**DATED**

**ALTERNATIVE PROVISION**

**PARTNERSHIP SERVICE LEVEL AGREEMENT**

**For the provision of the Funding for Alternative Education Provision for the Shepway area of Kent**

**Delegated**

**BETWEEN**

**THE MANAGEMENT COMMITTEE OF BIRCHWOOD**

**AND**

**THE KENT COUNTY COUNCIL**



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THIS Agreement is dated (date)

**PARTIES**

(1) The KENT COUNTY COUNCIL, whose principal address is at County Hall, Maidstone, Kent ME14 1XQ (“**The Council**”); and

(2) Birchwood Alternative Provision PRU, 106 Cheriton Road, Folkestone, CT20 2QN (“**the School**“ )

Altogether ‘the Parties’

**BACKGROUND**

**WHEREAS**

1. As a local authority, the Council has statutory duties and responsibilities in relation to providing education for pupils who are unable to access or who have lost or are at risk of losing a school place as a result of behavioral issues or who are hard to place.
2. In accordance with the terms of this Agreement the Council will delegate funding ( Delegated Budget ) to the Management Committee to meet the needs of these identified groups so that their needs are within the AC/PRU environment and the AC/PRU shall be responsible for the delivery of high quality and appropriate educational arrangements to achieve zero exclusion of at risk pupils from AC/PRUs
3. This Agreement establishes the relationship between the Parties and sets out sets out the terms of this Agreement and the framework within which day-to-day management of this Agreement will be undertaken.
4. This Agreement describes the underpinning principles, roles/responsibilities and accountabilities of the Parties and it is intended to represent the clear intentions of the parties in relation to the provision, implementation and administration of high quality educational programs to be provided within the AC/PRU environment to meet those needs.
5. DEFINITIONS AND INTERPRETATION
   1. In this Agreement the following terms shall have the following meanings:

**Alternative Education Placement:** A placement other than at mainstream school

**Approved Base;** a premises for education and training that meets KCCs requirements for Health & Safety and which is approved for the delivery of education Project.

**Authorised Representatives:** the persons respectively designated as such by the Council and the School, the first such persons being set out in 2

**Best Industry Practice:** the standards which fall within the upper quartile in the relevant industry for the provision of comparable Project which are substantially similar to the Project or the relevant part of them, having regard to factors such as the nature and size of the parties, the service levels, the term, the pricing structure and any other relevant factors.

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

**Commencement Date:** the date of this Agreement

**Data Processor:** shall have the same meaning as set out in the Data Protection Act 1998.

**Data Protection Legislation:** the Data Protection Act 1998 (DPA), the EU Data Protection Directive 95/46/EC, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000, the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner.

**Default Notice:** is defined in Clause 6.2.

**DBS:** Disclosure and Barring Service

**Delegated Budget Means:** that proportion of funding which is delegated by KCC being the sum of £ 1,177,523.00 to be paid to the AC/PRU in accordance with Schedule 2 of this Agreement.

**Dispute Resolution Procedure:** the procedure set out in Clause 24.

**Education Commissioning Plan:** plan that outlines how Project for young people may be procured

**Education Other Than at School:** placement, including home tuition, at any establishment other than mainstream school

**Environmental Information Regulations:** the Environmental Information Regulations 2004 (SI 2004/3391) together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.

**FOIA:** the Freedom of Information Act 2000, and any subordinate legislation made under the Act from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.

**Information:** has the meaning given under section 84 of FOIA.

**Initial Term: shall commence from the Commencement Date and shall come to an end on the third anniversary of the Commencement Date**

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

**Management Reports:** the reports to be prepared and presented by the Management Committee in accordance with Clause 16 and Schedule 1 to include a comparison of Achieved Service Levels with the Service Levels in the measurement period in question and measures to be taken to remedy any deficiency in Achieved Service Levels.

**Personal Data:** shall have the same meaning as set out in the Data Protection Act 1998.

**Prohibited Act:** the following constitute Prohibited Acts:

* + - 1. to directly or indirectly offer, promise or give any person working for or engaged by the Council a financial or other advantage to:
         1. induce that person to perform improperly a relevant function or activity; or
         2. reward that person for improper performance of a relevant function or activity;

b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement;

c) committing any offence:

* + - * 1. under the Bribery Act;
        2. under legislation creating offences concerning fraudulent acts;
        3. at common law concerning fraudulent acts relating to this Agreement or any other contract with the Council; or
        4. defrauding, attempting to defraud or conspiring to defraud the Council.

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

**Regulated Activity School:** shall have the same meaning as set out in section 6 of the Safeguarding Vulnerable Groups Act 2006.

**Request for Information:** a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the Environmental Information Regulations.

**School Party:** the AC/PRU's agents and contractors, including each Sub-Contractor.

**AC/PRU's Personnel:** all employees, staff, other workers, agents and consultants of the AC/PRU and of any Sub-Contractors who are engaged in the provision of the Project from time to time. .

**Service Users:** Young people who may be excluded from AC/PRU; or who may be out of AC/PRU pending placement in a mainstream AC/PRU.

**Project:** the Project to be delivered by or on behalf of the AC/PRU to the Service Users under this Agreement, as more particularly described in Schedule 1 (Specification).

**Sub-Contract:** any contract between the AC/PRU and a third party pursuant to which the AC/PRU agrees to source the provision of any of the Project from that third party.

