



# **SCHOOL, COLLEGE, TRAINING & APPRENTICESHIP PROVIDERS CONTRACT**

**For the Placement of Learners with High Needs  
in Day School, College and Training Settings**

This contract is based on the National Schools and Colleges Contract (2013) developed by the ADCS, NASS, LGA and natspec. This document updates the previous contract in relation to Education and Data Protection legislation and regulation.

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

### **Introduction**

The Schools Standards and Framework Act 1998, The Education Act 1996, the Special Educational Needs and Disability Act 2001, the Children Act 1989, the Children and Families Act 2014, the Learning and Skills Act 2000, the Education and Skills Act 2008 and the Apprenticeships, Skills, Children and Learning Act 2009 and the associated regulations (such as the Special Educational Needs and Disability Regulations 2014; Special educational needs and disability code of practice: 0 to 25 years. January 2015; The Education (Independent School Standards) Regulations 2014) give details of Placement arrangements for Learners in educational establishment.

Under section 1(6) of the Care Standards Act 2000, a School which accommodates Children and Young People for 295 days or more in one year is also classified as a Children's Home. See also, the Children's Homes (England) Regulations 2015 and the Guide to the Children's Homes Regulations including the quality standards, April 2015.

The Education and Skills Funding Agency (ESFA) contracts directly with Providers for high needs Services (Elements 1 and 2). This Contract covers the arrangements where the Authority provides "top up" funding (Element 3) for Services to meet the requirements of the Learner's Plan. The Services that are supplied through the ESFA Contract are therefore materially relevant to this Contract in ensuring the Learner's overall needs are met.

The purposes of this Contract are to:

Ensure that there is a Contract for all learners placed by Local Authorities in educational establishments to provide Education, Care and Health.

Ensure that there is clarity over the funding arrangements between the Provider and the Authority.

This core contract aims to

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

### **Values and Beliefs**

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

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

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

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

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

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

Safeguarding Learners' welfare by the application of clearly stated operational procedures, established standards of practice and provision, including the use of safe recruitment procedures for staff appointments (as set out in Working Together to Safeguard Children 2018, DfES Guidance and the National Minimum Standards for Children's Homes and Residential Special Schools and Sections 157 and 175 of the Education Act 2002).

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

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## **A. Parties to the Agreement**

This Contract is made on the            day of            20            between the parties named below, and will expire/be reviewed by the end of the academic year 20

1.

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

Name of education establishment.	
Address of education establishment.	
Registered Number / Registered Charity Number:	

("The Provider")

2.

Name of Local Authority: ("Authority")	Solihull MBC
Address	The Council House Manor Square Solihull B90 3QB

("The Authority")

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## 1. Definitions

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

- 1.1 **"Academic Year"** means the Twelve [12] calendar month period commencing on the 1st of September each year unless a variation is added in Schedule 2 (Individual Placement Agreement)
- 1.2 **"Admission Date"** means the actual date on which the Learner is admitted to the education establishment.
- 1.3 **"Alternative Provision"** means education arranged by local authorities for pupils who, because of exclusion from a school, illness or other reasons, would not otherwise receive suitable education; education arranged by providers for pupils on a fixed period exclusion; and pupils being directed by providers to off-site provision to improve their behaviour.
- 1.4 **"Appendix/Appendices"** means any document that is mutually agreed by the parties to this Contract and should be appended to the Contract".
- 1.5 **"Arrangements"** means the standards of care, practices, and operations required of the provider to comply with the Contract as set out at Schedule 1 (Service Specification).
- 1.6 **"Authorised Signatory on behalf of the Authority"** means the lead officer specified by the Authority as having the responsibility to authorise the payment of Fees.
- 1.7 **"Authority"** is the Local Authority which has responsibility for the Learner and shall include its representatives, successors and assigns.
- 1.8 **"Authority Contracts Officer"** means the person or persons appointed by the Authority to oversee and monitor this Contract and to act as its representative for the purpose of the Contract.
- 1.9 **"Care Manager"** means the person appointed by the Authority to develop a Care Plan to meet the assessed needs of the Learner. In practice this may be a social worker or other appropriate professional.
- 1.10 **"Care Plan"** means a document detailing a Learner's specific care needs and requirements for which the Authority is responsible or a plan drawn up by the responsible Authority for a "looked after Child" under the terms of the Children Act and which may be amended from time to time.
- 1.11 **"Carer"** means a person named by an Authority to care for a Learner for whom the Authority has parental responsibility.
- 1.12 **"Child"** and **"Children"** mean any young person(s) whose care and educational needs are the responsibility of the Authority who is the subject of a Placement and whose fees at the educational establishment are paid by the Authority, or by those for whom the Authority is acting.
- 1.13 **"Children's Home"** means an educational establishment which accommodates and provides care to Children and is classified as a Children's Home under current legislation.
- 1.14 **"Contract"** means this document and includes the Contract, Schedules and Appendices to which reference may properly be made to ascertain the rights and obligations of the educational establishment and the Authority.
- 1.15 **"Data Protection Legislation"** means all applicable privacy and data protection laws including the General Data Protection Regulation ((EU) 2016/679) (**GDPR**) and any

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applicable national implementing laws, regulations and secondary legislation in England and Wales relating to the processing of personal data and the privacy of electronic communications, as amended, replaced or updated from time to time, including the Data Protection Act 2018 the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2003/2426) (Privacy Regulations) as amended by the Privacy and Electronic Communications (EC Directive) (Amendment) Regulations 2011 (SI 2011/1208), the Privacy and Electronic Communications (EC Directive) (Amendment) Regulations 2015 (SI 2015/355) and the Privacy and Electronic Communications (EC Directive) (Amendment) Regulations 2016 (SI 2016/524).

