

## **[Lokrum Fields / Chestnut Place] Placement Agreement**

**A Placement is requested at [Lokrum Fields, Copyholt Lane, Stoke Pound, B60 3AY / Chestnut Place, 11-16 Chestnut Court, Jill Lane, Sambourne, B96 6EW] ("the Setting")** which is owned and operated by Wider Ambition Ltd of 11-16 Chestnut Court, Jill Lane, Sambourne, B96 6EW, registered in England & Wales as company number 11761642 ("Wider Ambition")

**for:**

Student Name ..... ("the Student")

Date of Birth .....

Initial Basic Fee .....

**fixed for this student until <end of initial period>**

Initial Supplemental Fee .....

Placement Commencement Date .....

**by:**

Name of Local Authority ..... ("the Authority")

### **1. The Authority hereby:**

1.1 Agrees to pay the Basic and Supplemental Fees (together referred to as the Fees) as detailed above and as varied from time to time in accordance with this Agreement.

1.2 Acknowledges that the Fees are payable in accordance with the procedures set out in this Agreement and will use best endeavours to make payments on time.

1.3 Agrees to provide at least one term's Notice in writing before ending the Placement or otherwise agrees to pay one term's Fees in lieu of Notice.

1.4 Acknowledges that in the event of the Student's withdrawal or lawful exclusion no refund shall be payable.

1.5 Agrees to be bound by the attached Terms and Conditions which are an integral part of this Agreement.

### **2. Wider Ambition hereby:**

2.1 Agrees to provide a Placement at the Setting for the Student in accordance with this Agreement.

2.2 Agrees to be bound by the attached Terms and Conditions which are an integral part of this Agreement.

**Signatures of Parties to the Agreement:**

For and on behalf of the Authority:

Name of Authority .....

Address of Authority .....

Name of Authorised Signatory .....

Position held .....

Telephone number .....

Signed .....

Date .....

For and on behalf of Wider Ambition Ltd:

Alison Chalmers

Director

Signed .....

Date .....

## **TERMS AND CONDITIONS**

### **1. Acceptance and Term**

- 1.1. In the absence of a signed Placement Agreement, these Terms and Conditions will be deemed to have been accepted by the Authority if:
  - 1.1.1. The Setting is named by the Authority in the Student's Education Health and Care Plan following a written offer of Placement by the Setting including details of the Initial Fees; and
  - 1.1.2. The Student subsequently attends the Setting on at least one occasion; and
  - 1.1.3. No other signed Agreement is in existence between Wider Ambition and the Authority in relation to the Student being placed at the Setting.
- 1.2. The payment of Fees by the Authority and the acceptance of payment by Wider Ambition shall not constitute acceptance by Wider Ambition of any other contract or agreement.
- 1.3. Unless a Commencement Date has been agreed in writing between the Parties through the prior completion of the Placement Agreement, the Commencement Date of the Placement shall be defined as the first day in term time on which a place is available at the Setting for the Student following the earlier of:
  - 1.3.1. A SEND Tribunal determining that the Setting shall be named in the Student's Education Health and Care Plan; or
  - 1.3.2. The Authority naming the Setting in the Student's Education Health and Care Plan or otherwise advising the Student's parents or the Setting in writing that a placement has been agreed.
- 1.4. This Placement shall remain in force until terminated in accordance with the procedures in Section 3.

### **2. Fees**

- 2.1. Wider Ambition will maintain due regard to the need of the Authority to attain value for money.
- 2.2. The Parties shall use reasonable endeavours to implement and maintain efficient working practices in relation to the Placement.
- 2.3. The Basic Fee is defined as the element of the Fees which relates to the Student's ongoing enrolment at the Setting and covers the cost of the provision set out in the Setting's Standard Offer.

- 2.4. Supplemental Fees are defined as the element of the Fees which relates to any provision which falls outside the Setting's Standard Offer and which:
- 2.4.1. is detailed in the Student's Education Health and Care Plan, or
  - 2.4.2. has been recommended or agreed by Wider Ambition at an Annual Review in accordance with prevailing evidence and where the Authority has either: (i) not subsequently issued an updated version of the Education Health and Care Plan, or (ii) declined to include such provision in the updated Education Health and Care Plan, without having provided Wider Ambition with professional evidence to support this decision.
- 2.5. The Basic Fee and any Supplemental Fees (together referred to as the Fees) are payable termly in advance.
- 2.6. The Initial Basic Fee and the Initial Supplemental Fee shall be the amounts set out in the attached Placement Agreement or, in the absence of a completed Placement Agreement, the amounts set out in an Order of the SEND Tribunal in relation to the Student or, in the absence of such an Order, the amounts set out in the most recent written offer of a Placement for the Student at the Setting prior to the Setting being named in the Student's Education Health and Care Plan, subject to reasonable adjustment in relation to any fee increases which have applied in the interim and subject to reasonable adjustment as per clause 2.8 in relation to any changes made to the Student's Education Health and Care Plan following the provision of such written offer.
- 2.7. The Setting's Standard Offer may be varied periodically and the prevailing Standard Offer shall be published on the Setting's website. In the event of any aspect of provision being removed from the Standard Offer, any related requirement for Supplementary Fees to become payable for a Student shall be offset by a corresponding reduction in the Basic Fee for that Student.
- 2.8. If requirements are added to the Student's Education Health and Care Plan during the Placement or subsequent to a written offer of a Placement being provided, or if requirements are recommended or agreed by Wider Ambition at an Annual Review on the basis of prevailing evidence and in the absence of the Authority providing professional evidence to the contrary, and if such requirements are reasonably deemed by Wider Ambition to fall outside the prevailing Standard Offer as published on the Setting's website then Wider Ambition shall notify the Authority that Supplemental Fees will be payable in relation to the additional provision.
- 2.9. The amount of any Supplemental Fees shall be commensurate to the relevant costs incurred or predicted to be incurred by Wider Ambition.
- 2.10. The Authority will acknowledge any notification of Supplemental Fees within five working days and may within ten working days of being notified of any Supplemental Fees request

reasonable evidence to demonstrate that any Supplemental Fees are commensurate to the costs incurred or predicted to be incurred by Wider Ambition and such evidence shall be provided to the Authority within five working days.

- 2.11. In the event of the Authority considering any Supplemental Fees to be unreasonable after receiving the evidence specified at clause 2.10 it may propose an alternative means of fulfilling the relevant provision within a further ten working days. The Setting shall give due consideration to any such proposals within five working days and shall promptly notify the Authority of the outcome of such consideration. The Parties shall work in good faith to resolve any dispute in relation to Supplemental Fees at the earliest opportunity. The Setting may, at its discretion, implement any element of the provision which is subject to Supplemental Fees prior to any such dispute being resolved and the Authority shall remain liable for paying any invoices relating to such provision.
- 2.12. Notwithstanding clause 2.11, Wider Ambition shall have no obligation to provide any element of the provision which is subject to Supplemental Fees until any applicable invoices have been paid.
- 2.13. In the event of any revision to a Student's Education Health and Care Plan resulting in the removal of an element of provision which had previously been subject to Supplemental Fees, Wider Ambition shall use all reasonable endeavours to cease incurring costs in relation to that element of provision and shall cease invoicing the Authority in relation to those costs once applicable costs have ceased. The Authority accepts that such additional elements of provision may temporarily be subject to ongoing costs including but not limited to amounts incurred during the notice period for commissioned services or the termination or reassignment of applicable employment contracts. All reasonable endeavours will be made to identify and agree any notice period relating to the Supplemental Fees at the point of the Supplemental Fees being introduced.
- 2.14. Wider Ambition shall invoice the Authority in respect of the Fees up to 60 days before the Placement Commencement Date and up to 60 days before the start of each subsequent term.
- 2.15. In the event of Supplemental Fees arising as permitted under these Terms and Conditions or otherwise being varied in accordance with these Terms and Conditions prior to the next termly invoicing date, Wider Ambition will issue a supplementary invoice without undue delay.
- 2.16. A valid invoice is hereby defined as an invoice which is consistent with these Terms and Conditions.
- 2.17. The Authority shall pay all valid invoices in full within 30 days of issue.

- 2.18. If the Authority considers any invoice to be inconsistent with these Terms and Conditions it shall notify Wider Ambition in writing and provide a clear explanation of the alleged inconsistency within ten working days of the invoice being issued. The Parties shall use all reasonable endeavours to resolve any such inconsistency within ten working days. The Authority shall not withhold or offset any payment of Fees which are due under these Terms and Conditions.
- 2.19. Wider Ambition reserves the right to refuse to allow the Student to attend the Setting in the event of Fees being unpaid. The Authority shall indemnify Wider Ambition against any obligation to offer Education Health or Care provision to the Student in such circumstances.
- 2.20. If an invoice is paid after the due date, Wider Ambition may at its sole discretion charge interest and late payment charges in relation to the period from the due date of the unpaid invoice until the date of payment being received, at the rates detailed in the Late Payment of Commercial Debts (Interest) Act 1998, regardless of whether the Student has attended the Setting during the period of non-payment.
- 2.21. Except to the extent that the Fees are specified in this Agreement as remaining fixed for an initial period, the Fees due under this Agreement will be reviewed annually and subject to clauses 2.22, 2.23, 2.24, 2.25 and 2.26 may be increased from the start of the next academic year by the provision of one term's notice from Wider Ambition to the Authority. If the Placement commences within the final term of the academic year, the notice requirement for any increase in Fees shall be reduced to six weeks.
- 2.22. Where a SEND Tribunal has determined that the Setting shall be named on any student's Education Health and Care Plan then no further justification shall be required by the Authority in relation to any increase of the Basic Fee applicable to this Placement where the revised Basic Fee does not exceed the Basic Fee accepted by the SEND Tribunal in relation to the prevailing Standard Offer.
- 2.23. Any inflationary increase in Fees which does not exceed the greater of 5% per annum or prevailing annual inflation as measured by the latest release of the Retail Prices Index at the time of the annual increase being notified shall be accepted by the Authority without any further justification being required.
- 2.24. Any increase in Fees which corresponds directly to a national Teachers Pay Award or an increase in taxation or social security contributions shall be accepted by the Authority without any further justification being required.
- 2.25. If Wider Ambition provides notice of an annual increase in Fees which exceeds the provisions specified at 2.22, 2.23 and 2.24, the Authority may within 15 working days request that Wider Ambition provides details of any relevant increases to its actual or predicted costs as applicable to the Placement and shall be allowed a further 25 working days following receipt of such information in which to propose any means of cost reduction

which it wishes Wider Ambition to consider. Wider Ambition shall give appropriate consideration to any such proposals and shall provide the Authority with an explanation of the outcome. Any cost savings arising from such a proposal shall be reflected via an appropriate reduction in the previously notified increase in Fees which shall otherwise be payable in full.

- 2.26. In the circumstances specified at 2.25 and in the event of the Authority not being satisfied that the increase in Fees is reasonable, the Authority will be entitled to withdraw the Student from the start of the following term without giving Wider Ambition a term's notice or paying Fees in lieu of notice, provided that notice is given within 60 calendar days of the date of the notification of the increase in Fees or if later within 15 calendar days of Wider Ambition providing the Authority with the outcome of its consideration of the Authority's proposals for cost savings in relation to that increase. In the event of the Student or the Student's parent or guardian disputing such a withdrawal via an Appeal to the SEND Tribunal Service, the prevailing Fees for that Placement shall be capped at the amounts specified at 2.22, 2.23 and 2.24 until the Appeal is determined. In the event of such an Appeal resulting in the Placement continuing, the notified increase in Fees shall be implemented and the Authority's liability to pay the increased Fees shall be back-dated to the original effective date of the Fee increase notification.
- 2.27. Wider Ambition reserves the right to amend the Fees during any academic year subject to 60 calendar days' notice if it considers such an amendment to be commercially necessary. The provisions at clauses 2.22 to 2.26 inclusive shall apply to any such increase.
- 2.28. Fees will not be reduced or refunded as a result of a Student being absent due to illness or otherwise. The Setting will use all reasonable endeavours to provide the Student with appropriate educational provision during any period of absence exceeding five school days to the extent that the Student is available and physically and mentally able to engage in such educational provision.
- 2.29. The Fees for the first part-term of the Student's actual or permitted attendance shall be pro-rated to cover the period between the Commencement Date and the end of that term.
- 2.30. Invoices in relation to the first term or part-term of a Placement shall be payable in advance of the Commencement Date where it is feasible for the invoice to be issued sufficiently in advance or otherwise within ten working days of the invoice being issued.

### **3. Exclusions and Placement Termination**

- 3.1. If the Authority wishes to terminate the Placement, the Authority shall either provide Wider Ambition with a term's written notice or shall pay Wider Ambition a term's Fees in lieu of notice, at such rate of Fees as would have been charged for the final term of provision if a term's notice had been given.



- 3.2. If written notice is not provided pursuant to clause 3.1 then the appropriate sum in lieu of notice will become due and owing to Wider Ambition as a debt on the first day of the term which would have been the final term of the Placement if a term's notice had been given.
- 3.3. The notice requirement at clause 3.1 shall not apply in the event of the termination of this Placement Agreement coinciding with the Commencement Date of a new Placement Agreement between the Local Authority and Wider Ambition for the purpose of enabling the Student to attend another Wider Ambition setting on a full-time basis.
- 3.4. Notwithstanding clause 3.1, in the event that the Authority wishes to terminate the placement due to a material and unresolvable failure of contract delivery by Wider Ambition, no notice payment shall apply provided that the Authority has raised its concerns and cooperated with attempts at resolution as per Section 4 and, in the event of a dispute regarding the alleged failure of contract delivery, has followed the dispute resolution process as per Section 5.
- 3.5. Both parties agree to co-operate in good faith and to keep the welfare of the student and continuity of service in mind in all circumstances concerning termination of the Placement.
- 3.6. Wider Ambition may at its sole discretion suspend or expel the Student from the Setting in accordance with the Setting's published policies and subject to not breaching statutory or regulatory requirements.
- 3.7. Wider Ambition undertakes to notify the Authority within one working day in the event of commencing such action and to provide such information about the circumstances leading to such action as the Authority reasonably requests. The Authority acknowledges that in some circumstances such action may be taken swiftly by Wider Ambition and prior liaison with the Authority may not be practicable.
- 3.8. Should Wider Ambition exercise its right under clause 3.6: .
  - a) if the expulsion occurs after the half-term break of the term for which Fees have been paid or have become payable, the Authority will not be entitled to any refund or remission of Fees including any Supplemental Fees (whether paid or payable) but Fees in lieu of notice will not be payable.
  - b) if the expulsion occurs before the half-term break of the term for which Fees have been paid or have become payable, the Authority will be entitled to a pro-rata refund or remission of Fees for the latter half of the term, excluding any Supplemental Fees (whether paid or payable) which Wider Ambition is unable to recoup in accordance with previously notified notice periods for Supplemental Fees but Fees in lieu of notice will not be payable.
- 3.9. Wider Ambition may at its sole discretion and subject to not breaching statutory or regulatory requirements terminate the Placement in the event that it considers that it is unable to meet the Student's needs or that the Placement has had, or is reasonably expected to have, a detrimental impact on other students or on Wider Ambition. Any such



termination of Placement shall occur via an EHCP Review which shall be convened without undue delay or by a similar process in the event of the Student not holding an EHCP.

- 3.10. Should Wider Ambition exercise its right under clause 3.8, a full term's notice shall apply and Wider Ambition shall use reasonable endeavours to provide the Student with appropriate education for the remainder of the Placement. Wider Ambition may require the Student to access such provision remotely.
- 3.11. Notwithstanding clause 3.9, the Authority may promptly request that Wider Ambition agrees to an extended notice period for the purpose of supporting the Student's transition to another educational provision and agreement to such a request shall not be unreasonably withheld.
- 3.12. The Authority hereby grants consent for the Setting to remove the Student from its roll in circumstances in which Wider Ambition considers such action to be justifiable.
- 3.13. Wider Ambition may terminate this Agreement without penalty and at its sole discretion by providing the Authority with two terms' written notice in the event that Wider Ambition considers that any change in legislation or regulation or costs or other financial matters renders the Placement commercially unsustainable.
- 3.14. The obligations of the Parties at 2.17 and sections 6, 8, 10, 11, 13 and 14 shall survive the variation, expiry or termination of this Agreement for a period of five years thereafter.

#### **4. Obligation to Act in Good Faith**

- 4.1. During school hours and at other times when the Student is participating in activities under the supervision of the Setting, Wider Ambition undertakes to exercise all reasonable skill and care in respect of the Student's education and welfare.
- 4.2. Wider Ambition undertakes to ensure that its service complies with all applicable regulatory standards and legislation.
- 4.3. Wider Ambition shall use all reasonable endeavours to employ or otherwise engage sufficient persons appropriately qualified to deliver the standards of education and care detailed in the Independent School Standards and other applicable regulations and legislation.
- 4.4. Recruitment of all staff including ancillary staff and those on a contractual/sessional basis and volunteers who work with students in the Setting will follow safer recruitment practice in accordance with the Independent School Standards and other applicable regulations and legislation.

