

COMMERCIAL IN CONFIDENCE

MASTER SERVICES – TERMS & CONDITIONS

YOUNG GIANTS LIMITED

ATTENTION IS DRAWN TO THE LIMITATION OF LIABILITY AND INSURANCE PROVISIONS AT CLAUSE 17 AND THE DISCLAIMERS THAT APPLY TO THE SERVICES AT CLAUSE 11

Young Giants Limited (Company Number 12495621) the registered office of which is at 2-4 Packhorse Road, Gerrards Cross, Buckinghamshire SL9 7QE (“**Company / we / us**”)

BACKGROUND

- (A) The Company is in the business of providing mentoring and education Services as commissioned by the Client on an outsourced basis in respect of Service Users.
- (B) The Client may, from time to time, require the provision of particular Services from the Company.
- (C) These terms and conditions set out the mechanism whereby individual Assignments for the provision of particular Services are entered into, the terms that apply to particular Services, the terms which apply to all Services and those which otherwise govern the relationship between Assignments, including with regard to confidentiality and data protection.

1. INTERPRETATION

The following definitions and rules of interpretation apply in this Agreement.

Agency Rules: Chapter 7 of Part 2 of the Income Tax (Earnings and Pensions) Act 2003 (ITEPA 2003)

Applicable Laws: all mandatory laws, statutes and regulations from time to time in force which apply in respect of this Agreement and any Assignment.

- 1 **Applicable Data Protection Laws:** all applicable data protection laws to include, to the extent the UK GDPR applies, the law of the United Kingdom or of a part of the United Kingdom which relates to the protection of personal data and to the extent the EU GDPR applies, of the law of the European Union or any member state of the European Union to which the parties are subject which relates to the protection of personal data.
- 2 **Assignment:** a contract made between the parties under clause 4 for the Company to carry out particular Services (and Risk Assessments in accordance with clause 5), as set out in a Statement of Work, subject to and in accordance with the other provisions of this Agreement.
- 3 **Assignment Period:** the period of an Assignment commencing on the Assignment Start Date and continuing until its termination, as set out at clause 2.11. **Assignment Start Date:** the date the Client validly accepts an Offer to enter into a contract for the provision of Services, as set out at clause 4.3.
- 4 **Business Day:** a day, other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.
- 5 **Company's Manager:** Ms Jaime Johnson, or such other replacement individual appointed by the Company from time to time on a temporary or permanent basis as notified to the Client, being the person responsible for managing the Services on behalf of the Company and who has authority to contractually bind the Company on all matters relating to this Agreement and any Assignment.
- 6 **Company Personnel:** all employees, workers, directors, agents, consultants and Subcontractors engaged by the Company in the provision of the Services.

- 7 Confidential Information:** includes any information for the time being confidential to the Company or the Client, or which either party is bound by an obligation of confidence to a third party, that is not in the public domain, except by reason of unauthorised disclosure, whether or not the information is expressly stated to be confidential or marked as such, to include (without limitation) the terms of this Agreement, any Statement of Work or draft Statement of Work and all other information which is disclosed to one Party by the other Party pursuant to or in connection with this Agreement or any Assignment (whether orally or in writing or any other medium, including information disclosed in respect of Service Users such as school records, assessments, attendance and exclusion records, Education Health and Care Plans, relevant medical diagnosis, Educational Psychologists' reports, professionals' reports and staff and / or child views etc. where the child has an active Child in Need, Child Protection, Early Help Family Support plan or has Looked After status.
- 8 Client's Manager:** the Client's authorised representative, being the Company's main point of contact in respect of all matters relating to the Services, with authority to contractually bind the Client on all matters relating to this Agreement or any Assignment as appointed in accordance with clause 12.1(c) below.
- 9 Deemed Employment:** the engagement of a person to carry out work in respect of an Assignment, through an intermediary, to which section 61M(1)(d) of the Income Tax (Earnings and Pensions) Act 2003 applies.
- 10 Fees:** the Fees set out in the Statement of Work for the mentoring and education Services being made available and provided by the Company, the Fees charged for ancillary health and safety and safeguarding risk assessments carried out by the Company as set out at clause 5 and for attendance at Official Meetings, as set out at clause 9.1(l)
- 11 Insurance Policies:** Professional Indemnity Insurance, Public Liability Insurance and such insurances as the Company is required to have by law.
- 12 Losses:** all damages, losses, liabilities, costs, expenses (including legal and other professional charges and expenses and charges) whether arising under statute, contract or at common law, or in connection with judgments, proceedings, internal costs or demands).
- 13 Official Meetings:** any formal arranged meeting as required or attended by any regulated body or regulatory authority at which the Company Personnel's attendance is essential to allow for such regulated body or authority to meet its obligations in respect of the education and welfare of the Service User, including in respect of meeting particular outcomes in this regard, to include annual reviews and Child in Need meetings.
- 14 Off-Payroll Rules:** the rules in Chapter 10 of Part 2 of Income Tax Earnings and Pensions Act 2003.
- 15 Risk Assessment:** a Health and Safety or Safeguarding risk assessment as carried out in accordance with clause 5.
- 16 Session:** each individual period the Services are to be made available to Service Users on any given day, the date's start and end times of each Session, being set out in the timetable provided with the Statement of Work (the "Timetable").
- 17 Services:** means, as set out at clause 6, the mentoring and education services that may be commissioned by the Client on an outsourced basis to be made available and provided in respect of Service Users and ancillary services including carrying out Risk Assessments and attending at Official Meetings particular Services being set out in the Statement of Work.
- 18 Service Users:** out of school and in school learners of statutory school age and above in respect of whom the Services are made available and provided under an Assignment entered into between the Company and the Client.
- 19 Statement of Work:** in respect of a given Assignment the plan, prepared and agreed in accordance with clause 4 (Assignments) for the provision of Services in respect of a given Assignment, the Statement of Work giving the description or specification of the particular Services and such other particular information relating to the Assignment as referred to in this Agreement, including as set out in the Template Statement of Work at Schedule 1 below.
- 20 Subcontract:** means any contract between the Company and a third party pursuant to which the Company agrees to source the provision of any part of the Services, from that third party.
- 21 Subcontractors:** those persons with whom the Company enters into a Subcontract.
- Term:** The period of this Agreement as set out at clause 2.1.
- TUPE:** the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246).

- 1.1 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.2 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.3 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.4 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.5 "Writing", and any cognate expression, includes a reference to any communication effected by electronic or similar means.
- 1.6 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.7 Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

2. TERMS AND SCOPE OF THIS AGREEMENT

- 2.1 This Agreement shall commence on the date it has been executed by both parties in accordance with clause 31 (Counterparts and Execution) or, absent the Client executing this Agreement, the date upon which, after it is first provided to the Client, the Client first notifies the Company of a requirement for the Company to provide Services, but may be immediately terminated at any time by either party on written notice or in accordance with the provisions of clause 20 (Termination) below.
- 2.2 During the Term the Client may in its absolute discretion, procure particular Services by agreeing a Statement of Work with the Company pursuant to clause 4 (Assignments).
- 2.3 Each agreed and signed Statement of Works together with, and subject to, the terms of this Agreement, is an Assignment.
- 2.4 This Agreement and each Assignment shall be a separate legally binding contract between the parties (each Assignment incorporating the provisions of this Agreement).
- 2.5 In the case of conflict or ambiguity between any provision contained in the body of this Agreement and any provision contained in any Statement of Work, the provision in the body of this Agreement shall take precedence unless specific provision is made to the contrary in writing in accordance with clause 24 (Variation).
- 2.6 No additional or other terms and conditions of the Client communicated by or on behalf of the Client shall be incorporated into this Agreement nor any Assignment nor shall any such terms or conditions be of any effect.
- 2.7 This Agreement together with the relevant Statement of Work apply to each Assignment to the exclusion of any other terms that the Client seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.

