person/ Young Adult placed by the Authority, as reasonably requested by the relevant Authority. Progress towards outcomes for each individual placement:
   4. On a termly basis the Provider will supply:
      1. Attendance data
      2. Behaviour/incident logs (if appropriate)
      3. A summary of children/young people/young adults’ engagement within learning and accreditation(s) the child or young person is currently working towards, as agreed with the placing authority
   5. If the above information not received by the end of the following term this may trigger a value for money meeting, at the Placing Authority’s discretion.
6. **VISITS**
   1. The Provider will facilitate visits by officers of the Authority to see the Child/Young Person and will take reasonable measures to ensure that relevant staff are available to speak to the officers during the visit.
   2. The Child/Young Person’s file and all supporting documents will be made available upon request.

**PART B - MONITORING, CONTRACT MANAGEMENT AND COMPLIANCE OF THE SERVICE**

1. The aim of effective monitoring, contract management and compliance is to ensure that Children / Young People / Young Adults are receiving the maximum levels and quality of service, that value for the spend of public monies is proved and that risk is minimised.
2. **PRINCIPLES**
   1. The following principles underpin that aim:
      1. that this Contract is known and understood by all those who will be involved in its management and execution;
      2. there is clarity about accountability, roles and responsibilities;
      3. there is an established use of strong governance arrangements to manage risk and enable strategic oversight;
      4. an acceptance that change will happen and plan for it;
      5. there are proportionate measurement and reporting methods in place which collect and use data effectively and which recognise good performance;
      6. this Contract is used to drive continuous improvement, value for money and to capture innovation;
      7. the Provider and Authority work together with a shared focus on delivery of successful Outcomes; and
      8. the Provider and Authority adopt and encourage mature commercial behaviours, shared understanding, information exchange and are open and receptive to new ideas.
      9. The Provider and Authority will ensure ongoing compliance with regulations and legislation, including but not limited to; Public Contracts Regulations and SEND Code of Practice 2014
3. **EXPECTATIONS RELATED TO CONTRACT MANAGEMENT IN PRACTICE**
   1. Contract ownership, management processes and governance mechanisms are clear with defined roles and responsibilities.
      1. Service Level Monitoring Data will be shared across the Consortium of Local Authorities in order to facilitate a joined up, collaborative approach to monitoring
      2. Individual Placement Monitoring is the responsibility of individual Local Authorities.
   2. Personnel from both Parties involved in managing this Contract have the range of skills, capability and experience to effectively and efficiently discharge their roles and responsibilities.
   3. An up to date, hard copy of this Contract is stored and easily accessible to relevant personnel. All correspondence in relation to this Contract and any variations and changes is stored in line with appropriate data retention schedules and is easily accessible.
   4. The relationship between both Parties is clear and well defined, and there are structural and informal communication routes that may also include other stakeholders.
   5. There is an agreed management framework in place that includes meaningful reporting and Providers receive formal and informal feedback on their performance.
   6. Clear processes are in place for managing problems efficiently and effectively.
   7. There are defined and appropriate mechanisms in place to ensure that payments are made to the Provider in a timely manner.
   8. Risks are identified and communicated at an early stage; risks will be subject to ongoing review and assessment. There is a clear understanding by both Parties of who is best placed to manage risks.
   9. Opportunities are provided to capture innovation; development is focused on continuous improvement and achieving value.
   10. There is an understanding by the Authority of what drives and motivates the Provider; development is aligned with the Authority’s goals and joint working, or shared activities between the two Parties, benefits both.
   11. The Authority will use contract management to build and maintain market intelligence which is used to inform benchmarking, contingency planning and strategies for future development.
4. **DELIVERABLES**
   1. Contract monitoring and compliance will at all times be proportionate and reasonable, reflecting the value of spend with the Provider, the assessed risk status and the vulnerability of the Young People using the Services. It ***may*** include any of the following and the Provider will co-operate with:
      1. requests for the submission of annual reports that aggregate information and informs the position and progress of the Service as a whole in delivering Outcomes;
      2. contract monitoring meetings;
      3. Provider self-assessment reports and validation visits;
      4. quality assurance visits (announced and unannounced) to consider the effectiveness of quality management systems;
      5. annual compliance checks.
   2. Certain reporting may take place by electronic means where notified by the Authority to the Provider, and where this is the method adopted by the Authority, the Provider must ensure that relevant staff understand and can use effectively the IT systems that support this.
   3. The Provider will ensure that where the Local Authority has issued compliance actions or recommendations for service improvement, these are incorporated within a service improvement plan and actioned as per the timescales agreed with the Local Authority. This may include an improvement plan arising from the safeguarding process. The service improvement plan will be shared with the Local Authority
5. **GENERAL** 
   1. When conducting any visits at the Establishments, every effort will be made by the Authority to ensure the continued privacy of Children, Young People and Young Adults, and minimal disruption to the education of Young People.
   2. When undertaking a planned visit of a non-urgent nature, the Authority shall endeavour to ensure that the visit is arranged for a mutually convenient date and time for both parties.
   3. The Authority may choose to prioritise Providers for contract monitoring based on the contract value, risk associated to the Authority and vulnerability of the Young People placed at the Establishment.
   4. Early agreement will be made about the expected membership of meetings and availability of senior managers during visits, to ensure appropriate representation.
   5. The Authority shall ensure that officers undertaking any contact management and monitoring activities are suitably qualified, skilled and experienced to consider and comment upon the areas they undertake responsibility for during meetings and visits.
   6. Alternative representatives must be identified by the Provider or Authority in the event of the non-availability of the designated representatives. Cancellations of meetings or visits are to be avoided where possible; in the event of emergency where a cancellation is inevitable, good communication should be maintained between Provider and the Authority.
6. **MEASUREMENT APPROACH FOR OUTCOMES**

The measurement approach provides a structure for identifying and measuring progression towards Outcomes. It is made up of three sections, described below.

1. **SECTION A: SERVICE OUTCOME INDICATORS**
   1. **Evidence and data to be rated/scored:**
      1. Evidence of internal auditing of their existing provision e.g. provision mapping, evidence of continual self reflection, planning and progression such as:
      2. How well does provision match need and recognise gaps in provision
      3. identify strengths in provision and areas for development;
      4. Highlight repetitive or ineffective use of resources
   2. **Demonstrate Accountability:**
      1. Inform parents, carers, external agencies and OFSTED inspectors
      2. Assess school effectiveness when linked with outcomes for pupils through review of the provision;
      3. Setting internal annual objectives and success criteria for the setting
   3. **Engagement and Participation**
      1. Evidence of the active participation of Children/Young People/Young Adults and families in the process of planning how to achieve their aspirations and outcomes for their life.
      2. The views of Children/Young People/Young Adults and families are sought at all stages of planning the provision, the practice and the development of the setting so that young people and families have greater choice, feel they are in control and are being listened to and their concerns are resolved swiftly.
      3. Provide and develop different ways in which Children/Young People/Young Adults and their families can participate
      4. Children/ Young People / Young Adults and their parents/carers, are supported to effectively contribute to planning and decision making.

* 1. **Person Centred Approaches**
     1. Evidence of Person Centered Approaches embedded across practice within the setting.
     2. Annual reviews:   
        1. Children / young people /young adults are effectively prepared for their reviews,
        2. Develop and maintain children/ young people/young adults and parents knowledge about services and resources available so they can be fully informed when making future plans, particularly at transition times.
        3. Children/ Young People / Young Adults and their parents/carers are supported to help them to effectively contribute to planning and decision making.
        4. Transparent and accessible information
  2. **Multi Agency Working:**
     1. Evidence of joint working with partners and other services to enable a full picture of support to be understood and available to young people and families. Timely and appropriate involvement from other agencies including but not limited to:  
        1. Careers service
        2. Children’s Social Care/Adult Care. Transition referral and planning for NCY9 and above.
        3. Local Authority SEND services
        4. Health services
        5. Inclusion opportunities with mainstream and community groups, events and provisions.
  3. **Preparation for Adulthood:**
     1. Preparation for next phase transfer:   
        1. Evidence of timely discussions and exploration with partners, parents and children, young people and adults of the options available.
        2. Preparing for Adulthood agenda and principles embedded in curriculum and practice.
        3. The principles of inclusion, independence and contribution reduce reliance, develop greater independence and inclusion by working on areas such as personal safety (home and community), developing inclusive relationships, healthy lifestyles, understanding of risk, problem solving skills, road safety, transport training and use of leisure time.
        4. Evidence of sustainability, resilience and transferability of skills.

1. **SECTION B: PRINCIPLES FOR GOOD EVIDENCE**
   1. **See Appendix 1.** These principles help us understand how confident commissioners at the Authority can be in the evidence presented by Providers, and to encourage Providers to develop the best possible evidence base. The principles for good evidence are graded from level 1 to level 3. Level 1 is an acceptable standard for evidence, however commissioners at the Authority would like to see standards of evidence develop and progress towards level 3. There are four principles:
      1. ***Triangulation*** is a term that refers to drawing upon multiple data sources in order to reach a conclusion. For example, measuring Young People’s levels of resilience by both observation (are there a reduced number of disproportionate emotional or aggressive outbursts in response to setbacks?) and self-assessment by the Young People using a survey scale. The data collection methods used should be reliable, which means a method that produces stable or consistent results. Providers may present qualitative evidence such as observation notes, video or photographic evidence of a Child/Young Person’s achievement. Often the richest data is a combination of qualitative and quantitative.
      2. ***Transparency***is important to ensure that others can adequately assess the evidence provided. Provide as much relevant information about the data as possible, e.g. the sample size and the data collection tools used.
      3. ***Multiple perspectives*** require involving a range of relevant and significant stakeholders in the process of assessing Outcomes. The different perspectives should be considered for agreement. If there are important differences of opinion this should be explored to identify the reasons and to see if consensus can be reached.
      4. ***Multiple points in time*** is a principle that refers to collecting data regularly enough to be able to identify the degree of progression towards an outcome and whether it is sustained over time.
2. **Section C: Data collection tools – optional tools to use or adapt**
   1. A selection of tools can be used with Children /Young People/Young Adults to measure and record their progress on Outcomes including:
      1. Outcomes star,
      2. Warwick Edinburgh Mental Wellbeing Scale,
      3. SDQs,
      4. National accounts of wellbeing
   2. This selection is by no means prescriptive or exhaustive. Providers are encouraged to choose a data collection approach that is best suited to the needs and abilities of the Young People in their care, whilst also giving consideration to the principles for good evidence outlined in this document. Providers may draw from a variety of data collection methods, including both qualitative and quantitative methods, and creative methods such as video evidence. They may use methods developed by their own organisation, if suitable.
3. **KEY PERFORMANCE INDICATORS**
   1. In addition to providing evidence that demonstrates progress towards, and achievement of, outcomes, the following KPIs will be considered to evidence that the Services provided by the Provider under this Contract and the Individual Placement Agreements are meeting the quality standards that the Authority expects. Whilst KPIs are not intended to be punitive, persistent failure to achieve satisfactory results without an acceptable explanation may result in the Authority identifying a Provider Default under the Contract and commencing action pursuant to clause [35 Schedule 8] (Remedies in the Event of Inadequate Performance).
   2. Data and information that provides evidence of progress and achievement against the KPIs will be requested in line with the Authority’s monitoring agreement with the Provider. As a minimum, the Provider will provide this annually but may be required to provide this information more regularly if the Authority has concerns regarding the Provider’s performance of the Services.

