

**Dated 1<sup>st</sup> July 2016**

-----

**Service Level Agreement**

**In respect of Special Educational Needs provision  
at Blackhorse Primary School**

between

**Blackhorse Primary School**

and

**South Gloucestershire District Council**

**This Service Level Agreement** is dated September 2016

## **Parties**

- (1) The Governing Body of Blackhorse Primary School, Blackhorse Lane, Emersons Green South Gloucestershire (the **Governors**).
- (2) South Gloucestershire District Council of The Civic Centre , High Street, Kingswood, Bristol BS15 0DQ (**Council**),

each a **Party** and together the **Parties**.

## **Background**

- (A) Under Part IV of the Education Act 1996, the Children and Families Act 2014 and the Equality Act 2010 (**Acts**) the Council is required to make arrangements for suitable full time education for pupils with special educational needs (**SEN**).
- (B) A Resource Base comprising accommodation and facilities for meeting the SEN of pupils in relation to their communication and interaction needs (the **Resource Base**) has been provided by the Council at the Blackhorse Primary School site as a capital investment for helping to meet the SEN of children and young people in South Gloucestershire.
- (C) Pursuant to its statutory duties, the Council has previously made revenue contributions towards a Resource Base at Blackhorse Primary School (**School**) to meet pupil's SEN needs (**Resource Base**) in respect of a particular range of SEN (as identified in clause 2.1).
- (D) This Service Level Agreement sets out the arrangements agreed between the Council and the Governors for the development and operation of the Resource Base. The Parties agree that in the event of the School converting to an Academy (or other category of school as may be permitted by law) the burden and benefit of the rights and obligations of the School, in this Agreement, shall transfer to and be performed by the relevant Academy trust (or other permitted category of school as may be permitted by law) and shall be contained in a relevant Commercial Transfer Agreement (or similar agreement) as part of that conversion.

## **Agreed terms**

### **1 Interpretation**

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

1.2 Definitions:

**Global Mediation** means the Resource Base for Effective Dispute Resolution

<b>Code of Practice</b>	means the Department for Education's Code of Practice for Special Educational Needs (2015) or any successor statutory guidance.
<b>Commencement Date</b>	<b>means September 2016</b>
<b>DfE</b>	means Department for Education.
<b>Month:</b>	means a calendar month.
<b>School</b>	means Blackhorse Primary School
<b>Schools Forum</b>	means South Gloucestershire Schools' Forum
<b>SEN Services:</b>	has the meaning given in clause 2.1.

**Statement, Statemented Statementing and Education and Health Care plans (EHC plans)** have the meanings attributed to them in the Education Act 1996 and shall as appropriate include the corresponding references to Education Health and Care Plans under the Children and Families Act 2014.

**Supplemental Needs Agreement** means the agreement entered into by Parties from time to time under clause 2.5

- 1.3 Clause headings shall not affect the interpretation of this Agreement.
- 1.4 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time, and includes all subordinate legislation made from time to time under that statute or statutory provision.
- 1.8 A reference to **writing** or **written** includes faxes and e-mail.

## **2 Provision of SEN Services**

- 2.1 Subject to the terms of the Funding Agreement, the Governors will provide appropriate education at the Resource Base for up to 22 pupils from Year R to Year 6 (the "**Capacity**"). The suggested maximum number per year group is 3:
  - 2.1.1 with additional needs where the primary SEN is communication and interaction and:

- Autistic Spectrum needs of a nature that would allow integration with support into mainstream activities for at least part of the week by the first Annual Review;
- Difficulties in acquiring language skills arising from a specific disorder;
- Behavioural difficulties occurring as a result of the primary needs that could reasonably be expected to abate once the primary needs are met, (NB this specifically excludes pupils whose primary need is social emotional and mental health needs)

2.1.2 who have been placed by the Council pursuant to the statutory SEN assessment process, together “the SEN Services”

2.2 Notwithstanding clause 2.1, pupils may be placed in the Resource Base by the Council over and above its above stated capacity for the Resource Base with the prior written consent of the Governors. In placing pupils over the number of agreed pupils, the Council and the Governors will have regard to the resources available to the SEN Services and the overall number of pupils with statements or Education Health Care plans within the School.

2.3 The Capacity may be varied by written agreement between the Governors and the Council and in accordance with statutory admission arrangements. The Parties will review the Capacity at least once every two years and any changes shall reflect long term trends rather than short term cyclical variations in pupil numbers.

2.4 The SEN Services will include specific programmes (including one-to-one and group work where appropriate) designed for pupils with SEN (as in clause 2.1) by specialist staff members. The contents and format of these programmes will be determined by the Governors. The programmes will ensure that provision is made in accordance with Part 3 of the Statement of SEN and/or relevant section of the Education Health Care plan of each pupil on roll at the Resource Base.