- 1.16 **“Education and Skills Funding Agency” (“ESFA”)** means the Executive Agency of the Department for Education.
- 1.17 **“Education, Health and Care Plan” (“EHCP”)** means the plan outlining the statutory provisions that must be delivered for Learners as introduced nationally in September 2014.
- 1.18 **“EHCP Outcomes”** will be specified in Section E of EHC plans; they should be focused on education, and training, health and care outcomes that will enable children and young people to progress in their learning and be well prepared for adulthood (see Code of Practice 2015, 9.64 to 9.69).
- 1.19 **“Element 1”** (core funding) is the funding provided to an educational establishment based on the applicable DfE funding formula.
- 1.20 **“Element 2”** (additional needs funding) is the funding provided to an educational establishment which allows the provider to meet the costs of providing additional support to Learners with special educational needs up to a fixed amount.
- 1.21 **“Element 3”** funding (top-up funding) is the funding above the core education and additional support funding to meet the total cost of provision required by a High Needs student as assessed by the Authority as agreed by this Contract.
- 1.22 **“Fees”** shall mean the Fees so detailed herein at Schedule 2 (Individual Placement Agreement) in respect of a Learner which the Provider is to receive from the Authority for the service, as may be varied in accordance with Clause 3.
- 1.23 **“Financial Year”** means the twelve calendar months accounting period commencing on the 1st of April each year.
- 1.24 **“Headteacher”** (“Head, Leader, Principal, Proprietor”) means the person designated in charge of the educational establishment and who acts in loco parentis.
- 1.25 **“IEP”** means Individual Education Plan and is the plan for a Learner’s educational programme for which the Provider is responsible.
- 1.26 **“Individual Placement Agreement”** means Schedule 2 (Individual Placement Agreement - IPA) of this Contract when it refers to the individual arrangements agreed by the Provider and the Authority for a Learner who is the subject of a Placement and encompassing the arrangements within this Contract agreed between the Authority and the Provider.
- 1.27 **“Inspectorates”** means one, any or all of the Office for Standards in Education (Ofsted), Her Majesty’s Inspectorate for Education and Training in Wales (Estyn) and the Care Quality Commission (CQC).
- 1.28 **“Learner”** means any Student whose educational, health and care needs are the responsibility of the Authority who is the subject of a Placement and whose Fees at the educational establishment are paid by the Authority, or by those for whom the Authority is

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acting.

- 1.29 **"Location"** means the location of the Provider's premises from where education, health and care is primarily to be provided.
- 1.30 **"Parent"** means the person(s) having parental responsibility for a Child as defined by the Children Act 1989.
- 1.31 **"PEP"** means the personal education plan which is the plan for the education of a Looked After Child.
- 1.32 **"Period of the Contract"** means the dates specified in this Contract during which the Service is to be provided (see 2.2 below).
- 1.33 **"Personal Adviser"** means the adviser employed to provide information, advice and guidance to Children and young adults between the ages of 13 and 25 years.
- 1.34 **"Personal Budget"** is an amount of money identified by the Local Authority to deliver provision set out in an EHCP where a parent or young person is involved in securing that provision. As defined and regulated by Sec. 49 Children and Families Act 2014, the Special Educational Needs (Personal Budgets) Regulations 2014 and Sections 9.95 – 9.124 of the SEND Code of Practice 2015.
- 1.35 **"Phase Transition Point"** means any of the phase transition points of the National Curriculum Year (NCY) being the end date of the phase for:
- Early Years to Primary (NCY R to 1)
  - Primary to Secondary (NCY 6 to 7)
  - Secondary to Further Education (NCY 11 to 12)
- as set out in the Individual Placement Agreement (IPA)
- 1.36 **"Placement"** means a specific commitment made by the Authority through the completion of Schedule 2 (Individual Placement Agreement) in respect of a Learner and agreed by the Provider for the provision of education, health and care to address a Learner's individual needs in accordance with their Education, Health and Care Plan, IEP and/ or PEP.
- 1.37 **"Plan"** refers to all necessary plans for the education, health and care of an individual Learner according to current legislation and statutory guidance.
- 1.38 **"Provider"** means the organisation or body which maintains the School, College, Training/apprenticeship or any other educational establishment, and the actual educational establishment in which the child/young person is placed. This term shall include any such establishments and their representatives, employees, sub-contractors, successors and assigns.
- 1.39 **"Provider Contracts Officer"** means the person or persons appointed by the Provider to oversee and monitor this Contract and to act as its representative for the purpose of the Contract.
- 1.40 **"Review"** means the annual or other review of a Learner's Education, Health and Care Plan carried out in accordance with Section 44 of the Children and Families Act 2014, Regulations 18 – 22 of the Special Educational Needs and Disability Regulations 2014 and Sections 9.166 to 9.198 of the SEND Code of Practice 2015. For looked after children Reviews are meetings held at intervals governed by the Children Act 1989 which are fully recorded and which include consultation with the Child, Parent/ Carer, significant other



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(including the Provider).