|  |  |
| --- | --- |
|  |  |
| In Services where the Ofsted/ISI/Estyn status is Good or above, subsequent or monitoring Ofsted inspection judgements maintain the status or evidence Sustained Effectiveness/Progress | 100% of inspections |
| In Services where the Ofsted (or equivalent regulatory body) status is Requires Improvement, that status will progress to Good or above | At the next full inspection |
| In services where the Ofsted/ISI/Estyn status falls to Inadequate | Refer to Clause 35 of Terms and Conditions and Schedule 8 which describes the action and process according to the placing Authority |
| Senior management roles are filled | The role is not unfilled for more than one term during any single academic year period |
| Use of agency frontline care staff represents no more than 10% of staff team | 90% of the time during any single academic year period |
| Use of supply or agency teaching staff, including classroom assistants, represents no more than 5% of the staff team | 90% of the time during any single academic year period |
| Mandatory staff training is completed within the required legislative timescales | 100% of the time during any single academic year period |
| Other staff training, as identified as appropriate by the school, is completed within timescale | 90% of the time during any single academic year period |
| Child/Young Person case files and all documents related to the Child/Young Person are complete and up to date | 100% of the time during any single academic year period |
| There are no errors or omissions in reporting in relation to safeguarding issues | 100% of the time during any single academic year period |
| Complaints are managed in line with the published policy | 100% of the time during any single academic year period |
| Evidence of the active participation of cyp and families in the process of planning how to achieve their aspirations and outcomes for their life. | 100% placements |
| Evidence of Person-centered approaches (PCA) embedded across practice within the setting. | 100% of placements |
| Evidence of preparation for transitions (primary to secondary and for adulthood). | 100% of placements |
| Evidence of joint working with partners and other services to enable a full picture of support to be understood and available to young people and families. Timely and appropriate involvement from other agencies. | 100% placements |
| Average Attendance Level | Above 95% |

**Additionally**

The Provider must have robust ways of demonstrating (e.g. Governor’s report) and providing annual evidence that shows the number of Young People that:

1. Are making progress towards educational targets; and
2. Are achieving educational targets; and
3. Are exceeding educational targets; and
4. Provides detail about the ongoing destinations of Young People as they leave the school.



**SCHEDULE 5: COMMUNICATIONS**

In order to maintain effective working partnerships between the Authority and the Provider (and the relevant Establishments), it is important that timely communication is received about all relevant matters, and that it is directed to the correct people within the Provider (and the relevant Establishments) and the Authority.

The following 2 tables must be completed by the Parties and both tables shall be updated at least once a year. Nothing withstanding this general obligation to update the tables, updates shall also be sent by either Party as and when there are changes to key personnel.

*Each Authority will insert their respective communication and contact details – this sheet will be tailored to each LA and amended as appropriate.*

**The Establishment:**

|  |  |  |
| --- | --- | --- |
| **Matters relating to** | **Communication sent to** | **Contact email address** |
| Individual child – education |  |  |
| Individual child – care |  |  |
| Safeguarding |  |  |
| Finance |  |  |
| Contract terms and conditions |  |  |
| Organisation issues |  |  |
| Complaints |  |  |

**The Authority:**

|  |  |  |
| --- | --- | --- |
| **Matters relating to** | **Communication sent to all listed** | **Contact email address** |
| Individual Child/Young Person & IPA | SEN Caseworker  Social Worker | Please refer to child’s file |
| Contract terms & conditions | Contracts Manager  Contracts Officer |  |
| Changes to (including absences) the senior management team, service changes and matters of a serious nature (including safeguarding) | Contracts Manager, Contracts Officer, SEND Business Manager  (all matters relating to safeguarding also need to be reported to the LADO) |  |
| Allegations regarding members of Staff | LADO |  |
| CSE/Radicalisation/PREVENT |  |  |
| Outcome of Ofsted inspections, DfE notices, change to Ofsted and/or DfE status | Contracts Manager  SEND Business Manager |  |
| Fees relating to a Placement | SEN Caseworker  Social Worker  Finance Officer (SEN) | Please refer to child’s file |
| Queries related to invoicing and Purchase Orders | Finance Officer (SEN) |  |

|  |  |  |  |
| --- | --- | --- | --- |
| Proposals regarding changes to fees/fee structures at the school | SEND Placement Manager Contracts Manager  Category Manager/Commissioning Lead as appropriate per each Authority  To be taken to the Project Board for agreement | |  |
| **Notifiable Events** | | | |
| In addition to those in the table above the Provider is required to notify the **Placing Authority** in respect of a Child/Young Person placed by them, and the **Host Authority** in addition (as highlighted) in respect of any Child/Young Person placed, as follows: | | | |
| **‘Without delay’ In the event of:** | | **Within 48 hours in the event of:** | |
| Death of a Child/Young Person accommodated in the Establishment | | A formal complaint being received from the Child/Young Person. | |
| Serious illness or accident sustained by the Child/Young Person | | A Child/Young Person expresses a wish not to continue with existing ‘contact’ arrangements. | |
| Outbreak of any infectious disease which considered sufficiently serious to be so notified in the opinion of a registered medical practitioner | | In residential schools, the Provider becomes aware that a Child/Young Person who is resident in the Establishment or is about to become resident is a Schedule 1 offender. | |
| An allegation that a Child/Young Person accommodated at the Establishment has committed a serious offence | | There is fear for the safety of the Child/Young Person whilst in the care of the Provider or during family ‘contact’ periods | |
| Involvement or suspected involvement of a Child/Young Person accommodated at the Establishment in prostitution | | All holidays granted to a Child/Young Person outside academic terms or those extending beyond the 2 weeks that can be given as authorised absence in special circumstances | |
| Serious incident necessitating calling the police to the Establishment | | Any situation in which there are Deprivation Of Liberty Safeguard concerns | |
| Where the Child/Young Person/Young Adult is the victim of an a series offence | | Any significant circumstance which affects the Provider’s ability to provide the Service to the Child/Young Person in accordance with this Contract | |
| Absence by the Child/Young Person from the Establishment for any reason, including absence initiated by the parent, unless pre-arranged and agreed with the Authority.  In addition, the Establishment must follow the host Authority’s policy in respect of children that are missing. | | Where it is known that the Headteacher/Registered Manager is likely to be off-site or absent for a period of four weeks or more. This notification must be accompanied by the contingency plan for the period of absence. | |
| Any serious complaint about the Provider or persons working for the Provider | | An indication from Ofsted that, following an inspection, the judgement will be Inadequate or Requires Improvement. | |
| Instigation and outcome of any Child/Young Person protection enquiry involving a Child/Young Person accommodated at the Establishment | |  | |
| Referrals of an individual working at the Establishment or in line with requirements under Vetting and Barring/ISA | |  | |
| Communication regarding the health and safety of a student within the scope of Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995 (RIDDOR) | |  | |
| Any situation which threatens the Child/Young Person’s well-being, including self-harm or attempted self-harm | |  | |

**SCHEDULE 6: FEE MANAGEMENT SCHEDULE**

1. Core Fees (set out in schedule 3) and any additional capital investment must be submitted at the point of tender for the Flexible Framework. For the avoidance of doubt the Core Costs are the basic costs required to run the school before specific requirements are added for particular individual children/ young people/young adults.
2. Additional pricing requirements based on the individual needs of Children/Young People/Young Adults such as waking nights or 1-1 support shall be submitted in accordance with the Call-Off Process as defined in schedule 7A.
3. If the Relevant Authority determines that the Core Fees combined with the individual pricing requirements are so high that to place the child/young person/young adult there would be incompatible with the efficient use of resources or the efficient education of others, the Relevant Authority may determine the tender submission unsuccessful.
4. Placements will be awarded on the basis of the price submitted during the call-off process (set out in schedule 7A), however within three months of placements being made we reserve the right to negotiate individual placement costs with providers.
5. During the Agreement Term, on an annual basis between 1st November and 1st December, the Provider will be able to complete and submit to the Authority a fee increase request for placements under the framework terms and conditions. A decision will be given by 1st April, with any granted uplift coming into effect from September onwards. If a fee increase request is not received by 1st December, the Joint Local Authority Project Board shall assume that the school/college is not applying for uplift.

The annual fee increase will be based on a calculation of 40% of national teacher salary increase award + 40% of NJC salary increase award + 20% of the December Consumer Price Index (CPI), up to a total of 2.5%, whichever is less.

1. All requests for increase in fees must be received using the Fee Increase Request Form which will be circulated ahead of the annual uplift period. Providers must resubmit their core costs as part of the uplift request to show where the additional funding will be invested. Any request that is not completed within the timeframe set out in clause 5 of this schedule 6, or using the supplied form template will not be considered.

We expect schools to apply a responsible approach and only request what is actually required. This must be evidenced and costings clearly broken down on the supporting Fee Increase Request Form. No uplift will be granted for items without sufficient evidence to support the application.

1. The information submitted will be used by the Joint Local Authority Project Board to monitor the prices/costs of the Provider to ensure value for money and to monitor supplier stability.
2. If the Provider applies for a fee increase, the request will be subject to agreement by the Joint Local Authority Project Board. The Inter Authority Agreement details the arrangements for any fee increase or uplift request.
3. In order to inform and support any such fee review applications the Authority may:
   1. request a copy of the Provider’s most recent two years of accounts (audited where applicable); and/or
   2. request any additional information and documentation from the Provider which the Project Board believes (acting reasonably) is relevant to the fee review process.
4. Where a school or college has successfully applied for uplift we will expect to see a noticeable service improvement, as evidenced through quality monitoring processes and applicable inspection ratings. The increased funding should be commensurate with delivering services to the agreed quality, and encourage innovation and improvement.
5. If a provider has been granted uplift and the inspection rating then drops in a subsequent inspection, the provider may still request a fee increase during the next annual uplift period, but this must be linked to a service improvement plan.

Any changes agreed by the Project Board pursuant to the fee review process carried out pursuant to paragraphs 3 and 4 of this Schedule 6 (Fee Management Schedule) shall be recorded in writing in accordance with clause 47.8 of this Agreement.