**Sub-Contractor:** the contractors or AC/PRU that enter into a Sub-Contract with the AC/PRU.

**Term:** the period of the Initial Term as may be varied by:

* + - 1. any extensions to this Agreement which are agreed pursuant to Clause 4; or

the earlier termination of this Agreement in accordance with its terms.

**Termination Date:** the date of expiry or termination of this Agreement.

**Working Day:** Monday to Friday, excluding any public holidays in England and Wales.

* 1. Clause, schedule and paragraph headings shall not affect the interpretation of this Agreement.
  2. A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality)[ and that person's legal and personal representatives, successors and permitted assigns].
  3. The schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement and any reference to this Agreement includes the schedules.
  4. A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
  5. Words in the singular shall include the plural and vice versa.
  6. A reference to one gender shall include a reference to the other genders.
  7. A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
  8. A reference to writing or written includes faxes and e -mail.
  9. Any obligation in this Agreement on a person not to do something includes an obligation not to agree or allow that thing to be done.
  10. A reference to a document is a reference to that document as varied or novated (in each case, other than in breach of the provisions of this Agreement) at any time.
  11. References to clauses and schedules are to the clauses and schedules of this Agreement; references to paragraphs are to paragraphs of the relevant schedule.
  12. This Agreement shall be comprised of these terms and conditions and the Schedules 1 and 2

1. PURPOSE OF AGREEMENT
   1. The purpose of this Agreement is to:
      1. to ensure the best solution is designed and deployed for the effective provision and management of high quality Early Intervention and Prevention activities to reduce Permanent Exclusion including Alternative Curriculum places appropriate individualised programmes to meet learners’ needs.
         1. To ensure that its aims and activities are consistent with, and complement, those of the Education Commissioning Plan and the priorities set out in the 14-24 Learning Employment and Skills Strategy
         2. The parties will monitor performance by continuous review, data capture and analysis, termly monitoring meetings between the parties to this Agreement and a full service level Agreement review bi-annually
         3. specify basic financial arrangements;
         4. set out any other obligations of the parties in relation to the delivery of Project under the Agreement.
         5. fulfil the overall aims of the Agreement which is to meet the Council’s statutory obligation to provide education for young people who are unable to access or who have lost or are at risk of losing a AC/PRU place as a result of behavioural issues by providing the required educational programme in accordance with the specification contained in Schedule
   2. The AC/PRU shall use the Delegated Budget only for the delivery of the Programme and in accordance with the terms and conditions set out in this Agreement. The Delegated Budget shall not be used for any other purpose without the prior written agreement of the Council.
   3. The AC/PRU shall not make any significant change to the Programme without the Council's prior written agreement.
   4. Where the AC/PRU intends to apply to a third party for other funding for the Programme, it will notify the Council in advance of its intention to do so and, where such funding is obtained, it will provide the Council with details of the amount and purpose of that funding. The AC/PRU agrees and accepts that it shall not apply for duplicate funding in respect of any part of the Programme or any related administration costs that the Council is funding in full under this Agreement.
2. COMMENCEMENT AND DURATION
   1. TERM

This Agreement shall take effect on the Commencement Date and shall continue for the term of three years.

* 1. EXTENDING THE INITIAL TERM
     1. The Council may extend this Agreement beyond the Initial Term. If it intends not to do so it shall give the AC/PRU at least two years written notice of such intension before expiry of the initial term.

1. CONSENTS, AC/PRU'S WARRANTY AND DUE DILIGENCE
   1. The AC/PRU shall ensure that all Necessary Consents are in place to provide the Programme and the Council shall not (unless otherwise agreed) incur any additional costs associated with obtaining, maintaining or complying with the same.
   2. Where there is any conflict or inconsistency between the provisions of the Agreement and the requirements of a Necessary Consent, then the latter shall prevail, provided that the AC/PRU has made all reasonable attempts to obtain a Necessary Consent in line with the requirements of the Programme.
2. PAYMENT OF DELEGATED BUDGET
   1. Subject to clause 17 the Council shall pay the Delegated Budget to the AC/PRU Management Committee [in in accordance with Schedule 2, subject to the necessary funds being available when payment falls due. The AC/PRU agrees and accepts that payments of the Delegated Budget can only be made to the extent that the Council has available funds.
   2. No Delegated Budget shall be paid unless and until the Council is satisfied that such payment will be used for proper expenditure in the delivery of the Programme.
   3. The amount of the Delegated Budget shall not be increased in the event of any overspend by the AC/PRU in its delivery of the Programme.
   4. The AC/PRU shall promptly repay to the Council any money incorrectly paid to it either as a result of an administrative error or otherwise. This includes (without limitation) situations where either an incorrect sum of money has been paid or where Delegated Budget monies have been paid in error before all conditions attaching to the Delegated Budget have been complied with by the AC/PRU.
   5. The AC/PRU shall ensure that any interest that accrues on the Delegated Budget Payments prior to the Delegated Budget Payments being fully expended on the Programme is added to the amount of the Delegated Budget Payments and used solely to contribute to the cost of the Programme.
3. USE OF DELEGATED BUDGET
   1. The Delegated Budget shall be used by the AC/PRU for the delivery of the Programme in accordance with the agreed budget set out in Schedule 1
   2. Where the AC/PRU has obtained funding from a third party in relation to its delivery of the Programme (including without limitation funding for associated administration and staffing costs), the amount of such funding shall be included in the budget in Schedule 2 together with a clear description of what that funding shall be used for.
   3. The AC/PRU shall not use the Delegated Budget to:
      1. make any payment to employ members of the management committee ;
      2. purchase buildings or land; or
      3. pay for any expenditure commitments of the AC/PRU entered into before the Commencement Date,

unless this has been approved in writing by the Council.