- 1.41 **“Safeguarding”** means the action that is taken to promote the welfare of children and protect them from harm: protecting children from abuse and maltreatment; preventing impairment of children’s health or development; ensuring that children grow up with the provision of safe and effective care; taking action to enable all children and young people to have optimum life chances and to enter adulthood successfully
- 1.42 **“Schedules”** means the Schedules annexed hereto.
- 1.43 **“Serious Breach”** means circumstances where either party has been shown to have failed to fulfil its obligations in accordance with the requirements set out in this Contract, being a breach, which goes to the root of this Contract such failure being considered so serious and fundamental to the continuance of the Contract as to justify immediate termination.
- 1.44 **“Service”** means all provision of education, care, work, actions and responsibilities required of the Provider as described in this Contract.
- 1.45 **“Supplementary Charges”** means charges to be paid by the Authority over and above the agreed Fees as defined in Schedule 2 (Individual Placement Agreement) which have been negotiated between the Authority and the Provider in order to meet a Learner’s additional needs.
- 1.46 **“Undisputed Invoice”** means an invoice that has been received in the correct format to the named contact and address given in writing by the Authority to the Provider and the invoice is for payment as set out under the terms and conditions in 3.2 and the Authority has not raised concerns about the invoice details or the level of service being provided within 30 days of the invoice being issued and payment becoming due.
- 1.47 **“VAT”** means any value added tax as imposed under the Value Added Tax Act 1994 or any similar value added tax.
- 1.48 **“Parental Contribution”** means a contribution payable directly to the Provider by a Parent or by a Learner (but must not relate to EHCP Outcomes) who is over the age of 16 (and in accordance with Section 532A of the Education Act 1996) outside the terms of this Contract.

## **2. The Contract**

### **2.1 Standard of Service**

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

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## 2.2 Period of Contract

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

## 2.3 Scope of Contract

2.3.1 This Contract will apply to the Learner named in Schedule 2 (Individual Placement Agreement) to be placed and funded by the Authority with the Provider at the educational establishment specified in Section A during the period of the Contract.

2.3.2 Any pre-existing Individual Placement Agreements/ Schedules will transfer onto this contract at the earliest opportunity as agreed by both parties at the Learner's next Review.

## 2.4 Variations

2.4.1 The Provider may propose, or the Authority may request, during the Period of the Contract, a variation in the manner in which the Service is provided and funded by the Authority.

2.4.2 Where there is a substantial change in the Service the Provider Contracts Officer and the Authority Contracts Officer will consider whether any variations shall be made in respect of the Fees or any Supplementary Charges. No variation should be made without the written agreement of both parties.

2.4.3 This Contract may only be amended in writing, signed by the duly authorised representatives of the Provider and the Authority and annexed to this Contract by way of an Appendix, following prior discussion of the need for proposed alterations and consideration of the time required to implement any agreed changes.

2.4.4 Where agreement cannot be reached as to a variation of the Fees resulting in any variation the conditions in Clause 12 (Resolution of Dispute between Parties) will be applied.

## **3. Financial Arrangements**

### 3.1 Fees

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

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

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

3.1.4 All amounts due under this Agreement are exclusive of VAT except where it expressly provides otherwise.

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## 3.2 Payment of Fees

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

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

3.2.2.1 Payment in respect of such Fees shall be paid in accordance with Schedule 2 (Individual Placement Agreement) unless the Authority, acting reasonably, is not satisfied that the Service provided has been provided in accordance with the contract. Payment made by the Authority shall not imply acceptance by the Authority that the Services have been satisfactorily performed.

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

3.2.3 Based on agreed changes to the Learner's Plan(s) (this will ordinarily be following a formal annual review process), either Party may propose an increase or decrease of the Fees and Additional Service Fees by submission in writing of any proposed changes.

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

3.2.5 The Fees shall apply for the duration of the Individual Placement Agreement in respect of a Learner unless varied in accordance with the provisions of this clause.

3.2.5.1 Within Three [3] months of the start of an Academic Year either Party may notify the other of any proposed increase or decrease in the Fees. If the Provider proposes to increase the Fees, then such increases must be demonstrated by the Provider as being justified and the Authority shall be entitled to request the Provider to provide any documents or other information to support the proposed Price increase. In any event any increase in the Fees shall not exceed the percentage change in the Office of National Statistics' Consumer Price Index (CPI) between the start date of the previous Academic Year and the date which is 3 months before the start date of the relevant Academic Year.

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

3.2.5.3 If the Authority does not agree a variation to the Fees, the current Fees will continue to apply for the duration of the Individual Placement Agreement or until such time as a variation under this clause is agreed by the Authority.

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

3.2.6.1 Where a Learner is directed by the Provider not to attend, for any reason, for more than five [5] days and the educational establishment has not provided

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suitable alternative education within six [6] days, the Authority will not meet the fees from the seventh day until the date of the Learner's return to the educational establishment. Where the Learner is permanently excluded then the Authority's liability to pay fees ceases.