- 4.5. Wider Ambition undertakes to ensure that its provision meets the Student's needs as detailed in the Student's Education Health and Care Plan, to the extent that the Student is attending or otherwise engaging with Wider Ambition provision full-time and notwithstanding any prevailing agreement that the Student's needs shall be met through alternative means either temporarily or pending an update to the EHCP.
- 4.6. Wider Ambition shall have due regard to any change in the Student's needs or professional advice during the course of the Placement and to the views of all relevant stakeholders and the EHCP Annual Review process.
- 4.7. Wider Ambition reserves the right to amend its curriculum, prospectus and policies at any time and to make changes to any aspect of the Setting subject to continuing to comply with all applicable regulatory standards and legislation.
- 4.8. Wider Ambition will provide the Authority with an annual account of income received and expenditure incurred in respect of the Placement in accordance with legislation.
- 4.9. The Authority undertakes to ensure that all of its actions and interactions with or in relation to Wider Ambition and the Student are undertaken in good faith and will comply with all applicable regulatory standards and legislation.
- 4.10. Wider Ambition acknowledges the right of the Authority to monitor the provision of education throughout this Placement.
- 4.11. Monitoring may include visits to the Setting by the Authority's representatives or agents by prior agreement with the Headteacher.
- 4.12. Monitoring arrangements shall be in addition to and shall not prejudice any statutory inspection.
- 4.13. The Authority shall notify the Setting within five working days in the event of it having any concern about the quality of provision at the Setting unless such a notification is reasonably deemed by the Authority to represent a safeguarding risk. Such notification shall provide the Setting with sufficient detail to enable the Setting to understand and respond to the concern. The Authority shall use all reasonable endeavours to cooperate with the Setting for the purpose of resolving any such concerns.
- 4.14. In the event of the Authority having any serious concerns in relation to the quality of provision including but not limited to safeguarding concerns then the Authority's representatives or agents may visit the Setting without prior agreement. Details of any such concerns shall be provided by the Authority to Wider Ambition pursuant to clause 4.13. Any relevant observations made during the visit shall be shared with Wider Ambition within five working days including a clear statement explaining whether the concerns are ongoing and proposing a reasonable method of resolution.

- 4.15. The Authority agrees not to withhold from Wider Ambition any information which could reasonably be expected to be relevant to the Placement unless such action is necessary for safeguarding or statutory compliance.
- 4.16. The Authority shall have appropriate regard to Wider Ambition's administrative workload and costs when making requests for information and shall keep such requests to a level which is necessary in order for the Authority to fulfil its statutory and regulatory duties.
- 4.17. The Authority shall notify Wider Ambition within three working days of becoming aware of any third party claim for damages, costs, actions or other loss liability arising in relation to this Agreement for which Wider Ambition may be liable.
- 4.18. The Authority shall notify Wider Ambition within three working days of becoming aware of any substantial risk or threat of a third party claim for damages, costs, actions or other loss liability arising in relation to this Agreement for which Wider Ambition Ltd may be liable.
- 4.19. The Authority shall fully cooperate with Wider Ambition in the circumstances stated in clauses 4.17 and 4.18 including without limitation: sharing all relevant information without breaching data protection legislation; wherever practicable not taking any action or making any admissions or comment in relation to the claim or risk without first agreeing such action with Wider Ambition; having appropriate regard for any lawful action requested by Wider Ambition or its insurers; and notifying Wider Ambition within one working day of any action taken or other development of the matter.

## **5. Dispute Resolution**

- 5.1. The Parties shall work together in good faith and use best endeavours to resolve by agreement any dispute arising between them in relation to this Agreement.
- 5.2. The following procedure shall apply in the event of a dispute:
  - 5.2.1. The aggrieved Party shall notify the other Party of their concern without undue delay and shall provide sufficient detail to enable the other Party to understand their concern.
  - 5.2.2. The notified Party shall acknowledge the concern within five working days and respond within ten working days.
  - 5.2.3. If the dispute remains unresolved, the Parties shall arrange a meeting which shall be held within ten working days or such other period as agreed within five working days between the parties.
  - 5.2.4. If the dispute remains unresolved, a further meeting involving senior representatives of both parties shall be arranged within ten working days or such other period as agreed within five working days between the parties.

- 5.2.5. If the dispute remains unresolved, then the matter will be referred to independent mediation subject to the agreement of both Parties and where the identity of the mediator is agreed between the Parties.
- 5.2.6. If there is a failure to resolve the dispute, either Party may serve notice on the other to require the dispute to be referred to arbitration in accordance with the Arbitration Act.