**SCHEDULE 7A: CALL-OFF PROCESSES**

**GENERAL**

1. **DEFINITIONS** 
   1. In this Schedule 7A (Call-Off Process), unless the context otherwise requires, the following terms shall have the meanings given to them below:

“**Best Offer**” means the proposal that:

* best meets the needs of the Child/Young Person/Young Adult in respect of the following need categories:
  + Cognition and Learning;
  + Communication and Interaction;
  + Sensory and/or Physical; and
  + Social, Emotional and Mental Health;
  + Health and social care needs (where identified)
* Best meets the Child/Young Person/Young Adult’s needs with regards to Preparation for Adulthood
* bests meet the location requirement with regard to the Child/Young Person’s needs;
* has taken into account the Ofsted, or equivalent regulatory body, rating (Band A, B or C as set out in the Part A General Terms and Conditions of this agreement)
* has taken into account Parent/Guardian and (where they have capacity) Child/Young person/Young Adult preference in accordance with the SEN Code of Practice; and
* the proposed placement cost (Core Fees combined with the individual pricing requirements, including assessment fee) is compatible with the efficient use of resources or the provision of efficient education of others

“**Block Contract** **Award Criteria**” means the block contract award criteria to be applied to the evaluation of Tenders for the Block Contracts, which are received in response to an Invitation to Tender issued under the flexible framework at the further competition stage. The example block contract award criteria are listed below:

***Quality Criteria***

* The ability of the Qualified Provider to meet the Authority’s capacity requirements and the specific needs of the identified cohort of children/young people.
* The ability of the Qualified Provider to support the requested children/young people in the timescales required by the Authority.
* The ability of the Qualified Provider to meet the required Outcomes.
* The ability of the Qualified Provider to promote the welfare or safeguarding of children/young people.
* The ability of the Qualified Provider to ensure quality, continuity, accessibility, availability and comprehensiveness of the Services.
* The ability of the Qualified Provider to work effectively with the Authority and relevant services.
* The ability of the provider to deliver an innovative approach and personalised service delivery

***Commercial Criteria***

* Price of provision.

The Authority will provide final detailed Block Contract Award Criteria based on the example criteria above (which may be further defined and for added to) at the time of issuing an Invitation to Tender for the relevant Block Contract so as to enable an open and transparent mini-competition between the Qualified Providers;

“**SEN Panel**” means the Authority’s Panel that meet discuss and advise on the best way to support children with SEN; and

“**SEN Panel Form**” means the form prepared by the Authority for the SEN Panel which includes:

* information from the relevant EHC Plan;
* information from the Tender (including the expression of interest and placement pricing schedule);
* relevant background information;
* Parent/Guardian’s views and wishes;
* Provider/Establishment school view;
* involvement/views from other agencies, including Social Care, SNO, Social Communication Team, Educational Psychologist, Therapist (e.g. SALT, OT, Physio), Paediatrician, CAMHS, SST; and
* Information on Special Educational Needs with regards to Cognition and Learning, Communication and Interaction, Sensory or Physical, Social, Emotional and Mental Health.

1. **IDENTIFYING THE AUTHORITY’S REQUIREMENTS**
   1. During the Agreement Term, the Authority shall (at its absolute discretion) award Call-Off Contracts to Qualified Providers representing the most economically advantageous tender for the relevant Call-Off Contract (pursuant to the identified award criteria) through the issuing of an Invitation to Tender in accordance with the relevant provisions of this Schedule 7A (Call-Off Processes).
   2. Firstly, the Authority will:
      1. identify whether the requirement is for an Individual Placement or a Block Contract;
      2. identify the relevant Flexible Framework Lot(s) into which the relevant Call-Off Contract falls;
      3. identify all of the Qualified Providers appointed to the relevant Flexible Framework Lot(s)
      4. where the requirement is for a Block Contract, confirm the final detailed Block Contract Award Criteria that will apply to the evaluation of Tenders; and
      5. issue an Invitation to Tender and invite all Qualified Providers to submit an Expression of Interest or Tender under the Flexible Framework for the Authority’s requirements in accordance with the relevant provisions of this Schedule 7A (Call-Off Processes). Where the requirement is for an Individual Placement, the Authority will follow the processes set out in paragraphs 3 to 5 of this Schedule 7A (Call-Off Processes) and where the requirement is for an Block Contract, the Authority will follow the processes set out in paragraphs 6 to 8 of this Schedule 7A (Call-Off Processes).
   3. For the avoidance of doubt, nothing in this Schedule 7A (Call-Off Processes) shall oblige the Provider to respond to any Invitations to Tender issued by the Authority.
   4. Without prejudice to the generality of clause 8 (No Guarantee and Non-Exclusivity) of this Agreement, in the event that no Qualified Providers respond to any Invitation to Tender, or no responses are deemed appropriate in the particular circumstance, the Authority reserves the right to enter into other contracts and arrangements for the relevant Call-Off Contract, including with other providers on the flexible framework who are not Qualified Providers in respect of the requirements for that particular Call-Off Contract or with other providers outside of the flexible framework.
   5. Notwithstanding the fact that the Authority has followed the procedures set out below, the Authority shall be entitled at all times to cancel, postpone, delay or decline to make an award for its requirements under the flexible framework. Nothing in this Agreement shall oblige the Authority to award any Call-Off Contract and in circumstances where the Authority does not issue an award for a Call-Off Contract after it has undertaken a further competition under the flexible framework, the Authority shall have no liability, whether in relation to costs and expenses of the Provider in responding to the Invitation to Tender, or otherwise.

**INDIVIDUAL PLACEMENTS**

1. **THE ISSUE OF AN INVITATION TO TENDER FOR AN INDIVIDUAL PLACEMENT** 
   1. For an Individual Placement Agreement, the Authority will issue an Invitation to Tender (a placement request) to the Qualified Providers in the form of a **referral form** which will set out or contain at the discretion of the placing authority, the following:
      1. A common front sheet used by all Participating Authorities summarising the key information
      2. the Flexible Framework lot(s) to which the requirement relates;
      3. a redacted EHC Plan for the Child/Young Person;
      4. where this information is not already covered in the EHC Plan, any other relevant details of the Child/Young Person and Authority’s requirements for the Services required under the relevant Placement, including the Individual Outcomes that the Provider will be expected to achieve for the Child/Young Person whilst they are in the Placement any other information the Authority considers relevant to the particular Placement, for example review documentation and any updated advice;
      5. instructions regarding how the Expression of Interest responses to the placement request must be completed and returned; and
      6. the deadline for the receipt of Expression of Interest responses to the Invitation to Tender. Subject to the below, this will normally be five (5) Working Days from the date of issue of the Invitation to Tender. However, in emergencies the deadline will be 3 days, the placing Local Authority will make clear in the referral form if a placement is an emergency. In setting such time limits the Authority will take into account factors such as the complexity of the subject matter of the Services required under the particular Placement and the time needed to prepare a response. Such time limits will at all times be reasonable and proportionate.
2. **SUBMISSION OF TENDERS FOR AN INDIVIDUAL PLACEMENTS** 
   1. All of the interested Qualified Providers will respond to the Invitation to Tender Placement Request issued pursuant to paragraph 3 (The Issue of an Invitation to Tender for an Individual Placement) of this Schedule 7A (Call-Off Processes) by submitting a Tender comprising of an **expression of interest** (in the Authority’s standard format) where a Qualified Provider will detail:
      1. how it will fulfil the overall purpose of the Placement and will set out its initial proposals for the Services required, including how it will meet the meets the needs of the Child/Young Person identified in the **referral form** in respect of the following categories:
         1. Cognition and Learning;
         2. Communication and Interaction;
         3. Sensory and/or Physical; and
         4. Social, Emotional and Mental Health; and
      2. the Qualified Provider’s proposed fees for the Placement made up of the Core Fees; for the avoidance of doubt, the core fees provided at this stage should not exceed the fees set out set out in Part B (The Provider’s Pricing) of the Pricing Schedule but they may be lower than such fees.
      3. Additional pricing requirements based on the individual needs of Children/Young People/Young Adults as determined in the EHC Plan
   2. If the Relevant Authority determines that the Core Fees, combined with the Additional Individual Pricing requirements, is so high that to place the child/young person/young adult there would be incompatible with the efficient use of resources or the efficient education of others, the Relevant Authority may render the tender submission unsuccessful
   3. Submitted Tenders will be required to remain valid for a period of not less than ninety (90) days from the date of submission.
   4. Late Tender submissions received by the Authority after the specified deadline may be disqualified by the Authority.
3. **CONSIDERATION OF THE TENDER – INDIVIDUAL PLACEMENTS** 
   1. For all compliant Expression of Interest submissions received by the Authority by the relevant deadline, the Authority will prepare details on the SEN Panel Form for presentation to the SEN Panel.
   2. The placing Authority’s SEN Panel will then review and consider all compliant Tenders via the SEN Panel Form to determine the Tender that represents the overall Best Offer to the Authority.
   3. A formal **consultation** is then sent to the successful Qualified Provider who has submitted the Best Offer asking if the successful Qualified Provider would like to make an assessment of the Child/Young Person and asking the Qualified Provider to complete a **formal offer of placement form** within the timeframe specified by the Authority (this will normally be ten (10) days), which may include information from an assessment if the Successful Qualified Provider has chosen to carry one out.
   4. If the successful Qualified Provider notifies the Authority that it accepts the award, by completing and submitting a **formal offer of placement form** within the timeframe specified by the Authority, an Individual Placement Agreement will then be entered into by the Parties pursuant to clause 11 (The Formation and Performance of Call-Off Contracts) of this Agreement.
   5. If the successful Qualified Provider declines to submit a **formal offer of placement form** or does not respond with a **formal offer of placement form** within the timeframe specified by the Authority, the Authority shall be entitled to invite the Qualified Provider who submitted the next Best Offer to carry out a consultation by issuing an **invitation to consult** to that Qualified Provider, and the procedures set out in paragraphs 5.3 to 5.4 of this Schedule 7A (Call-Off Processes) will be repeated.
   6. In some instances, the SEN Panel may decide when considering the Tenders pursuant to paragraph 5.2 of this Schedule 7A (Call-Off Processes) that two or more expressions of interest are equal and both represent the Best Offer to the Authority. In such cases, the Authority will issue an **invitation to consult** to both Qualified Providers and both Qualified Providers would be invited to assess the Child/Young Person. In such cases, once the Authority has received a **formal offer of placement form** from both Qualified Providers, the SEN Panel would be asked to consider both forms and make a decision about which offer represents the Best Offer for the Authority.
   7. Once the above procedures have been completed by the Authority, all Flexible Framework Providers who submitted an Expression of Interest for the placement will be notified of the award decision.
   8. Placements will be awarded on the basis of the price submitted during the call-off process, however within three months of placements being made we reserve the right to negotiate individual placement costs with providers.