2.5 The Parties agree to enter into a supplemental *Key Performance Indicators* agreement in the form of Appendix 1 to this Agreement. The School will be required to provide the Council with a brief annual report providing progress against the Key Performance Indicators for their School.

2.6 The Parties agree that the Supplemental Needs Agreement may be amended from time to time by the Council with the prior written consent of the Governors (such consent not to be unreasonably withheld or delayed).

### **3 Admissions**

3.1 The Council shall be responsible for identifying South Gloucestershire pupils with additional needs in relation to Communication and Interaction: social communication specifically autism and high levels of anxiety, who have a Statement of Special Educational Need or an Education, Health and Care plan.

3.2 In determining the suitability of a placement at the Resource Base, the Council shall consult with the Governors (15 day consultation period), the pupil, the pupil's parents or legal guardians, and relevant professionals. The Parties agree to utilise the statutory assessment process, in accordance with the Code of Practice.

- 3.3 The Council will specify, in each pupil's Statement or Education Health Care plan, the nature of the provision required to meet their educational needs. All relevant services supplied at the Resource Base will be agreed between the Council and the Governors.
- 3.4 The Council may consult with the Governors and request an Assessment Placement. Assessment places are time limited and not a permanent placement at the Resource Base. Assessment placements will be rare and only be made in line with the Council's Assessment Placements protocol.
- 3.5 The Council will attend by invitation review meetings for reception pupils (up to 2 per year) where there is a concern that the placement may need to be reconsidered. The school will collect baseline data on all children entering reception in the Resource Base in order to measure progress; this will be discussed with the parents at the review meeting.
- 3.6 If another local authority wishes to place a pupil at the Resource Base, the Governors may agree to the placement if:
- 3.6.1 there are vacant places remaining at the Resource Base within the Capacity;
  - 3.6.2 the Resource Base is able to meet the provision set out in the pupil's Statement of SEN (or Education Health Care plan) without disadvantage to the South Gloucestershire pupils already at the Resource Base and the placing local authority provides all of the relevant funding for the place including any top up payments and additional SEN Services; and
  - 3.6.3 the placement is agreed with the Council and does not result in a breach in overall Resource Base numbers.

#### **4 Admission objections, appeals, attendance and terminations of placement**

- 4.1 In the event that the Governors considers that the Council has acted unreasonably in naming the School Resource Base in a pupil's Statement or Education Health Care plan, the Governors may seek a determination from the Secretary of State to that effect, and an order that the Council shall reconsider its decision. Any such order issued by the Secretary of State shall be final and binding on the Council subject to any right of appeal by the relevant pupil's parent or guardian to the First-tier Tribunal (Special Educational Needs and Disability) (**Tribunal**).
- 4.2 In the event that an appeal is brought to the First-tier Tribunal, and subject to its own legal obligations, the Governors agrees to provide the Council such information as is reasonably necessary in order to allow it to respond to the appeal. If requested by the Council, the Governors will also make available an appropriate member of staff to attend the Tribunal as a witness and the Council shall pay the Governor's reasonable costs for such attendance.
- 4.3 The Governors will apply the attendance policy to pupil's attending the Resource Base. The School will also inform the Council (0-25 Manager) on at least a termly basis if the attendance level is below 96%.
- 4.4 With respect to the termination of a placement of a pupil in the SEN Services:

- 4.4.1 in the event that a pupil's needs increase, decrease or change to the extent that the Governors considers it cannot, or should no longer, provide SEN Services to them, the Governors shall arrange and conduct a review meeting with the *Family and Council* and all other agencies involved in supporting the pupil (**Review**);
- 4.4.2 the Review shall comply with the requirements for annual reviews under the Code of Practice or subsequent guidance and the relevant guidelines issued by the Council;
- 4.4.3 the Review shall consider whether or not the pupil's needs can be met within the SEN Services provided at the Resource Base and make a recommendation to the Council; and
- 4.4.4 following statutory procedures, if the Council agrees that the pupil's needs cannot be met by the Governors, the Council shall follow the statutory procedures to amend the existing statement or EHC plan to name an alternative provision. If the Council agrees that the pupil no longer needs the placement and ceases to maintain the statement or EHC plan the Council will support admission to mainstream schooling. The Council will use their best endeavours to secure a new placement by the next annual review of the Statement or EHC plan. The pupil must remain registered at the Resource Base until an alternative placement is identified and named in a new Final Statement or EHC Plan or until the child is registered at a new school/the parent has notified the Governors, in writing, that the parent intends to educate the child at home.

## **5 Obligations of the Governors**

- 5.1 The Governors will through the delegated responsibility to the headteacher be responsible for providing at the Resource Base:
  - 5.1.1 an appropriately qualified teacher for pupils with communication and interaction: social communication specifically autism and high levels of anxiety and other appropriate SEN qualification or with specific knowledge of, and training in, SEN;
  - 5.1.2 access to therapy (e.g. S&LT, OT) in line with the statement/EHC plan;
  - 5.1.3 support assistants with appropriate qualifications, experience or skills to work with the teachers and assist with young people with communication and interaction: social communication specifically autism and high levels of anxiety;
  - 5.1.4 logistical (e.g. specialist equipment) and administrative support required for the SEN Services, including sickness cover and related services;
- 5.2 The Governors through the delegated responsibility to the headteacher will also:
  - 5.2.1 support with transitions arrangements for prospective pupils;
  - 5.2.2 routinely review pupils' progress against their individual learning plans and in compliance with the Code of Practice;

- 5.2.3 convene, manage and conduct annual reviews of pupils in accordance with the Code of Practice and any relevant guidelines issued by the Council from time to time; and
- 5.2.4 routinely deal with any complaints arising from parents/carers and inform the Council of the outcomes.

## **6 Access**

- 6.1 The Governors will grant access to the Resource Base by officers of the Council and authorised external providers for the purposes of assessing the SEN Services. A minimum of 7 days' notice will be given.

## **7 Funding**

- 7.1 Allocation of funding from the Council will be in accordance with current legislation and guidance provided by the DfE and after extensive consultation with all other schools in South Gloucestershire and the Schools Forum.
- 7.2 The Parties recognise that the Governors will receive funding for low cost, high incidence SEN Services from the Council via the formula allocation available within the school budget.
- 7.3 In respect of placements in the Resource Base by the Council, as placing authority for young people resident in South Gloucestershire, the Council agrees to fund the costs of providing additional SEN Services to a particular pupil where that pupil is allocated a financial resource to enable the school to meet that pupil's agreed educational outcomes. *Descriptors of SEN Funding Bands for Special Schools and Resource Bases* will be used to determine the level of funding, based on the individual needs of the pupil. A funding band will be selected by the SEN Statutory Panel on placement and reviewed by the School and local authority through the statutory annual review process. Where pupils are placed in the Resource Base by the Council over and above its stated capacity for the Resource Base (with the prior written consent of the Governors) or in addition to the annually agreed placement numbers and the Governors have not received placement funding for those additional places the Council will pay the Governors the placement funding as well as funding the costs of providing additional SEN services for the period those additional pupils are in the Resource Base.
- 7.4 In the event of a dispute regarding such funding, the matter shall be resolved through the procedures in paragraphs 10.1.1 and 10.1.2, if no agreement is reached, the matter shall be referred to the DfE. Following such a referral, the Parties agree to comply with the DfE's determination.
- 7.5 The Parties agree to work in good faith to ensure the ongoing delivery and sustainability of the SEN Services in future years, including negotiating any necessary amendments to this Agreement.

## **8 Transport**

- 8.1 Pupils who are placed by the Council at the Resource Base may be provided with transport in line with the Council's policies on the provision of transport to young people on grounds of distance (or SEN where a distance policy does not apply) (**the Transport Policy**).

- 8.2 The Council shall consult with the Governors in respect of any proposed changes to the Transport Policy.

## **9 Quality assurance**

- 9.1 The Governors shall:

9.1.1 Carry out internal reviews of the SEN Services to ensure the quality of delivery; and

9.1.2 Evaluate the SEN Services through an annual audit.

9.1.3 The Council reserves the right to carry out periodic reviews of the Resource Base without cost to the Governors – reviews will focus on pupil outcomes and quality of provision, with reference to the key performance indicators.

- 9.2 The Parties agree that the training of employees employed by the Governors for the provision of the Resource Base is the responsibility of the Governors. The Governors will consider how best to ensure that employees are adequately trained to deliver the SEN Services and also to ensure that all relevant employees are aware of the ongoing needs of SEN pupils placed in the Resource Base and that professional development is appropriately supported to enable effective access to the curriculum.

- 9.3 Each academic year the Council shall arrange a meeting of representatives of the Governors, the Council and any relevant external provider of specialist services in respect of the SEN Services (together, **the SEN Representatives**). At this meeting, the SEN Representatives will assess matters including but not limited to the work, effectiveness, funding, suitability and sustainability of the SEN Services.