* 1. The AC/PRU shall not spend any part of the Delegated Budget on the delivery of the Programme after the Term.

1. FINANCIAL ARRANGEMENTS
   1. The AC/PRU agrees that they shall be responsible for all costs associated with the provision of educational Programme including the costs of suitable premises, amenities, equipment and books. For the avoidance of doubt the Council shall not be responsible for the costs of suitable premises, amenities, equipment and books as set out in this clause.
   2. Subject to clause 6.1 the Council shall only be responsible for the cost of public transportation of the Service Users from their home addresses to the Approved Base ( as agreed by the parties in writing) where the core elements of the programme are to be delivered and the agreed standard cost of school meals to those Service Users entitled to free school meals. The AC/PRU hereby agrees that they shall be fully responsible for bearing the costs and shall be responsible for the provision of transport to other sites used to deliver other parts of the programme.
2. SERVICE STANDARDS
   1. Without prejudice to clause 8, the AC/PRU shall provide the Programme, or procure that they are provided:
      1. with reasonable skill and care and in accordance with the Council's policies and Specifications set out in Schedule 1; and
      2. in accordance with all Applicable Laws.
   2. Without limiting the general obligation set out in clause 8.1, the AC/PRU shall (and shall procure that the AC/PRU 's Personnel shall):
      1. at all times comply with the provisions of the Human Rights Act 1998 in the performance of this Agreement. The AC/PRU shall also undertake, or refrain from undertaking, such acts as the Council requests so as to enable the Council to comply with its obligations under the Human Rights Act 1998; and
3. ACCOUNTS AND RECORDS
   1. The Delegated Budget shall be shown in the AC/PRU's accounts as a restricted fund and shall not be included under general funds.
   2. The AC/PRU shall keep separate, accurate and up-to-date accounts and records of the receipt and expenditure of the Delegated Budget monies received by it.
   3. The AC/PRU shall keep all invoices, receipts, and accounts and any other relevant documents relating to the expenditure of the Delegated Budget for a period of at least six years following receipt of any Delegated Budget monies to which they relate. The Council shall have the right to review, at the Council's reasonable request, the AC/PRU's accounts and records that relate to the expenditure of the Delegated Budget and shall have the right to take copies of such accounts and records.
   4. The AC/PRU shall provide the Council with a copy of its annual accounts within six months (or such lesser period as the Council may reasonably require) of the end of the relevant financial year in respect of each year in which the Delegated Budget is paid.
   5. The AC/PRU shall comply and facilitate the Council's compliance with all statutory requirements as regards accounts, audit or examination of accounts, annual reports and annual returns applicable to itself and the Council.
4. MONITORING AND REPORTING
   1. The AC/PRU shall closely monitor the delivery and success of the Programme throughout the Term to ensure that the aims and objectives of the Programme are being met and that this Agreement is being adhered to.
   2. The Authorised Representatives shall meet in accordance with the details set out in Schedule 2 and the AC/PRU shall, at each meeting, present its previously circulated Management Reports [and Financial Reports] in the format set out in that Schedule.
   3. The AC/PRU shall permit any person authorised by the Council for the purpose to visit the AC/PRU once every quarter to monitor the delivery of the Project. Where, in its reasonable opinion, the Council considers that additional visits are necessary to monitor the Project, it shall be entitled to authorise any person to make such visits on its behalf.
   4. The AC/PRU shall provide the Council with a final report on completion of the Term which shall confirm whether the Project has been successfully and properly completed.
5. SAFEGUARDING CHILDREN AND VULNERABLE ADULTS
   1. The parties acknowledge that the AC/PRU is a Regulated Activity School with ultimate responsibility for the management and control of the Regulated Activity provided under this Agreement and for the purposes of the Safeguarding Vulnerable Groups Act 2006.
   2. The AC/PRU shall ensure that all individuals engaged in the provision of the Programme are:
      1. subject to a valid enhanced disclosure check undertaken through the Disclosure and Barring Service including a check against the adults' barred list or the children's barred list, as appropriate; and
      2. the AC/PRU shall monitor the level and validity of the checks under this clause 14.2 for each member of staff.
   3. The AC/PRU warrants that at all times for the purposes of this Agreement it has no reason to believe that any person who is or will be employed or engaged by the AC/PRU in the provision of the Programme is barred from the activity in accordance with the provisions of the Safeguarding Vulnerable Groups Act 2006 and any regulations made thereunder, as amended from time to time.
   4. The AC/PRU shall immediately notify the Council of any information that it reasonably requests to enable it to be satisfied that the obligations of this clause 14 have been met.
   5. The AC/PRU shall refer information about any person carrying out the Programme to the DBS where it removes permission for such person to carry out the Programme (or would have, if such person had not otherwise ceased to carry out the Programme) because, in its opinion, such person has harmed or poses a risk of harm to any [service users/children/vulnerable adults].
   6. The AC/PRU shall not employ or use the Programme of any person who is barred from, or whose previous conduct or records indicate that they would not be suitable to carry out Regulated Activity or who may otherwise present a risk to service users.
6. PROPERTY
   1. The Council is the [registered freehold] owner of the Property
   2. The Council permits the AC/PRU to occupy the Property for the duration of this agreement to enable the AC/PRU to comply with its obligations in this agreement such occupation to be in common with the Council and all others authorised by the Council (in so far as this is not inconsistent with the rights given to the AC/PRU under this agreement)
   3. The AC/PRU acknowledges and confirms that it shall occupy the Property as a licensee and that no relationship of landlord and tenant is created between the Council and the AC/PRU by this agreement
   4. The Council retains control, possession [and management] of the Property and the AC/PRU has no right to exclude the Council from the Property.
   5. The licence to occupy granted by this agreement is personal to the AC/PRU.
   6. The AC/PRU must vacate the Property immediately upon termination of this agreement.
7. CONFIDENTIALITY
   1. Subject to clause 18 (Freedom of Information), each party shall during the term of this Agreement and thereafter keep secret and confidential all Intellectual Property Rights or Know-How or other business, technical or commercial information disclosed to it as a result of the Agreement and shall not disclose the same to any person save to the extent necessary to perform its obligations in accordance with the terms of this Agreement or save as expressly authorised in writing by the other party.
   2. The obligation of confidentiality contained in this clause shall not apply or shall cease to apply to any Intellectual Property Rights, Know-How or other business, technical or commercial information which:
      1. at the time of its disclosure by the disclosing party is already in the public domain or which subsequently enters the public domain other than by breach of the terms of this Agreement by the receiving party;
      2. is already known to the receiving party as evidenced by written records at the time of its disclosure by the disclosing party and was not otherwise acquired by the receiving party from the disclosing party under any obligations of confidence; or
      3. is at any time after the date of this Agreement acquired by the receiving party from a third party having the right to disclose the same to the receiving party without breach of the obligations owed by that party to the disclosing party.
8. FREEDOM OF INFORMATION
   1. The AC/PRU acknowledges that the Council is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and co-operate with the Council (at the AC/PRU's expense) to enable the Council to comply with these information disclosure requirements.
   2. The AC/PRU shall and shall procure that its Sub-Contractors shall:
   3. transfer the Request for Information to the Council as soon as practicable after receipt and in any event within two Working Days of receiving a Request for Information;
   4. provide the Council with a copy of all Information in its possession or power in the form that the Council requires within five Working Days (or such other period as the Council may specify) of the Council requesting that Information; and
   5. provide all necessary assistance as reasonably requested by the Council to enable the Council to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.
   6. The Council shall be responsible for determining at its absolute discretion whether the Information:

18.6.1is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations; and/or

* 1. 18.6.2 is to be disclosed in response to a Request for Information.
  2. 18.7 In no event shall the AC/PRU respond directly to a Request for Information unless expressly authorised to do so by the Council.
  3. 18.8 The AC/PRU acknowledges that the Council may, acting in accordance with the Secretary of State for Constitutional Affairs' Code of Practice on the discharge of public authorities' functions under Part 1 of FOIA (issued under section 45 of the FOIA, November 2004), be obliged under the FOIA or the Environmental Information Regulations to disclose Information:
  4. 18.8.1without consulting with the AC/PRU; or
  5. 18.8.2following consultation with the AC/PRU and having taken its views into account,
  6. provided always that where Clause 18.6 applies the Council shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the AC/PRU advanced notice, or failing that, to draw the disclosure to the AC/PRU's attention after any such disclosure.
  7. The AC/PRU shall ensure that all Information produced in the course of the Agreement or relating to the Agreement is retained for disclosure and shall permit the Council to inspect such records as requested from time to time.
  8. The AC/PRU acknowledges that any lists or Schedules provided by it outlining Confidential Information are of indicative value only and that the Council may nevertheless be obliged to disclose Confidential Information in accordance with Clause 22.5

1. DATA PROTECTION
   1. The AC/PRU shall (and shall procure that any of its AC/PRU's Personnel and Sub – Contractor involved in the provision of the Agreement shall) comply with any notification requirements under the DPA and both Parties shall duly observe all their obligations under the DPA, which arise in connection with the Agreement.
   2. Notwithstanding the general obligation in Clause 19.1, where the AC/PRU is processing Personal Data as a Data Processor for the Council, the AC/PRU shall ensure that it has in place appropriate technical and contractual measures to ensure the security of the Personal Data (and to guard against unauthorised or unlawful processing of the Personal Data and against accidental loss or destruction of, or damage to, the Personal Data), as required under the Seventh Data Protection Principle in Schedule 1 to the DPA; and
      1. provide the Council with such information as the Council may reasonably require to satisfy itself that the AC/PRU is complying with its obligations under the DPA;
      2. promptly notify the Council of any breach of the security measures required to be put in place pursuant to Clause 19.2; and
      3. ensure it does not knowingly or negligently do or omit to do anything which places the Council in breach of the Council's obligations under the DPA.
   3. The provisions of this Clause shall apply during the continuance of the Agreement and indefinitely after its expiry or termination.
2. WITHHOLDING, SUSPENDING AND REPAYMENT OF DElegated BUDGET
   1. The Council's intention is that the Delegated Budget will be paid to the AC/PRU in full. However, without prejudice to the Council's other rights and remedies, the Council may at its discretion withhold or suspend payment of the Delegated Budget [and/or require repayment of all or part of the Delegated Budget] if:
      1. the AC/PRU uses the Delegated Budget for purposes other than those for which they have been awarded;
      2. the AC/PRU permanently excludes a Service User and/or Service Users from the AC/PRU the delivery of the Programme does not start within [6 months] of the Commencement Date and the AC/PRU has failed to provide the Council with a reasonable explanation for the delay;
      3. the Council considers that the AC/PRU has not made satisfactory progress with the delivery of the Project;
      4. the AC/PRU is, in the reasonable opinion of the Council, delivering the Programme in a negligent manner;
      5. the AC/PRU obtains duplicate funding from a third party for the Programme;
      6. the AC/PRU obtains funding from a third party which, in the reasonable opinion of the Council, undertakes activities that are likely to bring the reputation of the Programme or the Council into disrepute;
      7. the AC/PRU provides the Council with any materially misleading or inaccurate information;
      8. the AC/PRU commits or committed a Prohibited Act;
      9. any member of the governing body, employee or volunteer of the AC/PRU has (a) acted dishonestly or negligently at any time and directly or indirectly to the detriment of the Programme or (b) taken any actions which, in the reasonable opinion of the Council, bring or are likely to bring the Council's name or reputation into disrepute;
      10. the AC/PRU ceases to operate for any reason, or it passes a resolution (or any court of competent jurisdiction makes an order) that it be wound up or dissolved (other than for the purpose of a bona fide and solvent reconstruction or amalgamation);
      11. the AC/PRU becomes insolvent, or it is declared bankrupt, or it is placed into receivership, administration or liquidation, or a petition has been presented for its winding up, or it enters into any arrangement or composition for the benefit of its creditors, or it is unable to pay its debts as they fall due; or
      12. the AC/PRU fails to comply with any of the terms and conditions set out in this Agreement and fails to rectify any such failure within 30 days of receiving written notice detailing the failure.
   2. Wherever under the Agreement any sum of money is recoverable from or payable by the AC/PRU (including any sum that the AC/PRU is liable to pay to the Council in respect of any breach of the Agreement), the Council may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the AC/PRU under the Agreement or under any other agreement or contract with the Council.
   3. [The AC/PRU shall make any payments due to the Council without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise.]
   4. Should the AC/PRU be subject to financial or other difficulties which are capable of having a material impact on its effective delivery of the Programme or compliance with this Agreement it will notify the Council as soon as possible so that, if possible, and without creating any legal obligation, the Council will have an opportunity to provide assistance in resolving the problem or to take action to protect the Council and the Delegated Budget monies.
3. ANTI-DISCRIMINATION
   1. The AC/PRU shall not unlawfully discriminate within the meaning and scope of any law, enactment, order, or regulation relating to discrimination (whether in race, gender, religion, disability, sexual orientation, age or otherwise) in employment.
   2. The AC/PRU shall take all reasonable steps to secure the observance of clause 13.1 by all servants, employees or agents of the AC/PRU and all suppliers and sub-contractors engaged on the Programme.
4. WARRANTIES
   1. The AC/PRU warrants, undertakes and agrees that:
      1. it has all necessary resources and expertise to deliver the Programme (assuming due receipt of the Delegated Budget);
      2. it has not committed, nor shall it commit, any Prohibited Act;
      3. it shall at all times comply with all relevant legislation and all applicable codes of practice and other similar codes or recommendations, and shall notify the Council immediately of any significant departure from such legislation, codes or recommendations;
      4. it shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to employees and other persons working on the Programme;
      5. it has and shall keep in place adequate procedures for dealing with any conflicts of interest;
      6. it has and shall keep in place systems to deal with the prevention of fraud and/or administrative malfunction;
      7. all financial and other information concerning the AC/PRU which has been disclosed to the Council is to the best of its knowledge and belief, true and accurate;
      8. it is not subject to any contractual or other restriction imposed by its own or any other organisation's rules or regulations or otherwise which may prevent or materially impede it from meeting its obligations in connection with the Delegated Budget;
      9. it is not aware of anything in its own affairs, which it has not disclosed to the Council or any of the Council's advisers, which might reasonably have influenced the decision of the Council to make the Delegated Budget on the terms contained in this Agreement; and
      10. since the date of its last accounts there has been no material change in its financial position or prospects.
5. INSURANCE AND LIMITATION OF LIABILITY
   1. In the event that the AC/PRU have not taken out cover under KCC’s Insurance Scheme and is therefore as a consequence of this not covered by KCC’s Insurance Scheme then the AC/PRU shall ensure that is shall effect and maintain with a reputable insurance company a policy or policies in respect of all risks which may be incurred by the AC/PRU, arising out of the AC/PRU's performance of the Agreement, including death or personal injury, loss of or damage to property or any other loss (the Required Insurances) PROVIDED THAT the AC/PRU have taken out cover under KCC’s Insurance Scheme they would be covered under KCC’s Insurance Scheme then this clause 23 would not apply.
   2. The Required Insurances referred to above include (but are not limited to):
      * 1. public liability insurance with a limit of indemnity of not less than [ten] million pounds [(£10,000,000)] in relation to any one claim or series of claims arising from the Service; and
        2. employer's liability insurance with a limit of indemnity of not less than [five] million pounds [(£5,000,000)] in relation to any one claim or series of claims arising from the Service.
   3. The AC/PRU shall (on request) supply to the Council a copy of such insurance policies and evidence that the relevant premiums have been paid.
   4. In the event that the AC/PRU has not taken out cover under KCC’s Insurance Scheme and is therefore as a consequence of this not covered by KCC’s Insurance Scheme then the Council accepts no liability for any consequences, whether direct or indirect, that may come about from the AC/PRU providing the Project, the use of the Delegated Budget or from withdrawal of the Delegated Budget and the AC/PRU shall indemnify and hold harmless the Council, its employees, agents, officers or sub-contractors with respect to all claims, demands, actions, costs, expenses, losses, damages and all other liabilities arising from or incurred by reason of the actions and/or omissions of the AC/PRU in relation to the provision of the Programme, the non-fulfilment of obligations of the AC/PRU under this Agreement or its obligations to third parties. PROVIDED THAT if the AC/PRU has taken out cover under KCC’s Insurance Scheme and is therefore covered under KCC’s Insurance Scheme then this clause 23 would not apply.
   5. Subject to clause 23.2, the Council's liability under this Agreement is limited to the payment of the Delegated Budget.

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1. FORCE MAJUERE

Neither party shall be in breach of this agreement nor liable for delay in performing, or failure to perform, any of its obligations under this agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances the time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed

1. ASSIGNMENT

The AC/PRU may not, without the prior written consent of the Council, assign, transfer, sub-contract, or in any other way make over to any third party the benefit and/or the burden of this Agreement or, except as contemplated as part of the Project, transfer or pay to any other person any part of the Delegated Budget.

In the event that the AC/PRU should in any way assign, transfer or sub – contract this Agreement to a third party it shall require that the third party as a condition their Agreement, should maintain adequate insurance cover as required under clause 23 of this Agreement with a reputable insurer. The AC/PRU shall provide such copies of this evidence as it has obtained to the Council within 5 Working Days of written demand

1. WAIVER

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

1. NOTICES
   1. All notices and other communications in relation to this Agreement shall be in writing and shall be deemed to have been duly given if personally delivered, e-mailed, or mailed (first class postage prepaid) to the address of the relevant party named below, or as otherwise notified in writing:

For the AC/PRU: Sean Heslop, Chair of the Management Committee

For the Council: Ming Zhang, Head of PRUs, Inclusion and Attendance

If personally delivered or if e-mailed all such communications shall be deemed to have been given when received (except that if received on a non-working day or after 5.00 pm on any working day they shall be deemed received on the next working day) and if mailed all such communications shall be deemed to have been given and received on the second working day following such mailing.

1. DISPUTE RESOLUTION
   1. In the event of any dispute arising under the terms of this Agreement the Parties shall attempt in good faith to resolve such disputes by Agreement of the Parties’ authorised representatives at a meeting convened for this purpose.
   2. If such dispute cannot be solved by the Parties under the provisions of clause 29.1 within 30 days, it shall be referred for review and negotiation between the Parties’ Chief Executive Officers.
   3. If the matter is not resolved under the provisions of Clauses 29.1 and 29.2 the dispute shall be referred to a mediator as the Parties shall jointly nominate. If the Parties shall fail to agree on the selection of a mediator within 14 days after the date of expiry of the 30 days period specified in Clause 18.2 the mediator shall be nominated at the request of either Party by the President for the time being of the CEDR (Centre for Dispute Resolution).
   4. The result of such mediation shall, except in the case of manifest error, be final and binding upon Parties.
   5. The Parties shall ensure that the mediation starts within 20 Working Days of nomination of the mediator under Clause 29.3. Both Parties shall pay the mediator’s fee in equal shares.
   6. The provisions of this Clause 29 are without prejudice to the rights of the Parties expressed elsewhere in this Agreement and the use of the dispute resolution procedures set out in this Clause 29 shall not delay or take precedence over the provisions for termination
2. NO PARTNERSHIP OR AGENCY

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

1. 9. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

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

1. 10. GOVERNING LAW

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

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

EXECUTED as a DEED

by the affixing of the COMMON SEAL of

THE KENT COUNTY COUNCIL

in the presence of: .................................

Authorised Signatory

SIGNED AS A DEED BY

[insert name of authorised signatory]

acting on behalf of the MANAGEMENT COMMITTEE OF ………

.................................

Authorised Signatory

SIGNED AS A DEED BY

[insert name of authorised signatory]

acting on behalf of the MANAGEMENT COMMITTEE OF…………

.................................

Authorised Signatory

Schedule 1 Specification

a. Introduction

Kent County Council wishes to meet its statutory obligations to provide education for pupils who are unable to access or who have lost or are at risk of losing a AC/PRU place as a result of behavioural issues or who are hard to place.

Most of these young people have complex needs that require the AC/PRU providers to work in cooperation with other agencies as well as parents/carers and the young people themselves. It is important, therefore, that this Agreement is seen in the context of a close working partnership between Kent County Council and the AC/PRUs and providers of services to this group of young people.