3.2.6.2 Where a Learner is absent on account of illness and the educational establishment is unable to continue to provide suitable / appropriate / alternative education or if the Authority is having to provide home tuition or hospital school 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 Learner.

3.2.6.3 When a Learner dies the Individual Placement Agreement shall be terminated Seven [7] Days following the date of death. During this time, the Authority and the Provider shall work together to make appropriate arrangements and responses to any coroner inquest, funeral arrangements and transfer of personal belongings.

3.2.6.4 Where in any of the circumstances set out in clauses 3.2.6.1 to 3.2.6.2 the Authority is having to provide home tuition, alternative education or hospital school education during the periods that the Authority is liable to pay the Fees as specified in such clauses the Authority may deduct the cost of such provision it makes from the Fees.

3.2.7 In the case of a permanent exclusion, the date of exclusion shall be that date on which, in accordance with the Provider's policy on exclusion, following appropriate notice and consultation,) it is deemed that a return to the educational establishment will not be possible.

### 3.3 Parental Contributions or Learner Contributions

3.3.1 The Provider shall be entitled to request voluntary contributions from a Parent for any services, activities, materials or items of clothing provided by the Provider and not included or listed within the Fees detailed in Schedule 2 (Individual Placement Agreement) of this Contract.

3.3.2 Neither the Learner's Placement with the Provider, nor his or her opportunity to take part in the whole curriculum of the educational establishment, shall be prejudiced by any unwillingness or inability on the part of the Parent or Learner to make Voluntary Parental Contributions.

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

3.3.3 Where Direct Payments have been made or a Personal Budget has been agreed to either parents of Learners who are under 16 or to Learners aged over 16 for the purpose of securing:

3.3.3.1 special educational provision specified in an Education, Health and Care Plan,

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

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

#### **4. Approval, Statutory and other Regulations**

- 4.1 The Provider must inform the Authority immediately by telephone confirmed in writing within two days of any amendment, change to or restriction placed upon the approval of the educational establishment by the Secretary of State for the Department for Education and/ or the Education and Skills Funding Agency, and of any change in status.
- 4.2 The Provider shall operate fully in accordance with all relevant Acts of Parliament, amendment or re-enactment of any Act, Statutory Regulation, and other such laws and statutory guidance, as may affect the provision of education, health and care specified under the Contract including without limitation relevant parts of:
- 4.2.1 The Education Act 1996 and Regulations made under the Act;
  - 4.2.2 The Children Act 1989 and Regulations made under the Act;
  - 4.2.3 The School Standards and Framework Act 1998 and Regulations made under the Act;
  - 4.2.4 The Special Educational Needs and Disability Act 2001;
  - 4.2.5 Education (Special Educational Needs) (Approval of Independent Schools) (amendment) Regulations (1998; 2002);
  - 4.2.6 Special Educational Needs (Code of Practice) (Appointed Day) Order 2014;
  - 4.2.7 The Care Standards Act 2000 and Regulations made under the Act;
  - 4.2.8 The Human Rights Act 1998;
  - 4.2.9 The Equality Act 2010 and Regulations made under the A
  - 4.2.10 DfE guidance “Residential Special Schools – National minimum standards” 2015;
  - 4.2.11 Equality and Human Rights Commission technical guidance for schools and Further and Higher Education providers;
  - 4.2.12 DfES guidance “Inclusive Schooling- Children with Special Educational Needs” 2001;
  - 4.2.13 DfE guidance “Ensuring a good education for children who cannot attend school because of health needs” 2013;
  - 4.2.14 DfE guidance “Keeping children safe in education – statutory guidance for schools and colleges” 2020
  - 4.2.15 The Special Educational Needs (Direct Payments) (Pilot Scheme) Order 2012
  - 4.2.16 The Learning and Skills Act 2000.
  - 4.2.17 The Education and Skills Act 2008
  - 4.2.18 The Apprenticeships, Skills, Children and Learning Act 2009
  - 4.2.19 Education Act 2011
  - 4.2.20 Children and Families Act 2014 and regulations made under the Act
  - 4.2.21 Special educational needs and disability code of practice: 0 to 25 years. January 2015
  - 4.2.22 The Education (Independent School Standards) Regulations 2014
  - 4.2.23 Working Together to Safeguard Children 2018
  - 4.2.24 The Children’s Homes (England) Regulations 2015
  - 4.2.25 Data Protection Act 2018 and Regulations made under the Act
  - 4.2.26 All other relevant Acts, Regulations and enabling powers and provisions.

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### 4.3 Health & Safety

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

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

4.3.2 all relevant and appropriate guidance and good working practices, as published by the Health and Safety Executive; its own Health and Safety Policy, systems and procedures.

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

4.5 Local authorities shall share information about health and safety issues that may have an effect on Learners receiving provision at the educational establishment with the ESFA.

## **5. Conflict of Interest**

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

## **6. Indemnity and Insurance**

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

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

6.2 The Provider shall have in place the following minimum insurance requirements unless individual circumstances notified and agreed in advance with the Authority have been determined.

