



**Terms and Conditions  
for Full-Time School Admission**

Applicable for all onsite and Single registered offsite Learners  
relating to **The Complete Works**

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:

<b>Additional Services</b>	means the additional services described in paragraph 4 of Schedule 1 to the Learner Education Contract;
<b>Admission Date</b>	means the date specified in paragraph 5.1 of Schedule 1 to the Learner Education Contract;
<b>Authority</b>	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;
<b>Business Day</b>	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.
<b>Care Plan</b>	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 1989, and which may be amended from time to time;
<b>Care Manager</b>	means the person appointed by the Authority to develop a Care Plan to meet the assessed needs of the Learner;
<b>Education, Health and Care Plan or EHC Plan</b>	means the plan outlining the statutory provisions that must be delivered for Learners;
<b>Fees</b>	means the fees as set out in paragraph 6 of Schedule 1 to the Learner Education Contract, subject to any variation under clause 14.2 and any amendments that may be agreed between the parties from time to time under clause 13;
<b>Headteacher</b>	means the person designated in charge of the School and who acts in loco parentis;
<b>Individual Education Plan</b>	means the plan for a Learner's educational programme for which the Provider is responsible;

<b>Inspectorates</b>	means one, any or all of the Office for Standards in Education (Ofsted) and the Care Quality Commission (CQC);
<b>Learner</b>	means the student named in paragraph 3 of Schedule 1 to the Learner Education Contract;
<b>Looked After Child</b>	means a looked after child under the terms of the Children Act 1989;
<b>Parent</b>	means the person or persons having parental responsibility for the Learner as defined by the Children Act 1989;
<b>PEP</b>	means the personal education plan for the education of a Looked After Child;
<b>Placement</b>	means a specific commitment made by the Authority and the Provider through entering into the Learner Education Contract in respect of the Learner for the provision of education, health and care to address the Learner's individual needs in accordance with their EHCP, statement, IEP and/or PEP;
<b>Probationary Period</b>	means a period of 6 consecutive weeks commencing on the Admission Date;
<b>Provider</b>	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;
<b>Learner Education Contract</b>	means the contract entered into between the Provider and the Authority incorporating these terms and conditions for the provision of the Services in respect of the Learner;
<b>School</b>	means The Complete Works Independent School;
<b>Serious Breach</b>	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;

**Services** means all provision of education, care, work, actions and responsibilities required of the Provider as described in these terms and conditions and any Additional Services; and

**Statement** means a Statement of Special Educational Needs (SEN) or an Education, Health and Care Plan.

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 **PROBATIONARY PERIOD**

2.1 The Learner will be initially admitted to the School for the Probationary Period to enable the Provider to assess the Learner's suitability to study at the School. Assessment of the suitability of Learner will be in the Provider's sole discretion. The Provider may, in its sole

discretion, terminate the Learner Education Contract at the expiry of the Probationary Period if it assesses the Learner as unsuitable for continued admission to the School.

2.2 Two weeks prior to the end of the Probationary Period, the Provider will decide whether or not to terminate the Learner Education Contract and will provide written notice to the Authority of its decision. If the Provider wishes to terminate the Learner Education Contract, the written notice must confirm the date on which the Learner Education Contract will terminate.

2.3 The school should not be named on any EHC Plan, until completion of the probationary period.

### **3 SERVICES**

3.1 The Provider shall provide for the Learner:

3.1.1 an Individual Education Plan containing targets and timescales to be achieved within 6 weeks of the Admission Date, where applicable linked to the provision specified in the Learner's EHCP;

3.1.2 education and/or training appropriate to the age, ability, aptitude and special educational needs of the Learner, where applicable, in accordance with the Learner's EHCP and taking account of information provided in reviews;

3.1.3 any Additional Services; and

3.1.4 such further services as may be agreed between the Authority and the Provider from time to time following a detailed assessment of the Learner's specific needs, provided that any further services agreed between the parties must be confirmed in writing by both parties.