The aims of the district provision will be to:

To work as a district with at risk students to achieve zero exclusions through working in partnership to

1. provide appropriate educational arrangements and a full curriculum offer that meet pupils’ educational needs, and their personal and social development needs, as well as supporting their successful transition into adult life and, in particular, the take up of further education, training or employment on leaving full time education

2. provide appropriate individualised programmes to meet learners’ educational needs as appropriate.

3. ensure all young people who need multi-agency support have the protection of a plan, delivered and monitored through the CAF process

4. direct provision to increase motivation, self esteem, improved basic and employability skills and life and social skills as a result of the provision

5. ensure learners achieve maths and English GCSE, other core GCSE and vocational qualifications, that enable them to progress to post 16 learning and training and the opportunity to improve their level of qualifications

6. ensure that all the young people within the district are well and appropriately supported to find education, employment or training following the last year of statutory schooling. Ensure that all students engage with KC4U to ensure a destination under the September Guarantee

7. ensure all young people can access a full timetabled curriculum each week (usually 25 hours)

b. Key Requirements of the Delegated Provision

The Delegated Providers agrees that they shall:

8. offer a full time provision (usually 25 hours).

9. ensure that the students’ capacity to access this provision will be carefully assessed in accordance with current educational guidance and good practice. Wherever possible, the focus of provision should be on reintegration of the pupil to mainstream education; and appropriate plans to support reintegration at the earliest opportunity.

10. where students are unable to access full time provision, the Provider will inform Kent County Council of the reasons through the reports and during meetings.

11. ensure programmes are educational and focused on achieving good outcomes in recognised qualifications, supporting the learning of new and relevant skills and acknowledged accreditation and helping the Service User to overcome impediments to successful learning and achievement.

12. where appropriate, educational programmes should include opportunities for vocational learning that may be provided either on site or through other Providers or employers under appropriate safeguards.

13. take all reasonable steps to integrate the educational plan with those of other relevant services such as, Family and Social Care, Youth Offending Teams and Kent Integrated Adolescent Support Service (KIASS) etc.

14. ensure that all elements of the programme are accessible to the student and are sensitive to their ethnic, religious and cultural backgrounds and additional or special needs they may have.

15. provide statistical data linked to key performance indicators eg progress, attendance, behavior and written reports for scrutiny at a termly ACP management meeting attended by Kent County Council representative. These reports should be available for Ofsted scrutiny

c. Outcomes

Provision should be designed to achieve the following outcomes:-

16. zero permanent exclusions

17. improved and increasingly positive behaviour patterns

18. a pattern of improved regular attendance

19. the skills to learn and work individually and in a group

20. completion of an educational course, which is appropriate to individual needs and abilities, and which results in qualifications that reflect high expectations of student performance. Within this it will be important to identify a specific focus on developing and achieving a recognised level of age appropriate skill and qualification in literacy and numeracy, English and mathematics (currently grade C or above in GCSE maths and English)

21. accredited educational awards / qualifications at Key Stage 4 (usually GCSE) to a level that equals or exceeds that indicated by the trajectory of prior attainment

22. an immediate post 16 destination that includes learning or employment with training, and an agreed pathway to age 18

d. Description of Project

23. The Delegated Providers shall make available a full time high quality education programme for a minimum of 190 days per academic year. The term dates should be set within those for Kent AC/PRUs.

24. Any proposal that part-time attendance should continue beyond 10 term-time days must be agreed with the nominated local Council officer and accompanied by an appropriate risk assessment.

25. The Delegated Provider may combine the provision of core academic teaching with planned learning opportunities offsite (for example in a college, vocational training centre, work experience placement or educational visits), subject to the Delegated Provider ensuring appropriate supervision, health and safety, standards and indemnifying insurance are in place.

26. The core curriculum should cover Maths, English, Science, personal, social and health education, including sex and relationships education, CEIAG and PE, with an extended curriculum which reflects the National Curriculum and is relevant to the students’ needs and prior attainment and background study.

27. Each student should have an active education plan (emerging from a completed CAF) and meeting the following criteria:

1. the first education plan should be prepared within 15 term-time days of the young person being admitted to the programme.

2. Ideally, the plan will be agreed by the young person and their parents or carers.

3. the plan should lay out key educational goals, including those for achieving reasonable levels of literacy and numeracy, but should also cover other aspects of the young person’s development including their emotional well-being, health needs and behavioural needs and where significant or necessary, future planning e.g. careers interviews.

4. plans should be capable of providing evidence of progress in learning and achievement on a regular basis, so that the monitoring of these can be used to adjust teaching and learning to improve progress

5. the Delegated Provider will follow the Kent & Medway Information Sharing Agreement in sharing the plan with outside agencies.

6. the design of and the consultation about the plan should aim to maximise the possibilities and opportunities for young people to exercise informed choice and to develop their independence.

28. The Delegated Provider should inform KCC at an early stage of any major situation or problem with a student that is likely to result in Permanent Exclusion in order to allow the opportunity of additional support to be put in place.