6.2.1 Employer's liability (a sum to be determined by the Provider commensurate with the potential liabilities of the Provider but at least to the value of £10,000,000)

6.2.2 Public liability (at least £20,000,000 in respect of any one claim)

6.2.3 Buildings and Contents

6.2.4 Directors' and Officers' liability, Trustees' liability, Professional liability or similar as appropriate to the Provider's circumstances (a sum to be determined by the Provider commensurate with the potential liabilities of the Provider but

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at least to the value of £2,000,000 any one insurance period) which should be in place for a 6 year period following the termination of the Contract and the Individual Placement Agreement (IPA) in respect of retrospective claims.

6.2.5 The Provider shall have in place motor vehicle insurance commensurate with the potential liabilities of the Provider relating to the operation of vehicles used for the transport of pupils by the educational establishment.

## **7. Provider Employees**

7.1 The Provider shall at all times during the Contract employ sufficient persons appropriately qualified to successfully deliver the standards of education, health and care required by this Contract.

7.2 The Provider shall ensure that all persons including their Staff whose duties involve access to or information about, Learners are subject to enhanced Disclosure and Barring checks/ ISA and checks by the Provider prior to starting their duties, ensuring full compliance with the Safeguarding Vulnerable Groups Act 2006, Working Together to Safeguard Children 2018.

7.3 The Provider shall ensure that no member of their Staff or any sub-contractor is permitted to provide Services until all the necessary checks have been undertaken and the checks are satisfactory.

7.4 The Provider will follow the system for recruitment as set out in Standard 14 of the National minimum standards for Residential Special Schools, Regulation 33 of the Children's Homes (England) Regulations 2015 or Part 3 of 'Keeping children safe in education – statutory guidance for schools and colleges' as appropriate. The Provider will ensure that there is a satisfactory recruitment process recorded in writing for all employees.

7.5 The Provider shall make all reasonable arrangements to ensure the annual review of all driving licences, insurance and where appropriate MOT certificates, are current, insurance includes business use and that the member of staff has not received sufficient penalty points to be barred from driving or received a court judgement that bars them from driving

## **8. Records, Information and Data Protection**

8.1 The Provider will maintain formal procedures/systems for the keeping of accurate records that fully comply with The Education (Pupil Information) (England) Regulations 2005 (SI 1437), the Freedom of Information Act 2000, Data Protection Legislation and/or relevant National Minimum Care Standards and for a minimum of 10 years or longer if the Authority specifically requests so in writing.

8.2 In addition to 8.1 above, the Provider will ensure that the information, records and documentation necessary to effectively monitor the performance of the Contract are accurately maintained at all times and that their validity is checked at regular intervals.

8.3 The Provider undertakes to provide the Authority with information to allow for the monitoring, review and assessment of the Provider's capabilities to provide the standards of education, health and care required by this Contract and thereby to ensure that the Authority fully meets its statutory obligations in regards to this information.

8.4 Full written records must be kept of all complaints including those outstanding received in connection with the Service, whether orally or in writing from any source and shall fully detail all the actions taken by the Provider in respect of each such complaint.

8.5 Relevant records will be made available on request to the Authority and to the Parent and/ or Learner subject to clause 9.



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- 8.6 The Provider will allow access to Service records to any Learners' Guardian appointed by the Courts to a Learner.
- 8.7 On termination of a Placement, the Provider shall ensure that they maintain all files and records, including Learners' individual records, case notes and information held by the Provider in full compliance with all relevant legislation and guidance. The Provider will ensure that where a learner is placed at a new educational establishment all relevant files and records shall be forwarded or copied to the learner's new educational establishment within three [3] weeks of the learner starting their Placement. On request of the Authority, all files and records should be returned to the Authority by the Provider.
- 8.8 Provision must be made for the separate recording and secure storage of confidential files.
- 8.9 The Provider shall maintain an up to date Data Protection notification and abide by all the principles of the Data Protection Legislation. Where the Provider is processing Personal Data (as defined by the Data Protection Legislation) on behalf of the Authority, the Provider shall:
- 8.9.1 Only use the Personal Data in accordance with instructions from the Authority and for purposes defined by the Council. The information must not be used for any other purpose without the consideration and express written permission of the Council.
- 8.9.2 Not disclose any personal data to sub-contractors or other parties without obtaining the prior written consent of the Council unless required to by law. The Provider shall inform the Authority of that legal requirement before processing personal data unless the law prohibits the Provider from informing the Authority on the grounds of public interest.
- 8.9.3 Not cause or permit the Personal Data to be transferred outside of the European Economic Area without the prior consent of the Authority.
- 8.10 The Provider will implement appropriate technical and organisational measures to protect the Learner's Personal Data. The measures taken shall be appropriate to the harm which might result from any unauthorised or unlawful processing, accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected.
- 8.10.1 Ensure that laptops and other portable and mobile devices including magnetic media, used to store and transmit Personal Data, the loss of which could cause damage or distress to individuals, shall be protected using approved encryption software which is designed to guard against the compromise of information.
- 8.10.2 Take reasonable steps to ensure the reliability of its Staff who may have access to the Personal Data; including ensuring that persons authorised to process the personal data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality.
- 8.10.3 Ensure that only those of the Provider's Staff who need to have access to the Personal Data are granted access to such data and only for the purposes of the performance of the Contract and all of the Provider's Staff required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the obligations of this clause 8.9.
- 8.11 Upon receipt of a written request from an individual (or someone acting on behalf of the



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individual) for them to be given access to their own personal data, or a complaint about how their personal data has been used, notify the Authority within five [5] working days and not release any Personal Data without first consulting with and seeking the advice of the Authority.