## **10 Dispute resolution**

- 10.1 Without prejudice to the right of termination under clause 11, the Parties agree as follows in the event of a disagreement or dispute the Dispute will be referred to the Headteacher of the School and the Council's senior officer with responsibility for SEN for consideration and resolution. The nature of the dispute will be put in writing. If the Dispute continues, it will be referred to the Chair of Governors and the Director of the Department for Children, Adults and Health at the Council for consideration and resolution; and

10.1.1 If the Chair of the Governors and the Director fail to resolve the Dispute, the Parties will attempt to settle the Dispute by mediation in accordance with the Global Mediation Procedure or any other an appropriate, recognised mediation procedure agreed by the Parties. In the case of funding disputes refer to paragraph 7.4. Either Party may give notice in writing to the other to initiate mediation (**Mediation Notice**). The mediation shall commence within twenty working days from the service of the Mediation Notice. The Parties agree to co-operate with any person appointed as mediator, to provide them with such information and other assistance as they shall require and to pay their costs as they shall determine (or failing such determination, in equal shares).

10.1.2 Except where a Party would be prejudiced by a delay in the issue of proceedings, the Parties agree not to commence court proceedings or arbitration in relation to any dispute arising under this Agreement until they have attempted to settle the dispute under the procedures in clause 10.1 and

either the mediation has been terminated or the other Party has failed to participate in it.

## **11 Termination**

11.1 Without prejudice to any rights that have accrued under this Agreement or any other rights or remedies, either Party may terminate this Agreement with immediate effect by giving at least 12 months' written notice of such termination to the other Party (such notice to expire at the end of the Governor's school year).

11.2 Without any prejudice to the right of termination in clause 11.1:

11.2.1 the Parties acknowledge the Council's responsibilities to the Resource Base's pupils in the event of a termination; and

11.2.2 agree, wherever reasonably possible, to give at least 18 to 24 months' notice of a termination in order to allow for the orderly re-allocation of pupils by the Council to other settings or for current pupils to conclude their education with the Governors.

## **12 Consequences of termination**

12.1 Termination of this Agreement for any reason shall not affect the accrued rights, remedies, obligations or liabilities of the Parties existing at termination.

## **13 Third Party Rights**

13.1 A person who is not a party to this Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999, or otherwise, to enforce any term of this Agreement.

## **14 Variation**

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

## **15 Severance**

15.1 If any court or competent authority finds that any provision of this Agreement (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of this Agreement shall not be affected.

15.2 If any invalid, unenforceable or illegal provision of this Agreement would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

## **16 Counterparts**

16.1 This Agreement may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all the counterparts shall together constitute one Agreement.

**17 Governing law and jurisdiction**

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

17.2 The Parties irrevocably agree that the courts of England shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

This Service Level Agreement has been entered into as a deed and delivered on the date stated at the beginning of it.

Executed and delivered as a deed  
by **XXXXX** acting by a director in  
the presence of a witness

.....  
Director

.....  
Name of director

.....  
Signature of witness

.....  
Name of witness

.....  
.....  
Address

The **COMMON SEAL** of **SOUTH  
GLOUCESTERSHIRE DISTRICT  
COUNCIL** was hereunto affixed  
and authenticated by-

Authorised signatory



## Appendix 1 Key Performance Indicators Agreement

The following Key Performance Indicators, reviewed on an annual basis will provide evidence of the outcomes for the pupils placed at Blackhorse Primary.

**1. Progress has been made in the overwhelming majority (+ 80%) of Education Health Care plan (and/or Annual Review) outcomes**

Evidence provided shows that outcomes on the EHC plan or Statement are achieved. Where progress is slower than anticipated, evidence of intervention can be provided including any trend data that supports a positive trajectory.

**2. All pupils placed at the Resource Base will make good or better progress relative to their starting points with the aspiration of meeting national expectations of progress where appropriate.<sup>1</sup>**

Clear baseline data is available and progress can be evidenced for each pupil placed at the Resource Base.

**3. The overwhelming majority (+80%) of identified targets in their plan are met.**

Clear baseline data is available and progress can be evidenced for each pupil placed at the Resource Base

**4. Pupils demonstrating challenging behaviour have reduced year on year incidences**

Clear baseline data is available and progress can be evidenced for each pupil placed at the Resource Base

**5. Individual pupil attendance levels show year on year improvement with an aspiration of 96% overall attendance<sup>2</sup>**

Data demonstrates that attendance has increased for all pupils. Highlight interventions put in place to support attendance.

**6. The overwhelming majority (+80%) of parents are happy with the choice of school and Resource Base**

Information collated at the first annual review after placement and then on an ongoing basis as part of the annual review process.

**7. Positive feedback provided at last Ofsted Inspection in relation to the Resource Base if commented on**

---

<sup>1</sup> It is acknowledged that pupils with autism may make differing levels of progress; progress between KS1 and KS2 in English may be slower than in maths as the English curriculum develops concepts that may be difficult for this pupil cohort (e.g. inference and/or empathy)

<sup>2</sup> Allowance can be made where significant medical conditions have impacted on attendance of pupils in the Resource Base, however all attendance processes should be implemented where poor, intermittent or persistent absence occurs. Attendance will be measured on an individual pupil basis.