## **6. Indemnity and Insurance**

- 6.1. Wider Ambition will maintain Employers Liability insurance of at least £10 million and Public Liability insurance of at least £5 million.
- 6.2. Wider Ambition will maintain insurance for its buildings and contents at a level which it reasonably considers to be appropriate in order to meet its statutory and contractual obligations.
- 6.3. Wider Ambition will maintain motor vehicle insurances which it reasonably considers appropriate for the operation of vehicles owned by Wider Ambition and used for the transport of students by the Setting.
- 6.4. Wider Ambition shall indemnify the Authority against damages, costs, actions and other loss liability claims suffered or incurred by the Authority arising under this Agreement directly in relation to an act of neglect, default or omission by the Setting save to the extent that the same is due to or exacerbated by an act of negligence, default or omission of the Authority, its employees or agents. To the fullest extent permitted in law, Wider Ambition's total liability under this Agreement is limited to the Fees paid by the Authority in relation to the Student in the twelve months preceding a claim.
- 6.5. The Authority shall indemnify Wider Ambition against damages, costs, actions and other loss liability claims suffered or incurred by Wider Ambition arising under this Agreement directly in relation to an act of neglect, default or omission by the Authority save to the extent that the same is due to or exacerbated by an act of negligence, default or omission of the Setting. To the fullest extent permitted in law, the Authority's total liability under this Agreement is limited to the Fees detailed in Section 2 plus three terms of Fees at the rate prevailing at the time of the claim being notified.
- 6.6. Any liability arising under this Agreement shall be limited to direct losses and legal costs and shall exclude consequential losses.
- 6.7. Notwithstanding any other provision of this Agreement, the liability of the parties shall not be limited in any way in respect of the following:
  - 6.7.1. death or personal injury caused by negligence;
  - 6.7.2. fraud or fraudulent misrepresentation;
  - 6.7.3. any other losses which cannot be excluded or limited by applicable law.

- 6.8. Any claims arising under this Agreement must be made within one year of the cause of claim.

## **7. Compliance**

- 7.1. In the event of either party having reason to believe that the other party may be in breach of any legislation, statutory guidance or its own policies, as relevant to this Placement, it shall notify the other party of the same in writing without undue delay. The notified party shall respond within 10 working days in sufficient detail to assure the other party of its compliance or, in the event of agreeing that a breach has occurred, with details of how it intends to rectify the breach in a timely manner and prevent further breaches and shall additionally provide appropriate further evidence to assure the other party of its timely progress towards such rectification and prevention.

## **8. Confidentiality, Records, Freedom of Information and Data Protection**

- 8.1. Wider Ambition will provide reasonable and timely assistance to the Authority to enable the Authority to comply with its obligations under the Freedom of Information Act or other applicable legislation governing access to information in relation to this Agreement.
- 8.2. Wider Ambition will keep records in compliance with the School Records Regulations (1999) and have due regard to reasonable written requests by the Authority for records to be retained for a longer period.
- 8.3. Wider Ambition will maintain sufficient information, records and documentation to enable the performance of the Placement to be monitored effectively.
- 8.4. Wider Ambition will maintain written records of any complaints received in connection with the service in accordance with the Independent School Standards.
- 8.5. Both Parties may process information arising from or in connection with this Placement, subject to any data processing being in accordance with their respective needs and obligations and compliant with prevailing data protection legislation including the General Data Protection Regulations and the Data Protection Act 1998.
- 8.6. The Parties agree that each shall act as an Independent Data Controller in the fulfilment of their respective duties.
- 8.7. Notwithstanding clause 8.6, in the event of either Party processing personal information on behalf of the other as a result of this Agreement, that party shall be the Data Processor and the originating party shall be the Data Controller. The Data Processor shall:
- 8.7.1. ensure all personal data is held and processed securely and only in accordance with prevailing data protection legislation;

- 8.7.2. maintain an up-to-date knowledge of prevailing data protection legislation sufficient to be confident that it is compliant with the same and shall notify the Data Controller promptly on becoming aware of any breach of this legislation;
- 8.7.3. process personal data only in accordance with the instructions set out herein and any written instructions agreed between the parties in writing from time to time;
- 8.7.4. not share personal data with any third party without the written authorisation of the Data Controller;
- 8.7.5. retain personal data only for the duration of this Agreement and for such period as is necessary after termination of this Agreement for it to fulfil its statutory obligations;
- 8.7.6. treat all personal data as strictly confidential;
- 8.7.7. only disclose personal data to its personnel to the extent that disclosure is needed for the purpose of satisfying the obligations in this Agreement or its statutory obligations;
- 8.7.8. take all necessary steps to ensure the reliability of its personnel and ensure that its personnel are contractually bound to respect the confidentiality of the personal data;
- 8.7.9. at all times implement and maintain appropriate technical and organisational security measures against unauthorised or unlawful processing of the personal data including without limitation any loss, damage, destruction, alteration or disclosure of the personal data;
- 8.7.10. not assign or transfer any or all of the processing of the personal data without the prior written consent of the Data Controller, such consent to not be unreasonably withheld or delayed;
- 8.7.11. enter into a written agreement with any subsequent data processor which is processing data arising under this Agreement, which shall be equivalent to and no less onerous than this Agreement, and remain fully liable to the Data Controller for the performance of that data processor;
- 8.7.12. not transfer personal data to a location outside the UK without prior written consent from the Data Controller and shall ensure that appropriate safeguards are implemented in the event of such a transfer;
- 8.7.13. maintain written records of all processing carried out under this Agreement and shall make those records available to the Data Controller upon written request;
- 8.7.14. promptly provide to the Data Controller such information, cooperation and assistance as it may reasonably require to enable each party to comply with its obligations under prevailing data protection legislation, including without limitation:
  - (a) Demonstrating its compliance with its data protection obligations contained in this Agreement;
  - (b) Implementing and maintaining appropriate technical and organisational measures to enable a swift response to requests in respect of data subject rights;
  - (c) Providing a swift response to requests in respect of data subject rights at no charge and within any deadlines imposed by prevailing legislation;

- (d) Notifying the Data Controller as soon as possible and within three working days of any actual, threatened or suspected unauthorised or unlawful processing, disclosure, access, loss, alteration or corruption of personal data and using all reasonable endeavours to investigate and rectify such breach and to prevent recurrence and sharing all related information with the Data Controller promptly and transparently;
- (e) Cooperating with the relevant Data Protection Authorities in the event of any enquiry relating to this agreement or the personal data;
- (f) Notifying the Data Controller in writing on becoming aware that any of the processing instructions breach prevailing data protection legislation.

8.8. Confidential Information means all information (whether in oral, written or electronic form) relating to a Party's business or activity which may reasonably be considered to be confidential in nature including without limitation information relating to that Party's finances, contracts, intellectual property, assets, strategy, personnel, services and operations.

8.9. Each Party shall maintain the confidentiality of the other Party's Confidential Information and shall not without the prior written consent of the other use, disclose or copy the other Party's Confidential Information (or permit others to do so) other than as necessary for the exercise of its rights and performance of its obligations under this Agreement or statutory obligations.

8.10. The provisions of clause 8.9 shall not apply to information which:

- 8.10.1. is or comes into the public domain through no fault of the Party which is the recipient of the Confidential Information, its officers, employees, agents or contractors;
- 8.10.2. is lawfully received by the recipient from a third party free of any obligation of confidence at the time of its disclosure;
- 8.10.3. is required to be disclosed under statutory obligations provided that the relevant Party, where possible, notifies the other Party at the earliest opportunity before making any disclosure.

8.11. Wider Ambition agrees to the Authority publishing an appropriately redacted version of this Agreement where required to do so under statutory obligations.

## **9. Assignment and sub-contracting**

9.1. Wider Ambition shall not without prior written agreement from the Authority, such agreement not to be unreasonably withheld, assign or sub-contract its responsibilities under this Agreement such that:

- 9.1.1. The Student's provision is delivered off-site by a third party under an Alternative Provision arrangement, or



- 9.1.2. A third party assumes responsibility for the operational management of the Placement, the Setting or Wider Ambition.
- 9.2. Notwithstanding the requirements of clause 9.1, in the event of Wider Ambition assigning or sub-contracting any of its responsibilities under this Agreement to any other entity, it shall:
  - 9.2.1. Notify the Authority of such assignment or sub-contracting in writing not later than five working days after entering into the assignment or sub-contracting agreement and wherever practicable at least 60 days in advance of such an arrangement taking effect.
  - 9.2.2. Ensure that any such assignment or sub-contracting arrangement meets all applicable statutory and regulatory requirements in relation to the provision of education by Wider Ambition, including without limitation the requirements of the Independent School Standards.
  - 9.2.3. Ensure that any such assignment or sub-contracting arrangement does not prevent the Authority from exercising any rights specified in this Agreement including any right to request and receive information, engage in supervisory oversight, raise concerns or seek a remedy to any concerns, in relation to the responsibilities which have been assigned or sub-contracted.
  - 9.2.4. Provide the Authority within five working days of a request with such information about such assignment or sub-contracting arrangement as the Authority reasonably requests, including without limitation providing clear details of which responsibilities have been assigned and to which entity and contact details of an Authorised Signatory at such entity and details of arrangements for quality assurance.
  - 9.2.5. Indemnify the Authority against any failure of the entity to which responsibilities have been assigned or sub-contracted to fulfil its obligations under this Agreement up to the level of indemnity which would have applied in the event that the breach had been effected by Wider Ambition.
- 9.3. The arrangements specified at clause 9.1 and 9.2 shall not apply in relation to the following arrangements to which the Authority hereby agrees subject to any such arrangements following all statutory and regulatory requirements in relation to safer recruitment:
  - 9.3.1. The sub-contracting of any education, health or care tasks for the purpose of temporarily covering sickness, absence or departure of staff or covering any additional workload on a short-term basis;
  - 9.3.2. The sub-contracting of domestic or ancillary tasks;
  - 9.3.3. The appointment of any HCPC regulated professional for the purpose of providing therapeutic services or professional advice;
  - 9.3.4. Any use of educational software, resources or services which complement curriculum delivery.
  - 9.3.5. Any use of software or professional services for the purpose of administrative tasks, IT support, accountancy, legal advice or other matters not directly associated with the provision of education or the fulfilment of the Student's Education Health or Care Plan.