**BLOCK CONTRACTS**

1. **THE ISSUE OF AN INVITATION TO TENDER FOR A BLOCK CONTRACT**
   1. For a Block Contract, the Authority will issue an Invitation to Tender to the Qualified Providers which will set out:
      1. the Flexible Framework Lot(s) to which the requirement relates;
      2. full details of the requirements of the relevant Block Contract, which may include, without limitation, the number of Placements required, any additional terms and conditions applicable and the proposed pricing structure and/or payment terms for the Block Contract along with any other information the Authority considers relevant to the particular Placement;
      3. the specific Block Contract Award Criteria that will be applied to the evaluation of the Tenders;
      4. instructions regarding how the Tender responses to the Invitation to Tender must be completed and returned; and
      5. the deadline for the receipt of Tender responses to the Invitation to Tender. In setting such time limits the Authority will take into account factors such as the complexity of the subject matter of the Services required under the particular Call-Off Contract and the time needed to prepare a response. Such time limits will at all times be reasonable and proportionate.
2. **SUBMISSION OF TENDERS FOR A BLOCK CONTRACT**
   1. All of the interested Qualified Providers will respond to the Invitation to Tender issued pursuant to paragraph 6 (The Issue of an Invitation to Tender for a Block Contract) of this Schedule 7A (Call-Off Processes) by submitting a Tender comprising of:

* + 1. a **quality submission** setting out the Qualified Provider’s ability to meet the Authority’s requirements as identified in the Block Contract Award Criteria; and
    2. a **pricing schedule** which shall be a block contract specific pricing schedule, setting out the Qualified Provider’s proposed fees for the Block Contract. The Provider will also be able to provide details here of any discounts being offered to the Authority. For the avoidance of doubt, the proposed fees provided at this stage should not exceed the fees set out set out in Part B (The Provider’s Pricing) of the Pricing Schedule but they may be lower than such fees.
  1. All Tender submissions received by the Authority by the relevant deadline will be evaluated in accordance with the provisions of paragraph 8 (Evaluation and Award – Block Contracts) of this Schedule 7A (Call-Off Processes). Late Tender submissions received by the Authority after the specified deadline may be disqualified by the Authority.

* 1. Submitted Tenders will be required to remain valid for a period of not less than ninety (90) days from the date of submission.

1. **EVALUATION AND AWARD – BLOCK CONTRACTS**
   1. The Authority will assess all of the Tenders against the award criteria set out below. This award criteria comprises a quality section and a commercial section.

**Quality Section**

* 1. Firstly, the quality criteria identified in the Block Contract Award Criteria will be scored using the scoring matrix set out in Appendix A (Scoring Matrix – Block Contracts) to this Schedule 7A (Call-Off Processes), in terms of the extent to which the responses demonstrate and evidence how the Qualified Provider will meet the quality aspects identified to determine a score ranging from 0 to 5. Only whole number scores between 0 and 5 will be applied.
  2. Qualified Providers with a score of “3” or more for each of the quality criteria will be deemed to be able to meet the Authority’s requirements. Therefore, a Tender submission will be required to meet a minimum quality threshold score of 3 out of the 5 marks available for each and every one of the identified quality criteria in order for a Qualified Provider to proceed to have its fees evaluated. Failure to meet this requirement will result in a Tender submission failing and being disqualified by the Authority.
  3. All Tenders that pass the quality section of the evaluation carried out pursuant to paragraphs 8.2 and 8.3 of this Schedule 7A (Call-Off Processes) will then have its proposed fees evaluated against the commercial model.

**Commercial Section**

* 1. The commercial section will be evaluated on a lowest price model.
  2. In the event that more than one Tender progresses to the commercial evaluation stage then the Authority will award the Block Contract to the lowest priced Qualified Provider.

**Award**

* 1. Once the evaluation has been completed by the Authority the preferred Qualified Provider (being the Qualified Provider that is assessed to have submitted the most economically advantageous tender for the relevant Block Contract (pursuant to the relevant Block Contract Award Criteria)) will be selected and notified and all Flexible Framework Providers in the relevant Flexible Framework will be notified of the award decision.
  2. Where practicable, the Authority intends to implement a voluntary standstill period of ten (10) days before the formal award of the relevant Call-Off Contract. For the avoidance of doubt, this is considered to be best practice, but the Authority will not be bound to implement a standstill period where the Authority deems that it is not appropriate (which will include, but will not be limited to, a situation where any emergency provision is required by the Authority as part of the Services).
  3. If the successful Qualified Provider notifies the Authority that it accepts the award, following completion of the voluntary standstill period, a Block Contract will be entered into pursuant to clause 11 (The Formation and Performance of Call-Off Contracts) of this Agreement.
  4. If the successful Qualified Provider notifies the Authority that it declines to accept the award of a Block Contract then the offer from the Authority to the successful Qualified Provider shall lapse and the Authority may offer that Block Contract to the Qualified Provider that submitted the next most economically advantageous tender (pursuant to the Block Contract Award Criteria).

**Services Under Block Contracts**

* 1. Where the Authority has entered into a Block Contract with the Provider, when the Authority has a requirement for Services under the Block Contract, the Authority shall be entitled to follow the procedure set out in paragraphs 8.13 to 8.25 of this Schedule 7A (Call-Off Processes) and need not follow the procedures detailed in paragraphs 2 to 5 of this Schedule 7A (Call-Off Processes).
  2. At any time after the Block Contract Commencement Date, the Authority may nominate an individual Child/Young Person to fill a vacancy on the Block Contract, either as an initial nomination at the start of the Block Contract or as a nomination to fill a vacancy which the Provider has notified the Authority of pursuant to paragraph 8.18 of this Schedule 7A (Call-Off Processes) or which the Authority has otherwise become aware of.
  3. Where the Authority wishes to make a nomination it shall provide details of the nominee to the Provider in writing, such details shall include (without limitation) the same information as the Authority provides as part of the referral form as detailed in paragraphs 3.1.2 and 3.1.3 of this Schedule 7A (Call-Off Processes).
  4. As soon as reasonably possible after receipt by the Provider of the information detailed in paragraph 8.13 of this Schedule 7A (Call-Off Processes), the Authority and the Provider’s nominated representative shall meet to discuss the nomination and to reach agreement on the nominee (unless the Authority and the Provider agree that such meeting is not required). The Authority acknowledges that the Provider may also (depending on the particular requirements) wish to meet with the nominee and/or their representatives for assessment and/or verification purposes. In such circumstances the Provider shall arrange such a meeting as soon as reasonably possible after receipt of the Authority’s nomination.
  5. The Provider shall, after full discussion with the Authority, have the right to refuse the Authority’s nominee only in exceptional circumstances, including (without limitation) where the nominee requires facilities and/or care and support which cannot be provided by the Provider at the relevant Establishment(s).
  6. Where the Provider refuses a nominee it shall notify the Authority in writing stating the reasons for the rejection, which shall clearly and justifiably represent those allowable under the SEND code of practice and following such notification the Authority may make a further nomination at any time in respect of such vacancy in accordance with paragraph 8.12 of this Schedule 7A (Call-Off Processes).
  7. Where the Provider accepts a nominee, the Provider shall enter into an Individual Placement Agreement with the Provider awarded under the Block Contract. For the avoidance of doubt, the Fees to be paid under the Individual Placement Agreement shall be the price in the relevant Tender for the Block Contract.
  8. The Provider shall notify the Authority, within five (5) Working Days of it becoming aware of a vacancy.
  9. If the Authority does not intend to make a nomination in respect of any vacancy it must notify the Provider of this as soon as reasonably practicable.
  10. What will constitute a “**void**” shall be detailed in the relevant Block Contract.
  11. Where a void arises, if the Call-Off Contract sets out a price/rate that the Authority will pay to the Provider for unoccupied placements, the Authority shall pay such price/rate to the Provider for the voids in accordance with the terms of the relevant Block Contract. Where the Block Contract does not contain such a price/rate, the Authority does not intend to pay the Provider in respect of any voids. However, if, in exceptional circumstances, the Provider demonstrates and evidences to the Authority’s reasonable satisfaction that there is a risk to the remaining Children/Young People under the Block Contract or to the sustainability of the Services being provided by the Provider as a result of any voids, the Authority will consider, on an individual case by case basis, making a payment to the Provider in respect of a void. Such payment will be for the amount agreed by the Authority in light of the information and evidence provided by the Provider and will be paid to the Provider in accordance with the payment terms of this Agreement.
  12. In the case of a void, where the provider repeatedly refuses nominations, the Authority reserves the right to pay the Provider a reduced fee of 50% (fifty percent) of the Weekly Fee on that bed until a suitable nomination is accepted.
  13. If, when the Authority has a requirement for Services under the flexible framework, there is an appropriate vacancy available under any Block Contract awarded by the Authority under this Agreement, the Authority will always look to fill such a vacancy first in priority to issuing an Invitation to Tender for Services under an Individual Placement Agreement.
  14. If the Authority has issued an Invitation to Tender for an Individual Placement under the flexible framework and the Provider believes that it has a vacancy under an existing Block Contract with the Authority that would be suitable for the relevant Child/Young Person it will notify the Authority as soon as reasonably practicable of becoming aware of the same.