3.2 The Provider shall put in place a programme of activities to promote the development of the Learner's social, personal, leisure and life skills, which allows for positive interaction with the School and wider community and family and is appropriate to support the Learner in achieving goals/outcomes set out in the Learner's Individual Education Plan.

3.3 Subject to the Provider's obligations set out in clause 17 and to the extent permitted by applicable law and regulation from time to time, the Provider shall periodically send to the Authority reports on the progress made by the Learner, in a format and at timescales determined by the Provider in its sole discretion.

3.4 The Provider shall use reasonable endeavours to:

3.4.1 provide the Learner with every reasonable opportunity to exercise reasonable choice, where appropriate, and subject to Care Plan and review decisions;

- 3.4.2 provide the Learner with privacy as far as reasonably practicable, taking account of the Provider's obligations of care under the Learner Education Contract and all applicable law and regulation;
  - 3.4.3 ensure that the Learner's right to be treated with equality, irrespective of race, gender, ethnicity, disability, national origin, age, religion, sexuality, or economic status, is respected;
  - 3.4.4 provide the Learner with individual and culturally appropriate dietary needs through the provision of an appropriate, balanced and nutritionally sound diet, using discretion at all times when addressing the needs of the Learner with eating disorders;
- 3.5 The Provider shall have procedures to record, explain and review decisions which restrict the Learner's self-determination. Any restriction or sanction to be imposed, for example to control extreme behaviour seriously affecting the Learner's safety (or that of other children or staff), shall be clearly stated in a Learner's Individual Education Plan in order that staff know what action is permissible.

#### **4 STANDARD OF CARE**

- 4.1 Subject to clause 4.2, 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.
- 4.2 The Provider may subcontract any of the Services 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.
- 4.3 The Provider shall use its reasonable endeavours to ensure that the Services meet the quality standards detailed in these terms and conditions and comply with the requirements set out in the Education, Health and Care Plan, IEP, or PEP for the Learner as appropriate to the Placement arrangements.
- 4.4 The Provider shall use reasonable endeavours to ensure the health and safety of the Learner.
- 4.5 The Provider shall operate in accordance with all applicable law and regulations relating to its obligations under the Learner Education Contract.
- 4.6 The Provider reserves the right to move students between different centres or locations, for their own care or for the care of others.
- 4.7 Where the Provider considers it unsuitable for a student to receive education on-site (outside of any exclusion, see clause 8), where the student has an assigned individual

teacher; an initial 2.5 hours of education per day, will be offered in a local library until an arrangement for 5 hours a day can be put in place.

- 4.8 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 school, as well as between the family/carers, school and professionals. The intervention usually lasts around 6-weeks. The intervention programme will not incur any extra payment from referrers, but will replace the usual teaching timetable with the agreed fees continuing in line with the Learner Education Contract.

## **5 INFORMATION TO BE PROVIDED BY THE PROVIDER**

- 5.1 The Provider shall make available to the Authority upon reasonable request a current copy of:
- 5.1.1 the School prospectus, admissions policy, curriculum policy, assessment/ reporting policy, and all relevant care policies, including those on behaviour and discipline, physical restraint, exclusion, child protection (with reference to Safeguarding Children Board guidelines) and for the handling of complaints;
  - 5.1.2 any relevant inspection reports in relation to the Provider produced by any regulatory bodies;
  - 5.1.3 the Provider's procedures for the involvement of relevant support services;
  - 5.1.4 term dates for each academic year; and
  - 5.1.5 evidence that risk assessment has been carried out in respect of employers' and public liability.

## **6 INFORMATION TO BE PROVIDED BY THE AUTHORITY**

- 6.1 The Authority shall supply to the Provider no later than 5 Business Days prior to the Admission Date 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, where relevant, a EHC Plan and PEP. 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).
- 6.2 The Authority shall notify the Provider of its procedures for out of office hours' contact.