29. In providing the service to young people and their families the Provider will need to be mindful of ways in which they can support the Council to meet its obligations to eliminate unlawful discrimination, promote equality of opportunity and promote good relations between people of different racial groups.

e. Safeguarding and Quality Assurance

The provider is expected to:

30. engage with the range of support Agencies intended to ensure that Service Users and their families are able to fully engage with education provision

31. maintain clear health and safety policies and ensure their implementation to safeguard the health and well being of students undertaking programmes of activity both on and off site.

f. Commitment to Partnership

Kent County Council recognises that the young people who will benefit from this provision are amongst the most needy and challenging. Further, it recognises that there may be unpredictable events and circumstances that surround the referral of particular students or provision for those that are already enrolled that require effective joint problem solving, reciprocal goodwill and exceptionally deviations from the exact arrangements agreed. Council wishes to signal a strong commitment to work in partnership with the Provider, in which the reciprocal stresses and demands of both parties are acknowledged.

32. In this context, KCC wishes to ensure the continuation of Local Inclusion Forums and is committed to the maintenance of In Year Fair Access Protocols. KCC will support these by:

1. ensuring the attendance of Inclusion Officers/SEN Officers where appropriate and in order to develop and maintain the Fair Access Protocol.

2. The County Council shall also work to support the development of local partnership activity by:

1. helping AC/PRUs to develop local options

2. supporting processes for collective quality assurance and outcome analysis and ensuring that these are fair, reasonable and transparent.

3. helping to establish processes for prioritisation of cases

4. developing an approved provider framework for alternative provision from a range of providers through a quality assured competitive tendering process

**Service levels**

g. Performance Monitoring

33. The Providers should report on the following targets on a termly basis

|  |  |
| --- | --- |
| **Target encompassing all pupils and outcomes** | **Target** |
| Number of students Permanently Excluded in the district | 0 |
| Improved attendance for all students against their baseline on entry, expressed as a percentage of sessions each student attended out of the total possible sessions. | 100% making improvement or staying above the attendance rate of 95% |
| All students to be on the role of a AC/PRU | 100% |
| Increase percentage of students reintegrated back to their host school |  |
| All at risk students identified by the district providers complete the programme at the end of Year 11 with recognised qualifications as defined by government accountabilities eg Progress 8 | 95% |
| Students to have developed the skills which support them in learning to work both independently and as part of a group | 100% |
| Students to have completed a course appropriate to individual needs, abilities, qualifications and their key stage | 100% |
| Students to have an agreed destination at post 16 as part of the September Guarantee. | 100% |

**Contract management**

h. AUTHORISED REPRESENTATIVES

36. The Council's initial Authorised Representative: Ming Zhang

37. The Provider's initial Authorised Representative: Sean Heslop

Monitoring arrangements for the performance management of the Service include:

38. the Provider will support the young people to be involved in the monitoring and development of the provision and to ensure that their voices are heard during decision making processes. This may be affected by the use of a pupils’ forum / AC/PRU council.

39. the Provider will prepare an Annual Report to be presented to Council in the autumn term of each year (see below).being subject to OFSTED inspections

1. regular monitoring visits by Council

The Annual Report will in most cases be based upon the reports made to the Management Committee during the course of the year, but they should include the following data:

2. details of the number of placements delivered;

3. a summary of the quality of the provision made, eg quality of teaching and the progress achieved by all learners;

4. information from quality assurance systems;

5. details of most recent inspections conducted by Fire safety/Environmental Health;

6. an annual record of attendance for all students and analysis to show improvement;

7. an account and evaluation of the effectiveness of any agency or multi-agency support provided to the students, including use of the CAF and progress on agreed outcomes;

8. a summary of re-integration figures and analysis of how this has improved over time;

9. an account of the work of the pupils’ forum / AC/PRU council and how this has helped to develop the overall programme;

10. a detailed account of work related support and experience and how students were supported in work placements;

11. a summary and analysis of the qualifications and accreditation achieved by all students, with comparative data;

12. an account of where students have progressed or otherwise after leaving alternative provision;

13. feedback from other agencies;

14. the result of consulting parents/carers and students on their views of the strengths and weaknesses of the arrangements that have been made for them;

15. key strengths and areas of improvement for the provision and joint working arrangements relevant to the service delivered (self-evaluation and development plan);

16. a qualitative and quantitative analysis of any complaints made;

17. an annual meeting between Council and the Provider will take place. The monitoring report should be sent to Council two weeks prior to this meeting.

In addition:

18. Representative(s) of Council may undertake ad hoc visits, make observations and discuss with the students the provision and their learning. Any concerns will be discussed with the Provider.

19. The development plan will be devised by the Provider and agreed with Council setting clear objectives and targets. This will be agreed on a termly basis in order to achieve the main performance targets and quality of provision.

Schedule 2 Payment Schedule

1. The Delegated Budget will be committed at the start of each financial year, and paid in monthly instalments. The amount of the funding will vary between districts, and is decided according to the formula that has been agreed by all stakeholders.

2. Where budgets are delegated to AC/PRUs for the purpose of commissioning any other service, the budget will also be committed at the commencement of each financial year and paid at monthly interval

Appendix 1 Outline of Budget Allocations

|  |  |
| --- | --- |
| **Breakdown of Budget Allocations** | |
| **Delegated Districts** | **Allocation** |
| Dartford, Gravesend & N. Sevenoaks | £2,048,759.00 |
| Tonbridge, Tunbridge Wells & S. Sevenoaks | £1,301,759.00 |
| Thanet & Dover | £2,572,935.00 |
| Maidstone & Malling | £1,494,010.00 |
| Swale | £1,343,363.00 |
| Shepway | £1,177,523.00 |
| **Total** | **£9,938,349.00** |