- 8.12 Provide the Authority with full co-operation and assistance in relation to any complaint or request made in respect of any Personal Data to enable the Authority to:
- 8.12.1 fulfil its obligations by using appropriate technical and organisational measures to respond to requests for exercising an individual's rights which include but are not limited to providing access to information, rights to rectification or erasure of information within the relevant timescales set out in Data Protection Legislation but in accordance with the Authority's timescales, and
  - 8.12.2 ensuring compliance with its obligations relating to the security of processing, investigating and reporting data breaches and completion of data protection risk assessments.
- 8.13 The Provider will permit the Authority or its external advisors to, subject to reasonable and appropriate confidential undertakings, inspect and audit the Provider's data processing activities and those of its agents and sub-contractors and comply with all reasonable requests or directions of the Authority to verify and procure that the Provider is in full compliance with its obligations under the Contract.
- 8.14 The Provider shall ensure that its sub-contractors comply at all times with Data Protection Legislation and shall not perform their obligations under the Contract in such a way as to cause the Authority to breach any of its obligations under Data Protection Legislation.
- 8.15 Where the Provider sub-contracts processing Personal Data they will ensure that the provisions having the same effect as this Clause 8.9.1 are included in any contract between the Provider and the sub-contractor.
- 8.16 The Provider shall not disclose information relating to the Learner to any other person except such of its staff as may be necessary for the performance of its obligations under this Contract.
- 8.17 In order to ensure that no unauthorised person gains access to any Confidential Information or any data, including Personal Data, obtained in the performance of the Contract, the Provider undertakes to maintain its security systems.
- 8.17.1 The Provider will immediately notify the Authority of any breach of security in relation to Confidential Information and all data obtained in the performance of the Contract and will keep a record of such breaches. The Provider will use its best endeavours to recover such Confidential Information or data however it may be recorded. The Provider will co-operate with the Authority in any investigation that the Authority considers necessary to undertake as a result of any breach of security in relation to Confidential Information or data.
- 8.18 Copyright in all the material including but not limited to drawings, reports, specifications, bills of quantity, calculations and other similar documents prepared for the Contract by the Provider shall remain vested in the Provider, but the Provider shall grant to the Authority and its nominees an irrevocable royalty-free non-exclusive licence to copy and use the material and to reproduce the information contained in it for any purpose whatsoever relating to the Contract. Such licence shall enable the Authority to copy and use the material for any extension of the Contract. Such licence shall be capable of sub-licence and transfer by the Authority. The Provider shall not be liable to the Authority for any sub-licensee or transferee for any use of the material for any purpose other than that for which the same was prepared or provided by the Provider.

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- 8.18.1 The Authority shall on written request be entitled to be supplied by the Provider with copies of the items referred to above.
- 8.19 The Provider warrants that the performance of the Contract does not in any way infringe the Intellectual Property Rights of any third party and the Provider fully indemnifies the Authority against any actions claims, demands, damages, losses, charges and costs and expenses of whatever nature in respect of any alleged infringement.
- 8.20 The Provider shall not advertise the fact that it is supplying Goods and/or Services to the Authority under this Contract other than with the written permission of the Authority. The Provider shall not use the logo of the Authority or any representation thereof, nor cause it to be used without the written consent of the Authority.
- 8.21 The Provider acknowledges that the Authority is subject to the requirements of the Freedom of Information Act 2000 and the Environmental Information Regulations 2004 and shall:
- 8.21.1 Provide all necessary assistance and cooperation as reasonably requested by the Authority to enable the Authority to comply with its obligations under the Freedom of Information Act 2000 and the Environmental Information Regulations 2004;
  - 8.21.2 Transfer to the Authority all Requests for Information relating to this Contract that it receives as soon as practicable and in any event within Two [2] Working Days of receipt;
  - 8.21.3 Provide the Authority with a copy of all Information belonging to the Authority requested in the Request for Information which is in its possession or control in the form that the Authority requires within Five [5] Working Days (or such other period as the Authority may reasonably specify) of the Authority's request for such Information; and
  - 8.21.4 Not respond directly to a Request for Information unless authorised in writing to do so by the Authority.
  - 8.21.5 The Provider acknowledges that the Authority may be required under the Freedom of Information Act 2000 and the Environmental Information Regulations 2004 to disclose Information concerning the Provider or the Services (including Commercially Sensitive Information) without consulting or obtaining consent from the Provider. In these circumstances the Authority shall, in accordance with any relevant guidance issued under the Freedom of Information Act 2000, take reasonable steps, where appropriate, to give the Provider advance notice, or failing that, to draw the disclosure to the Provider's attention after any such disclosure.
  - 8.21.6 Notwithstanding any other provision in the Contract, the Authority shall be responsible for determining in its absolute discretion whether any Information relating to the Provider, or the Services is exempt from disclosure in accordance with the Freedom of Information Act 2000 and/or the Environmental Information Regulations 2004.