**APPENDIX A – SCORING MATRIX – BLOCK CONTRACTS**

| **Scoring Matrix Table** | | |
| --- | --- | --- |
| Score | Classification | Definition |
| 0 | No response (complete non-compliance) | No response at all or insufficient information provided in the response such that the solution is totally non-assessable and/or incomprehensible. |
| 1 | Unsatisfactory response (potential for some compliance but very major areas of weakness) | Substantially unacceptable submission which fails in several significant areas to set out a solution that addresses and meets the requirements of the Authority.  Little or no detail (and, where evidence is required or necessary, no evidence) has been provided to support and demonstrate that the Qualified Provider will be able to provide the services and/or considerable reservations as to the Qualified Provider’s proposals in respect of relevant ability, understanding, expertise, skills and/or resources to deliver the requirements.  Would represent a very high risk solution for the Authority. |
| 2 | Partially acceptable response (one or more areas of major weakness) | Weak submission which does not set out a solution that fully addresses and meets the requirements.  The response may be basic/ minimal with little or no detail (and, where evidence is required or necessary, with insufficient evidence) provided to support the solution and demonstrate that the Qualified Provider will be able to provide the services and/or some reservations as to the Qualified Provider’s solution in respect of relevant ability, understanding, expertise, skills and/or resources to deliver the requirements.  May represent a high risk solution for the Authority. |
| 3 | Satisfactory and acceptable response (substantial compliance with no major concerns) | Submission sets out a solution that largely addresses and meets the requirements, with some detail (or, where evidence is required or necessary, some relevant evidence) provided to support the solution.  Minor reservations or weakness in a few areas of the solution in respect of relevant ability, understanding, expertise, skills and/or resources to deliver the requirements.  Medium, acceptable risk solution to the Authority. |
| 4 | Fully satisfactory /very good response (fully compliant with requirements). | Submission sets out a robust solution that fully addresses and meets the requirements, with full details (and, where evidence is required or necessary, full and relevant evidence) provided to support the solution.  Provides full confidence as to the relevant ability, understanding, expertise, skills and/or resources to deliver the requirements.  Low risk solution for the Authority. |
| 5 | Outstanding response (fully compliant, with some areas exceeding requirements) | Submission sets out a robust solution (as for a 4 score – above) and, in addition, provides or proposes additional value and/or elements of the solution which exceed the requirements in substance and outcomes in a manner acceptable to the Authority.  Provides full confidence as to the relevant ability, understanding, expertise, skills and/or resources not only to deliver the requirements, but also exceed it as described.  Low risk solution for the Authority. |

**SCHEDULE 7B: CALL-OFF TERMS AND CONDITIONS**

1. **DURATION OF CALL-OFF CONTRACTS**
   1. A Call-Off Contract (the Individual Placement Agreement (IPA) or block contract, as appropriate) shall take effect from the Call-Off Contract Commencement Date and, unless terminated earlier in accordance with the terms of this Schedule 7B (Call-Off Terms and Conditions), shall remain in force until the earlier of:
      1. the Call-Off Contract Expiry Date; or
      2. the date of expiry of any extended period, following an extension of a Call-Off Contract pursuant to paragraph 1.3 (Extension of a Call-Off Contract); or
      3. where no Call-Off Contract Expiry Date is given in the relevant Call-Off Contract, the date on which the relevant Call-Off Contract is terminated by either Party pursuant the terms of paragraph 2 (Termination of Call-Off Contracts).
   2. For the avoidance of doubt, the term of the Call-Off Contract shall be the period from the Call-Off Contract Commencement Date to the date of expiry or termination, howsoever arising.

**EXTENSION OF A CALL-OFF CONTRACT**

* 1. Where a Call-Off Contract is stated to have an option to extend the relevant Call-Off Contract prior to the Call-Off Contract Expiry Date, subject to the satisfactory performance of the Provider’s obligations under the relevant Call-Off Contract, the Authority may, at its sole discretion, by giving at least one (1) month’s written notice to the Provider prior to the relevant Call-Off Contract Expiry Date or the expiry of any previous extension agreed by the Placing Authority pursuant to this paragraph 1.3, agree to extend the term of the relevant Call-Off Contract. The provisions of the relevant Call-Off Contract will continue to apply throughout any such extended period.

1. **TERMINATION OF CALL-OFF CONTRACTS**
   1. The expiry of this Agreement or the termination of this Agreement in whole shall also serve as notice of termination of all Call-Off Contracts with the same notice period that applies to this Agreement. However, where:
      1. this Agreement expires by passage of time pursuant to clause 37.1 of Part A (General Terms and Condition) of this Agreement or is terminated by either Party on notice pursuant to clause 37.2 of Part A (General Terms and Condition) of this Agreement; and

* + 1. the Provider continues to be registered to operate; and
    2. at least one Child/Young Person/Young Adult is placed by the Authority under a Call-Off Contract at the date of such expiry or termination (even if such Child/Young Person/Young Adult may be temporarily Absent at such date); and
    3. no new agreement for the provision of the Services has been entered into between the Authority and the Provider, then, notwithstanding such expiry or termination of this Agreement, the Call-Off Contracts shall remain in force until otherwise terminated by either Party by giving the other Party seven (7) working days’ notice in writing, and this Agreement shall be deemed to continue to operate only in respect of such Call-Off Contracts.
  1. Where this Agreement is terminated in part only in accordance with its terms, the Authority may, at its sole discretion, decide to terminate any Call-Off Contracts relating to the part of this Agreement that is to be terminated with the same period of notice. Where the Authority decides not to terminate such Call-Off Contracts pursuant to this paragraph 2.2, then, notwithstanding the termination of part of this Agreement, the Call-Off Contracts shall remain in force until otherwise terminated by either Party in accordance with the provisions of this Schedule 7B (Call-Off Terms and Conditions).

* 1. The Placing Authority may (at its sole discretion) terminate any Call-Off Contract by notice in writing with immediate effect if at any time the relevant Establishment at which a Placement under the Call-Off Contract falls below the Required Rating (set out in Part A: General Terms and Conditions, Section 1 Definitions) and/or have such Establishment removed from a Block Contract (whether or not any Individual Placement Agreement has been entered into in respect of it).
  2. The Authority may terminate any Call-Off Contract by notice in writing with immediate effect if:
     1. The Provider receives notice of the proposed cancellation of its registration by a Regulatory Body or ceases to hold any other Necessary Consents required in order to deliver the Services from the Establishment at which the Placement under the Individual Placement Agreement is made and/or may have such Establishment removed from a Block Contract (whether or not an Individual Placement Agreement has been entered into in respect of it)
     2. The Provider enters administration
  3. The Authority may terminate any Block Contract in its entirety:
     1. by giving at least three (3) months’ written notice to the Provider;
     2. where the Provider commits a breach of the Block Contract and if:
        1. the Provider has not remedied the breach to the satisfaction of the Authority within twenty (20) Working Days (or any such other period as may be specified by the Authority) of receiving a written notice from the Authority specifying the breach and requesting it to be remedied and informing the Provider that the relevant Block Contract will be terminated if such breach is not remedied within this period; or

* + - 1. the breach is not, in the opinion of the Authority, capable of remedy.
  1. Either Party may terminate an Individual Placement Agreement on a no-fault basis by giving a minimum of six (6) Weeks’ written notice to the other Party. If the Child/Young Person/Young Adult’s place is filled by the Provider within the notice period, the Authority’s liability for the payment of the Fees under the relevant Individual Placement Agreement will cease when the new replacement placement starts or at the end of the agreed notice period, whichever is sooner.
  2. No period of notice will be required for short stay residential or assessment Placements where a Child/Young Person/ Young Adult’s admission and leaving dates have been agreed in advance between the Authority and the Provider, except where the discharge date has been brought forward by the agreement of the Parties in which case a period of seven (7) working days’ notice will be applicable.
  3. Either Party may terminate an Individual Placement Agreement with such lesser period of notice as is stated below or, where no period of notice is stated, with immediate effect in the following circumstances:
     1. if following a thorough risk assessment, it is clear that:
        1. the safety and well-being of the Child/Young Person/Young Adult, the Provider’s Staff, or other person (including any other children at the relevant Establishment) is threatened;
        2. there is a child protection matter;
        3. a risk has arisen that cannot be adequately managed within the Placement;
        4. the Placement’s continuation puts the Child/Young Person, or any other children at the relevant Establishment at risk of harm,

an urgent disruption meeting shall be held by the Parties and the Individual Placement Agreement may be terminated by the giving of seven (7) days’ written notice to the other Party, notwithstanding the length of time the Child/Young Person has been at the Placement;

* + 1. as recommended by the Local Safeguarding Board;
    2. where mutually agreed by the Parties; or
    3. where the Provider commits a breach of the Individual Placement Agreement and if:
       1. the Provider has not remedied the breach to the satisfaction of the Authority within ten (10) Working Days (or any such other period as may be specified by the Authority) of receiving a written notice from the Authority specifying the breach and requesting it to be remedied and informing the Provider that the relevant Individual Placement Agreement will be terminated if such breach is not remedied within this period; or

* + - 1. the breach is not, in the opinion of the Authority, capable of remedy.
  1. If a Child/Young Person/Young Adult who is placed at the Provider’s Establishment under an Individual Placement Agreement becomes Absent and such an Absence is an Unauthorised Absence, then the Provider shall immediately notify the Authority of the same in accordance with the provisions of Schedule 5 (Communication) and shall comply with the relevant missing person’s protocol. The Provider should make all reasonable attempts to re-engage with the student and their family (where appropriate). Where this Unauthorised Absence continues for a continuous period of seven (7) working days, the Parties may agree to terminate the Individual Placement Agreement. Unless a notice to terminate the Individual Placement Agreement has already been served by either of the Parties pursuant to paragraph 2 at an earlier date, the notice period of six (6) Weeks (being the required notice period under paragraph 2.6) shall then be deemed to have commenced on the date that the Child/Young Person in question actually left the Establishment unless otherwise agreed between the Parties.
  2. The Individual Placement Agreement shall end automatically seven (7) working days following the death of the Child/Young Person. During this time, the Authority and the Provider shall work together to make appropriate arrangements and responses to any coroner inquest, funeral arrangements and transfer of personal belongings. Notwithstanding this paragraph 2.10, additional costs (for example for additional staffing) which the Provider is contracted to continue to pay in respect of the Child/Young Person will be paid by the Authority until the end of the relevant notice period that would have been applicable under paragraph 2 if the Child/Young Person had not died.
  3. Payment for Services under the Individual Placement Agreement will cease from the expiry of the relevant notice period for the Individual Placement Agreement or, where no notice period is required to be given, from the date on which the Placement terminates/ends. If either the Authority terminates this Agreement or the Child/Young Person leaves the Placement without the proper notice being given in accordance with paragraph 2, the Provider’s Fees shall continue to be payable to the date upon which such proper notice would have expired had it been given at the date of such termination or departure under paragraph 2.
  4. Where any Call-Off Contracts are terminated pursuant to paragraph 2, the best interests of the relevant Children/Young People shall be paramount and the Party with the right to terminate shall seek to exercise any such right in a manner which shall be consistent with the best interests of the relevant Children/Young Person. The Parties will work together to safeguard the interests of the Child/Young Person until such time as alternative arrangements can be made and shall co-operate to ensure that the interests of the Children/Young People are met under whatever new arrangements are to be put in place by the Authority. A final written assessment will also be produced by the Provider before the Child/Young Person leaves the Placement.

1. **VARIATIONS TO CALL-OFF CONTRACTS**
   1. Variations to any Call-Off Contract shall be in substantially the form set out at Schedule 10 (Variation Note) and shall be signed and dated by both the Provider and the Authority. For the avoidance of doubt, such Variations shall include a change of Premises or change of location in respect of any Services.
   2. Changes to Services or Fees agreed as part of a Variation will be effective from the date agreed by both Parties and invoices should not reflect any changes prior to the agreed date. Any invoices received detailing changes to the Services or Fees prior to the agreed date shall not be processed for payment by the Authority.

**SCHEDULE 8 – LOTS AND FLEXIBLE FRAMEWORK SUSPENSION PROTOCOL**

**PART A: FLEXIBLE FRAMEWORK LOTS**

|  |
| --- |
| 1. Independent/ Special Schools |
| 1. Specialist Post 16 Institutions (Colleges) |

**PART B: FLEXIBLE FRAMEWORK LOTS AND SUB-CATEGORIES**

|  |  |
| --- | --- |
| **Flexible Framework Lots** | **Flexible Framework Sub-Categories** |
| 1. Schools | 1. Residential schools 2. Day schools 3. Children’s Homes with education (settings dual registered as schools and children’s homes)   \*sub-categories (a) to (c) to cover placements for children with SEND |
| 1. Specialist Post 16 Institutions (Colleges) | Independent Specialist College |
|  |  |
|  |  |

**PART C: FLEXIBLE FRAMEWORK SUSPENSION PROTOCOL**

1. **ACTION THAT THE PARTICIPATING AUTHORITIES WILL TAKE FOLLOWING SUSPENSION**
   1. Where any Establishment is suspended from the Flexible Framework in accordance with the terms of this Agreement:
      1. for Flexible Framework Lots 1 2 (Independent Specialist Provision (Colleges) the Lead Authority shall (in consultation with the Board) remove the relevant Establishment from the Flexible Framework circulation list. The Provider shall not receive, and shall be suspended from responding to, any relevant Invitations to Tender issued under the Flexible Framework in respect of that Establishment; or

The Lead Authority will be permitted to advise all Participating Authorities of the suspension.

* 1. Where the Provider (and all of its Establishments) is suspended from the Flexible Framework in accordance with the terms of this Agreement:
     1. for Flexible Framework Lots 1 (Schools) and 2 (Specialist Provision Institutions (Colleges)) ) the Lead Authority will remove the Provider and its Establishments from the Flexible Framework circulation list. The Provider shall not receive, and shall be suspended from responding to, any Invitations to Tender issued under the Flexible Framework; or

The Lead Authority will be permitted to advise all Participating Authorities of the suspension.

* 1. In the event of any suspension:
     1. in light of the information available to the Participating Authorities, the Participating Authorities will consider the implications of the suspension for any existing Call-Off Contracts (IPA) with the relevant Provider, consulting with parents and other key agencies relevant to each Child/Young Person/Young Adult and undertaking a risk assessment in respect of each individual Placement. The Participating Authorities will then take a decision as to whether or not to remove an individual Child/Young Person/Young Adult from a Placement;
     2. where there are existing Placements with the relevant Provider which are retained during a suspension, if required, the Participating Authorities will arrange to undertake a site visit within an appropriate timescale;
     3. if appropriate, the Participating Authorities will contact Ofsted and/or the appropriate approved inspectorate of independent schools to inform them of the suspension;
     4. the Participating Authorities will agree further site visits, monitoring arrangements and progress meetings with the Provider as necessary;
     5. the Participating Authorities will offer advice and support to the Provider to help the Provider to achieve the required improvements, as appropriate;
     6. the Participating Authorities will take any other relevant actions as identified in Appendix A (Areas of Concern Leading to Action Plan/Suspension) to this Part C (Flexible Framework Suspension Protocol) of Schedule 8 ( Lots and Flexible Framework Suspension Protocol); and
     7. where the concerns relate to safeguarding, the Participating Authorities' Contracts and Commissioning Manager and lead for the Flexible Framework will ensure that contact is made (either by making contact or by agreement with another officer of the Participating Authorities) with the area Local Participating Authorities Designated Officer (LADO) and alert the Participating Authorities' Safeguarding Team.
  2. Once the Participating Authorities has decided that the suspension is no longer required in accordance with the terms of this Agreement, the Participating Authorities will notify the Provider in writing that it (or, where relevant, the relevant Establishments) is/are to be re-instated on to the Flexible Framework and shall set out any terms applicable to the re-instatement.

* 1. Following the re-instatement, the Lead Authority will ensure that the Provider (and the Provider's relevant Establishments) are included on the Flexible Framework circulation list and the Provider shall be entitled to start responding to any relevant Invitations to Tender issued under the Flexible Framework. The Lead Authority will also advise all the r Participating Authorities of the re-instatement in accordance with the Partner Agreement.

**APPENDIX A – FLEXIBLE FRAMEWORK ESTABLISHMENTS - AREAS OF CONCERN LEADING TO ACTION PLAN/SUSPENSION**

**Levels of concern**

1 – low

2 – medium

3 – high

4 – serious – immediate action required

**Risk scores**

1 – low

2 – medium

3 – high – action required

4 – significant – immediate action required

|  |  |  |  |
| --- | --- | --- | --- |
| **AREA OF CONCERN** | **TYPE OF CONCERN** | **LEVEL OF CONCERN** | **RISK SCORE** |
| Safeguarding | * The welfare, health and safety of Children/Young People is compromised | 4 | 4 |
| Excessive use of physical restraint | * Evidence of high incidence of physical restraints on one or more child * Quality of Behaviour Management Plans | 3 | 3 |
| Staffing | * Expertise * Training * High turnover * Use of agency staff * Qualifications * Ratio of staff to children/young people | 2/3 | 2/3 |
| Complaints | * Number of complaints * Outcome of complaints made * Recording * Source | 1/2 | 1/2 |

Outcome based on risk score

|  |  |
| --- | --- |
| **RISK SCORE** | **OUTCOME** |
| 1 | * Contact made with Provider which may lead to a site visit and/or arrangement to meet with the Provider at office base * Follow up to monitor |
| 2 | * Contact made with Provider to arrange a site visit and/or arrangement to meet with the provider at office base * Follow up to monitor |
| 3 | * Contact made with Provider to arrange a site visit. * Action Plan to be agreed – requires sign-off when all actions met * Consideration given to suspension from Flexible Framework |
| 4 - Safeguarding | * Automatic suspension from Flexible Framework * LADO involvement * Contact made with Provider to arrange a site visit. * Action Plan agreed – requires sign-off when all actions met |
| 4 – aggregated score | * Contact made with provider to arrange a site visit. * Action Plan agreed – requires sign-off when all actions met * Suspension from Flexible Framework likely |

**SCHEDULE 9 – DATA PROCESSING ACTIVITIES**

|  |  |  |
| --- | --- | --- |
| **Categories of Data** | Please tick all relevant boxes and add more detail if required: |  |
|  | **Personal Data** |  |
|  | Name |  |
|  | identification number |  |
|  | location data |  |
|  | online identifier (email/IP address) |  |
|  | Other (please insert details): |  |
|  |  |  |
|  |  |  |
|  | **Special Categories Lots of Personal Data** |  |
|  | race |  |
|  | ethnic origin |  |
|  | political opinions |  |
|  | religion |  |
|  | trade union membership |  |
|  | genetics |  |
|  | biometrics (where used for ID purposes) |  |
|  | health |  |
|  | sex life |  |
|  | sexual orientation |  |
|  | **Criminal Offence Data** |  |
|  | allegations |  |
|  | proceedings |  |
|  | convictions |  |
|  |  |  |
| **Categories of Data Subjects** | Please tick all relevant boxes: |  |
|  | Participating Authorities service users/customers |  |
|  | Participating Authorities service user/customer next of kin |  |
|  | Participating Authorities employees |  |
|  | Participating Authorities employees next of kin |  |
|  | Other (please insert details): |  |
|  |  | |
|  |  | |
|  |  |  |
| **Processing Operations** | Please tick all relevant boxes: |  |
|  | Using data provided by the Participating Authorities |  |
|  | Collecting new data from Data Subjects |  |
|  | Transforming data by adding new data collected from service users/customers to data provided by the Participating Authorities |  |
|  | Sharing data with anyone other than the Participating Authorities |  |
|  | Erasure or destruction of personal data |  |
|  | Other (please insert details): |  |
|  |  | |
|  |  | |
|  |  |  |
| **Location of Processing Operations** | Please tick one box only: |  |
|  | UK |  |
|  | EEA[[1]](#footnote-2) (European Economic Area) |  |
|  | Outside EEA (European Economic Area) |  |
|  | If outside the EEA please provide details: |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
| **Identity of sub-contractors** | *Insert details of all permitted sub-contractors, including full legal name, registered address and location where processing of Personal Data will occur and a description of the processing operations undertaken by each sub-contractor. Please note that you are not permitted to engage any sub-contractors to process this data without prior written Participating Authorities approval.* | |
|  |  |  |
| **Purposes** | For the purpose of performing the Agreement and any Call-Off Contracts awarded under it.  *If you’re using the data for a reason other than the purpose of delivering the contract, please amend this section accordingly and provide details here.* | |
|  |  |  |
| **Duration** | Until the later of the expiry or termination date of the Agreement, or the expiry or termination of the last remaining Call-Off Contract awarded under it.  *If the length of time for which data processing activities will be carried out will go beyond the expiry date of the Agreement or Call-Off Contract (as relevant), please amend this section accordingly and detail how long these activities will go on for.* | |

**SCHEDULE 10 – VARIATION NOTE**

|  |  |  |  |
| --- | --- | --- | --- |
| **Variation Note No.** | **Title:** | | **Type of Variation:** |
| **Date raised:** | **Raised by:** | | **Implementation date:** |
| **Detailed description of the Variation and wording of related changes to the Agreement and/or the Call-Off Contract:** | | | |
| **Where relevant, the proposed adjustment to the Fees resulting from the Variation:** | | | |
| ***Signed on behalf of the Participating Authority :***  **Name and Title:**  **Signature:**  **Date:** | | ***Signed on behalf of the Provider:***  **Name and Title:**  **Signature:**  **Date** | |

**SCHEDULE 11 – DATA SHARING AGREEMENT TEMPLATE**

**THIS DATA SHARING AGREEMENT IS MADE ON 20**

**BETWEEN:**

(1) [**INSERT NAME**]  **(‘Participating Authorities’**); and

(2) **[INSERT NAME OF SUCCESSFUL PROVIDER]** (Registered Company Number: [INSERT NUMBER]) of [INSERT REGISTERED COMPANY ADDRESS](“**the Provider**”)

each a(“**party**”) and together the (“**the parties**”).

**BACKGROUND:**

1. On [**DATE**] the Participating Authorities advertised in the Official Journal of the European Union (OJEU) (reference: [**INSERT**]), inviting prospective providers to submit requests to participate in an electronic purchasing system (based on dynamic purchasing principles) allowing for the Participating Authorities and other named local Participating Authorities purchasers to purchase special educational needs and disability Independent Non Maintained Special School placements (“**the Flexible Framework**”). On the basis of the Provider's response the Participating Authorities admitted the Provider selected the Provider.
2. *[INSERT ANY FURTHER RELEVANT BACKGROUND INFORMATION ABOUT THE SHARING ARRANGEMENT. THIS SHOULD INCLUDE INFORMATION ABOUT A) WHY THE ARRANGEMENT IS NECESSARY; B) THE SPECIFIC AIMS OF THE ARRANGEMENT; AND C) THE BENEFITS OF THE DATA SHARING TO INDIVIDUALS]*
3. The parties have agreed to share Personal Data (as defined below) for the Agreed Purpose on the terms set out in this Agreement.

1. DEFINITIONS AND INTERPRETATIONS
   1. In this Agreement, unless the context otherwise requires, the following words have the following meanings:

|  |  |
| --- | --- |
| "Agreed Purpose" | means the purpose for which the parties are entitled to use the Shared Personal Data, as set out in Appendix 2 (Agreed Purpose and Legal Basis); |
| "Agreement" | means this data sharing agreement and the appendices hereto; |
| "Business Day" | means a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business; |
| "Commencement Date" | means the date of this Agreement; |
| "Control" | means in relation to an entity that is not a natural person, the power of a person (or persons acting in concert) to secure directly or indirectly that the affairs of that entity are conducted in accordance with the wishes of that person (or persons); |
| "Data Controller" | means the natural or legal person, public Participating Authorities , agency or other body which, alone or jointly with others, determines the purposes and means of the processing of personal data; |
| "Data Discloser" | means the party disclosing Shared Personal Data under this Agreement; |
|  |  |
| "Data Protection Legislation" | means all legislation and regulatory requirements in force from time to time relating to the use of personal data and the privacy of electronic communications, including, without limitation (i) any data protection legislation from time to time in force in the UK including the Data Protection Act 2018 or any successor legislation, as well as (ii) the General Data Protection Regulation ((EU) 2016/679) and any other directly applicable European Union regulation relating to data protection and privacy (for so long as and to the extent that the law of the European Union has legal effect in the UK); |
| "Data Recipient" | means the party receiving Shared Personal Data under this Agreement; |
| "Data Security Breach" | means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to the Shared Personal Data; |
| "Data Subject" | means an identified or identifiable natural person to whom the Shared Personal Data relates; |
| "Deletion Procedure" | means the deletion procedure agreed by the parties and set out at Appendix 6 (Deletion Procedure) of this Agreement; |
| "GDPR" | means the General Data Protection Regulation (EU) 2016/679; |
| "Group Company" | means in relation to a party, any person Controlled by, Controlling or under common Control with that party; |
| "Insolvency Event" | means if a party makes any voluntary arrangement with its creditors, enters administration or goes into liquidation; if a security holder takes possession or a receiver or administrative receiver is appointed; if anything analogous to the foregoing occurs in any jurisdiction; or if that party ceases to do business; |
| "Permitted Recipient" | means a director, employee or professional advisor of each respective party or an agent or contractor used by that party in the fulfilment of the Agreed Purpose who has a legitimate need to receive and Process Personal Data for the Agreed Purpose; |
| "Personal Data" | means any information relating to an identified or identifiable natural person; |
| "Process, Processed or Processing" | means any set of operations which is performed on personal data, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction; |
| "Regulatory Authorities" | means any competent data protection or privacy Participating Authorities by which either party is regulated; |
| "Shared Personal Data" | means the Personal Data to be shared between the parties under this Agreement, as set out in Appendix 1 (Shared Personal Data); |
| "SPoC" | means Single Point of Contact as defined in clause 2.2; |
| "Subject Access Request" | means a request from a Data Subject to exercise his or her right of access to personal data under the Data Protection Legislation; and |
| "Third Country/Countries" | means all countries outside of the scope of the data protection laws of the European Economic Area (EEA), excluding countries that have been approved by the European Commission from time to time as having adequate data protection laws. |

* 1. In this Agreement, unless the context otherwise requires:
     1. a "person" shall be construed as a reference to any person, firm, company, corporation, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) or one or more of the foregoing;
     2. any phrase introduced by the terms include, including, particularly or in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms;
     3. a reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended, extended or re-enacted from time to time;
     4. unless otherwise provided the singular includes the plural and the masculine includes the feminine and vice versa;
     5. the headings are inserted for convenience and do not affect the construction of this Agreement.

1. PURPOSE
   1. This Agreement sets out the framework for the sharing of Personal Data between the parties as Data Controllers. It defines the principles and procedures that the parties shall adhere to and the responsibilities the parties owe to each other in respect of the Shared Personal Data.
   2. Each party shall nominate a single point of contact (“**SPoC**”). The SPoCs shall work together to reach agreement with regard to any issues arising from this Agreement and to actively improve the effectiveness of the Agreement going forward. The SPoC for each party is set out at Appendix 3 (Single Point of Contact).
2. COMPLIANCE WITH DATA PROTECTION LEGISLATION
   1. Each party must ensure compliance with all relevant Data Protection Legislation at all times during the term of this Agreement.
   2. Each party warrants that it has a valid registration with all relevant Regulatory Authorities as required by the Data Protection Legislation which, at the Commencement Date, covers the intended data sharing pursuant to this Agreement, unless an exemption applies.
3. SHARED PERSONAL DATA
   1. The parties will provide to each other the Shared Personal Data at the times, frequencies and in the format set out at Appendix 4 (Details of Sharing) or as otherwise agreed in writing between the parties.
   2. Each party shall ensure that the Shared Personal Data is accurate and is not irrelevant or excessive with regard to the Agreed Purposes.
   3. Each party shall ensure that it processes the Shared Personal Data fairly and lawfully during the term of this Agreement. The legal basis which permits the sharing of the Shared Personal Data for the Agreed Purposes is set out in Appendix 2 (Agreed Purpose and Legal Basis).
   4. The parties have agreed that the Provider shall be responsible for delivering a privacy notice to Data Subjects to provide all information that the parties are obliged to provide under the Data Protection Legislation to ensure that the Data Subjects understand how their Personal Data will be processed by the parties. The form of the privacy notice and the timing and method of delivery of the privacy notice will be [agreed in writing by the parties/as set out in Appendix 10 (Form and Method of Delivery of Privacy Notice).
   5. The parties agree that they shall record all Shared Personal Data using compatible databases and the data transfer methods as set out in Appendix 5 (Compatible Databases and Methods of Recording) or as otherwise agreed in writing between the parties.
4. DATA SUBJECTS' RIGHTS
   1. Each party shall maintain a record of individual requests from Data Subjects to exercise their rights under the Data Protection Legislation, including Subject Access Requests, requests for deletion, restriction, rectification, portability, objections and rights in relation to automated decision making. Records kept should include, but shall not necessarily be limited to, the following:
      1. copies of the relevant request received;
      2. details of the data accessed and shared with the Data Subject, if any; and
      3. notes of any meetings, correspondence or phone calls relating to the request.

The Provider shall be responsible for responding to individual requests from Data Subjects to exercise their rights under the Data Protection Legislation in relation to the Shared Personal Data. The Provider shall provide all reasonable assistance to enable Participating Authorities to comply with any requests received and to respond to queries or complaints from Data Subjects. The party that receives a request from an individual will be responsible for the costs of complying with the request. The basis of calculating such costs shall be agreed in advance in writing by the parties.

1. DATA RETENTION AND DELETION
   1. Neither party shall retain or process Shared Personal Data for longer than is necessary to carry out the Agreed Purposes.
   2. Notwithstanding clause 6.1, each party may continue to retain Shared Personal Data in accordance with any applicable statutory or professional retention periods.
   3. Each party shall ensure that all Shared Personal Data is returned to the other party or destroyed in accordance with the agreed Deletion Procedure:
      1. on termination or expiry of this Agreement; or
      2. once processing of the Shared Personal Data is no longer necessary for the Agreed Purposes.
   4. Following the deletion of the Shared Personal Data in accordance with clause 6.3, each party shall notify the other that the Shared Personal Data in question has been deleted in accordance with the Deletion Procedure.
2. TRANSFERS OF SHARED PERSONAL DATA TO THIRD COUNTRIES
   1. Neither party shall disclose or transfer the Shared Personal Data to any person located in a Third Country without the prior written consent of the other party.
   2. If the Provider is located in a Third Country, the Provider shall take all steps required by the Participating Authorities to ensure adequate safeguards are in place to protect the Shared Personal Data, including but not limited to entering into standard contractual clauses.
3. SECURITY OF SHARED PERSONAL DATA
   1. Having regard to the state of technological development and the cost of implementing such measures, each party shall have and maintain in place throughout the term of this Agreement appropriate technical and organisational measures as set out in Appendix 7 (Security Measures) in order to:
      1. prevent:
         1. unauthorised or unlawful processing of the Shared Personal Data; and
         2. the accidental loss or destruction of, or damage to, the Shared Personal Data; and
      2. ensure a level of security appropriate to:
         1. the harm that might result from such unauthorised or unlawful processing or accidental loss, destruction or damage; and
         2. the nature of the Shared Personal Data to be protected.
   2. Each party shall ensure that its staff members are appropriately trained to handle and process the Shared Personal Data in accordance with the technical and organisational security measures set out in Appendix 7 (Security Measures) and with the Data Protection Legislation.
   3. The level, content and regularity of training referred to in clause 8.2 shall be proportionate to the staff members’ role, responsibility and frequency with respect to their handling and processing of the Shared Personal Data and to the nature of the Shared Personal Data handled by the relevant staff members.
   4. Each party shall ensure that only Permitted Recipients have access to the Shared Personal Data and shall ensure the reliability of all such Permitted Recipients.
4. DATA SECURITY BREACHES AND REPORTING PROCEDURES
   1. Each party shall notify any potential or actual losses of the Shared Personal Data, and any Data Security Breach, to the other party’s SPoC as soon as possible and in any event within 24 hours after becoming aware of the breach. The SPoCs shall work together to consider the action required in order to resolve the issue in accordance with the applicable Data Protection Legislation.
   2. Each party shall provide reasonable assistance as is necessary to the other to facilitate the handling by the other party of any Data Security Breach in an expeditious and compliant manner.
5. REVIEW OF AGREEMENT
   1. The parties shall review the effectiveness of this data sharing initiative and Agreement every six (6) months and upon the addition and removal of a party, having consideration to the aims and purposes set out in this Agreement and to the Agreed Purpose. The parties shall continue, amend or terminate this Agreement depending on the outcome of this review.
   2. The review of the effectiveness of the data sharing initiative and Agreement will involve at least the following:
      1. assessing whether the purposes for which the Shared Personal Data is being processed still align with the Agreed Purpose;
      2. assessing whether the Shared Personal Data is still as listed in Appendix 1 (Shared Personal Data) to this Agreement or whether the scope of the Shared Personal Data needs to be amended;
      3. assessing whether the legal frameworks governing data quality, retention and data subjects’ rights are being complied with; and
      4. assessing whether Data Security Breaches involving the Shared Personal Data have been handled in accordance with this Agreement and the applicable Data Protection Legislation.
6. DIRECT MARKETING

If the Data Recipient processes the Shared Personal Data for the purposes of direct marketing, the Data Recipient shall ensure that effective procedures are in place to allow the Data Subjects to opt-out from having their Shared Personal Data used for such direct marketing purposes in accordance with the Data Protection Legislation.

1. RESOLUTION OF DISPUTES WITH DATA SUBJECTS OR REGULATORY AUTHORITIES
   1. In the event of a dispute or claim brought by a Data Subject or a relevant Regulatory Authorities concerning the processing of Shared Personal Data against either or both parties, the parties will inform each other about any such disputes or claims and will cooperate with a view to settling them amicably in a timely fashion.
   2. The parties agree to respond to any generally available non-binding mediation procedure initiated by a Data Subject or Regulatory Authorities. If they do participate in the proceedings, the parties may elect to do so remotely. The parties also agree to consider participating in any other arbitration, mediation or other dispute resolution proceedings developed for data protection disputes.
   3. Each party shall abide by a decision of a competent court of the UK or of the UK Regulatory Authorities which is final and against which no further appeal is possible.
2. WARRANTIES AND INDEMNITY
   1. The Provider warrants and undertakes that it will:
      1. process the Shared Personal Data in compliance with all applicable Data Protection Legislation;
      2. make available upon request to the Data Subjects who are third party beneficiaries a copy of this Agreement;
      3. respond within a reasonable time and as far as reasonably possible to enquiries from any relevant Regulatory Authorities in relation to the Shared Personal Data;
      4. where applicable, maintain registration with all relevant Regulatory Authorities to enable the Provider to process all Shared Personal Data for the Agreed Purpose;
      5. take all appropriate steps to ensure compliance with the security measures set out at clause 8 above; and
      6. not disclose or transfer Shared Personal Data to a Third Country without the prior written consent of the Participating Authorities.
   2. Except as expressly stated in this Agreement, all warranties, conditions and terms, whether express or implied by statute, common law or otherwise are hereby excluded to the extent permitted by law.
   3. The Provider undertakes to indemnify the Participating Authorities and hold the Participating Authorities harmless from any costs, charge, damages, expense or loss incurred or suffered by the Participating Authorities as a result of their breach by the Provider of any of the provisions of this Agreement.
3. LIMITATION OF LIABILITY
   1. Neither party excludes or limits liability to the other party for:
      1. fraud or fraudulent misrepresentation;
      2. death or personal injury caused by negligence; or
      3. any matter for which it would be unlawful for the parties to exclude or limit liability.
   2. Subject to clause 14.1, the Participating Authorities shall not in any circumstances be liable to the Provider whether in contract, tort (including for negligence and breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, for:
      1. any loss (whether direct or indirect) of profits, business, business opportunities, revenue, turnover, reputation or goodwill;
      2. loss (whether direct or indirect) of anticipated savings or wasted expenditure (including management time); or
      3. any loss or liability (whether direct or indirect) under or in relation to any other contract.
   3. Subject to clause 14.1, the Participating Authorities shall in no circumstances be liable to the Provider whether in contract, tort (including for negligence and breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, for any sum in excess of [INSERT] in aggregate.
   4. [Subject to clause 14.1, the Provider shall in no circumstances be liable to the Participating Authorities whether in contract, tort (including for negligence and breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, for any sum in excess of [£X] in aggregate.]
4. FORCE MAJEURE

Neither party shall be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this Agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations.

1. ALLOCATION OF COST

Except as expressly set out in this Agreement, each party shall perform its obligations under this Agreement at its own cost.

1. TERMINATION
   1. The Participating Authorities shall be entitled to terminate this Agreement in the event that the Provider:
      1. commits a material breach of any of the terms of this Agreement, which breach is irremediable or, if remediable, has not been remedied within 30 days of receipt by the Provider of a notice in writing from the Participating Authorities requiring the Provider to remedy it; or
      2. suffers an Insolvency Event.
   2. Either party shall be entitled to terminate this Agreement on giving the other party [30 days written notice to terminate.
   3. If the underlying agreement to which this Agreement relates (if applicable) is terminated or expires, this Agreement shall automatically terminate at the time of termination or expiry of the main agreement.
2. THIRD PARTY RIGHTS

Other than as expressly set out in this Agreement, a person who is not a party to this Agreement is not entitled to enforce any of its terms, whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise. If a person who is not a party to this Agreement is stated to have the right to enforce any of its terms, the parties may rescind or vary this Agreement without the consent of that person.

1. RIGHTS AND REMEDIES

The rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

1. NOTICE
   1. Any notice given to a party under or in connection with this Agreement shall be in writing, addressed to that party’s SPoC and shall be delivered by hand or pre-paid first-class post or other next working day delivery service at the address for the SPoC notified in Appendix 3 (Single Points of Contact).
   2. Any notice shall be deemed to have been received:
      1. if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; and
      2. if sent by pre-paid first-class post or other next working day delivery service, at 9:00am on the second Business Day after posting or at the time recorded by the delivery service.
   3. This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.
2. VARIATION

No variation of this Agreement shall be effective unless it is in writing and signed by the duly authorised representatives of each of the parties.

1. WAIVER

No failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

1. SEVERANCE
   1. If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this Agreement.
   2. If one party gives notice to the other of the possibility that any provision or part-provision of this Agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.
2. CHANGES TO DATA PROTECTION LEGISLATION

If the Data Protection Legislation applicable to either party changes in a way such that this Agreement is no longer adequate for the purposes of governing lawful data sharing, the parties agree that the SPoCs will negotiate in good faith to review this Agreement in light of the changes and to make any amendments required to enable this Agreement to be adequate for those purposes.

1. NO PARTNERSHIP OR AGENCY
   1. Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.
   2. Each party confirms it is acting on its own behalf and not for the benefit of any other person.
2. FURTHER ASSURANCE

Each party shall from time to time (both during the continuance of this Agreement and after its termination) do all such acts and execute all such documents as may be reasonably necessary in order to give effect to the provisions of this Agreement.

1. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement and understanding between the parties with respect to the subject matter of this Agreement and the terms of this Agreement shall supersede any previous agreements.

1. GOVERNING LAW AND JURISDICTION

This Agreement shall be governed by and construed in accordance with the law of England and Wales and any dispute arising under or in connection with this Agreement shall be subject to the exclusive jurisdiction of the courts of England and Wales, to which each of the parties irrevocably submits.

In witness where of this Agreement has been signed by the parties or their duly authorised representatives on the date written at the beginning of this Agreement.

|  |  |
| --- | --- |
| Signed by ) for and on behalf of )  **[Authority]** ) ) |  |

|  |  |
| --- | --- |
| Signed by ) for and on behalf of **[Provider]** ) ) |  |

APPENDIX 1- SHARED PERSONAL DATA

|  |  |  |
| --- | --- | --- |
| **Categories of Data** | Please tick all relevant boxes and add more detail if required: |  |
|  | **Personal Data** |  |
|  | Name |  |
|  | identification number |  |
|  | location data |  |
|  | online identifier (email/IP address) |  |
|  | Other (please insert details): |  |
|  |  |  |
|  |  |  |
|  | **Special Categories Lots of Personal Data** |  |
|  | race |  |
|  | ethnic origin |  |
|  | political opinions |  |
|  | religion |  |
|  | trade union membership |  |
|  | genetics |  |
|  | biometrics (where used for ID purposes) |  |
|  | health |  |
|  | ~~sex life~~ |  |
|  | sexual orientation |  |
|  | **Criminal Offence Data** |  |
|  | allegations |  |
|  | proceedings |  |
|  | convictions |  |
|  |  |  |
| **Categories of Data Subjects** | Please tick all relevant boxes: |  |
|  | Participating Authorities service users/customers |  |
|  | Participating Authorities service user/customer next of kin |  |
|  | Participating Authorities employees |  |
|  | Participating Authorities employees next of kin |  |
|  | Other (please insert details): |  |
|  |  | |
|  |  | |

APPENDIX 2 - AGREED PURPOSE AND LEGAL BASIS

The agreed purpose(s) for which the Shared Personal Data is being shared and processed by the parties is as follows:

To make educational placements for young people

The legal basis for the data sharing is as follows:

| **Legal basis:** | **Tick here if this legal basis is relied upon:** | **Details:** |
| --- | --- | --- |
| The Data Subject has consented to the processing | x | In some circumstances the Data Subject will consent to the sharing of their data where they are deemed to have consent. |
| The processing is necessary for performance of a contract with the individual or to take steps at the request of the Data Subject prior to entering into a contract | x | Data pertaining to the Data Subject is shared to perform the contract. Relevant information is shared to make the offer and confirm an educational placement for a young person. |
| The processing is necessary for compliance with a legal obligation | x | Data shared so that the Participating Authorities |
| The processing is necessary to protect the vital interests of the Data Subject | x |  |
| The processing is necessary for performance of a task carried out in the public interest | x |  |
| The processing is necessary for the purposes of the legitimate interests of the Participating Authorities or the Provider and those interests are not overridden by the privacy rights and interests of the individual  *Note that because the Participating Authorities is a public Participating Authorities, this legal basis can only be relied upon when the Participating Authorities is carrying out non-public functions. Please contact the legal team for advice if you require assistance with assessing the legal basis of processing.*  *Please note that if the legitimate interests condition is relied upon it is necessary to document the legitimate interests and to consider whether these interests are outweighed by the privacy rights and interests of affected individuals. Please include details of the relevant legitimate interests, any competing privacy interests of individuals and the reasons why you consider that the identified legitimate interests outweigh the interests of individuals.* |  |  |

APPENDIX 3 – SINGLE POINTS OF CONTACT

**SPoC for the Participating Authority:**

Name:

Address:

Email address:

Telephone number:

**SPoC for Provider:**

Name:

Address:

Email address:

Telephone number:

APPENDIX 4 – DETAILS OF SHARING

|  |  |
| --- | --- |
| Format in which data will be provided: | Secure electronic format (password protection/encryption) |
| Frequency of data sharing: | As required to allow for making placements for young people in a timely manner. |
| Method of transmission of data: | Secure electronic transfer, telephone and post (IPAs). |

APPENDIX 5 – COMPATIBLE DATABASES AND METHODS OF RECORDING

NOT USED

APPENDIX 6 – DELETION PROCEDURE

On termination of the Flexible Framework Agreement Providers are required to ensure that hardcopies of shared personal data are confidentially destroyed (e.g. by shredding/placing in confidential waste) and that electronic copies of shared personal data are completely removed from the relevant party’s systems, where they are not required to be stored by the Provider to compliance to the relevant regulator or statutory requirements.

In some instances, there may be a requirement to return the relevant personal data to the Participating Authorities. Where is necessary the nominated contract manager from each Participating Authority will contact the Provider to discuss and agree the exact data that needs to be returned and in what secure format.

1. Details of countries in the EEA are available at the following website: [www.gov.uk/eu-eea](http://www.gov.uk/eu-eea) [↑](#footnote-ref-2)