



**Terms and Conditions for
Offsite Individual Education**

Applicable for both non-registered and Dual (subsidiary) registered Learners

relating to **The Complete Works Limited**

From September 2018

1 DEFINITIONS AND INTERPRETATION

1.1 In these terms and conditions, unless the context otherwise requires, the provisions of clauses 1.2 to 1.10 shall have effect.

1.2 The following expressions shall have the following meanings in these terms and conditions:

Authority means the Local Authority, School or Referring body which is the body which has responsibility for the Learner, as specified in paragraph 1 of Schedule 1 to the Learner Education Contract, and shall include its representatives, successors and assigns;

Business Day means any chargeable school day which is not a Saturday a Sunday or a bank or public holiday in England and Wales; There are 195 school days in our academic year, inclusive of 5 chargeable inset days.

Date of Termination means the date the Learner Education Contract is terminated in accordance with clause 9;

Fees means the fees payable for the Education sessions, calculated with reference to the rate specified in paragraph 6 of Schedule 1 to the Learner Education Contract, subject to any variation under clause 8.3;

Learner means the student named in paragraph 3 of Schedule 1 to the Learner Education Contract;

Parent means the person or persons having parental responsibility for the Learner as defined by the Children Act 1989;

Provider means The Complete Works Independent School (DfE number 211/6006) operated by The Complete Works Limited, a charitable company limited by guarantee registered in England and Wales (company number 3805365 and charity number 1081200), whose registered office is at 843 Finchley Road, London NW11 8NA, and includes its representatives, employees, sub-contractors, successors and assigns;

Learner Education Contract means the contract entered into between the Provider and the Authority incorporating these terms and conditions for the provision of Education in respect of the Learner;

Serious Breach means circumstances where either party has been shown to have failed to fulfil its obligations in accordance with the requirements of the Learner Education Contract, being a breach which goes to the root of the Learner Education

Contract, such failure being so serious and fundamental to the continuance of the Learner Education Contract as to justify immediate termination;

Education means the provision of education as specified in paragraph 4 of Schedule 1 to the Learner Education Contract; and

Education Sessions means the periods during which Education is to be provided as set out in paragraph 5.3 of Schedule 1 to the Learner Education Contract.

1.3 References to a clause or sub-clause are references to a clause or sub-clause of these terms and conditions.

1.4 Except where the context otherwise requires, words denoting the singular include the plural and vice versa; words denoting gender include all genders and words denoting persons include bodies corporate, unincorporated associations and partnerships.

1.5 Clause headings are for convenience only and shall not affect the construction of this agreement.

1.6 All references to statutory provisions shall be construed as including references to:

1.6.1 any statutory modification, consolidation or re-enactment for the time being in force;

1.6.2 all statutory instruments or orders made pursuant to it; and

1.6.3 any statutory provisions of which it is a consolidation, re-enactment or modification.

1.7 Any words following the terms **including**, **include**, **in particular** 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.

1.8 A reference to **writing** or **written** includes faxes and e-mail.

1.9 All references to the **parties** shall be references to the parties to the Learner Education Contract.

1.10 If there is any discrepancy between these terms and conditions and any terms and conditions set out in the Learner Education Contract, the terms of the Learner Education Contract shall apply.

2 PROVISION OF EDUCATION

2.1 The Provider shall provide Education for the Learner in accordance with the Learner Education Contract.

- 2.2 The Provider shall monitor the Learner's progress and shall provide the Authority with half termly progress reports in respect of the Learner.
- 2.3 The Provider shall periodically review the Education provided to the Learner and, where in its reasonable opinion it considers it appropriate to do so, shall make any proposals to the Authority for variation of the Education it feels would be beneficial to ensure the Education meets the needs of and is appropriate for the Learner. The Authority shall consider any such proposals and decide whether to agree to a variation of the Education provision accordingly.

3 STANDARD OF CARE

- 3.1 Subject to clause 3.2, the Provider shall not assign or subcontract the whole of the Learner Education Contract or any part of it without the prior written consent of the Authority, such consent not to be unreasonably withheld or delayed.
- 3.2 The Provider may subcontract the provision of any Education Sessions where reasonably required in order to cover sickness, absence or departures of permanent staff, or to deal with additional workload on a short-term basis, provided that the Provider must be satisfied that any third party subcontractor has in place staff vetting procedures that fully comply with all applicable law and regulation.
- 3.3 The Provider shall use reasonable endeavours to ensure the health and safety of the Learner.
- 3.4 The Provider shall operate in accordance with all applicable law and regulations relating to its obligations under the Learner Education Contract.