## **9. Confidentiality**

- 9.1 Both Parties shall preserve confidentiality in respect of any personal information held in relation to a Learner and will not disclose the same to a third party without the Parent's or where appropriate, the Learner's written consent except where this is required by law or order of a Court or otherwise in accordance with their notification registered with the

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Information Commissioner.

- 9.2 Both Parties will have a policy on confidentiality which accords with the principles of the Data Protection Legislation.
- 9.3 The Provider will establish a policy on the maintenance and destruction of files which will take into account all relevant legislation and include the need to consider any response to future claims for liability against the Provider.

## **10. Monitoring of Service Provision**

- 10.1 The Provider acknowledges the right of the Authority to monitor the provision made for the care and education of a Learner specified in Schedule 2 (Individual Placement Agreement) placed by the Authority. This will include monitoring all aspects of the provision provided, irrespective of the Element (Element 1, Element 2 or Element 3) it is delivered through. Monitoring may also include visits by the Authority's representatives or agents by prior agreement with the Head-teacher, or unannounced visits consistent with the Duties provided that upon any such visit taking place the number of visitors at any one time should be no more than necessary for statutory/inspection purposes. Every effort shall be made to ensure the continued privacy of Learners and minimal disruption to the education of Learners.
- 10.2 Such arrangements shall be in addition to and not prejudice any Statutory Inspection under provision of the appropriate Acts.
- 10.3 The Authority may within Four [4] weeks of becoming aware that any Service is not of the quality or does not comply with the service requirements set out in the Contract, reject any Service provided which is in the Authority's reasonable opinion not equal in quality and all other respects to the service requirements set out in this Contract. The Authority shall in such circumstances be entitled to request the Provider and the Provider shall within Four [4] weeks of such request agree with the Authority either to provide Services in lieu to the agreed standard, to cancel any invoices raised or to provide the appropriate refund or reduction of a following payment.
- 10.4 Where the Services delivered under this Contract are subject to inspection by the Inspectorates and the inspection results in the Services, or part thereof, being assessed as inadequate, the Authority may, following consultation with the Education Funding Agency where appropriate, in its absolute discretion, take whatever action it deems appropriate, not limited to, the imposition of added conditions of funding by both the Authority or Education Funding Agency or to terminate the Contract in respect of the whole Services or that part which is assessed as inadequate.
- 10.5 The Authority will carry out an assessment of how the Provider has used the total funding made available to meet the needs of the Learner, as described in the Individual Placement Agreement. Due to the linked nature of this Contract and the Education & Skills Funding Agency (ESFA) contract, the Authority may share the outcome of such an assessment with the Education & Skills Funding Agency (ESFA). The purpose of this assessment will be to inform future contracting and allocation decisions.
- 10.6 The Provider will furnish the Authority with termly updates of attendance within 14 days of the end of term (as noted in Schedule 2 - IPA)

## **11. Corrupt Practices**

- 11.1 The following actions on the part of the Provider will constitute a Serious Breach and empower the Authority to terminate this Contract and to recover from the Provider the amount of any loss directly resulting from such cancellation and also to exclude the Provider from future Contracts. The Provider:

11.1.1 Offering any gift or consideration as an inducement or reward to any servant of

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a public body;

11.1.2 Offering any improper inducement or exerting unreasonable pressure upon potential pupils or their relatives, or others with an interest, to attempt to encourage the potential Learner, Parent or relative to use the Provider; or

11.1.3 Taking unreasonable financial advantage of its relationship with a Learner.

11.2 Neither the Provider nor the Authority nor any of their employees or agents shall solicit or accept any gratuity, expensive gifts or tip or any other form of money taking or reward, collection or charge for any part of the Service other than lawful charges notified to the Authority and except where this is compliant with the Trust Deeds of the educational establishment and other relevant documents.

## **12. Resolution of Disputes between Parties**

12.1 If a dispute arises out of this Contract the Parties will use best endeavours to settle the dispute by negotiation. Discussions will take place between the representatives of The Authority and the Provider.

12.2 If the dispute cannot be resolved at this level then either Party may request the other to participate in a meeting of their respective senior managers, in order to discuss the dispute and to agree a strategy to resolve it.

12.3 In the event that the dispute is not resolved by negotiations within Twenty [20] Working Days the Parties shall, before resorting to arbitration proceedings, attempt to resolve the dispute by mediation in accordance with the Centre for Dispute Resolution (CEDR) Model Mediation Procedure.

12.4 If the Parties fail to resolve their dispute by mediation, then either Party may serve notice on the other to require the dispute to be referred to arbitration in accordance with the Arbitration Acts 1950 and 1996.

12.5 The Parties agree that if an arbitrator is appointed under clause 12.4 then:

12.5.1 The decision of the arbitrator will be final and binding on the Parties in the absence of manifest error;

12.5.2 The arbitrator will not have exclusive jurisdiction on questions of construction of law;

12.5.3 Each of the Parties will bear one half of the costs of the reference to the arbitrator unless the arbitrator directs otherwise.