## **10. Third party rights, Severance and Waiver**

- 10.1. No third party has the right to enforce any term of this Agreement under the Agreements (Rights of Third Parties) Act 1999.
- 10.2. If any provision of this Agreement (or part of any provision) is or becomes illegal, invalid or unenforceable, the legality, validity and enforceability of any other provision of this Agreement shall not be affected.
- 10.3. If any provision of this Agreement (or part of any provision) is or becomes illegal, invalid or unenforceable but would be legal, valid and enforceable if some part of it was deleted or modified, the provision or part-provision in question shall apply with such deletions or modifications as may be necessary to make the provision legal, valid and enforceable. In the event of such deletion or modification, the parties shall negotiate in good faith in order to agree the terms of a mutually acceptable alternative provision.
- 10.4. No waiver by either party of any default of the other under this Agreement shall operate or be construed as a waiver of any future defaults.
- 10.5. No granting of time or other forbearance or indulgence by either party to the other shall in any way release, discharge or otherwise affect any liability under this Agreement.

## **11. Force Majeure**

- 11.1. Neither party shall be liable for delay or failure to perform the obligations of this Agreement if the delay or failure results from circumstances beyond their reasonable control including but not limited to freak events such as storm, flood, fire, government actions or directions, war, explosion, civil commotion, industrial dispute or changes in the law.
- 11.2. In the event of delay or failure arising from a force majeure event the Parties will work in good faith to prevent or minimise any disruption to the services.

## **12. Variations**

- 12.1. Wider Ambition reserves the right to change or add to these Terms and Conditions from time to time in response to legislative change or for reasonable safety or safeguarding purposes or to address any unintended interpretation or deficit in the Agreement which was not envisaged by Wider Ambition at the time of signing or in order to reasonably assist the proper delivery of education at the Setting.
- 12.2. The prevailing version of Wider Ambition's Standard Terms and Conditions shall be as published at [www.widerambition.org](http://www.widerambition.org) or as otherwise notified to the Authority in writing by Wider Ambition.

- 12.3. In the event of these Terms and Conditions having been modified by agreement between the Parties in a way which deviated at the time from Wider Ambition's Standard Terms and Conditions, any subsequent material modifications shall be notified to the Authority in writing with one term's written notice.
- 12.4. The Authority shall be deemed to have accepted and agreed to any modifications to these Terms and Conditions through its continuation of the Placement or failure to promptly enter Dispute Resolution proceedings in accordance with Section 5.
- 12.5. In the event of the Authority not accepting and agreeing to any material modification to these Terms and Conditions, it shall notify Wider Ambition within 30 calendar days of being notified of the change and shall be entitled to withdraw the Student from the start of the following term without giving a term's notice or paying Fees in lieu of notice.
- 12.6. Any other variation to these Terms and Conditions must be made in writing and signed by the Authority and a Director of Wider Ambition.

### **13. Notices**

- 13.1. All notices required to be given under these Terms and Conditions must be given in writing.
- 13.2. The Authority undertakes to promptly notify Wider Ambition of any change of contact details of the Authorised Signatory and as applicable the identity and contact details of any person to whom the responsibilities of the Authorised Signatory have been assigned.
- 13.3. Notices will be sent by Wider Ambition to the Authority's address as published on its website or to such alternative address as notified in writing by the Authority from time to time or by email to any representative of the Authority who is reasonably understood by Wider Ambition to be the relevant decision-maker.
- 13.4. Notices that the Authority is required to give under these Terms and Conditions must be addressed to the Director of Wider Ambition Ltd and sent to Wider Ambition's registered company address or by email to the Director's email address.
- 13.5. If sent by post, notice shall be deemed to have been given on the second day after posting.

### **14. Interpretation and Jurisdiction**

- 14.1. Headings in these Terms and Conditions are for ease of understanding only and do not form part of the Terms and Conditions.

- 14.2. References to legislation shall be interpreted as including any modified or replacement legislation subsequently enacted.
- 14.3. This Agreement shall be governed by English Law and both parties agree to submit to the exclusive jurisdiction of the English courts.