- 2.8 No changes to this Agreement or any Assignment shall be made except as provided for under the terms of this Agreement.
- 2.9 Any descriptive matter or advertising issued by the Company, and any descriptions or illustrations contained in the Company's catalogues or brochures or on the Company's website, are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of any Assignment nor have any contractual force.
- 2.10 In consideration of payment of the sum of £1, the receipt by the Client and sufficiency of which is hereby acknowledged, all and any obligations under this Agreement which by their nature apply where no Assignment is entered into or apply between or after Assignments, to include the Confidentiality provisions at clause 14 and the Data Protection Provisions at clause 15 are binding upon the Client.
- 2.11 Any Assignment shall commence on the Assignment Start Date and shall continue until any pre-stated end date set out in the Statement of Work or, whether or not the Assignment is for a fixed period, it is terminated by either party on giving no less than one week's notice or it is terminated in accordance with clause 20 (Termination).
- 2.12 An Assignment may extend beyond the Term of this Agreement and, except as provided for at clause 20 (Termination), the termination of this Agreement shall not have the effect of terminating any Assignment.
- 2.13 The parties shall not enter into any further Assignment after the Term of this Agreement.
- 2.14 The parties agree:
- (a) The Client has no obligation to purchase any Services of any minimum quantity or value of any type from the Company during the Term.
 - (b) The Company has no obligation during the Term, to make available any Services to the Client, until such time as an Assignment is entered into in respect of particular Services.
 - (c) No form of exclusive arrangement is created by this Agreement. The Client shall be free to obtain from any third party/ies any services similar to or the same as the Services and the Company shall be free to provide to any third party/ies any services similar to or the same as the Services, provided that where either party enters into any agreement with any third party/ies doing so does not interfere with the performance of their obligations under this Agreement or in respect of any Assignment or otherwise gives rise to breach of the terms of this Agreement or Assignment, including clause 14 (Confidentiality) and clause 15 (Data Protection).

3. STATUS

- 3.1 In entering into this Agreement and any Assignment, the Client acknowledges and agrees that the relationship between the Company and the Client is that of an independent contractor providing services on an outsourced basis, not an agreement for the supply of personnel to work under the supervision, direction or control of the Client or otherwise:
- 3.2 in carrying out any Services:
- (a) The methods of the Company are at all times for the Company/the Company Personnel to decide and control to best achieve the requirements set out in this Agreement and the Statement of Work:
 - (i) The Company deciding by whom the Services are provided;
 - (ii) The Company /Company Personnel deciding how the Services are performed, including with regard to the particular form and content of Services to allow for them to be suitable for a given Service User;
 - (iii) The location of the Services being subject to Risk Assessments carried out by the Company and the Company's entitlements to carry our work remotely, as set out in this Agreement, and

- (iv) The times the Services are made available being as agreed and set out in the Timetable but may be varied by the Company, without the Client's consent, in accordance with the terms of this Agreement.
 - (b) Whilst the Company shall require that Company Personnel liaise with and provide information to the Client, assisting the Client in fulfilling its obligations to Services Users, the Client shall at not at any time seek to supervise, direct or control Company Personnel nor does the Client have any Client right to do so.
- 3.3 The Company may at any time during the course of any Assignment appoint any person to carry out the Services subject to and in accordance with the terms of this Agreement (including clause 22.1 (Subcontracting)).
- 3.4 Nothing in this Agreement or any Assignment entered into under its terms shall create, or be deemed to create, a partnership, the relationship of principal and agent between the Company and the Client or the relationship of worker, agency worker, or of employer and employee between the Client and any of the Company Personnel and the Client agrees and acknowledges that neither the Off Payroll Rules, nor the Agency Rules apply to any Assignment:
- 3.5 Neither party shall at any time act in a manner which is inconsistent with clause 3.4.
- 3.6 If at any time the Client:
 - (a) Seeks to apply the Off-Payroll Rules, to include the carrying out of any employment status determination exercise for the purposes of providing a Status Determination Statement ("SDS"), or any determination is made by HMRC that the relationship between the Client and any Intermediary Worker is one of Deemed Employment; or
 - (b) Informs the Company, HMRC or any other third party that it has determined that the Company is an agency within the meaning of the Agency Rules or any such determination is made by HMRC,

then without prejudice to clause 3.5 above and in addition to any other right or remedy the Company has, the Company may terminate this Agreement and all Assignments immediately on written notice to the Client.

4. ASSIGNMENTS

- 4.1 Each Assignment shall be agreed in the following manner.
 - (a) The Client may notify the Company of particular Services required, the Company then indicating whether, subject to a Statement of Work being prepared and agreed, as set out below, it is willing to provide such Services. If so, the Client will then provide further information to allow for the Statement of Work to be provided and for the Services to be made available including:
 - (i) the intended location for the provision of the Services;
 - (ii) a timetable in respect of the other elements of the Service User's education package in addition to the Services requested of the Company, if any;
 - (iii) any information in respect of the Service User's mental and physical health or behavioural issues relevant to the safe and effective provision of the Services required including any disability or other condition which may have a material effect on arrangements for the provision of the Services or any behavioural issues which pose any threat to the safety of the Service User or Company Personnel and any details of any existing child protection arrangements in place involving the Service User;
 - (b) The Company may then prepare a Statement of Work, where necessary discussing the particulars of the Services required (to include direct discussions with the Service User/their parent or legal guardian) or otherwise requesting further information from the Client, in order to do so;
 - (c) The Company will also, as set out at clause 5, carry out a health and safety Risk Assessment in respect of the intended location for the provision of the Services, and a Risk Assessment in respect of safeguarding arrangements for the provision of the Services;

- (d) In providing any information directly to the Company, as required or requested in accordance with this clause 4 or clause 5, the Client warrants and undertakes that it is complete, accurate and not misleading.
- (e) The Client will use its reasonable endeavours to ensure that the Service User/their parent or guardian co-operate with the Company in the preparation of the Statement of Work and the carrying out of Risk Assessments, as set out at clause 5.
- (f) After the requisite information has been obtained and, subject to clause 5.4, Risk Assessments have been carried out, the Company may then submit a signed Statement of Work to the Client.
- (g) Submission of a signed Statement of Work shall be an offer by the Company to enter into a contract for the provision of Services subject to and in accordance with the terms of this Agreement (an "Offer").
- (h) Any Statement of Work provided in draft form, or which is unsigned, is not a valid Offer to enter into a contract for the provisions of Services which is capable of acceptance by the Client. In indicating that it is willing to provide the Service and in preparing a Statement of Work, as set out above, the Company gives no warranty, representation or undertaking that the Services will be made available/ that an Offer will be made.
- (i) Following receipt of a valid Offer the Client shall as soon as practicable and in any event no later than the end of the 5th Business Day following receipt of that Offer or the time for the commencement of the Services, as set out in the Statement of Work, or such other time which is stipulated in the Statement of Work for the acceptance of the Offer, whichever is the earlier:
 - (i) notify the Company that it declines to accept the Offer;
 - (ii) notify the Company that it accepts the Offer, by having an authorised representative of the Client sign the Statement of Work then sending a copy of the signed document to the Company's Manager:

4.2 Where after a signed Statement of Work has been provided to the Client by the Company, the Client does not first notify the Company that it declines the Offer, nor provide the signed Statement of Work within the period set out at clause 4.1(i) but, otherwise communicates what, in the reasonable opinion of the Company, is its requirement for the provision of the Services, the Client shall at that point be deemed to have accepted the Offer.