12.6 For the avoidance of doubt, the use of the disputes' procedure will not delay, or take precedence over, any use of the default or termination procedures.

## **13. Breach of Contract and Conditions of Termination**

13.1 The Contract may be terminated forthwith: -

13.1.1 by either Party on written notice if the other party is in Serious Breach of the terms of the Contract or,

13.1.2 by either Party in the event of a breach capable of being remedied if the other Party fails to remedy the breach within Twenty-Eight [28] days of receipt of a written notice to remedy the same. It is agreed that termination arising in relation to this clause relates to the breach of a particular Placement only and not this Contract or any other Placement.

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13.1.3 Where a learner has been in Placement for One [1] week or less the Authority's liability for the Fee will be limited to one additional day.

13.1.4 Where a learner is in Placement more than One [1] week but less than a full academic half term the Authority's liability for the Fee will be limited to one additional week.

13.2 Either Party may terminate the Contract forthwith on written notice if the other Party shall become bankrupt or make an arrangement with its creditors or enter into winding up proceedings.

13.3 Termination of the Contract shall not prejudice the rights of either Party or any Learner which have arisen on or before the date of termination.

## **14. Termination of a Particular Placement**

14.1 An individual Placement in respect of a Learner will automatically expire upon the Phase Transition Point.

14.2 Prior to the Phase Transition Point where the Learner has been in placement less than One [1] week an individual Placement may be terminated by either party giving to the other One [1] day written notice.

14.3 Prior to the Phase Transition Point where a Learner has been in placement more than One [1] week but less than a full academic half term an individual Placement may be terminated by either party giving to the other One [1] week written notice.

14.4 Prior to the Phase Transition Point where Learner has been in placement more than an academic half term but less than a full academic term an individual Placement may be terminated by either party giving to the other Two [2] weeks written notice. Prior to the Phase Transition Point where a Learner has been in Placement for more than a full academic term, an individual Placement may be terminated by either Party giving to the other not less than Six [6] weeks' written notice or in respect of a Learner permanently excluded, through the arrangements described in clauses 3.2.6 and 3.2.7.

14.5 If a Learner's place is filled by the Authority within the notice period, specified in clause 14.1 to 14.4 above the Authority's liability to pay the Fees will cease when the replacement Learner's Placement starts. If no replacement Learner is nominated by the Authority, the Authority's liability to pay the Fees will cease at the end of the agreed notice period.

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

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

## **15. Force Majeure**

15.1 Neither Party will be liable for delay or failure to perform the obligations of the Contract if the delay or failure result from circumstances beyond their reasonable control including but not limited to Act of God, Government Act or direction, War, Explosion or Civil Commotion or Industrial Dispute (excluding disputes local to the Provider). In the

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event of delay or failure arising from any such cause the Authority shall not be liable to pay the Fees in respect of a Learner during a period of Force Majeure and will have the right to make alternative arrangements for the provision of the Service. Both parties will have the right to seek to renegotiate the Fee and the terms of the Contract.

## **16. Waiver**

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

## **17. Notices**

17.1 Any notice [or other communication] given to a party under or in connection with this agreement shall be in writing and shall be:

- (a) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
- (b) sent by email to the address specified in Schedule 2 – Individual Placement Agreement

17.2 Any notice [or communication] shall be deemed to have been received:

- (c) if delivered by hand, at the time the notice is left at the proper address;
- (d) if sent by [pre-paid first-class post or other] next working day delivery service, at [9.00 am] on the [second] Business Day after posting; [or]
- (e) if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause **1.1(e)**, business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.

17.3 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.

## **18. Law**

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

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

## **19. Third Parties**

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

## **20. Complete Contract**

20.1 This Contract, in conjunction with Schedules 1 and 2, embodies the complete Contract between the Authority and the Provider and supersedes all other written understanding and Contracts with respect to all matters referred to herein.

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## 21. Signatures of Agreeing Parties to the Contract

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

### 1. Duly Authorised Signatory on behalf of the Provider

Signed by: (PLEASE PRINT NAME)

Designation: (PLEASE PRINT)

Signature:

Dated:

*In the presence of:* (PLEASE PRINT NAME)

Designation: (PLEASE PRINT)

Signature:

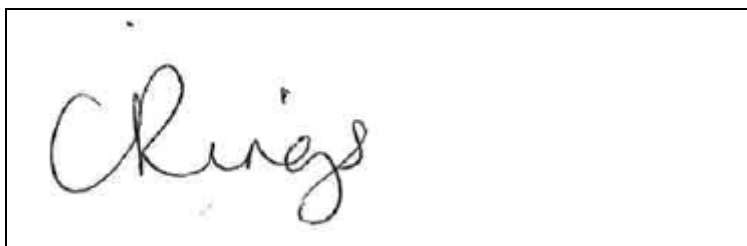
Dated:

### 2. Duly Authorised Signatory on behalf of the Authority

Signed by: (PLEASE PRINT NAME)

Designation: (PLEASE PRINT)

Signature:




Dated:

*In the presence of:* (PLEASE PRINT NAME)

Designation: (PLEASE PRINT)

Signature:



Dated:

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