- 6.3 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.
- 6.4 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.
- 6.5 The Authority shall, upon request, supply the Provider with a copy of its current *Missing From Care Protocol*.

## 7 REVIEWS

- 7.1 Review meetings shall be planned by the Provider in consultation with the Authority, and where appropriate the Learner and the Parent. Wherever possible reviews for different statutory purposes will be arranged in combination or to follow on from one another.
- 7.2 The Provider shall give at least 14 days' notice of all review meetings to the Authority.
- 7.3 The Provider shall supply the Authority with all relevant reports at least 5 Business Days before each review meeting.
- 7.4 The Services shall be reviewed by the Provider in accordance with the Children and Families Act 2014, SEN Code of Practice and any applicable Department for Education regulations and, where appropriate, the Children Act 1989 (s.26), Guidance & Regulation Volume 4 or 5 (as appropriate), and any other relevant legislation and guidance. Reviews may be undertaken at more frequent intervals than prescribed in the Guidance and Regulations in the event of an emergency situation arising, or upon a reasonable request by a Learner, Parent, Provider or the Authority.
- 7.5 The purpose of each review will be to:
  - 7.5.1 consider the needs of the Learner and the extent to which they have changed in any respect;
  - 7.5.2 consider the provision required to meet the Learner's needs; and
  - 7.5.3 ensure that the provision continues to be appropriate.

Any recommendations/advice revealing a changed need shall be considered by the Authority, which has the responsibility to determine whether and in what respects to alter the EHCP.

- 7.6 The persons involved in review meetings shall include the Learner, Provider representative, Care Manager, where appropriate Parent and any other persons as the Authority may consider necessary in line with the Children Act 1989, Guidance & Regulations. Normally, at the discretion of the Provider, staff who are significantly involved in a Learner's welfare will attend and contribute to review meetings.



- 7.7 The review meetings in Year 9 for the purpose of creating a transition plan should include any relevant assessments under the Disabled Persons (Services, Consultation and Representation) Act 1986 and the National Health Service and Community Care Act 1990. Representatives of the relevant Social Services, Local Authorities, Health Authority and Careers Advice (likely to be the Personal Adviser) will be notified of the review and invited to attend.
- 7.8 The Provider may call an emergency review meeting if a Placement has broken down or appears likely to break down.

## 8 EXCLUSION ON DISCIPLINARY GROUNDS

- 8.1 The Provider shall use its reasonable endeavours to resolve problems with respect to misconduct on the part of the Learner, including liaising with the Authority, before considering the use of formal exclusion procedures.
- 8.2 The Provider shall inform the Authority as soon as reasonably practicable of any situation or developing problem likely to lead to an exclusion in order to give the Authority the opportunity to work with the Provider and the Parent to resolve the difficulty.
- 8.3 If the Learner is in public care the Provider shall comply with the relevant provisions of the Children Act 1989 (including Care Planning, Placement and Care Review Regulations 2010).
- 8.4 If the Learner is excluded by the Provider for a fixed period, the Provider shall notify the Authority in writing within 24 hours.
- 8.5 In respect of any fixed period exclusion (exceeding more than 3 days):
- 8.5.1 the Provider shall provide work for the Learner to undertake and/or guidance with regard to activities and occupation of time during the period of exclusion;
  - 8.5.2 the Provider shall convene a meeting at the earliest opportunity (and in all cases within 5 Business Days) with the Authority in order to discuss a strategy plan to be adopted for the Learner's return; and
  - 8.5.3 if the Learner is looked after by the Authority the Provider shall convene an emergency review meeting in accordance with clause 7.
- 8.6 If the Provider intends to permanently exclude the Learner, the Provider shall notify the Authority by written confirmation within 3 Business Days (the **Permanent Exclusion Notice**). The Authority and (where appropriate) the Parent may request a meeting with the Provider to discuss the proposed permanent exclusion, provided that they must make such a request within 5 Business Days of the date on which the Permanent Exclusion Notice is issued, and the meeting must be convened within 15 Business Days of that date.
- 8.7 The proposed permanent exclusion of the Learner shall take effect:

- 8.7.1 if no meeting is requested by the Authority and/or Parent in accordance with clause 8.6, upon expiry of 15 Business Days following the date on which the Permanent Exclusion Notice is issued; or
- 8.7.2 if a meeting is requested by the Authority and/or Parent in accordance with clause 8.6, upon expiry of 20 Business Days following the date on which the Permanent Exclusion Notice is issued, provided that the Provider has not notified the Authority, having taken into account information provided to it during that meeting, that it does not wish to proceed with the exclusion.

## **9 MANAGEMENT SYSTEMS**

- 9.1 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.
- 9.2 The Provider shall implement procedures to deal with incidents where children are alleged to be abused or exploited. These procedures will be integrated into those agreed by the Local Safeguarding Children Board, in line with the Department of Health's Children Act 1989, Guidance and Regulations, Volume 4 or 5, Residential Care and "Working Together" 2006 especially the information from 6.2 to 6.37 of that document and subsequent or associated guidance.
- 9.3 The Provider shall inform the Authority at the earliest opportunity of any allegations of ill-treatment or abuse which involve any Learner and which fall within the remit of the Local Safeguarding Children Board Procedures. The Provider shall also inform any other parties as required by those procedures.
- 9.4 The Provider shall inform the Authority in writing four weeks in advance of any planned absence of the Headteacher to last more than four consecutive weeks outside of normal leave arrangements. The Provider shall put in place arrangements for running the School during the Headteacher's absence to ensure that the quality of education is not adversely affected.

## **10 NOTIFICATIONS TO THE AUTHORITY**

- 10.1 The Provider shall notify the Authority as soon as possible and within 24 hours in any of the following circumstances:
  - 10.1.1 a serious illness or accident sustained by the Learner whilst on School premises;
  - 10.1.2 the outbreak of any infectious disease at the School which is considered sufficiently serious to be so notified in the opinion of a registered medical practitioner;
  - 10.1.3 the death of the Learner whilst on School premises;

- 10.1.4 an allegation that the Learner has committed a serious offence whilst on School premises;
  - 10.1.5 involvement or suspected involvement of the Learner in prostitution;
  - 10.1.6 any serious complaint about the School and/or Provider or any persons working at the School or otherwise employed by the Provider;
  - 10.1.7 instigation and outcome of any child protection enquiry involving the Learner; and
  - 10.1.8 a referral to the Secretary of State pursuant to section 2(1)(a) of the Protection of Children Act 1999(a) of an individual working at the school or in line with requirements under Disclosure and Barring.
- 10.2 The Provider shall notify the Authority within 48 hours in any of the following circumstances:
- 10.2.1 a formal complaint being received from the Learner;
  - 10.2.2 if the Provider has any reason for concern regarding the safety of the Learner whilst on School premises;
  - 10.2.3 a serious incident involving the Learner necessitating calling the police to the School;
  - 10.2.4 any situation which threatens the Learner's well-being, including self harm or attempted self harm;
  - 10.2.5 all holidays granted to a Learner during an academic term; and
  - 10.2.6 any significant circumstance which affects the Provider's ability to provide the Services to the Learner.

## **11 COMPLAINTS**

- 11.1 The Provider shall, prior to the Admission Date, provide to the Learner and his Parent with a copy of the Provider's complaints policy and procedure.
- 11.2 The existence of the Provider's complaints policy and procedure has no impact upon the Parent's or Learner's right of access to the Authority's complaints and representation procedure, where they are eligible. Written details of the same and the identity of the Authority's officer to whom applications should be made will be provided by and at the expense of the Authority to the Parent.

## **12 PERIOD OF THE LEARNER EDUCATION CONTRACT**

- 12.1 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 Education

Contract and shall continue in full force and effect until terminated in accordance with clause 23.

- 12.2 The Learner Education Contract cancels and supersedes any previous contract existing between the parties in relation to the Learner.