4.3 Once the Client has accepted the Offer in accordance with clause 4.1(i) or 4.2 then an Assignment will be entered into, but not otherwise.

4.4 If

- (a) the Client notifies the Company that it declines to accept the Offer; or
- (b) the time-limit referred to in clause 4.1(i) has expired before all of the relevant condition for the acceptance of the Offer have been satisfied, the Notice provisions of clause 29 applying to the time the Company receives notification of the signed Statement of Work.

then the Offer from the Company to the Client shall lapse. The Company may otherwise notify the Client that the Offer is withdrawn at any time before the relevant condition for acceptance have been satisfied. Where the Offer lapses or is withdrawn it is no longer capable of acceptance.

4.5 If during the period of any Assignment, the Client requires Services outside of the scope of the Statement of Work, then this will be subject to a further Assignment being entered into in accordance with this clause 4.

4.6 Where a new Assignment is to be entered into when preparing a new Statement of Work the Company shall be entitled to rely on relevant information previously provided by the Client in respect of a prior Assignment if it informs the Client it is doing so. Where the Client is so informed the Client, in entering into the Assignment, undertakes and warrants that the information previously provided by the Client remains correct unless the Company is told otherwise by the Client.

- 4.7 If either party wishes to make any change to the scope or execution of the Services, as set out in the Statement of Work or this Agreement, then except as otherwise specifically provided for in this agreement this must be agreed in accordance with clause 24 below (Variation).
- 4.8 Except in respect of Fees that may be incurred by the Client in respect of the Company carrying out Risk Assessments, as set out at clause 5, each party shall bear its own costs and expenses incurred in respect of any action under this clause 4 whether or not an Assignment is entered into.

5. RISK ASSESSMENTS

- 5.1 The Company will, as set out at clause 4.1(c) or otherwise where necessary during the course of any Assignment, carry out a health and safety Risk Assessment of the location for the provision of the Services to be carried out including in respect of the health and safety of the Service User and Company Personnel to be engaged in the provisions of the Services. The Company will also carry out a Risk Assessment in respect of safeguarding arrangements for the provision of the Services in accordance with clause 4.1(c) or where necessary during the course of an Assignment, the Client providing such information as is available to it as is reasonably necessary for the Company to carry out all Risk Assessments and securing the co-operation of the Service User/the Service User's parent or guardian in this regard, as required under terms of the Agreement.
- 5.2 The Company shall in carrying out Risk Assessments in accordance with 5.1 inform the Client, taking into account available information provided including in accordance with clause 5.1, if, in its opinion, a site visit is needed to complete the Risk Assessments, the Client being informed of charges then payable in this regard. Where the Client then agrees to the site visit charges shall then be payable and invoiced once it is carried out, whether or not an Assignment is then entered into or is terminated.
- 5.3 Upon the completion of any Risk Assessment the Company will, where appropriate, prepare a risk assessment report setting out any particular measures be adopted and by whom in respect of health and safety and safeguarding matters.
- 5.4 Where the Client is informed of the need for a site visit to carry out a Risk Assessment in accordance with clause 5.2 but it is not agreed that a Risk Assessment will be carried out prior to the intended date for the commencement of the provision of the Services at the relevant site, including because there is not the time to do so, the Company may agree to carry out the risk assessment on that date, the Risk Assessments then forming part of the services carried out under the Assignment.
- 5.5 Where in the reasonable opinion of the Company the Services cannot be carried out, at the time the risk assessment is carried out in accordance with clause 5.4, because of health and safety or safeguarding issues then identified, the Company may then, without prejudice to any other right or remedy it may have immediately terminate the Assignment, with the Client then being liable to pay for the carrying out of the Risk Assessments a charge equivalent to the total Fees payable for the provision of the Services for the first day of the provision of the Services, as set out in the Statement of Work.
- 5.6 For the avoidance of doubt, where an Assignment is entered into, without a site visit being carried out under clauses 5.2 or 5.4 and the Client has failed to abide by its obligations in respect of the provision of information in respect of health and safety and safeguarding matters, such that it is found that, at the time the Company's provision of the Services is to commence the Services cannot, in the reasonable opinion of the Company, be provided for health and safety or safeguarding issues, then as set out at clause 11.8 the Company shall have no obligation to carry out the Assignment, and the Assignment may be immediately terminated for breach of contract, in accordance with clause 20 below the Company then being entitled to be compensated for all Losses then incurred in accordance with clause 17.15 below.

5.7 Without prejudice to the provisions of this clause 5 clause 8.6 and 8.7 apply in respect of a change in venue for the provision of the Services where health and safety and safeguarding issues arise during the course of an Assignment, after the commencement of the provision of the Services.

6. SERVICES

6.1 The Services made available and provided by the Company subject to the terms of this Agreement, and as particularised in each Statement of Work, are the provision of mentoring services to assist Service Users access education and academic tuition services and ancillary services, including the carrying out of Risk Assessments and attendance at Official Meetings, subject to the disclaimers set out at clause 11 and the limitation and liability and insurance provisions at clause 17

6.2 Services may include the provision by the Company of ASDAN accredited courses and such other courses for which the Company may become accredited and the carrying out of assessments/examinations in respect of such courses.

6.3 Subject to the carrying out of Risk Assessments and remote service provisions set out at clause 8 Services are provided in person, on a one-to-one basis or in small groups as stipulated in the Statement of Work.

6.4 The Services will be provided at such times and at such locations as set out in the Statement of Work, subject to and in accordance with the terms of this Agreement.

7. TIMING OF SERVICES

7.1 Once an Assignment has been entered into the Company shall until the Assignment is terminated in accordance with clause 2.11 make available and provide the Services from the date and on the days and times of day set out in the Timetable set out in the Statement of Work, subject to clause 7.3 below.

7.2 The Company shall at no time in respect of any Service User of statutory school age provide Services for a number of hours or in a manner that would constitute the provision to that Service User of a full-time education, as defined by the Department of Education or at law.

7.3 The Company may, as agreed with the Service User, upon the Company or upon the Services User's request at any time during an Assignment, change the times the Services are to be made available to the Service User, as set in the Timetable provided including in respect of the days and times of day Sessions are to commence or end, providing that:

- (a) The Company will not agree to make available the Services where this would conflict with the Service User's other education commitments as notified to the Company.
- (b) The Company must, in any two-week period of the Assignment (or shorter period if the Assignment is of a shorter duration), make the same number of hours available to the Services User, as provided for in the Timetable in respect of this period Accordingly, the Company will not agree any changes to Session times if Company Personnel are not then available to carry out two weeks Services in any two-week period.

7.4 The Company will notify the Client and the Service User as far in advance as practicable of any time that the Services will not be made available by the Company, for any reason.

7.5 If, in breach of this Agreement, the Services are not made available by the Company in respect of any Session, the Company will use its reasonable endeavours to rearrange it at the next time that is convenient to the Service User, the remedial breach provisions at clause 20.1(a) otherwise applying.

- 7.6 Where Services cannot be made available by the Company by reason of matters beyond its reasonable control the force majeure provisions set out at clause 16 shall apply.
- 7.7 In accordance with clause 12.1(e) the Client will use its reasonable endeavours to ensure that the Services User, or the Service User's parent or legal guardian will, in respect of any Session, promptly notify the Company of any planned or unplanned absence of the Service User of which it ought reasonably be aware, clause 18.3 applying in respect of fees incurred in respect of Sessions made available to the Service User which the Service User does not attend.
- 7.8 Other than as set out above, any variation in the timing and duration of the Services as set out in the Statement of Work, where requested by either party or by the Service User, is subject to the provisions of clause 24 below.
- 7.9 Subject to clause 18.4 no fees shall be payable for any period that the Company does not make available the Services to the Service User.