4 INFORMATION TO BE PROVIDED BY THE AUTHORITY

- 4.1 The Authority shall supply to the Provider, prior to the start date specified in paragraph 5.5 of Schedule 1 to the Learner Education Contract, all the necessary information relating to the Learner (including all relevant reports and information in relation to the care and educational needs of the Learner as well as any known information, confirmed or otherwise, which may be of particular consideration to a member of staff working alone with a Learner or within the Learner's household).
- 4.2 The Authority shall notify the Provider of its procedures for out of office hours' contact.
- 4.3 The Authority shall supply the Provider with copies of all relevant correspondence between the Authority and the Learner and the Learner's Parent, where appropriate.
- 4.4 The Authority shall grant to the Provider access to any relevant professional advice which it may have in respect of the care and educational needs of the Learner.
- 4.5 The Authority shall, upon request, supply the Provider with a copy of its current *Missing From Care Protocol*.
- 4.6 The Authority shall supply all contact details for the main provider as specified in 3.5 of schedule 1 to the Learner Education Contract. Learners may simultaneously be on the roll of

two establishments, in which case they are considered to be dual registered. All dually rolled Learners must have a valid enrolment status combination as follows. 'M' - Main dual registration by the one base; and 'S' - Subsidiary dual registration by the other base. These terms and conditions alongside our dual roll offsite contract allow only for The Complete Works to be the subsidiary base. If The Complete Works is required to act as the main base or the single roll school then an alternative contract with associated terms and conditions should be requested. Please note that the definition of main or subsidiary is not determined simply by the amount of time spent at each school. The main provider is responsible for holding the Learner's central records and ensuring their overall needs are met. This might include providing lunch, SENCo support, EWO intervention or conducting annual reviews. In summary they take the lead in ensuring the student is provided with an adequate level of their statutory education rights. The subsidiary provider is responsible for following the main provider's agreed plan and furnishing the main provider with all the relevant documentation requested. This documentation should be in line with the other terms of this agreement.

5 ATTENDANCE AND BEHAVIOUR MANAGEMENT

- 5.1 The Provider shall monitor the Learner's attendance at Education Sessions and shall notify the Authority if the Learner fails to attend three consecutive Education Sessions without prior notice and authorisation.
- 5.2 The Provider shall monitor the Learner's behaviour and deal with any behavioural issues on the part of the Learner in accordance with its Behaviour and Conduct Policy.
- 5.3 Learners who are identified as persistent non- engagers or non- attenders will be moved onto our emergency intervention programme. Our intervention officer will write a plan with the Learner and family to target increased engagement or attendance. The expectations soften on education for a period and dwell upon attendance for shorter more focussed sessions. These hours are then steadily built up again with clear expectations and sanctions/rewards as a new teacher is introduced. The intervention officer specialises in improving relationships between the Learner and the Provider, as well as between the family/carers, school and professionals. The intervention usually lasts around 6-weeks. The intervention programme may incur an extra payment from The Authority, in accordance with clause 8.7.

6 CANCELLATION OF EDUCATION SESSIONS

- 6.1 An Education Session may be cancelled by the Authority or (where appropriate) by the Learner or the Learner's Parent and, subject to clause 6.2, Fees shall not be payable for that Education Session provided that at least 14 days' notice of cancellation of that Education Session is given.
- 6.2 If a Learner Education Contract has been confirmed by the Authority confirming a start date for the Education, the Fees for the first Education Session shall be payable by the Authority, even if the notice of cancellation required under clause 6.1 has been given.
- 6.3 If the Provider is unable to provide a planned Education Session for any reason, it may cancel the Education Session by notifying the Authority, the Learner and/or the Learner's Parent (where appropriate), giving as much notice as possible. Fees shall not be payable in

respect of any Education Sessions cancelled by the Provider where cover has not been available, except if this decision is beyond the control of the Provider e.g. Force Majeure.

- 6.4 Where an Education Session is cancelled at the request of the Learner or the Learner's Parent, more than 3 times in succession, the Provider shall inform the Authority of the cancellation.
- 6.5 The first session of every new teacher and student pairing will be known as an 'initial session'. This consists of a shorter meeting between the teacher and student and where possible a parent/carer, TCW's Education Support and/or Curriculum and Pathways Officer(s). The remainder of the initial session will be utilised to create a risk assessment and develop or confirm an appropriate individual education plan with schemes of work for the student. There may be certain circumstances where the initial session will take place after the first teaching session takes place. If this session is cancelled by the parent/carer, it will be charged for in full as will any scheduled lessons until a new initial session can be arranged.