**13 VARIATIONS**

- 13.1 The Provider may propose, or the Authority may request, at any time, a variation to the Additional Services.

- 13.2 If the Provider and the Authority agree to a substantial change to the Additional Services, they will consider whether any variations should be made in respect of the Fees. No variation shall be made without the written agreement of both parties.

- 13.3 Save as provided for in clause 14.2, the Learner Education Contract may only be amended in writing, signed by the duly authorised representatives of the Provider and the Authority and annexed to the Learner Education Contract by way of an appendix, following prior discussion of the need for the proposed alterations and consideration of the time required to implement any agreed changes.

- 13.4 These terms and conditions cannot be varied.

**14 FEES**

- 14.1 Subject to clause 14.7, the Authority shall pay the Fees to the Provider for the period from the Admission Date until termination of the Learner Education Contract.

- 14.2 The Fees shall be reviewed by the Provider on an annual basis, usually at the end of each academic year and in any case no later than 30 Business Days before the commencement of the next 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. Subject to clause 14.3, the revised Fees shall take effect from the start of the next academic year and the Learner Education Contract shall be automatically varied accordingly.

- 14.3 If the Provider notifies the Authority of an increase in Fees for the next academic year in accordance with clause 14.2, the Authority may notify the Provider in writing that it wishes to terminate the Learner Education Contract, provided that such notification must be made within 10 Business Days of the date on which the Provider notifies the Authority of the proposed Fee increase.

- 14.4 All amounts due under the Learner Education Contract are exclusive of VAT, except where it expressly provides otherwise.

- 14.5 The Fees shall be paid by the Authority in accordance with the payment provisions set out in paragraph 7 of Schedule 1 to the Learner Education Contract and within 15 days of receipt of an invoice from the Provider.
- 14.6 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.
- 14.7 The Authority shall not be liable to meet the Fees in the following circumstances:
- 14.7.1 if the Learner has been permanently excluded from the School, in which case the Authority's liability to pay the Fees shall cease on the day that the permanent exclusion becomes effective;
- 14.7.2 if the Learner has been excluded for a fixed term period exceeding 15 Business Days and the Provider is unable to provide suitable alternative education (where appropriate) for the period of the exclusion, in which case the Authority shall have no liability to pay the Fees for the period from the expiry of 15 Business Days after the date on which the fixed term exclusion takes effect until conclusion of the fixed term exclusion;
- 14.7.3 if the Learner is directed not to attend the School on safeguarding advice and the Provider cannot provide suitable alternative education, in which case the Authority shall have no liability to pay the Fees from the date which falls 15 Business Days after the date of the Learner's last day of attendance at the School until the date on which the Learner returns to the School, and if the Authority is providing home education or alternative education during that 15 Business Day period, the cost of that support shall be deducted from the Fees payable;
- 14.7.4 if the Learner is absent due to illness for a period of 15 Business Days or more and the Provider is unable to continue to provide suitable and appropriate education in respect of the Learner and the Authority is providing home education or hospital school education to that Learner, in which case the Authority shall have no liability to pay the Fees from the date which falls 15 Business Days after the date of the Learner's last day of attendance at the School unless and until the Learner returns to the School, and if the Authority is providing home education or alternative education during that 15 Business Day period, the cost of that support shall be deducted from the Fees payable;
- 14.7.5 if the Learner dies, in which case the Authority's liability to pay the Fees will cease 5 Business Days after the date of death, save that any additional costs (for example the cost of additional staffing) which the Provider is contracted to continue to pay in

respect of the Learner shall be paid for by the Authority until the end of the relevant notice period that would have been applicable if the Learner had not died.

Where deductions are made from the Fees under any of the provisions of clause 14.7, the daily rate of those deductions shall not exceed the equivalent daily rate specified in paragraph 6.1 of Schedule 1 to the Learner Education Contract.