8. LOCATION FOR THE PROVISION OF THE SERVICES

- 8.1 The Company does not own or lease premises where the Services are provided. The Services will be provided at the Service User's home, or other suitable risk assessed venue, or remotely, as set out in the Statement of Work, subject to and in accordance with the terms of this Agreement. The provisions of Services may also include field trips, subject to Risk Assessments first being carried out in this regard.
- 8.2 The Company shall not bear any costs incurred by the Services User, the Client or any third party in respect of the provision of the Services at the Service User's home and the Client shall bear any costs incurred in renting/hiring any other venue where the Services are to be provided. The Cost of field trips shall be borne by the Service User or the Client, not the Company.
- 8.3 As set out at clause 5 safeguarding and health and safety risk assessments will be conducted in respect of the intended venue/location for the provision of the Services, any particular health and safety and safeguarding measures that are to be adopted in respect of any particular Assignment (and by whom) being identified.
- 8.4 Where the Services cannot, in the opinion of the Company, be provided by Company Personnel for health and safety, safeguarding or other reasons at the intended venue in person then the Company, may, where it is reasonably practicable to do so, provide the Services on a remote basis, this arrangement being recorded in the Statement of Work, provided always that the Client or the Services User shall then be responsible for the Service User's necessary IT equipment/internet access, the Client or the Service user /bearing any related expenses in this regard.
- 8.5 Where the Services are provided at premises owned or controlled by the Client the Client shall be responsible for ensuring the health and safety of the Service User and Company Personnel at such premises, the Client informing the Company and the Service User of any health and safety policies and procedures as apply to such premises.
- 8.6 Where, during the course of any Assignment, the Services cannot, in the reasonable opinion of the Company, continue to be provided at the existing venue/in person for safeguarding, health and safety reasons or other reason, including by reason of any failure of others to adopt/carry out health and safety and safeguarding measures or the venue becoming unavailable for use, the Company may, without prejudice to any other right or remedy it may have under this Agreement require that the Services be provided at a suitable alternative risk assessed venue (it being acknowledged and agreed that this may entail the Client incurring rental costs or increased rental costs and there being a material increase in travel time and irrecoverable travel costs for the Services User) or upon a remote basis where it

reasonably practicable to do so (the provisions of clause 8.4 applying in respect of the provision of necessary IT equipment/internet access), the Company remaining entitled to be paid for Sessions not made available pending arrangements being put in place in respect of the alternative venue or remote service provision, or the Assignment is terminated in accordance with clause 2.11.

- 8.7 Where the Services need to be provided at an alternative risk assessed venue then as provided for at clause 5.2 the Company may inform the Client of the need to carry out a site visit to carry out Risk Assessments prior the Services being provided at the alternative venue, the provisions of clauses 5.3 to 5.5 then applying, including in respect of the timing of the Risk Assessments and Fees chargeable in this regard.

9. THE COMPANY'S OBLIGATIONS

9.1 The Company shall:

- (a) Use reasonable skill and care in carrying out the Services, the Company/Company Personnel deciding upon the form and content of Services to assist the Service User in achieving desirable outcomes in respect of academic, personal and social progress, the Company/Company Personnel being responsible for setting particular objectives in respect of such outcomes which are aimed at being appropriate for the particular Service User having regard to relevant information provided by the Client, including any Service User's EHC plan, or as otherwise obtained during the provision of the Services.
- (b) Abide by all Applicable laws relating to the provision of the Services;
- (c) In carrying out its obligations under the terms of this Agreement and in respect of any Assignment do so within a reasonable time. Time shall not be of the essence in respect of this Agreement or any Assignment;
- (d) Engage suitably skilled and qualified personnel to carry out the Services. The Company will also carry out pre-engagement checks in respect of Company Personnel, as set out at clause (i)(B) below;
- (e) In respect of and during the term of any Assignment use all reasonable endeavours to ensure the health and safety and well-being of Services Users and others involved in the provision of the Service to include:
 - (f) In respect of health and safety;
 - (g) Complying with all Applicable Laws;
 - (h) Using all reasonable endeavours to have in place and implement appropriate health and safety policies and procedures, including with regard to carrying out and implementing health and safety risk assessments in accordance with clause 5.
- (i) In respect of the safeguarding of children and others who are vulnerable to abuse:
 - (A) Complying with all Applicable Laws;
 - (B) Using all reasonable endeavours to have in place and implement suitable safeguarding policies and procedures, to include carrying out safeguarding assessments in accordance with clause 5 and the pre-employment checks as apply to schools and colleges set out in the Keeping Children Safe in Education statutory guidance, to the extent it is reasonably possible to do so, taking into account the fact that the Company is not a registered independent school;
 - (C) Ensuring that staff are appropriately briefed and have received training in respect of the statutory child protection procedures;
 - (D) Ensuring that, a Designated Safeguarding Lead and DDSL are appointed with appropriate and up to date training and are always available during the Company's normal opening hours;
 - (E) Following statutory guidance in respect of safeguarding concerns relating to Service Users including informing the Client if there are any referrals involving Local Authority Designated Officers (LADO) or Multi-Agency Safeguarding Hubs (MASH);
 - (F) Ensuring information relating to Service Users and related individuals in respect of safeguarding matters is kept secure and confidential and in accordance with data protection requirements, as set out at clauses 14 and 15 below.

- (j) Except as specifically provided for in this Agreement or in the Statement of Work bear all costs and expenses incurred by the Company in the performance of its obligations;
- (k) Not, unless authorised by the Client's Manager in writing, incur any expenditure on behalf of the Client or otherwise bind the Client in any way;
- (l) Monitor and record Services Users' attendance, education outcomes, progress and behaviour, providing such records to the Client and reports detailing outcomes and progress to the Client and the Services User, in writing or at meetings (including Official Meetings where Fees for the Company Personnel's attendance are incurred, as set out at clause 18.5) at such times as agreed with the Client or as the Client may reasonably request during the term of this Agreement, promptly informing the Client where the Service User's attendance, progress or behaviour ought reasonably give cause for concern;
- (m) In entering into any Assignment or during the term of any Assignment co-operate with the Client to allow for the planning by the Client of full-time education for Service Users of statutory school age, where the Client has this responsibility;
- (n) In addition to such information as provided at clause (l) above, in respect of any audit, provide such information as the Client or properly authorised third party may reasonably request in a reasonable time, subject to and in accordance with clause 10;
- (o) Provide Services Users and their parents/legal guardian, with necessary details of the Services, e.g., contact information, Timetables, health and safety and safeguarding measures;
- (p) Comply with all other obligations set out in this Agreement or in a Statement of Work.

10. Audits

- 10.1 The Company shall during the Term of this Agreement (or if later during the term of any Assignment) provide such information, records and assistance as may reasonably be requested by the Client, in order to carry out an audit in order to:
- (a) fulfil any legally enforceable request by any regulatory body and/or applicable law; and
 - (b) verify that Services have been or are being provided in accordance with the terms of this Agreement.
- 10.2 The Client shall provide at least 7 days' notice of its intention to conduct an audit unless such audit is conducted in respect of a suspected fraud, in which event no notice is required.
- 10.3 The Client shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Company's business, and that, where possible, individual audits are co-ordinated with each other to minimise any disruption.
- 10.4 The Client shall comply with its confidentiality and data protection obligations in respect of any information obtained during the course of any audit and shall ensure that its auditor and other advisors are bound by commensurate confidentiality obligations for the benefit of the Company providing proof of the same upon the Company's request.
- 10.5 The parties shall bear their own costs and expenses incurred in respect of compliance with their obligations under this clause 10.