7 PERIOD OF THE LEARNER EDUCATION CONTRACT

- 7.1 The Learner Education Contract is effective from the date the Authority confirms its acceptance in writing to the Provider as specified in Clause 3 of the Learner Contract and shall continue in full force and effect until the Date of Termination.

8 FEES

- 8.1 The Authority shall pay the Fees to the Provider from the start date for the Education as specified in paragraph 5.5 of Schedule 1 to the Learner Education Contract until termination of the Learner Education Contract.
- 8.2 Save in respect of any Fees outstanding at the Date of Termination (including any termination notice fee), the Authority shall cease to be liable to pay Fees under the Learner Education Contract from the Date of Termination.
- 8.3 The Fees shall be reviewed by the Provider on an annual basis, usually at the end of each academic year, and may be varied by the Provider at its sole discretion. The Provider shall notify the Authority in writing of any variations to the Fees at least 20 Business Days before the commencement of the next academic year. The revised Fees shall take effect from the start of the following academic year and the Learner Education Contract shall be automatically varied accordingly.
- 8.4 Invoices for Fees shall be raised by the Provider monthly in arrears and payments shall be due within 15 days of receipt of an invoice.
- 8.5 If the Authority fails to make any payment due to the Provider under the Learner Education Contract by the due date for payment, then, without limiting the Provider's rights, the Authority shall pay interest on the overdue amount at the rate of 4% per annum above the Bank of England's base rate from time to time. Such interest shall accrue on a daily basis

from the due date until actual payment of the overdue amount, whether before or after judgment. The Authority shall pay the interest together with the overdue amount.

8.6 The Provider will make necessary exam entries for the Learner and the Authority will be consulted prior to the entries being made. Exam entries including, where applicable any late entry fees, will be charged to the Authority along with any of the following, if necessary:

8.6.1 Exam transportation - a car to transport the Learner to and from the Exam Centre or if an exam is to be taken at the Learner's home on medical grounds, a courier to securely deliver and collect the exam paper.

8.6.2 Invigilation - if an exam is scheduled outside of the Learner's regular education an invigilator will be appointed and the additional charge will be made to The Authority.

8.7 The Authority will be consulted prior to, and subsequently charged for, any specialist input that may be required e.g. SENCo or Interventions Officer.

8.8 Staff receive five training days per annum. On these days the usual fees will apply despite the Learner's Education Sessions being cancelled.

9 BREACH OF CONTRACT AND CONDITIONS OF TERMINATION

9.1 The Learner Education Contract may be terminated with immediate effect by either party:

9.1.1 on written notice if the other party is in Serious Breach of the terms of the Learner Education Contract;

9.1.2 in the event of a breach capable of being remedied, if the other party fails to remedy the breach within 28 days of receipt of a written notice to remedy the same; or

9.1.3 on written notice if the other party shall become bankrupt or make an arrangement with its creditors or enter into winding up proceedings.

9.2 Subject to clause 9.1, the Learner Education Contract shall be terminated:

9.2.1 if either party provides the other party with at least 10 business days written notice to terminate, on the date of expiry of that notice, or, if later, the date specified as the termination date in that notice; or

9.2.2 on the date stated to be the end date in paragraph 5.6 of Schedule 1 to the Learner Education Contract: or

9.2.3 if it becomes untenable to continue providing Education to the Learner, due to circumstances beyond the teacher's control e.g violent or threatening behaviour from the Learner towards the teacher. There will be 14 days of consultation after

an event of this nature. These days will be charged for in full as normal, while the Authority identify an appropriate provision.

9.3 Termination of the Learner Education Contract shall not prejudice the rights of either party or the Learner which have arisen on or before the Date of Termination.

10 EMPLOYEES

10.1 The Provider shall at all times during the Learner Education Contract use reasonable endeavours to employ teachers who are suitably qualified or otherwise eligible to plan and prepare lessons and courses for the Learner, teach the Learner, and assess and report on the Learner's development, progress and attainment.

10.2 The Provider shall ensure that no employee, representative or any sub-contractor is permitted to provide Education or perform duties that involve access to or information about the Learner until all the necessary checks have been undertaken and the checks are satisfactory.

10.3 The Provider shall have, and make available to the Authority upon reasonable request, its written policies on control and discipline. The Provider shall ensure that all of its employees and representatives are appropriately trained and comply with these policies at all times.

10.4 The Provider shall follow the system for recruitment as set out in *Keeping Children Safe in Education*.

11 RECORDS, INFORMATION AND DATA PROTECTION

11.1 The Provider shall maintain formal procedures/systems for the keeping of accurate records.

11.2 The Provider shall use reasonable endeavours to ensure that the information, records and documentation necessary to effectively monitor the performance of the Learner Education Contract are accurately maintained and that their validity is checked at regular intervals.

11.3 The Provider shall supply the Authority with information to allow for the monitoring, review and assessment of the Provider's capabilities to provide the Education.

11.4 Subject always to the Provider's obligations under the Data Protection Act 1998, the Provider shall

11.4.1 make records relating to the Learner available on request to the Authority and to the Parent and/ or Learner; and

11.4.2 allow access to records relating to the Learner to any guardian appointed by the courts in respect of the Learner.

11.5 On termination of the Learner Education Contract, the Provider shall maintain all files and records, including the Learner's individual record, case notes and information held by the Provider in compliance with all relevant legislation and guidance. Upon the reasonable

request of the Authority, all files and records shall be returned to the Authority by the Provider.

- 11.6 The Provider shall adopt a policy of open access for the Learner to their own records in line with General Data Protection Regulation (GDPR) and the Data Protection Act 2018.
- 11.7 The Learner has a right to privacy and, therefore, all information and knowledge relating to their and their circumstances shall be treated as confidential in that, subject to the reasonable reporting obligations imposed upon the Provider under the Learner Education Contract, it will not be disclosed to third parties without consent unless this is necessary in the public interest or to protect the vital interests of the Learner or another person.
- 11.8 The Learner will be furnished with a copy of the Provider's Privacy Notice.
- 11.9 The Provider acknowledges the Authority's obligations under the Freedom of Information Act 2000 (FOIA) and the GDPR, in particular that the Authority may be required to disclose information relating to the Learner Education Contract or the Provider in order to fully comply with its obligations.
- 11.10 The Provider shall use reasonable endeavours to facilitate the Authority's full compliance, in connection with the Learner Education Contract, with the Authority's obligations as stated by GDPR and fully comply with appropriate and reasonable requests from the Authority for that purpose.

12 CONFIDENTIALITY

- 12.1 Both parties shall preserve confidentiality in respect of any personal information held in relation to the Learner and, subject to disclosure and reporting obligations arising under the Learner Education Contract, will not disclose the same without written consent from the Learner or (where appropriate) the Parent unless required or permitted to do so by law including the Data Protection Act 2018.
- 12.2 Both parties shall ensure that their respective policies on confidentiality accord with the principles of the Data Protection Act 2018, and that they shall have mechanisms in place to ensure compliance.
- 12.3 The Provider shall 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.

13 COMPLAINTS

- 13.1 The Provider shall provide the Authority, the Learner and/or the Parent with a copy of its complaints policy on request.
- 13.2 Full written records shall be kept by the Provider of all written complaints received in connection with the Education and shall fully detail all the actions taken by the Provider in respect of each such complaint.

14 CORRUPT PRACTICES

14.1 The following actions on the part of the Provider shall constitute a Serious Breach and if any such action takes place the Authority shall be entitled to immediately terminate the Learner Education Contract under clause 9.1.1 and to recover from the Provider the amount of any loss directly resulting from such cancellation. The Provider:

14.1.1 offering any gift or consideration as an inducement or reward to any servant of a public body in connection with the Learner Education Contract;

14.1.2 offering any improper inducement or exerting unreasonable pressure upon the potential Learner or his Parent or relatives, or others with an interest, to attempt to encourage the potential Learner, Parent or relative to use the Provider; or

14.1.3 taking unreasonable financial advantage of its relationship with the Learner.

14.2 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 Education other than lawful charges notified to the Authority.

15 FORCE MAJEURE

15.1 Neither party shall be liable for delay or failure to perform their respective obligations of the Learner Education Contract if the delay or failure results from circumstances beyond their reasonable control including: act of God, government act or direction, war, explosion or civil commotion or industrial dispute. In the event of delay or failure arising from any such cause the Authority shall have the right to make alternative arrangements for the provision of the Education and both parties shall have the right to seek to renegotiate the Fees and the terms of the Learner Education 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 Learner Education Contract shall either be or be deemed to be a waiver or in any way prejudice any right of that party under the Learner Education Contract.

17 NOTICES

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

18 **LAW**

18.1 The Learner Education Contract shall be subject to, construed and interpreted in accordance with English Law, and shall be subject to the jurisdiction of the courts of England and Wales.

19 **THIRD PARTIES**

19.1 A person who is not a party to the Learner Education Contract may not enforce any of its terms under the Contract (Rights of Third Parties) Act 1999.

20 **COMPLETE CONTRACT**

20.1 The Learner Education Contract embodies the complete contract between the Authority and the Provider and supersedes all other written understanding and contracts with respect to all matters referred to in the Learner Education Contract.