- 14.8 Save in respect of any Fees outstanding as at the date of Termination of the Learner Education Contract (including any termination notice fee) and subject to clause 14.7, the Authority shall cease to be liable to pay the Fees under the Learner Education Contract from the date of termination of the Learner Education Contract.
- 14.9 Fees include resources, trips and lunches where required.
- 14.10 The Provider will make necessary exam entries for the Learner. If the Learner is referred after regular exam entry deadline, any late entry fees will be charged on to the Authority.
- 14.11 Fees include annual training for staff that take place over five inset training days each year. Students are not required to attend school on these days.
- 14.12 Extra funds will be sought from the local authority for supporting a student to travel to and from the education location, plus the costs of providing an additional teacher-assistant and for any tests or examinations to diagnose a learning difficulty or area of SEN that needs investigating and cannot be carried out by the local authority.
- 14.13 All places in the school should be full-time, and the placement should continue until the last day of the summer term, regardless of the student's age. This includes year eleven students, who may have completed their examinations, prior to the end of the academic year.
- 15 **EMPLOYEES**
- 15.1 The Provider shall at all times during the Learner Education Contract use reasonable endeavours to employ sufficient persons appropriately qualified to successfully deliver the standards of education, health and care required by the Learner Education Contract.
- 15.2 The Provider shall ensure that no employee, representative or any sub-contractor is permitted to provide Services until all the necessary checks have been undertaken and the checks are satisfactory.
- 15.3 The Provider shall follow the system for recruitment as set out in *Safeguarding Children and Safer Recruitment in Education*.
- 15.4 The Provider shall make reasonable arrangements to ensure, where appropriate, the annual review of employee driving licences, insurance and MOT certificates ensuring:
- 15.4.1 they are current;

- 15.4.2 that insurance includes business use; and
- 15.4.3 that the employee has not received sufficient penalty points to be barred from driving or received a court judgement that bars them from driving.

**16 RECORDS, INFORMATION, DATA PROTECTION AND CONFIDENTIALITY**

- 16.1 The Provider shall maintain formal procedures/systems for the keeping of accurate records.
- 16.2 The Provider shall use reasonable endeavours to ensure that the information, records and documentation necessary to effectively monitor the performance of the Learner are accurately maintained and that their validity is checked at regular intervals.
- 16.3 The Provider shall supply the Authority with information to allow for the monitoring, review and assessment of the Provider's capabilities to provide the Services.
- 16.4 Subject always to the Provider's obligations under the Data Protection Act 2018, the Provider shall
  - 16.4.1 make records relating to the Learner available on request to the Authority and to the Parent and/ or Learner; and
  - 16.4.2 allow access to records relating to the Learner to any guardian appointed by the courts in respect of the Learner.
- 16.5 On termination of the Learner Education Contract, the Provider shall maintain all files and records, including the Learner's individual records, case notes and information held by Provider in compliance with all relevant legislation and guidance, and if the Learner is placed at a new school or college, the Provider shall supply copies of all files and records relating to the Learner to the Learner's new school or college within 15 Business Days of the Learner starting their placement at the new school or college. Upon the reasonable request of the Authority, all files and records shall be returned to the Authority by the Provider.
- 16.6 The Provider shall adopt a policy of open access for the Learner to his own records in line with GDPR (*General Data Protection Regulation*) and the Data Protection Act 2018.
- 16.7 The Learner has a right to privacy and, therefore, all information and knowledge relating to him and his 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. The Learner will be furnished with a copy of the Provider's Privacy Notice.
- 16.8 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 under the FOIA.