11. SERVICES DISCLAIMERS

- 11.1 Whilst the Company is in the business of providing the Services on an outsourced basis it does not do so as a registered independent school. The Company does not, as set out at clause 7.2, provide any Service User with a full-time education nor are the Services provided from the Company's premises. Whilst the Company will comply with its obligations under this Agreement, including in respect of setting appropriate education objectives, as set out at clause 9.1(a) co-operating with the Client in respect of the Client arranging a Service User's full time education where the Client has this responsibility, as set out at clause 9.1(m), it is agreed that it is not the responsibility of the Company to:

- (a) Ensure that Service Users of statutory school age receive education in addition to the limited number of hours of Services to allow for the provision of full-time education;
 - (b) Except where the Services are for the provision of ASDAN accredited course, ensure that the Services User undertakes any curriculum-based study;
 - (c) Manage disciplinary/absence issues in respect of Services Users.
- 11.2 Other than as provided for at clause 9.1(m), it is agreed that the Company has no responsibility nor liability in respect of arrangements for the Service User to receive education or training from any other person, including in respect of making any arrangements for the Service User to start or enter into in-school education or receive any training from any other person.
- 11.3 It is not the responsibility of the Company, other than in respect of ASDAN accredited courses or such other courses for which the Company become accredited, provided by the Company, as set out at clause 6.2, arrange or invigilate any examinations to be undertaken by the Service User.
- 11.4 Whilst the Company will, in accordance with clause 9.1(a) be responsible for setting appropriate objectives for the Services provided to the Services User, and will provide information in respect of them including in respect of progress made, the Company abiding by its obligations under the terms of this Agreement, it is agreed that:
- (a) The Company is not, in agreeing to provide or in carrying out particular Services giving any undertaking or assurance that the Services required by the Client in respect of the Service User or carried out by the Company fulfil any obligation the Client or any third party may have to provide a suitable education to the Service User, and it is agreed that the Company has no liability for any breach of any obligation of any agreement entered into between the Client or any third party in this regard to which the Company is not a party, it being acknowledged and agreed, in particular that:
 - (i) Any ECH Plan or other agreement provided to the Company setting out the Client or other third party's obligations in respect of the Service User is provided to the Company for information purposes only to assist the Company/Company Personnel to make their own determination in respect of appropriate objectives for the Service User. Any objectives or obligations set out in any such agreement do not form part of this Agreement or any Assignment.
 - (ii) Whilst the Company may, in providing information in respect of the Service User comment on the suitability of relevant objectives in a Service User's ECH plan the terms of the EHC plan are for the parties to the ECH Plan, not the Company, to decide upon and implement, which will require input from third party specialists and the allocation of third party resource, which in each instance the Company is not responsible nor liable for.
- 11.5 The Company is not otherwise giving any assurance or warranty, that desired outcomes as decided upon by the Company/Company Personnel will be achieved, and it is agreed that the Company has no liability in this regard, it being acknowledged and agreed that the achievement of desired outcomes, including education outcomes, attendance and disciplinary/behavioural outcomes, are dependent upon matters which are not the responsibility of the Company, including as set out at clause 11.1, or are otherwise outside of the Company's control.
- 11.6 The Company is not responsible/ liable for any delay or failure in the provision of Services arising from any failure by the Client to perform its obligations under this Agreement or arising from the Service User's or the Service's User parents or legal guardian's failure to co-operate in respect of the provision of the Services, or matters which are otherwise outside of its control, as set out at clause 16 (Force Majeure).
- 11.7 If the Company's performance of its obligations under this Agreement or any Assignment is prevented or delayed by any act or omission of the Client, its agents, contractors, subcontractors, consultants or employees then, without prejudice to any other right or remedy it may have, the Company shall be

allowed an extension of time to perform its obligations equal to the delay caused by such act or omission.

- 11.8 The Company shall not be obliged to carry out the Services where doing so would pose a risk to the health and safety or welfare of the Company Personnel, Services User or any third party.
- 11.9 Taking into account the disclaimers set out above and the cost and availability of suitable insurance it is acknowledged and agreed that the limitations on the Company's liability set out at clause 17 are fair and reasonable.

12. CLIENT'S OBLIGATIONS

12.1 The Client shall:

- (a) In commissioning the Services and performing its obligations under this Agreement and in respect of any Assignment comply with all Applicable Laws and will obtain and maintain all necessary authorisations licences and consents it is responsible for, the Client, where it is a local authority or body to whom responsibility for providing Service Users of statutory school age with a suitable full time education has been delegated, remaining the responsible body for the full-time education of Service Users of statutory school age;
- (b) Not at any time hold the Company out to any third party, including any regulatory authority, as being an independent school requiring registration as such;
- (c) Appoint a manager for the Services, as identified in the Statement of Work;
- (d) Co-operate with the Company in all matters relating to the Services and ensure that any third party engaged by the Client co-operate with the Company so far as it is reasonably necessary for the performance of the Services;
- (e) Use its reasonable endeavours to ensure that Service Users and their parent(s) or legal guardian co-operate with the Company and Company Personnel to allow for the proper performance of the Services;
- (f) Provide to the Company, or make sure that third parties engaged by it in relation to the provision of the Services provides, in a timely manner all documents and information in any form (whether owned by or in the possession of the Client or owned by or in the possession of any such third party) as reasonably required to prepare the Statement of Work, as set out at clause 4 or to allow for the proper performance of the Services, ensuring documents and information are in all material respects complete, accurate not misleading and kept up to date, the Client notifying the Company Manager, as soon as possible of any significant change of circumstances involving the Service User or changes to information otherwise provided to the Client that would reasonably be expected to affect the performance of the parties obligations under this Agreement or any Assignment, of which the Client is aware of or ought reasonably be aware of.

13. RESTRICTIONS ON SOLICITING AND ENGAGING COMPANY PERSONNEL

- 13.1 Except in respect of any transfer of employees of the Company to the Client pursuant to TUPE the Client shall not, without the prior written consent of the Company, during any Assignment and for the period of 6 months afterwards:
- (a) Whether directly or indirectly, on its own behalf or that of any other person, solicit or entice away from the Company any Company Personnel engaged to any material extent in the performance of that Assignment in the period of 6 months prior to its termination (Restricted Persons); or
 - (b) Whether, directly or indirectly, under a contract for services or under a contract of service engage Restricted Persons.
- 13.2 Any consent given by the Company in accordance with clause 13.1 shall be subject to the Client paying to the Company a sum equivalent to 20% of the then current annual remuneration of the Restricted Person or, if higher, 20% of the annual remuneration to be paid by the Client to that Restricted Person.

14. CONFIDENTIALITY

- 14.1 A Party (receiving party) shall use its reasonable endeavours to keep secure and confidential all Confidential Information that has been disclosed to it by the other Party (disclosing party) and the Parties shall use all reasonable endeavours to secure and keep confidential all Confidential Information of the other Party which it may otherwise obtain.
- 14.2 The Parties shall only use Confidential Information disclosed to it by the other Party, or Confidential Information of the other Party which it may otherwise obtain, for the purposes of carrying out its obligations, or exercising its rights under this Agreement or and any Assignment and shall only disclose such Confidential Information to those of its employees, officers, representatives, contractors, subcontractors and advisors who need to know it for these purposes,
- 14.3 For the avoidance of doubt, neither party shall disclose or divulge Confidential Information provided in the negotiation of this Agreement or any Assignment, other than for the purposes of the exercise of rights and obligations under this Agreement, the negotiations of any Assignment, or the exercise of rights and obligations under the Assignment once entered into.
- 14.4 Each Party shall use all reasonable endeavours to ensure that its employees, officers, representatives, contractors, subcontractors or advisors to whom it discloses the other Party's Confidential Information or who otherwise obtain the other Party's Confidential Information comply with this clause.
- 14.5 Obligations contained in this clause 14 apply throughout the term of this Agreement and thereafter.
- (a) Obligations contained in this clause in respect of the disclosure and use of Confidential Information shall not to apply to:
 - (b) any information that, other than through either Party's unauthorised use or disclosure, already is, or comes into, the public domain;
 - (c) prevent either Party or third party from using or disclosing Confidential Information as required by law, a court of competent jurisdiction or any governmental or regulatory authority.

