

DATED

2014

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

between

WILTSHIRE COUNCIL

and

[THE GOVERNING BODY OF [SCHOOL]] OR [NAME OF ACADEMY]

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THIS AGREEMENT is dated

2014

PARTIES

- (1) **WILTSHIRE COUNCIL** of County Hall, Bythesea Road, Trowbridge BA14 0SU (the “**Council**”).
- (2) **[THE GOVERNING BODY OF [NAME OF SCHOOL] of [ADDRESS]] OR [[NAME OF ACADEMY]** a company limited by guarantee registered in England and Wales (company number **[NUMBER]**) whose registered office is at **[ADDRESS]** (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. The arrangements set out in this agreement will replace arrangements 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 will cease to have effect on 31 July 2014. This agreement replaces the Trial Agreement (as defined below), and the parties acknowledge that under this agreement the Council retains its statutory obligations under section 19.
- C. On **[INSERT]**, the Council’s Cabinet approved the arrangements set out in this agreement.
- D. 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 Service Users 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 **[] %** of the Funding received by the School during the 2014 – 2015 Financial Year.

Act: the Education Act 1996.

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.

Commencement Date: 1 April 2014.

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.

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 meeting of school heads 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 Service User's educational support programme devised by the School at the School's reasonable discretion to meet the individual needs of a Service User.

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 of compulsory school age on roll at the School, or who has been permanently excluded on disciplinary grounds from the School during the Term or during the Trial.

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

PRU: means a Pupil Referral Unit.

Service: means the provision of such teaching, support and associated services as is required to deliver Suitable Full-Time Education to a Service User, subject to any reduction to part-time provision made in accordance with clause **Error! Reference source not found.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.

Service User: means a Pupil 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.

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 [dated [INSERT]] 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 Service User 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 Service Users.
 - 2.4 This agreement shall take effect on the Commencement Date and shall continue until 31 March 2017, 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 and removes the requirement for the School to delete the name of any permanently excluded Pupil from the admission register. The School acknowledges that when the Order ceases to have effect on and from 31 July 2014, the Duty will return to the Council and the School must delete from the admission register the name of any permanently excluded Pupil. 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 proposed permanently excluded Pupils during the exclusion process and any appeal, and permanently excluded Pupils after they are removed from the admission register. The School must ensure that any Pupil it permanently excludes during the Term is enrolled on the admission register of an alternative provider or school within the cluster of the School on and from the day following removal of his or her name from the School's admission register. The Parties wish to ensure that, within the requirements of Legislation, this agreement works in practice as closely as possible to the Trial. Therefore, 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 needs of the Pupil can be so met.

3.2.2 If the School determines that it would not be in a Service User'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) 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 returns to the Council;
- 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 Service User, giving due regard to the School's knowledge of that Service User 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 Service User.

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 Trial 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 Trial funding shall be added to the Funding after the Commencement Date and shall be subject to the terms and conditions of this agreement.
- 3.5 Any part of the Funding which remains uncommitted at the end of a Financial Year can be rolled over to the next Financial Year provided that the School notifies the Council in writing of its intention to roll over any part of the Funding prior to the end of the relevant Financial Year, such notification to include details of the intended use of the Funding to be rolled over towards the Purpose.

3.6 The use of any Funding which remains uncommitted at the end of the Term will be determined following a consultation with all schools with whom the Council has an agreement on similar terms to this agreement regarding the next stage of alternative provision development in the light of the local and national context at the time.

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.

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 oral or written 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 Service User, 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 Service User, 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 Where the delivery of the Purpose results in regulated activity by a Service Provider or any other subcontractor or agent of the School relating to children as defined in section 5 and schedule 4 of the Safeguarding Vulnerable Groups Act 2006 (“the SVGA 2006”) (In this clause: a child is defined by the SVGA 2006 as any person who has not attained the age of 18; for details refer to the following website <http://www.legislation.gov.uk/ukpga/2006/47/section/5>), the School shall procure that such Service Providers, subcontractors and agents have regard to the need to safeguard and promote the welfare of children in accordance with section 11 of the Children Act 2004 (as amended or replaced from time to time) and any current guidelines issued by the Department for Education in relation to that section.