- 16.9 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 under the FOIA and fully comply with appropriate and reasonable requests from the Authority for that purpose within 10 working days of the request being made.
- 16.10 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.
- 16.11 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.
- 16.12 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.
- 17 **MONITORING OF SERVICE PROVISION**
- 17.1 The Provider acknowledges the right of the Authority to monitor the provision made for the care and education of the Learner. Monitoring may include visits by the Authority's representatives or agents by prior agreement with the Headteacher at the School, 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 by the Authority to ensure the continued privacy of Learners and minimal disruption to the education of Learners.
- 17.2 The Authority may within 20 Business Days of becoming aware of the same reject any Services provided which are in the Authority's reasonable opinion not equal in quality and all other respects to the service requirements set out in the Learner Education Contract. The Authority shall in such circumstances be entitled to request the Provider and the Provider shall within 20 Business Days 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.
- 17.3 Where the Services delivered under the Learner Education Contract are subject to inspection by the Inspectorates and the inspection results in the Services, or part of the Services, being assessed as inadequate, the parties shall meet to discuss the Provider's proposals to address the inadequacies and, if the Authority is unsatisfied with the Provider's proposals, the Authority may, in its absolute discretion, terminate the Learner Education Contract in respect of the whole of the Services or that part which is assessed as



inadequate, and in the case of partial termination the Learner Education Contract shall be deemed varied accordingly and the Fees shall be adjusted accordingly.

**18 CORRUPT PRACTICES**

18.1 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 and to recover from the Provider the amount of any loss directly resulting from such cancellation. The Provider:

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

18.1.2 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

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

18.2 Neither the Provider nor the Authority nor any of their respective 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 Services other than lawful charges notified to the Authority.

**19 RESOLUTION OF DISPUTES BETWEEN PARTIES**

19.1 If a dispute arises in connection with the Learner Education Contract the parties shall use their respective reasonable endeavours to settle the dispute by negotiation between the representatives of the Authority and the Provider.

19.2 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.

19.3 If the dispute is not resolved by negotiations within 20 Business 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.

19.4 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.

19.5 The parties agree that if an arbitrator is appointed under clause 19.4 then:

19.5.1 the decision of the arbitrator will be final and binding on the parties in the absence of manifest error;

19.5.2 the arbitrator will not have exclusive jurisdiction on questions of construction of law; and

19.5.3 each of the parties will bear one half of the costs of the reference to the arbitrator unless the arbitrator directs otherwise.

19.6 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.

## 20 **BREACH OF CONTRACT AND CONDITIONS OF TERMINATION**

20.1 The Learner Education Contract may be terminated with immediate effect:

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

20.1.2 by either party in the event of a breach capable of being remedied, if the other party fails to remedy the breach within 28 Business Days of receipt of a written notice to remedy the same;

20.1.3 by the Authority in accordance with clause 17.3 or 18.1; or

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

20.2 Subject to clause 20.1, the Learner Education Contract shall terminate:

20.2.1 if the Provider terminates under clause 2, on the date specified as the termination date in the written notice issued to the Authority in accordance with clause 2;

20.2.2 if the Learner is permanently excluded in accordance with clause 8, on the date that the Learner's permanent exclusion from the School becomes effective in accordance with clause 8.7;

20.2.3 if the Learner dies, on the date of death subject to any ongoing liability of the Authority under clause 14.7.5;

20.2.4 if the Authority terminates under clause 14.3, on the date immediately before the first day of the next academic year;

20.2.5 if either party provides the other party with at least 6 weeks' 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

20.2.6 on the date stated, if any, to be the date of termination in paragraph 4.2 of the Learner Education Contract.

20.2.7 The provider will charge for a minimum of 15 school days, in the event of a student's instant departure, without notice and beyond the Authority's control.

20.3 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.

## 21 **FORCE MAJEURE**

21.1 Neither party shall be liable for any delay or failure to perform their respective obligations under 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 Services and both parties shall have the right to seek to renegotiate the Fees and the terms of the Learner Education Contract.

## 22 **WAIVER**

22.1 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.

## 23 **NOTICES**

23.1 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.

## 24 **LAW**

24.1 The Learner Education Contract shall be subject to, construed and interpreted in accordance with English Law, and, subject to clause 19, shall be subject to the jurisdiction of the courts of England and Wales.

## 25 **THIRD PARTIES**

25.1 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.

26 **COMPLETE CONTRACT**

- 26.1 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.