15. DATA PROTECTION

- 15.1 The following definitions shall apply to this clause 15

Agreed Purposes: Personal data is to be held by both the Company and Client in relation to Services Users in respect of whom the Services are provided.

Controller, data controller, processor, data processor, data subject, personal data, processing and appropriate technical and organisational measures, binding corporate rules shall have the meanings set out in the Data Protection Legislation in force at the time.

Permitted Recipients: The parties to this agreement, the employees of each party, any third parties engaged to perform obligations in connection with this agreement.

Shared Personal Data: The personal data to be shared between the parties under this agreement. Shared Personal Data shall be confined to the following categories of information relevant to the following categories of data subject:

Categories of Personal Data

- (a) Education Data
- (b) Social Care Data where this is pertinent to the provision of the Services.
- (c) Health Data where this is pertinent to the provision of the Services.
- (d) Location and contact details.

- (e) Details of Tutors and their records including personal data and special category data.

Categories of Data Subject:

- (a) Service Users/Learners (children and young people) referred by the Client.
- (b) Tutors.

- 15.2 Each party shall comply with all the obligations imposed on a controller under the UK Data Protection Legislation, and any material breach of the UK Data Protection Legislation by one party shall, if not remedied within 30 days of written notice from the other party, give grounds to the other party to terminate this agreement with immediate effect.
- 15.3 Each Party shall be individually and separately responsible for complying with the obligations that apply to it as a Data Controller under any applicable Data Protection Laws in relation to the Personal Data Processed under the original agreement.
- 15.4 Each Party is a Controller of the Personal Data it discloses or makes available to the other Party and will process that Personal Data as separate and independent Data Controllers for the Agreed purposes and not jointly as joint Data Controllers.
- 15.5 The provisions which follow set out the framework for the sharing of personal data between the parties as data controllers. Each party acknowledges that one party (the Data Discloser) will regularly disclose to the other party (the Data Recipient) Shared Personal Data collected by the Data Discloser for the Agreed Purposes. Each party shall:
 - (a) ensure that it has all necessary consents and notices in place to enable lawful transfer of the Shared Personal Data to the Data Recipient for the Agreed Purposes;
 - (b) give full information to any data subject whose personal data may be processed under this agreement of the nature of such processing. This includes giving notice that, on the termination of this agreement, personal data relating to them may be retained by or, as the case may be, transferred to one or more of the Data Recipients, their successors and assigns;
 - (c) process the Shared Personal Data only for the Agreed Purposes;
 - (d) not disclose or allow access to the Shared Personal Data to anyone other than the Permitted Recipients;
 - (e) ensure that all Permitted Recipients are subject to written contractual obligations concerning the Shared Personal Data (including obligations of confidentiality) which are no less demanding than those imposed by this Agreement;
 - (f) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the other party, to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data; and
 - (g) not transfer any personal data received from the Data Discloser outside the EEA unless the transferor:
 - (h) complies with the provisions of Article 26 of the UK GDPR (in the event the transferee is a joint controller); and
 - (i) ensures that the transfer is to a country approved by the European Commission as providing adequate protection pursuant to Article 45 UK GDPR; (ii) there are appropriate safeguards in place pursuant to Article 46 UK GDPR; (iii) binding corporate rules are in place, or (iv) one of the derogations for specific situations in Article 49 UK GDPR applies to the transfer.
- 15.6 Each party shall comply with the Data Protection Legislation and agrees that any material breach of the Data Protection Legislation shall, if not remedied within 30 days of written notice from the other party, give grounds to the other party to terminate this agreement with immediate effect.
- 15.7 Each party shall assist the other in complying with all applicable requirements of the Data Protection Legislation. In particular, each party shall:

- (a) consult with the other party about any notices given to data subjects in relation to the Shared Personal Data;
- (b) promptly inform the other party about the receipt of any data subject access request or any request from a data subject to erase or rectify Shared Personal Data and provide the other party with reasonable assistance in complying with any such request;
- (c) not disclose or release any Shared Personal Data in response to a data subject access request without first consulting the other party;
- (d) assist the other party, at the cost of the other party, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (e) notify the other party without undue delay on becoming aware of any breach of the Data Protection Legislation;
- (f) at the written direction of the Data Discloser, delete or return Shared Personal Data and copies thereof to the Data Discloser on termination of this agreement unless required by law to store the Shared Personal Data;
- (g) use compatible technology for the processing of Shared Personal Data to ensure that there is no lack of accuracy resulting from personal data transfers;
- (h) maintain complete and accurate records and information to demonstrate its compliance with this clause 8 and allow for audits by the other party or the other party's designated auditor; and
- (i) provide the other party with contact details of at least one employee as point of contact and responsible manager for all issues arising out of the Data Protection Legislation, including the joint training of relevant staff, the procedures to be followed in the event of a data security breach, and the regular review of the parties' compliance with the Data Protection Legislation.

16. FORCE MAJEURE

- 16.1 Subject to clause 18.3 no Party to this Agreement/an Assignment shall be liable for any failure or delay in performing their obligations where such failure or delay results from any cause that is beyond the reasonable control of that Party. Such causes include, but are not limited to, power failure, internet service provider failure, industrial action, civil unrest, fire, flood, storms, earthquakes, pandemic, epidemic, quarantine, acts of terrorism, acts of war, governmental action or any other event that is beyond the control of the Party in question.
- 16.2 In the event that a Party to the Agreement/any Assignment cannot perform their obligations as a result of force majeure for a period of 2 weeks or more, the other Party, without prejudice to its right to terminate the Agreement/an Assignment in accordance with clause 2, may at its discretion terminate the Agreement by written notice at the end of that period.

17. LIMITATION OF LIABILITY AND INSURANCE

- 17.1 The Company shall have in place during the Term of this Agreement and any Assignment Period continuing after the Term, the Insurance Policies in respect of its own legal liability for claims arising in respect of this Agreement or any Assignment. The Company shall prior to this Agreement being entered into provide evidence of claims covered by the insurance Policies and indemnity limits together with evidence that all premiums are duly paid up to date.
- 17.2 The Company may, during the Term of this Agreement change the provider of the Insurance Policies and/or where in its judgement, the costs of the maintaining the existing level of indemnity cover is not reasonable, reduce the level of indemnity, promptly notifying the Client of any such change of provider or level of indemnity cover.