- 9.2 Without limitation to the generality of the foregoing, the School shall require that its subcontractors and agents engaged in the delivery of the Service including all Service Providers shall:

9.2.1 Operate recruitment and training policies and procedures having regard to the need to safeguard and promote the welfare of children;

9.2.2 Operate a child protection policy that reflects and complements ‘Wiltshire’s Multi-Agency and Single Agency Child Protection Procedures’ (as amended from time to time, the latest version being available upon request or from the following website www.wiltshire.gov.uk, and Wiltshire Local Safeguarding Children’s Board website at www.wiltshirelscb.org);

9.2.3 Use a recruitment application form that includes an explanation that the post is exempt from the Rehabilitation of Offenders Act 1974 and therefore that all convictions, cautions and bind-overs, including those regarded as ‘spent’, should be declared. The subcontractor or agent should also obtain a signed statement that the person is not disqualified from work with children, or subject to sanctions imposed by a regulatory body, and either has no convictions, cautions, or bind-overs, or has declared the details of such offences;

9.2.4 Obtain an Enhanced Criminal Records Bureau Disclosure in accordance with Part V of the Police Act 1997 and the exemptions to the Rehabilitation of Offenders Act 1974 for each member of staff engaged in the delivery of services to the School.

Organisations registered with the CRB can only apply for a CRB Disclosure if the position is included in this list. The Disclosure for each member of staff shall include as appropriate. A search of the new barred lists, one for children, one for vulnerable adults, which will encompass all the existing lists such as The Protection of Children Act (POCA) list, Protection of Vulnerable Adults (POVA) list, List 99 and the Disqualification Order Regime;

- 9.2.5 Provide evidence to the Council and the School showing that they are following the Council's own storage of Disclosures policy a copy of which is annexed hereto;
- 9.2.6 Ensure that no person who discloses any convictions, or is found to have any convictions following the results of an Enhanced Criminal Records Bureau Disclosure, is permitted to supply any services to the School where that conviction is incompatible with the type of work being undertaken by the person supplying the services or where that person is found to be barred from working or applying to work with children;
- 9.2.7 Ensure that the Council and the School are kept advised at all times of any person who, subsequent to the supply of services to the School, receives a conviction or whose previous conviction(s) becomes known to the relevant subcontractor or agent where that conviction is incompatible with the type of work being undertaken by the person supplying the services to the School or where that person is found to be barred from working or applying to work with children or vulnerable adults. (Reference to guidance is 'Working Together to Safeguard Children', Appx 5, HM Govt 2010, and www.swcpp.org.uk regarding allegations against staff);
- 9.2.8 Where the Council or the School so requests in writing, provide written confirmation that an acceptable Enhanced Criminal Record Disclosure has been issued in respect of any person pursuant to the requirements of this clause and without liability the Council or the School may require the suspension of any person from carrying out services to the School until written confirmation of required clearances is given in a form reasonably satisfactory to the Council and the School.

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 The School shall (and shall procure that its staff, volunteers, agents or sub-contractors involved in connection with the Service shall) comply with any notification requirements under the Data Protection Act 1998 (**DPA**) and both parties will duly observe all their obligations under the DPA, which arise in connection with the agreement.

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. If the School is an academy, this would include 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;

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 [] 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 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 [] days of receipt of the New Funding Notification. On receipt of the Termination Notice this agreement shall determine immediately 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 £10 million, public liability insurance of not less than £5 million (in respect of any one claim) and professional indemnity insurance of not less than £2 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 [Head of Targeted Services] (for the Council) or [INSERT TITLE] (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 Head of Targeted Services 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 from the School the numbers of fixed term and permanent exclusions.

The School will identify by name any pupils who are Service Users. The School will send to the Council the following data at the end of terms 2, 4 and 6.

- hours of provision
- levels of attendance
- academic progress and achievement to date

Following the end of the year, information on the Pupil's progress beyond year 10 and for Year 11 Pupils, their academic attainment in terms of qualifications and progression beyond 16.

The Council will share all the data collected with all secondary schools at the end of school terms 2, 4 and 6 and following the end of the year for year 11.

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.

2. **Monthly Amounts**

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

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.