

**DATED**

**SERVICE LEVEL AGREEMENT**

**AGREEMENT RELATING TO FUNDING  
FOR THE PROVISION OF PERSONALISED LEARNING TO EXCLUDED  
PUPILS AND THOSE AT RISK OF EXCLUSION**

between

**WILTSHIRE COUNCIL**

and

**[NAME OF SCHOOL/ACADEMY]**

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This agreement is dated April 2021

## **PARTIES**

- (1) **Wiltshire Council** of County Hall, Bythesea Road, Trowbridge BA14 0SU (the “**Council**”).
- (2) **Name of Academy/School**\_\_\_\_\_ (the “**School**”).

## **BACKGROUND**

- A. The Council has a statutory duty under section 19 of the Act (as defined below) to provide suitable education for children of compulsory school age who, by reason of illness, exclusion from school or otherwise, may not for any period receive suitable education unless such arrangements are made for them. Suitable education in relation to a child or young person is defined in the Act as ‘efficient education suitable to his age, ability and aptitude and to any special educational needs he may have’ and must be on a full-time basis unless the Council considers that for reasons which relate to his physical or mental health, it would not be in his best interests to receive full-time education.
- B. Arrangements were made under the Wiltshire Council (Arrangements for the Provision of Suitable Education) Order 2012 (the “**Order**”) enabling the Department for Education’s alternative provision trial (the “**Trial**”) under which the Council’s statutory obligations under section 19(1) of the Act were placed on the Proprietors of the School. The Order and the Trial (as defined below) ceased to have effect on 31 July 2014.

This agreement replaces the Service Level Agreement which will cease to have effect on 31<sup>st</sup> March 2021, and the parties acknowledge that under this agreement the Council retains its statutory obligations under section 19.

- C. The Council agrees to devolve to the School and the School agrees to accept the Funding on the terms and conditions of this agreement in order to provide suitable education for pupils for the purposes of section 19 of the Act.

## **AGREED TERMS**

### **1. INTERPRETATION**

- 1.1 The definitions and rules of interpretation in this clause apply in this agreement.

**Acceptable Level of Funding:** means a minimum of 98.5% of the Funding received by the School.

**Act:** the Education Act 1996.

**Applicable law:** means any legal provision the Service Provider must comply with, including any law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of section 2 of the European Communities Act 1972, regulation, order, mandatory guidance or code of practice, judgement of a relevant court of law, or directives or requirements of any regulatory body, whether in the UK or elsewhere;

**Bribery Act:** the Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning the legislation.

**Data Protection Legislation:** unless and until it is no longer directly applicable in the UK, the General Data Protection Regulation (EU Regulation 2016/679) (the “GDPR”), the Data Protection Act (DPA) 2018 to the extent that it relates to processing of personal data and privacy, and all applicable laws and regulations relating to processing of personal data and privacy including, where applicable, the guidance and codes of practice issued by the Information Commissioner, in each case, to the extent in force, and as such are updated, amended or replaced from time to time, including any successor legislation to the GDPR or the Data Protection Act 2018.

**Data Controller, Data Processor, Data Subject, and Personal Data** take the meaning given in the Data Protection Legislation.

**Duty:** has the meaning given in clause 3.2.

**Financial Year:** 1 April to 31 March.

**Funding:** the funding to be devolved to the School by the Council to be calculated and paid in accordance with Schedule 2.

**Funding Agreement:** means the agreement made between the School and the Secretary of State for Education as may have been varied from time to time.

**High Needs Budget:** means the budget set by the Schools Forum (for Wiltshire).

**Intellectual Property Rights:** all patents, copyrights and design rights (whether registered or not) and all applications for any of the foregoing and all rights of confidence and Know-How however arising for their full term and any renewals and extensions.

**In Year Fair Access Panel:** means a quorate meeting of the head teacher of schools in the three regions of North Wiltshire, West Wiltshire and South Wiltshire which decides on the placement of hard to place children.

**Know-How:** information, data, know-how or experience whether patentable or not and including but not limited to any technical and commercial information relating to research, design, development, manufacture, use or sale.

**Legislation:** means:

- a) any applicable statute or any delegated or subordinate legislation or regulation;
- b) any applicable judgement of a relevant court of law which is a binding precedent in England and Wales;
- c) requirements set by any regulatory body;
- d) the guidance and recommendations of any central government department or body; and
- e) any applicable code of practice,

in each case as applicable in England and Wales and as from time to time amended or replaced.

**Order:** has the meaning given in Recital B.

**PLP:** a personalised learning plan being an individually devised plan setting out a pupil's educational support programme devised by the School at the School's reasonable discretion to meet the individual needs of a pupil.

**Proprietors of the School:** means such Governors of the School who are or may be appointed from time to time in accordance with the School's Articles of Association.

**Prohibited Act:** means:

- 1.1.1 offering, giving or agreeing to give to any servant of the Council any gift or consideration of any kind as an inducement or reward for:
  - (a) doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this agreement or any other contract with the Council; or
  - (b) showing or not showing favour or disfavour to any person in relation to this agreement or any other contract with the Council;
- 1.1.2 entering into this agreement or any other contract with the Council where a commission has been paid or has been agreed to be paid by the School or on its behalf, or to its knowledge, unless before the relevant contract is entered into particulars of any such commission and of the terms and conditions of any such contract for the payment thereof have been disclosed in writing to the Council;
- 1.1.3 committing any offence:
  - (a) under the Bribery Act;
  - (b) under legislation creating offences in respect of fraudulent acts; or
  - (c) at common law in respect of fraudulent acts in relation to this agreement or any other contract with the Council; or
- 1.1.4 defrauding or attempting to defraud or conspiring to defraud the Council.

**Pupil:** means a child who is at risk of permanent exclusion or who is permanently excluded (as the case may be) and who requires alternative provision either in-house or with alternative providers including any out of county pupils who have been permanently excluded or have been attending a PRU or other form of alternative provision and whose placement in the School has been ratified by an In Year Fair Access Panel during the Term of this agreement.

**Purpose:** means the satisfactory delivery of the Service to pupils by the School or by a Service Provider appointed by the School.

**PRU:** means a Pupil Referral Unit.

**Regulated Activity:** in relation to children shall have the same meaning as set out in Part 1 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006 and in relation to adults at risk shall have the same meaning as set out in Part 2 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006.

**Regulated Activity Provider:** as defined in section 6 of the Safeguarding Vulnerable Groups Act 2006.

**Schools Forum (for Wiltshire):** means the forum of schools and academies constituted by Wiltshire Council in accordance with The Schools Forums (England) Regulations 2012.

**Service:** means the provision of such teaching, support and associated services as is required to deliver 'suitable full-time education' to a pupil as described in Annex 1, subject to any reduction to part-time provision made in accordance with clause 3.2 and/or Legislation.

**Service Provider:** any third-party supplier of all or part of the Service appointed by the School from time to time.

**Suitable Full-Time Education:** the full-time education which must be provided by the Council in accordance with section 19 of the Act, the Department for Education's "Alternative Provision: Statutory guidance for local authorities" issued in January 2013 and other relevant Legislation.

**Term:** has the meaning given in clause 2.4.

**Trial:** has the meaning given in Recital B.

**Trial Agreement:** means the agreement between the Council and the School which dealt with funding devolved to the School in relation to the Trial.

- 1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this agreement.
- 1.3 A person includes an individual, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors or permitted assigns.
- 1.4 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 Words in the singular shall include the plural and vice versa.
- 1.6 A reference to one gender shall include a reference to the other genders.
- 1.7 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.8 A reference to writing or written includes faxes and e-mail.
- 1.9 References to clauses and schedules are to the clauses and schedules of this agreement; references to paragraphs are to paragraphs of the relevant schedule to this agreement.

## 2. **AGREEMENT AND DURATION**

- 2.1 The Council agrees to devolve the Funding to the School during the Term in accordance with the terms of this agreement.
- 2.2 In consideration of the Council providing the Funding to the School, the School agrees to provide or appoint Service Providers to provide the Service for the Purpose. The School shall devise a PLP for a pupil where appropriate.

- 2.3 The parties agree that each of them shall at all times act in good faith towards each other and in the best interests of Pupils.
- 2.4 This agreement shall take effect on the Commencement Date and shall continue until 31<sup>st</sup> March 2023, subject to earlier termination in accordance with clause 12.4 (the “**Term**”).
3. **PURPOSE OF FUNDING**
- 3.1 The School shall use the Funding as revenue funding and only for the Purpose and in accordance with the terms and conditions set out in this agreement. The Funding shall not be used for any other purpose without the prior written agreement of the Council.
- 3.2 Section 19 of the Act places a duty on a local authority to make arrangements for the provision of suitable education at school or otherwise than at school for children of compulsory school age resident in the authority’s area who have been permanently excluded from school on disciplinary grounds (the “**Duty**”). The School also has a statutory obligation to provide suitable education for Pupils on roll at the School. The Order exempts the Council from the Duty, places the Duty on the School in relation to permanently excluded Pupils. Notwithstanding the Order ceasing to have effect, the Parties agree as follows:
- 3.2.1 The Council shall continue to devolve the Funding to the School in accordance with this agreement, and the School shall continue to use the Funding in accordance with this agreement to fulfil the Duty in relation to permanently excluded Pupils during the exclusion process and any appeal, and permanently excluded Pupils after they are removed from the admission register. The School agrees to exhaust all possible alternatives before making any decision to permanently exclude a Pupil, provided that in doing so the School shall act in accordance with Legislation and the School’s Funding Agreement, and the needs of the Pupil can be so met.
  - 3.2.2 If the School determines that it would not be in a pupil’s best interests to attend full-time education for reasons which relate to his or her physical or mental health, it shall instead offer suitable education on such part-time basis as it considers (giving due regard to Legislation and the School’s Funding Agreement) to be in his or her best interests;
  - 3.2.3 The School shall inform the Council of all part-time provision offered in accordance with clause 3.2.2 through the In Year Fair Access Panel and the School’s monitoring obligations under clause 7 and Schedule 1 herein;
  - 3.2.4 In order to ensure that the Duty is being fulfilled, the Council reserves the right to review the School’s reasons for any offer of part time provision made in accordance with clause 3.2.2, and the School will co-operate with any such review. If appropriate, the Council and the School shall meet to discuss other options for each

relevant pupil, giving due regard to the School's knowledge of that pupil and its professional expertise;

- 3.2.5 In order to ensure that the Duty is being fulfilled, the Council will monitor the provision put in place by the School in accordance with clause 7 and Schedule 1. This will include monitoring attendance, taking account of any offer of part time provision made in accordance with clause 3.2.2. However, the Council acknowledges that nothing in this clause 3.2 guarantees attendance by a pupil.

3.3 The School shall not use the Funding to:

- 3.3.1 make any payment to members of its governing body (except where the Funding is used to pay any Purpose-related element of the normal School salary of a governor who is also a member of paid staff of the School);

- 3.3.2 purchase buildings or any interest in land; or

- 3.3.3 pay for any expenditure commitments of the School entered into before the Commencement Date,

without the prior written agreement of the Council (such agreement not to be unreasonably withheld or delayed).

- 3.4 The School shall promptly notify the Council of the amount of any funding which was devolved to the School under the Agreement and which remains unspent and uncommitted immediately prior to the Commencement Date, and the intended use of such funding. Subject to the Council's prior written agreement (such agreement not to be unreasonably withheld or delayed) such unspent or uncommitted funding shall be added to the Funding after the Commencement Date and shall be subject to the terms and conditions of this agreement.

**4. PAYMENT OF FUNDING**

- 4.1 The Council shall devolve the Funding to the School in accordance with the terms of this agreement and Schedule 2.

- 4.2 The amount of the Funding shall not be increased in the event of any overspend by the School in relation to the Purpose.

- 4.3 The School shall promptly repay to the Council any money incorrectly paid to it either as a result of an administrative error or otherwise. This includes (without limitation) situations where either an incorrect sum of money has been paid or where Funding monies have been paid in error before all conditions attaching to the Funding have been complied with by the School.

**5. QUALITY ASSURANCE**

- 5.1 The School shall assure the quality of all provision including any delivered by Service Providers.

**6. ACCOUNTS AND RECORDS**

- 6.1 The Funding shall be shown in the School's accounts as a restricted fund with a separate cost centre for the expenditure and income and shall not be included under general funds.
- 6.2 The School shall keep separate, accurate and up-to-date accounts and records of the receipt and expenditure of the Funding monies received by it.
- 6.3 The School shall keep all invoices, receipts, and accounts and any other relevant documents relating to the expenditure of the Funding for a period of at least six years following receipt of any Funding monies to which they relate. The Council shall have the right to review, at the Council's reasonable request, the School's accounts and records that relate to the expenditure of the Funding and shall have the right to take copies of such accounts and records at the Council's expense.
- 6.4 The School shall provide the Council with a copy of annual accounts relating only to the Funding, as soon as they are available and in any event within three months of the end of the relevant Financial Year in respect of each year in which the Funding is paid.
- 6.5 The School shall comply and so far as is practicable shall facilitate the Council's compliance with all statutory requirements as regards accounts, audit or examination of accounts, annual reports and annual returns applicable to itself and the Council in relation to the subject matter of this agreement.

**7. MONITORING AND REPORTING**

- 7.1 The School agrees to provide the monitoring information as set out in Schedule 1 and Annex 1.
- 7.2 The School shall on request provide the Council with such further information, explanations and documents as the Council may reasonably require in order for it to establish that the Funding has been used properly in accordance with this agreement.
- 7.3 The School shall permit any person authorised by the Council such reasonable access to its employees, agents, premises, facilities and records, for the purpose of discussing, monitoring and evaluating the School's fulfilment of the Purpose and shall, if so required, provide appropriate explanations from them.
- 7.4 If, at any time during the Term, the Council has reasonable cause to believe that the Purpose is not being or may not be achieved in respect of any pupil, it reserves the right to ask the School for additional information about why this is happening and what action the School is taking.
- 7.5 If following consultation with the School in accordance with clause 7.4 the Council has reasonable cause to believe that the Purpose still is not being or may not be achieved in respect of any pupil, then the Council reserves the right to ask the School to carry out with it a joint review of the Service and the Service Provider (if any) as follows:



- 7.5.1 the parties shall meet within 10 working days of the Council's request for a joint review to discuss whether remedial action is required;
- 7.5.2 where either party reasonably believes that remedial action is required, the parties shall agree a plan for such remedial action within 1 month of the meeting held under clause 7.5.1.
- 7.5.3 each party shall implement the remedial action plan within the timescales set out in such plan;
- 7.5.4 if the parties fail either (i) to agree a remedial action plan or (ii) to implement an agreed remedial action plan within the timescales set out in such plan, and in the Council's reasonable opinion, this failure has a serious and detrimental affect on the Service, then the dispute resolution procedure at clause 18 shall apply and the Council reserves the right to withhold payment of the Funding in accordance with clause 12.1.2;

## 8. PUBLICITY

- 8.1 The parties shall not publish any material referring to this agreement without the prior written agreement of each other. The parties shall acknowledge the support of each other in any materials that refer to this agreement or its subject matter.

## 9. SAFEGUARDING

- 9.1 Everyone has a responsibility for safeguarding and promoting the welfare of children, and safeguarding adults at risk. In the event that the Service Provider has concerns that a child, or adult at risk, is experiencing, or is at risk of, abuse (whether financial, physical, sexual, emotional or neglect) this should be reported in the following ways:
  - 9.1.1 if a child, or adult at risk, is in immediate danger or left alone, contact the police or call an ambulance on 999;
  - 9.1.2 in all other cases involving children, referrals should be made to Wiltshire social care services via the Council's 'Multi-Agency Safeguarding Hub' (MASH) on 0300 456 0108 (or out of hours via the 'Emergency Duty Service' on 0300 456 0100);
  - 9.1.3 in all other cases involving adults, referrals should be made to the Council's Advice and Contact Team on 0300 456 0111 (or out of hours via the 'Emergency Duty Service'), e-mail [AdviceandContact@wiltshire.gov.uk](mailto:AdviceandContact@wiltshire.gov.uk)

*(In the event that a Regulated Activity is provided under this Agreement, the following provisions shall apply:- )*

- 9.2 The parties acknowledge that the Service Provider is a Regulated Activity Provider with ultimate responsibility for the management and control of the Regulated Activity provided under this agreement and for the purposes of the Safeguarding Vulnerable Groups Act 2006 (SVGA 2006).
- 9.3 The Service Provider shall (whether performing the agreement by itself and/or any Sub-Contractor):

- 9.3.1 comply at all times with the provisions of the SVGA 2006 and any regulations made thereunder and all related guidance issued by HM Government (including government ministers, government departments and particular bodies, persons, commissions or agencies from time to time carrying out functions on its behalf) including 'Working together to safeguard children' (2018) and Care Act 2014, LGA Chapter 14 Guidance (published March 2016- 2<sup>nd</sup> Edition), with reference to the Wiltshire Safeguarding Adults Board (WSAB) "[Safeguarding Adults in Wiltshire](#)" [Booklet. Revised Guidance for Staff](#).
- 9.3.2 comply with all relevant Council policies and procedures relating to safeguarding that are published on its website ([www.wiltshire.gov.uk](http://www.wiltshire.gov.uk) and [www.wiltshiresab.org.uk](http://www.wiltshiresab.org.uk)) or otherwise provided by the Council from time to time, "Policy and Procedures for Safeguarding Adults in Wiltshire" ([Safeguarding Adults at Risk](#)) and the "Safeguarding Framework for Children's Commissioned Services";
- 9.3.3 have due regard for and undertake, or refrain from undertaking, such acts as the Council may request so as to enable the Council to comply with its obligations under the SVGA 2006, Children Act 1989, section 11 of the Children Act 2004, the Care Act 2014, the policies and procedures referred to in Clause 1.3 and any other laws, enactments, orders or regulations relating to the protection, safeguarding and promotion of the welfare of children, and safeguarding adults at risk;
- 9.3.4 where applicable, operate a child protection policy that reflects and complements the Council's multi-agency and single agency child protection procedures (as provided by the Council and as may be amended from time to time);
- 9.3.5 where the provision of the Services results in contact with "adults at risk" (as defined in "Policy and Procedures for Safeguarding Adults in Wiltshire" ([Safeguarding Adults at Risk](#))) the Service Provider shall report any concerns of "abuse" (including allegations of abuse by a member of staff or volunteer) in accordance with the policy and shall (at its own expense) co-operate and provide all reasonable assistance to the Council in respect of any investigations or enforcement actions;
- 9.3.6 operate recruitment and training policies and procedures (including in relation to potential staff and volunteers) having regard to the need to safeguard and promote the welfare of children, and the need to safeguard adults at risk and shall:
  - (a) use an application form that includes an explanation that the post is exempt from the Rehabilitation of Offenders Act 1974 and therefore that all convictions, cautions, reprimands, final warnings, or bind overs, including those regarded as 'spent', should be declared unless otherwise "protected" from disclosure under the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (as amended in 2013). The Service Provider (or Sub-Contractor) should also obtain a signed statement that the person is not disqualified from work with children, or adults at risk, or subject to sanctions imposed by any regulatory body, and either has no convictions, cautions, reprimands, final warnings, or bind overs, or has declared the details of such offences (unless protected from disclosure);
  - (b) ensure that all Service Provider Personnel and Sub-Contractors engaged in the provisions of the Services are familiar with the legal requirements, policies and procedures referred to in this clause;

- 9.3.7 ensure that all individuals carrying out Services are subject to valid standard or enhanced disclosure checks (in accordance with the legal eligibility requirements relating to the position and duties) undertaken through the 'Disclosure and Barring Service' (DBS), including enhanced disclosure checks with a check of the appropriate barred list for individuals providing a Regulated Activity;
  - 9.3.8 not employ or use the services of any person who is barred from, or whose previous conduct or records indicate that he or she would not be suitable to carry out Regulated Activity or who may otherwise present a risk to pupils or other recipients of the Services under this agreement;
  - 9.3.9 immediately notify and keep the Council advised of any person who subsequently receives a conviction or whose previous conviction(s) becomes known to the Service Provider where such conviction would prevent that person from providing any of the Services in accordance with Clause 1.3.8;
  - 9.3.10 treat all DBS disclosures as confidential and store and retain them in compliance with all applicable laws and guidance including Data Protection Legislation and any other guidance issued by HM Government;
  - 9.3.11 monitor the level, validity and frequency of the checks required under Clause 1.3.7 for each individual employed or engaged in the provisions of the Services;
  - 9.3.12 comply with Clauses 1.4 to 1.6 below.
- 9.4 The Service Provider warrants and represents that at all times for the purposes of the agreement it has no reason to believe that any person who is or will be employed or engaged by the Service Provider in the provision of the Services will be employed or engaged in breach of Clause 1.3.8.
- 9.5 The Service Provider shall promptly provide, at its own cost, any information or evidence that the Council reasonably requests to enable it to be satisfied that the obligations of this Clause 1 have been met. In particular, and without incurring any liability to the Service Provider, the Council may require the suspension of any person from carrying out the Services until written confirmation of the required checks and clearances is given in a form satisfactory to the Council.
- 9.6 The Service Provider shall refer information about any person carrying out the Services to the DBS where it removes permission for such person to carry out the Services (or would have, if such person had not otherwise ceased to carry out the Services) because, in its opinion, such person has harmed or poses a risk of harm to the pupils, children, or adults at risk.
10. **FREEDOM OF INFORMATION**
- 10.1 Each party acknowledges that the other party is subject to the requirements of the Freedom of Information Act 2000 and the Environmental Information Regulations 2004 and shall assist and co-operate the other party to enable it to comply with these information disclosure requirements.

**11. DATA PROTECTION**

- 11.1 Both Parties shall comply with all applicable requirements of the Data Protection Legislation. This clause 11 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.
- 11.2 For the purposes of Data Protection legislation, the School and Service Provider are Data Controllers.
- 11.3 Each Party shall ensure that it does nothing knowingly or negligently which places the other Party in breach of Data Protection Legislation.
- 11.4 The provisions of this clause shall apply during the term of this Agreement and indefinitely after its expiry.

**12. WITHHOLDING, SUSPENDING AND REPAYMENT OF FUNDING AND TERMINATION**

- 12.1 Without prejudice to the Council's other rights and remedies, the Council may at its reasonable discretion withhold or suspend payment of all or part of the Funding and/or require repayment of all or part of the Funding which remains unspent by the School if:

12.1.1 the School uses the Funding for purposes other than the Purpose;

12.1.2 the circumstances in clause 7.5.4 apply;

12.1.3 there is a change in central government policy such that the Council can no longer devolve part or all of the Funding to the School;

12.1.4 circumstances arise in which there is duplicate funding available to the School from a third party. This includes but is not limited to circumstances in which financial provision for excluded pupils is included within the central government funding allocated to academies. However, the parties acknowledge that the School may seek additional funding from other sources for the Purpose and, if successful, the School may use this for the Purpose in addition to the Funding. For the avoidance of doubt, this clause 12.1.4. does not apply to the funding granted by Schools' Forum to In Year Fair Access Panels to meet costs due to the increasing number of out of county hard to place pupils and Year 11s coming into Wiltshire covered by a grant from the High Needs Budget agreed by the Schools Forum (for Wiltshire);

12.1.5 the School provides the Council with any materially misleading or inaccurate information;

12.1.6 the School commits or committed a Prohibited Act;

12.1.7 the School ceases to operate for any reason.

- 12.2 If the School:

12.2.1 uses any part of the Funding in breach of clause 3.1 or clause 3.3;  
or

12.2.2 receives monies in error from the Council in the circumstances referred to in clause 4.3,

then the School agrees to repay such monies to the Council upon demand. If the School fails to repay such monies upon demand, the Council reserves the right to withhold payments of the Funding to the value of the outstanding debt.

12.3 Should the School be subject to financial or other difficulties which are capable of having a material impact on its effective delivery of the Service or compliance with this agreement it will notify the Council as soon as reasonably possible so that, if possible, and without creating any legal obligation, the Council will have an opportunity to provide assistance in resolving the problem or to take action to protect the Council and the Funding monies.

12.4 In the event that there are changes or proposed changes to Legislation (for example, as a result of a general election) which prohibit, severely restrict or substantially conflict with the operation of this agreement, or substantially replace the arrangements within it, the parties shall as soon as reasonably practicable meet to discuss how the terms of this agreement may be varied to accommodate the changes or proposed changes. In the event that it is not possible to vary the agreement to accommodate the changes or proposed changes, either party may terminate this agreement by such written notice as is reasonable in the circumstances.

12.5

12.5.1 If the level of Funding falls below the Acceptable Level of Funding the School and the Council shall meet within 14 days of receipt of notification of the Funding for the new Financial Year (the “**New Funding Notification**”) to discuss how the terms of this agreement can be varied or how additional funding may be allocated to the School in order for the School to provide the Service for the new Financial Year in accordance with the terms of this agreement.

12.5.2 If the School and the Council cannot reach an agreed solution within 28 days of the meeting referred to in clause 12.5.1 above as to how the School can financially continue to provide the Service in accordance with the terms of this agreement, the School shall have the option to terminate this agreement by serving written notice of such on the Council (the “**Termination Notice**”) within 28 days of receipt of the New Funding Notification. On receipt of the Termination Notice this agreement shall determine on the day before the first day of the new Financial Year in question, and for the avoidance of doubt no Funding shall be payable by the Council for the new Financial Year.

### 13. **WARRANTIES**

13.1 The School warrants, undertakes and agrees that in relation to the Service:

- 13.1.1 it has not committed, nor shall it commit, any Prohibited Act;
- 13.1.2 it shall at all times comply with all Legislation from time to time, and shall notify the Council immediately of any significant departure from such Legislation;
- 13.1.3 it has and shall keep in place adequate procedures for dealing with any conflicts of interest;
- 13.1.4 it has and shall keep in place systems to deal with the prevention of fraud and/or administrative malfunction;
- 13.1.5 all financial and other information concerning the School which has been disclosed to the Council is to the best of its knowledge and belief, true and accurate;
- 13.1.6 it is not subject to any contractual or other restriction imposed by its own or any other organisation's rules or regulations or otherwise which may prevent or materially impede it from meeting its obligations in connection with the Funding;
- 13.1.7 it is not aware of anything in its own affairs, which it has not disclosed to the Council or any of the Council's advisers, which might reasonably have influenced the decision of the Council to provide the Funding on the terms contained in this agreement.

#### **14. INSURANCE**

- 14.1 The School shall ensure that all Service Providers at their own expense maintain with reputable insurers adequate insurance policies to cover such liabilities and in such minimum sums as a reasonable and prudent operator carrying out the same or similar service as it would think fit, including, but not limited to, employers liability insurance of £5 million, public liability insurance of not less than £5 million (in respect of any one claim) and professional indemnity insurance of not less than £1 million (in respect of any one claim) to cover such liabilities as may arise in the provision of the Service.

#### **15. VARIATION**

- 15.1 The terms of this agreement may only be varied by agreement by both the parties in writing.

#### **16. WAIVER**

- 16.1 No failure or delay by either party to exercise any right or remedy under this agreement shall be construed as a waiver of any other right or remedy.

#### **17. NOTICES**

- 17.1 All notices and other communications in relation to this agreement shall be in writing, shall be addressed to the Strategic Lead for Alternative Provision (for the Council) or Head Teacher (for the School) or such other officer as may be notified in writing from time to time, and shall be deemed to have been duly given if personally delivered or

mailed (first class postage prepaid) to the address of the relevant party, as referred to above or otherwise notified in writing. If personally delivered all such communications shall be deemed to have been given when received (except that if received on a non-working day or after 5.00 pm on any working day they shall be deemed received on the next working day) and if mailed all such communications shall be deemed to have been given and received on the second working day following such mailing.

**18. DISPUTE RESOLUTION**

18.1 In the event of any complaint or dispute (which does not relate to the Council's right to withhold funds or to terminate this agreement) arising between the parties to this agreement in relation to this agreement the matter should first be referred for resolution to the individuals nominated by the parties from time to time.

18.2 In the absence of agreement under clause 18.1, the matter shall be referred to the Council's Strategic Lead for Alternative Provision and the School's Headteacher/Principal for resolution.

18.3 In the absence of agreement under clause 18.2, the parties may seek to resolve the matter by mediation in accordance with the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator will be nominated by CEDR.

**19. NO PARTNERSHIP OR AGENCY**

19.1 This agreement shall not create any partnership or joint venture between the Council and the School, nor any relationship of principal and agent, nor authorise any party to make or enter into any commitments for or on behalf of the other party.

**20. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

20.1 This agreement does not and is not intended to confer any contractual benefit on any person pursuant to the terms of the Contracts (Rights of Third Parties) Act 1999.

**21. GOVERNING LAW**

21.1 This agreement shall be governed by and construed in accordance with the law of England and the parties irrevocably submit to the exclusive jurisdiction of the English courts.

**22. ENTIRE AGREEMENT**

22.1 This agreement constitutes the entire agreement between the parties and supersedes and extinguishes the Trial Agreement and all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

**SIGNED** by \_\_\_\_\_ ) .....

Duly authorised on behalf of )

**COUNCIL**

**SIGNED** by \_\_\_\_\_ ) .....

and \_\_\_\_\_ )

Duly authorised on behalf of

**SCHOOL**



## **A. SCHEDULE 1**

### **MONITORING AND EVALUATION**

The Council will continue to collect the numbers of fixed period and permanent exclusions via the established data collection system.

The School will identify by name and year group all pupils who are accessing full time Alternative Provision at the end of Term 2 and Term 4. Details of qualifications, progress and attendance will be gathered and maintained by the school.

At the end of each Academic Year, attainment in terms of qualifications and progression beyond 16 will be collected by the School for Year 11 pupils who have attended full time Alternative Provision. Ongoing curriculum plans will be collected for pupils from Year 7 to 10

## B. SCHEDULE 2

### FUNDING – PAYMENT ARRANGEMENTS

#### PROFILING OF PAYMENTS

##### 1. Annual Totals

Notification of the annual total Funding to be devolved will be provided by the Council to the School in March of each year in the format of a detailed funding statement showing the allocation to the School, determined in accordance with the agreed formula set out at paragraph 4 below, which will be updated each year.

The Total devolved funding for each financial year will be £2.7 million, devolved per the formula agreed by the Head teachers at the beginning of the original DfE exclusion Trial, details in POINT 4.

All costs for Alternative Providers will be paid by the schools from the devolved funds or Out of County Funding (details in POINT 4)

**If it is arranged that Independent Registered AP schools are receiving place funding from the DfE there will need to be immediate discussion with schools accessing the places to avoid double funding.**

##### 2. Monthly Amounts

The Funding will be paid to the School on the 20<sup>th</sup> day of each month in 12 equal instalments. Where the 20<sup>th</sup> falls on a weekend or bank holiday the payment will be paid on the closest working day prior to the 20<sup>th</sup>.

##### 3. Variation in Profiling

In general, the presumption is that the School will plan its affairs to match the profile of cash receipts outlined in paragraph 2 above.

If, however, for reasons outside the control of the School, forecast cash outflows cannot be accommodated within the above profile, then the School may request a tailored profiling of their payments. This should be done in writing to the Principal Accountant (Schools) explaining the circumstances, along with a cash flow forecast.

##### 4. Formula

The total budget to be devolved to Wiltshire schools participating in the arrangements set out in this agreement shall be set by the Schools Forum. That budget will be distributed amongst participating schools using the following formula:

- 98.25% distributed by Free Meals recorded at the School on the latest available census at the time of calculation (which would usually be the January census prior to the start of the relevant Financial Year); plus
- 1.75% distributed according to the latest available data on service pupil numbers at the School at the time of calculation.

Note that the 1.75% service pupil element targets funding to participating schools with greater than 20% of their pupils classified as service pupils.

## **5. Out of County Funding**

### **Provision Criteria**

£297,000 will be divided equally to the 3 regional school groups each financial year to provide support for all out of county pupils who move into Wiltshire and meet the criteria set out by the Fair Access Protocol.

### **Area Allocation**

The money will be transferred as a lump sum to the named group bank account, it will not be devolved directly for individual school use. This funding will be reviewed at the end of the term of the SLA.

At the end of each financial year, each regional school group will submit a report to the Council on how the funding has been used. Details of any balance to be carried forward each year must be provided to help inform future decision regarding the sufficiency of the funding. As this funding forms part of the deployment of the Council's Dedicated Schools Grant, the Council's auditors may seek evidence of the use of funds as part of their annual audit work.

# Annex 1 – services

## Introduction

### Background

#### 1 Aims

- 1.1 The Secondary phase Wiltshire system is based on six core principles. The approach to supporting inclusion and the effective use of Alternative Provision (AP) in Wiltshire aims to –
- provide pathways of support for young people to keep them engaged in high-quality education, that complements what can be provided by mainstream schools alone;
  - enable needs to be identified and issues to be addressed early, focusing on prevention wherever possible;
  - re-engage young people who are disengaged from education, stopping young people falling through the local system;
  - enable young people to progress and achieve good long-term outcomes – acquiring valuable skills and qualifications that enable them to pursue their education post-16, and move into work and fulfilling adult life, avoiding young people becoming NEET (not in education, employment or training);
  - enable schools and services to act as hubs of support serving their local communities; and
  - foster collective responsibility for young people placed in and the use of AP.

#### 2 Funding

- 2.1 Schools receive an allocation of resource from the high needs block that would otherwise be spent on pupils who had been excluded and required a placement in AP. This funding is provided to enable schools to put in place the right inclusion support and alternative education, in a timely, pro-active and preventative manner to foster good outcomes and progression for young people, and to avoid permanent exclusion where this can be avoided.
- 2.2 State-funded secondary schools in Wiltshire receive funding based on proxy indicators of pupil needs, calculated on the basis of pupils eligible for free school meals in the annual October census. (There is also a very small adjustment made for schools with a significant proportion of service children.) Secondary schools receive an agreed level of funding for three years to provide stability and foster effective planning from year to year.

#### 3 The period covered by this service level agreement

- 3.1 This service-level agreement will remain in place from 1<sup>st</sup> January 2021 to 31<sup>st</sup> March 2023. Arrangements for reviewing the system are set out in the final section on 'Governance, oversight and escalation'.

## Responsibilities

#### 4 The purpose for which funding is devolved from the high needs block

- 4.1 The purpose for which funding is devolved is to support schools to put in place both in-school inclusion support and to fund external AP where this is required. Schools have agreed to adopt a layered approach before an AP placement should be considered:
- Exploration of underlying needs – work to identify underlying needs causing barriers to learning.
  - Internal provision – alternative curriculum, more intensive pupil support.
  - Alternative study programmes – scope for adapting the curriculum to pupils’ needs.
  - Therapeutic support – putting in place therapeutic, restorative approaches, seeking advice.
  - Explored alternatives to non-mainstream placements – through a Managed Move that allow a pupil to make a fresh start at another school.
- 4.2 Where placements in AP are being sought, schools will demonstrate, for monitoring and evaluation purposes, that these layers have been considered and applied, over what timescale and to what effect, as part of explaining the rationale for an AP placement and collating the evidence about a pupil that would inform the support they receive.

## **5 Respective responsibilities in the Wiltshire system**

5.1 The core responsibilities of the following groups are:

5.1.1 Mainstream schools will –

- retain responsibility for every pupil on their roll.
- provide appropriate educational provision for all secondary-age pupils, using both the school’s own delegated and devolved high-needs block resources;
- maintain responsibility for educational outcomes and safety of pupils in AP;
- report data to Wiltshire Council or the purposes of collective monitoring;
- work in partnership with other schools in their partnership area and across areas where appropriate to ensure appropriate use of funding and of AP; and
- work with Wiltshire Council to agree strategic priorities and shape the system in Wiltshire.

5.1.2 In the Wiltshire system, the Council will –

- provide dedicated strategic leadership and support to schools re: inclusion and use of AP;
- maintain key policies and protocols governing how the Wiltshire system should operate;
- quality-assure partnerships’ and schools’ use of devolved funding, including maintaining oversight of pupils who are not offered full-time mainstream education ‘in the usual way’ including those supported in alternative education;
- maintain quality-assurance process for Wiltshire Council approved providers and work with schools to pro-actively shape a responsive, needs-based offer of locally available AP.

5.1.3 In the Wiltshire system, AP providers will –

- provide high-quality support that enables pupils to progress and thrive;

- share information with commissioners about pupils supported in AP in a timely way;
- support the system's key priorities – fostering inclusion, maintaining collective responsibility, supporting reintegration of pupils into mainstream education; and
- engage with schools and the Wiltshire Council to shape a responsive, needs-led offer of local AP.

5.1.4 In the Wiltshire system, other services with a role to play in supporting inclusion (early help, children social care, emotional wellbeing and mental health services, educational psychologists etc) will –

- engage and work in partnership with schools, AP providers and the Wiltshire Council around key processes to identify need and decide on appropriate support; and
- work in a spirit of finding solutions, addressing needs holistically, and sharing collective responsibility for ensuring pupils receive the right support at the right time.

## Underpinning systems and processes

### 6 Decision-making and partnership working

6.1 There are three locality partnerships, that are formalised and have clear terms of reference to which schools and partners adhere. The partnerships will meet once a year and record formally what funding is being pooled (if any), and will termly to record decisions about AP placements and oversee existing AP placements, and communicate this to the Council. The schools will work collaboratively drawing together intelligence about trends and needs from:

- Placements made and outcomes at alternative provision
- IYFAP
- Managed Moves

to:

- **plan** the use of devolved funding, including anything to be pooled centrally by the partnership;
- **share support** across schools, through Managed Moves;
- **oversee**, moderate and co-ordinate access to local AP to ensure equitable use; and
- **review** placements (internally, at AP or on a Managed Move) considering outcomes and planning the inclusion of pupils back in school as part of a broader, holistic discussion.

6.2 Schools will be expected to –

- record decisions about AP placements, including setting out the intended aims and expected duration / review period for the placements;
- keep pupils on the roll of their mainstream school when they are placed in AP – a fundamental tenet of the system should be the pupils remain part of their school from Y7 to Y11, even if they are placed in AP;

- plan for the longer term – reviewing AP placements, planning for transition back to mainstream school and/or future progression after KS4; and
- report on the use of AP and the outcomes of pupils placed in AP.

6.3 Managers from early help, children’s social care, community policing and inclusion support services, with the authority to share information about young people and take decisions about support, would be full members of the locality partnerships and will attend the locality partnership meetings.

6.4 The membership of the partnerships will be set out in their terms of reference.

## 7 Reporting and oversight of the use of support for inclusion and AP

7.1 The use of inclusion support and alternative education placements will be overseen, monitored and reported on to ensure transparency, fairness, equity and the effective use of public money for the most vulnerable young people in Wiltshire. Schools in receipt of devolved funding will report on their pupils who are not in full-time mainstream school every day (ie whose curriculum provision is significantly differentiated from their peers).

7.2 At the level of the local schools’ partnerships, this would mean that the partnerships would consider and would be in a position to report to the Council on –

- Pupils placed in AP and details of placements – length, aims, review dates, milestones, reintegration; and
- Pupils at risk of exclusion
- Pupil outcomes.

## 8 Working with parents / carers

8.1 Within a principle of joint working, schools will work with parents before and in choosing an AP placement, however parental consent is not required.

8.2 Maintained schools have a statutory power to direct a pupil off-site for education to improve their behaviour (section 29A Education Act 2002).

8.3 Academies will be clear that the requisite power has been correctly delegated by Trustees. This can be achieved by the Trust’s scheme of delegation clearly documenting the way in which this power is to be exercised.

## 9 Permanent exclusion

9.1 In Wiltshire, high needs block funding has been devolved in order to enable schools to access this resource for preventative purposes, to avoid needs escalating and avoid the need for permanent exclusion where this can be avoided. **As such, instances of permanent exclusion in Wiltshire should remain extremely rare. Signatories of the SLA will be committed to inclusion and to alternatives to permanent exclusion.**

9.2 One of the aims of devolving funding in Wiltshire is to avoid the challenges faced by more “traditional” models of access to AP – namely where access to AP is often by means of permanent exclusion. In Wiltshire, high needs block funding has been devolved in order to enable schools to access those same resources for preventative purposes, to avoid needs escalating and avoid the need for permanent exclusion where this can be avoided. As such, instances of permanent exclusion in Wiltshire should remain rare.

9.3 On the rare occasions a secondary-age pupil is excluded permanently from a Wiltshire school, the following steps will be taken –

- The mainstream school would be responsible for organising a placement in AP for that pupil from the sixth day after the permanent exclusion;
- This will be notified to and overseen by the Council to ensure that the Council is satisfied the pupil is placed appropriately and is receiving suitable full-time education;
- The mainstream school will be responsible for paying for the cost of the placement in AP;
- The Council will ensure that information about that pupil is on the agenda of the appropriate locality partnership so that decisions could be taken about the progression and potential reintegration of that pupil back into a mainstream school;
- Wiltshire Council will work with the alternative provision and ensure the pupil is equipped to return to mainstream education whenever possible;
- A pupil assessed to be ready to return to mainstream, will be allocated a place through IYFAP.

## Governance, oversight and escalation

### 10 Governance and oversight

10.1 Signatories of the SLA will confirm that the school governors and academy trustees have accepted the terms of this agreement.

10.2 A cross-phase Wiltshire Inclusion Strategic Group will be constituted to provide oversight and governance of inclusion support and the use of AP in Wiltshire. The Strategic Group will meet termly and receive reports, collated by the Wiltshire Council, about the use of inclusion support and AP, including the use of devolved high needs block funding for alternative education placements. The Strategic Group will -

- provide overall strategic direction to work to strengthen inclusion support and AP in Wiltshire.
- foster collective responsibility and partnership working across schools, settings, colleges and support services that supports the aims of the system, set out in this document;
- facilitate the planning of effective transition, particularly between primary and secondary schools, between schools and colleges, and between AP and mainstream schools; and
- keep key systems, processes and documents that underpin the system of support for inclusion and the use of AP under regular review.

10.3 The terms of reference of the Wiltshire Inclusion Strategic Group will cover the review and where necessary update key systems, processes and documents annually. The Strategic Group will also be able to convene to make changes by exception to those systems, processes and documents in response to changes in national policy.

### 11 Escalation

11.1 Where there are disputes about the use of resources, including devolved high needs block resources, to support inclusion and the use of AP that cannot be resolved through local agreement, the school will seek advice from Wiltshire Council via the strategic lead for AP in the first instance. The sequence of actions would then be to raise and seek to resolve the issue through the following channels –



- referring to the local partnership in which the school is located;
- if it cannot be resolved at that level, referring to the Wiltshire Inclusion Strategic Group; or
- if it cannot be resolved at either of the preceding levels, to refer to partners beyond the Wiltshire system, specifically the Regional Schools Commissioner.

## **12 Non-signatories**

12.1 This agreement represents Wiltshire Council and schools' commitment to inclusion to enable Wiltshire pupils to progress, thrive and achieve good long-term outcomes. By deploying and monitoring resources in this way, signatories are confident that school inclusive practice is strengthened for the benefit of all Wiltshire learners.

12.2 If a school were to decide **not** to sign the SLA:

- Outcomes for vulnerable pupils including those at risk of exclusion at that school would continue to be monitored.
- The school would not receive devolved high needs block funding for alternative education. Instead, this would be held by the Council to be used to fund any placements in AP resulting from any permanent exclusion from that school. The school would still be expected to include pupils and avoid exclusions to avoid placing a disproportionate burden on other schools and
- If multiple permanent exclusions occur that place a burden on local resources, such that this was risking diminishing the resources of the Council or increasing pressure on capacity at alternative provision within the County, information about this would be escalated through the Wiltshire Inclusion Strategic Group, and in exceptional circumstances, the Regional Schools Commissioner.