- 17.3 The limits and exclusions in this clause 17 reflect the insurance cover the Company has been able to arrange. Insurance held by the Company does not obviate the need for the Client to carry its own insurance including Public Liability insurance.
- 17.4 Nothing in this Agreement limits any liability which cannot legally be limited, including liability for:
- (a) death or personal injury caused by negligence; or
 - (b) fraud or fraudulent misrepresentation.
- 17.5 The liability (if any) of the Company and the Company's Personnel to the Client howsoever arising in respect of any Losses whatsoever shall be limited in accordance with the provisions of this clause 17 which are without prejudice to each other and to other provisions of the Assignment (including the disclaimers set out at clause 11)
- 17.6 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from this Agreement and any Assignment by the Company.
- 17.7 The Company shall have no liability for any loss of profit, loss of business, loss of opportunity, damage or depletion to goodwill, loss of opportunity, loss of goods, loss of contract, loss of use, loss of data or any economic loss or any special, indirect or consequential loss howsoever caused.
- 17.8 The liability (if any) of the Company in respect of all or any Losses arising out of or by reason of any act or default of the Company in breach of contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, or any of the Company's Personnel shall not, in respect of any one incident or series of related incidents giving rise to a particular claim/liability for Losses exceed the indemnity limits set out in the Insurance policies as apply to the particular claim/liability giving rise to Losses.
- 17.9 The Company shall not be liable for any Losses arising from any particular form of liability/claim not covered by the Insurance Policies.
- 17.10 The Company shall not be liable for any Losses in excess of that paid by the Company's insurers in respect of such Losses (even if below the indemnity limits referred to at clause 17.1 above).
- 17.11 The Client shall not be entitled to make any claim against the Company or any of the Company's Personnel unless it gives the Company written notice of the event giving rise to such claim, containing sufficient information for it to be identified and investigated by the Company, within fourteen (14) days of the date on which the Client becomes or ought reasonably to have become aware of the occurrence of such event.
- 17.12 The Company shall have no liability in respect of any Losses caused by the act or default of any of the Company's Personnel unless such act or default could have been foreseen and avoided by the exercise of due diligence on the part of the Company. Where such act or default should have been foreseen or avoided by the Company, liability (if any) shall be limited in accordance with the other provisions of this Agreement.
- 17.13 The Client shall not make any claim against any of the Company's Personnel for a greater amount than it could claim from or in respect of any liability that it could not claim from, the Company in accordance with the terms of this Agreement.
- 17.14 In the event that any third party makes a claim or allegation against the Company or the Company's Personnel for Losses arising from the performance of Services in excess of the level of liability referred to at 17.8 or which is excluded under this Agreement then to that extent, the Client agrees to indemnify

the Company and the Company's Personnel against all Losses which they incur or suffer as a result of such a third party claim.

17.15 The Client shall indemnify the Company against all or any Losses incurred by the Company where and to the extent that such Losses arise directly or indirectly as a result of any act or omission of the Client its servants or agents which is either negligent or in breach of the terms of this Agreement or any Assignment.

18. FEES, EXPENSES AND PAYMENT

18.1 The Client shall pay the Company Fees in respect of Services made available to the Service User and the performance of such Services then carried out subject to and in accordance with the terms of this Agreement, particularly this clause 18.

18.2 Fees are charged at the hourly rate set out in the Statement of Work in respect of the Sessions the Services are made available to the Service User during the Assignment.

18.3 If for any reason, where the Services are made available in accordance with the Company's obligations under the terms of this Agreement but the Services are not then provided for all or part of the relevant Session because the Service User does not attend the Session for any reason, including because of circumstances beyond the reasonable control of the Service User or the Client whether or not prior notice is given, then the Fees will still be chargeable in respect of the relevant Sessions, without deduction.

18.4 No fees shall be chargeable in respect of Sessions where the Services are not made available as provided for in the Statement of Work, other than in accordance with clause 8.6 or where the Services are not made available by reason of a breach by the Client of its obligations or a failure by the Service User, parent or guardian, to co-operate in respect of the provisions of the Services.

18.5 All costs and expenses incurred by the Company in respect of this Agreement and any Assignment shall be borne by the Company, unless set out in the Statement of Work, provided always that fees may be payable by the Client for the Company carrying out Risk Assessments, subject to and in accordance with the provisions of clause 5, and for attendance at Official Meetings, fees chargeable in this regard being at the same hourly rate as applies to the Services made available to the Service User to which the Official Meeting relates.

18.6 The Company shall not bear any costs or expenses incurred by the Service User or the Client in providing the Services. As set out at clause 8.2 above, the Client, not the Company shall bear any costs incurred in the hire of any venue where the Services are provided, including any hire charges or cancellation fees.

18.7 At no point in respect of the performance of any Services will the Company be responsible for the payment of any sums to any third party not directly engaged by the Company.

18.8 The Company shall invoice the Client for fees incurred in respect of Risk Assessments carried out prior to an Assignment being entered into as set out at clause 5.2, and shall otherwise invoice for all Fees incurred in respect of an Assignment at the end of the calendar month during the term of an Assignment or upon the termination of the Assignment. Such invoices are payable within 21 calendar days of receipt.

18.9 All Fees payable to the Company:

- (a) are exclusive of VAT, and the Client shall in addition pay an amount equal to any VAT chargeable on those sums on delivery of a VAT invoice, as set below; and

- (b) shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

18.10 The Company may change the Fees payable in respect of any Assignment on giving not less than one month's notice in writing, no such change in Fees effecting Fees already incurred.

19. LATE PAYMENT AND INTEREST

- 19.1 Without prejudice to any other right or remedy that it may have, if the Client fails to pay the Company any sums due in respect of any Assignment on the due date:
- (a) the Company may immediately terminate the Assignment on written notice;
 - (b) the Company may suspend all or part of the Services to be carried out under any Assignment until payment of all sums owing to the Company have been made in full;
 - (c) the Client shall pay interest on the overdue sum from the due date to the date of payment at the rate from time to time applicable to judgment debts. In respect of commercial debts owing to the Company we reserve the right to claim interest and recovery costs under the Late Payment of Commercial Debts (Interest) Act 1998.

20. TERMINATION

- 20.1 Without effecting any other right or remedy available to it, either party may terminate this Agreement and any Assignment with immediate effect by giving written notice to the other party to terminate this Agreement or Assignment, as applicable, if:
- (a) the other party commits a material breach of this Agreement or any Assignment and (if such breach is remediable) fails to remedy that breach, within a period of 15 Business Days after being notified in writing to do so;
 - (b) the other party repeatedly breaches any of the terms of this Agreement or any Assignment in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Agreement or any Assignment.
 - (c) the other party's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of this Agreement or any Assignment is in jeopardy.
- 20.2 The termination of one Assignment shall not affect this Agreement or any other Assignment unless one Assignment is terminable for the reasons set out at clause 20.1, in which event all other Assignments and this Agreement are terminable immediately on written notice.
- 20.3 On termination of this Agreement, each Assignment then in force at the date of such termination shall continue in full force and effect unless written notice to terminate the Assignment is given in accordance with clauses 2.1, 16 (Force Majeure) 20.1 or 20.2 where either party is entitled to terminate the Assignment immediately on written notice,
- 20.4 On termination of an Assignment the Client shall immediately pay to the Company all of the Company's outstanding unpaid invoices and interest and, in respect of the Services supplied but for which no invoice has been submitted, the Company may submit an invoice, which shall be payable immediately on receipt;
- 20.5 Termination of this Agreement or any Assignment shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breaches of the Agreement or any Assignment which existed at or before the date of termination.
- 20.6 On termination of this Agreement or any Assignment entered under its terms any terms set out in in this Agreement which provide that they have effect after the termination of the Agreement or any Assignment, or by their nature should survive the termination of the Agreement or the Assignment, shall

remain in force after such termination to include, the Confidentiality Provisions set out at clause 14 and the restriction on soliciting and engaging company personnel as set out at clause 13.

21. TUPE INDEMNITIES

- 21.1 In the event that any individual's employment transfers to the employ of the Company upon an Assignment being entered into by virtue of TUPE (a "Transferring Employee"), then the Client agrees to indemnify the Company in respect Losses which it may suffer as a result of the termination by the Company of the employment of the Transferring Employee by reason of the Transferring Employee becoming employed by the Company and the cost of employment incurred in respect of that Transferring Employee until such termination.
- 21.2 The Client warrants and undertakes to the Company to comply with the Regulations in relation to the Transferring Employees, the Client informing the Company, upon requesting Services, whether upon an Assignment being agreed that there would be such Transferring Employees.
- 21.3 The Client agrees to indemnify the Company against all Losses which it suffers or incurs as a result of: (i) the Client's breach of the warranty set out in clause 21.2; (ii) any acts or omissions (including without limitation failure to pay any accrued emoluments and to comply with statutory obligations) of the previous employer in relation to the Transferring Employees prior to the Commencement Date of the relevant Assignment; (iii) any claim brought by the Transferring Employee under regulations 4(9) of TUPE in respect change of identity of employer occurring by virtue of the Regulations being to the material detrimental to any of the Transferring Employees (iv) any change or proposed change in working conditions upon the Transferring Employee becoming engaged by the Company by virtue of TUPE being to the Transferring employee's material detriment.
- 21.4 If upon the termination of the Assignment and by virtue of the TUPE regulations any employee of the Company would transfer to the Client or a third party service provider, but for such employee objecting to such transfer of employment, then the Client shall indemnify the Company against all Losses it suffers or incurs as a result of any claim by such an employee who objects to the transfer of their employment bringing a claim against the Company under regulation 4(9) of TUPE.

22. ASSIGNMENT AND OTHER DEALINGS

- 22.1 Subject to clause 23 below, neither party may assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under this Agreement, with the consent of the other party, such consent not to be unreasonably withheld.

23. SUBCONTRACTING

- 23.1 The Company may, in respect of any Assignment, subcontract the provision of Services subject to the terms of this Agreement subject to the provisions of clauses following provisions:
- (a) the Company shall remain responsible for all acts and omissions of its Subcontractors and the acts and omissions of those employed or engaged by the Subcontractors as if they were its own. The Company acknowledges that any breach of the terms of this Agreement and any Assignment arising from a Subcontractors act or default shall constitute a separate breach by the Company for which the Company will be liable, together, when applicable with the Subcontractor.
 - (b) the Company shall (unless otherwise agreed by the Client in writing) ensure that each Subcontract includes:
 - (i) the written undertakings and assignments set out at clause 14(Confidentiality) and the right for the Client to enforce all terms of that Subcontract that operate for the benefit of the Client as if it were the Company;

- (ii) provision restricting the Subcontractor from assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the subcontract.

24. VARIATION

No variation of this Agreement or any Assignment shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

25. WAIVER

- 25.1 A waiver of any right or remedy under this Agreement or any Assignment or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.
- 25.2 A failure or delay by a party to exercise any right or remedy provided under this Agreement or any Assignment or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under this Agreement or any Assignment or by law shall prevent or restrict the further exercise of that or any other right or remedy.
- 25.3 A party that waives a right or remedy provided under this Agreement or Assignment by law in relation to one party or takes or fails to take any action against that party, does not affect its rights in relation to any other person.

26. RIGHTS AND REMEDIES

The rights and remedies provided under this Agreement, or any Assignment are in addition to, and not exclusive of, any rights or remedies provided by law.

27. SEVERANCE

- 27.1 If any provision or part-provision of this Agreement or any Assignment is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Agreement or any Assignment.
- 27.2 If any provision or part-provision of this Agreement or any Assignment is deemed deleted under 27.1 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

28. ENTIRE AGREEMENT

- 28.1 This Agreement and any Assignment constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to the subject matter of the Agreement and any Assignment.
- 28.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement or Statement of Work. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement or in any Statement of Work.

29. THIRD PARTY RIGHTS

- 29.1 Save in respect of any provision that operates for the benefit of the Company's Personnel, this Agreement does not give rise to any rights, whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise, for any third party to enforce any term of this Agreement.
- 29.2 The rights of the parties to rescind or vary this Agreement are not subject to the consent of any other person.

30. NOTICES

- 30.1 Any notice, request, demand or other communication to be given under this Agreement or any Assignment (Notices) will be deemed to be duly given by either party if in the English language and:
- (a) sent by first class post addressed to the other party at (in the case of a Notice to the Company) its registered office for the time being; or
 - (b) given personally, in the case of the Company to the Company's Manager or, in the case of the Client to the Client's Manager; or
 - (c) sent by email in the case of a Notice to the Company to the company email address of the Company's Manager and in the case of a Notice to the Client to the work email address of the Client's Manager the email address being, in each case, as notified in writing to the other party from time to time.
- 30.2 Any such Notice will be deemed to have been given, if sent by first class post, seven days after the time of posting and, in proving service, it will be sufficient to prove that the envelope containing such Notice was properly addressed, stamped and put in the post and, if sent by email, 24 hours after sending.
- 30.3 This clause does not apply to the service of any proceedings or any documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

31. COUNTERPARTS AND EXECUTION

- 31.1 This Agreement or any Statement of Work may be executed in any number of counterparts, each of which shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.
- 31.2 Each party agrees that this Agreement or any Statement of Work may be executed by electronic signature (whatever form the electronic signature takes) and that this method of signature is as conclusive of the parties' intention to be bound by the the terms of this Agreement and any Assignment to which the Statement of Work forms part as if signed by each party's manuscript signature.
- 31.3 No counterpart shall be effective until each party has delivered to the other one executed counterpart.
- 31.4 Transmission of an executed counterpart of this Agreement or Statement of Work (but for the avoidance of doubt not just a signature page) by email (in PDF, JPEG or other agreed format) shall take effect as delivery of executed counterpart of this Agreement or Statement of Work.

32. GOVERNING LAW

This Agreement, any Assignment and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with them or their subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

33. JURISDICTION

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Agreement any Assignment or their subject matter or formation.

Subject to the terms of this Agreement, it has been entered into on the date stated at the beginning of it.

Schedule 1 **TEMPLATE STATEMENT OF WORKS**

*****CONFIDENTIAL*****

The information contained in this document is commercially sensitive and is therefore confidential, privileged & only for the information of the intended recipient & may not be used, published or redistributed without the prior written consent of Young Giants Ltd.

Date of this Document:

COMMISSIONING CLIENT:	
Name and Address of Client:	
Name of Client Manager (Commissioner):	
Client Manager email & phone:	

SERVICE USER:	
Service User Full Name:	
Address:	
Service User DOB	

SERVICE USER'S PARENT, LEGAL GUARDIAN or CARER: With whom the Company is to liaise in respect of the provision of services	
Name:	
Address (if different from above):	
Email & Telephone:	

SERVICES:	
Particular service made available:	
Location for the provision of the services:	
Risk Assessment:	
Number of Hours of Service per Week:	
Timing of Services:	
Fees:	

Any other terms as apply to this particular Assignment:	
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This Statement of Works, as signed on behalf of the Company, is an Offer to carry out an Assignment subject to the provisions of the Master Services Agreement entered into between the Company and the Commissioning Client.

This Offer to carry out an Assignment is open for acceptance for 7 days from the date of this document.
OR
This Offer has already been agreed by commissioning party on: DATE

*Where this SOW is not returned signed, but the commissioning party has indicated to Young Giants that they wish to proceed then the terms of this contract apply and will be chargeable, allowing for 7 days' notice of cancellation from the client.

The definitions set out in the Master Service Terms applies to this Statement of Works.

.....template – not for signature here.....
Signed by [Pod EPL] for and on behalf of Young Giants Limited

..... template – not for signature here.....
Signed by **(name of client's manager/commissioner)**:
For and on behalf of **(name of client)**: