

# Children's Residential Care and Education Services Framework Agreement 03-11

## Schedule 2b – Individual Placement Terms

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Terms governing Individual Placement Agreements for  
Children's Residential Short Breaks

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## **1 Identified and Defined Terms**

- 1.1 This document forms the Individual Placement Terms for Short Breaks defined in the Framework Agreement for Children’s Residential Care Services 03-11 and will apply to every Individual Service or Placement for Short Breaks made under the Framework Agreement as detailed in Clause 3.1 herein.
- 1.2 The definitions and interpretations defined in Schedule 5 (Identified and Defined Terms) and Clause 1 (Interpretation) of the Framework Terms shall apply with the necessary changes to this IPT, except where the context otherwise requires. For the avoidance of doubt, any reference to Clause shall be construed as a reference to a Clause herein unless otherwise stated and any reference to the Service Specification means a reference to Schedule 1b (Service Specification for Residential Short Breaks) (unless otherwise stated).
- 1.3 Common Clauses
  - 1.3.1 The following Clauses in the Framework Terms are hereby taken to form part of this IPT with the necessary changes applied such as (where the context allows) the substitution of ‘Purchaser’ for ‘Scotland Excel’, the substitution of ‘Individual Placement Terms’ for ‘Framework Terms’ and so on:
    - i) Clause 6 (Best Value)
    - ii) Clause 7 (Law of Scotland)
    - iii) Clause 8 (Legislative Change)
    - iv) Clause 9 (Assistance in Legal Proceedings)
    - v) Clause 10 (Waiver)
    - vi) Clause 11 (Severability)
    - vii) Clause 12 (Remedies Cumulative)
    - viii) Clause 15 (Freedom of Information)
    - ix) Clause 16 (Public Media Enquiries)
    - x) Clause 17 (Human Rights)
    - xi) Clause 19 (Health and Safety)
    - xii) Clause 20 (Registration)
    - xiii) Clause 37 (Corruption and Collusion)
    - xiv) Clause 38 (Prevention of Fraud)
    - xv) Clause 39 (Conflicts of Interest)

## **2 Individual Placement Agreement (IPA) Status and Duration**

- 2.1 Under the terms of the Framework Agreement established by Scotland Excel, Purchasers may agree an Individual Service or enter into Placements for Children and Young People as and when required with Providers participating in the Framework Agreement.
- 2.2 In general, the Framework Terms sets out the rights and obligations between Scotland Excel, acting on behalf of Purchasers, and the Provider in terms of the operation and management of the Framework Agreement.
- 2.3 The Purchaser recognises the role of Scotland Excel in managing the Framework Agreement and will endeavour to avoid the duplication of information by the Provider or require this information in other formats where possible.

- 2.4 Individual Services or Placements for Short Breaks entered into under the Framework Agreement are subject to the Individual Placement Agreement (IPA) incorporating this IPT. The Short Breaks Service Specification (Schedule 1b) forms part of the IPT applying to each Short Breaks Placement or Individual Service.
- 2.5 The Individual Service or Placement will be as set out in the relevant IPA. Individual Services or Placements extending beyond the End Date of the Framework Agreement will be dealt with in accordance with Clause 28 (Arrangements for Individual Service or Placements Extending Beyond the Duration of the Framework Agreement) herein.

### **3 Purchaser's Obligations**

- 3.1 Purchasers may choose to enter into an Individual Service or a Placement with a Provider but are not bound to do so. Where an Individual Service or Placement is entered into by a Purchaser, it will be governed by the IPA incorporating this IPT.
- 3.2 The Fees payable in respect of an IPA will be calculated in accordance with Schedule 4 (Financial Information) to the Framework Agreement. Purchasers will be liable to pay the Fees in accordance with the terms herein.
- 3.3 The Purchasers will ensure the Child's Social Worker and other relevant staff are aware of their obligations under these Individual Placement Terms and any IPA.

### **4 Provider's Obligations**

- 4.1 The Provider will have a duty of care for the Child or Young Person for the Duration of the IPA.
- 4.2 The Provider shall perform its obligations:
- i) In accordance with the Framework Agreement and the requirements of each IPA;
  - ii) With appropriately experienced, qualified and trained personnel;
  - iii) In accordance with Good Social Care Practice
  - iv) In compliance with all applicable Laws and Guidance; and
  - v) In accordance with the relevant National Care Standards and any requirements made by relevant Regulatory Bodies including the Care Inspectorate Education Scotland or the Registrar of Independent Schools.
- 4.3 The Provider must provide the Service to the Child or Young Person in accordance with the requirements of these Individual Placement Terms (including the Short Breaks Service Specification) and the IPA. Without prejudice to the foregoing, the Service must be provided as detailed in the Service Specification, IPA and the Provider's tender bid together with any other requirements for the Child or Young Person which form part of the Service.
- 4.4 The Provider must ensure that Staff understand and at all times comply with the obligations resulting from this IPT and the IPA.
- 4.5 The Provider shall give Notice to the Purchaser as soon as reasonably practicable if it finds it is unable permanently or temporarily to meet the conditions of this IPT or any IPA and an action plan with timescales shall be agreed by both Parties.

- 4.6 Where a health and safety issue concerns or potentially concerns multiple Children or Young People in Placement, the Provider must advise all relevant Purchasers of the concern at the earliest time reasonable.
- 4.7 Care Inspectorate Registration and Grades
- 4.7.1 Where the Provider is awarded a Care Inspectorate grade of two (2) or below, this will be treated as a breach capable of remedy in accordance with Clause 27.5 (Material Breach – Capable of Remedy) herein. In addition to any other remedies the Purchaser may have including those provided for within this IPT, the Purchaser may suspend the making of new Placements with the Provider. In such an event, the provisions of Clause 25 (Suspension) herein will apply throughout any such period.
- 4.7.2 Following re-attainment of a grade of three (3) or above, the Purchaser will review the position and determine what action is appropriate in accordance with this IPT.

## **5 Statutory Obligations**

- 5.1 The Provider shall comply with the requirement of Clause 5 (Statutory Obligations) of the Framework Terms.

## **6 Staffing**

- 6.1 The Provider will fulfil its statutory obligations concerning the employment of Staff and at all times will have on duty a sufficient number of suitably trained, qualified and competent Staff in accordance with the Law and Guidance and the requirements of the appropriate regulatory bodies and any requirements set out in the Service Specification together with any specific terms included in each IPA which are not in conflict with the Framework Agreement.
- 6.2 The Provider will ensure that in accordance with Clause 21.3 (Staffing) of the Framework Terms all Staff and anyone else involved in the provision of the Service who require to be registered with the appropriate regulatory bodies, hold and maintain the required registration, including without limitation, the Scottish Social Services Council (SSSC), the General Teaching Council Scotland (GTCS) for Teachers, the Health Professions Council and the British Psychological Society for psychologists, the Nursing and Midwifery Council for Nurses and, for example, the British Association of Counsellors and Psychotherapists (BABCP) for Staff providing therapeutic interventions.
- 6.3 The Provider will comply with the SSSC Codes of Practice and where appropriate the Code of Professionalism and Conduct of the GTCS, and take all reasonable steps to secure compliance by all Staff with any relevant codes of practice and guidance documents issued by the relevant regulatory bodies.
- 6.4 On request, in situations where issues relating to Staff are impacting on the ability of the Provider to meet the requirements of the Framework Agreement, the Provider will provide the Purchaser full details of all Staff numbers, professional titles and job descriptions and roles of those participating in or involved in the provision of the Placement or Service in such a way as to ensure anonymity.
- 6.5 Volunteers may be used in the provision of the Service where they meet the standards of fitness as set out in Regulation 9 of the Social Care and Social Work Improvement Scotland (Requirements for Care Services) Regulations 2011 but not as a substitute for staff as defined by the Care Inspectorate's minimum staffing requirements for the provision of the Service.

- 6.6 Suitably trained and qualified agency staff may be used in the provision of the Service but only where the Provider is unexpectedly short-staffed and is consequently unable otherwise to provide the Service. Notwithstanding this, the Provider will not use agency staff unless it has, in the first instance, used its best endeavours to secure the availability of its own Staff on an over-time or sessional basis. If a situation arises where agency staff are regularly used then the Provider will promptly review and remedy this.
- 6.7 For the avoidance of doubt, neither the Provider nor its Staff will be deemed to be entitled to act or hold themselves out as agents or employees of the Purchaser, and the Provider will at all times be liable for the actions and omissions of its Staff.
- 6.8 For the purposes of this Clause 6 (Staffing) an “Individual” or member of Staff is any person that the Provider does use or is considering using to provide the Service or any part thereof and, for the avoidance of any doubt, includes a person recruited directly, or from an employment or similar agency, or from any other source. The terms of this Clause apply to both paid and unpaid Staff with the exception of the requirement to register with SSSC (Clause 6.2) which applies only to paid Staff.
- 6.9 In terms of the Rehabilitation of Offenders Act 1974 and the Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2003, the Provider will require any Individual to complete a statement concerning their previous convictions for offences of any description.
- 6.10 PVG Act
- 6.10.1 Before an Individual is assigned to the delivery of the Service, the Provider shall determine whether the delivery of the Service requires the Individual to undertake Regulated Work with Children. Where the Service requires the Individual to undertake Regulated Work, the Provider shall ensure the procedures set out herein relative to the PVG Act are adhered to throughout the Duration of the IPA.
- 6.10.2 The Provider hereby acknowledges that it is an offence in terms of section 35 of the PVG Act to offer Regulated Work with Children to an Individual where the Individual is barred from that work. Should such an Individual be used in the provision of the Service, this will be treated as a Material Breach in accordance with Clause 27 (Breach and Termination) herein.
- 6.10.3 The Provider shall not permit an Individual to carry out the type(s) of Regulated Work required in connection with the delivery of the Service until the Provider has obtained from Disclosure Scotland:
- i) The Individual’s Scheme Record for the type(s) of Regulated Work to be undertaken by the Individual in delivering the Service; or
  - ii) Where the Individual evidences existing membership of the PVG Scheme for the type(s) of Regulated Work to be undertaken by the Individual in delivering the Service, a Scheme Record Update; and
  - iii) Where a Scheme Record Update obtained evidences that there is new or existing Vetting Information in relation to the Individual or the Scheme Record of the Individual.
- 6.10.4 Where the Provider is unable to obtain a Scheme Record or Scheme Record Update by virtue of the Individual being barred under section 30 of the PVG Act from membership of the PVG Scheme for undertaking Regulated Work with Children or Regulated Work with Protected Adults, the Provider shall not offer that type of Regulated Work to the Individual.
- 6.10.5 The Provider shall use the contents of the Scheme Record, and/or the Scheme Record Update, where applicable, as part of the process to make recruitment decisions and such suitable arrangements as are

necessary, for the safeguarding and protection of the interests of the Child or Young Person. Where the contents of the Scheme Record show that the Individual has convictions, reprimands, warnings, cautions or any other relevant information, the Provider shall conduct a risk assessment and use that assessment to protect the interests of the Child or Young Person, including, without prejudice to the foregoing generality, prohibiting the subject of the Scheme Record or Scheme Record Update from providing the Service.

6.10.6 In the event that the Provider or any agency that it is using to recruit Individuals is notified by Disclosure Scotland that the Individual is barred from PVG Scheme membership for the type(s) of Regulated Work undertaken, the Provider shall immediately remove an Individual from the provision of the Service. The Provider shall in addition notify the Purchaser immediately of their receipt of such notification from Disclosure Scotland, or from an agency, and confirm what actions have been or will be taken following thereon.

6.10.7 For the delivery of elements of the Service which fall outside of the scope of Regulated Work under the PVG Act, the Provider shall obtain the appropriate level of Disclosure directly from Disclosure Scotland. For the purposes of this Clause:

- i) The appropriate level of Disclosure shall be determined by reference to sections 113 and 115 of the Police Act 1997 (as amended) and by reference to any regulations made under that Act and Guidance issued by Disclosure Scotland.
- ii) The Provider shall use the findings of the Disclosure as part of the process to make recruitment decisions and such suitable arrangements as are necessary for the safeguarding and protection of the interests of the Child or Young Person. Where the Disclosure shows that the Individual has convictions, reprimands, warnings, cautions or any other relevant information, the Provider shall conduct a risk assessment and use that assessment to protect the interests of the Child or Young Person including, without prejudice to the foregoing generality, prohibiting the subject of the Disclosure from being involved in the provision of the Service.
- iii) As a minimum, the Provider shall recheck the status of their existing Staff and any other Staff involved in the provision of the Service not less than every three years in order to ensure that their Disclosure Information is up-to-date.

6.10.8 To ensure compliance with the requirements of this Clause and subject to the written consent of the subject of the Disclosure, the Provider will share the Disclosure with the Purchaser on request.

6.10.9 To ensure compliance with Clauses 6.10.5 and 6.10.7 herein, the Provider shall record the fact that a risk assessment has been undertaken and shall on request, from the Purchaser disclose that record to it.

6.10.10 Before using the services of agency, seasonal or relief staff the Provider must obtain a signed written statement from the agency that is supplying the staff, a copy of which will be supplied to the Purchaser on request, which confirms that such staff:

- i) Are PVG Scheme members holding a Scheme Record in respect of the type(s) of Regulated Work being undertaken in the provision of the Service and have not subsequently been barred; or
- ii) Have been through the appropriate Disclosure checks with Disclosure Scotland in accordance with this Clause 6 should the provision of services fall outside of the scope of Regulated Work in terms of the PVG Scheme.

- 6.10.11 The appropriateness of the signed written statement from an agency shall be construed in accordance with Clauses 6.9 to 6.10.8 herein. A copy of the said statement from the agency shall be supplied to the Purchaser on request by the Provider.
- 6.10.12 In the event of the Provider failing to comply with any of the requirements of this Clause 6 (Staffing), or where any Individual as aforesaid has refused to complete a statement concerning their previous convictions in accordance with Clause 6.10.9 or in the reasonable opinion of the Purchaser is an Individual unsuitable to deliver the Service, the Purchaser reserves the right without prejudice to its other legal remedies to require such person to be withdrawn immediately from provision of the Service.
- 6.10.13 The Purchaser hereby acknowledges that it is an offence under Section 67 of the PVG Act for it to request provision of or otherwise seek sight of a Scheme Record or Scheme Record Update for a purpose other than as permitted under the PVG Act.
- 6.10.14 The Provider hereby acknowledges that it is an offence under Section 66 of the PVG Act for it as a body having access to a Scheme Record or Scheme Record Update (“relevant documents”) under sections 51, 52, 53 or 54 of that Act to disclose Vetting Information within relevant documents to any other person. Accordingly the Provider further acknowledges that it cannot disclose such Vetting Information to the Purchaser and that the Provider, in carrying out the risk assessment and coming to a decision under clause 6.10.8 hereof shall ensure that no Vetting Information is disclosed in advising the Purchaser, where appropriate, of the outcome of its action under Clause 6.10.11 other than as permitted under the PVG Act and any secondary instruments made under it.
- 6.10.15 The Provider shall ensure that criminal record checks are conducted in accordance with the relevant National Care Standards.
- 6.10.16 The Provider shall ensure that, any member of Staff from outside the jurisdiction of Disclosure Scotland and anyone who has spent a significant length of time outside the jurisdiction of Disclosure Scotland, provides an overseas criminal record check in addition to the requirements stated in Clause 6.10.15 herein. Such criminal record checks should come from the police or judicial authority, Government department or Home Embassy of the country or countries concerned and be an official statement confirming that the Individual has not been convicted of a criminal offence. If the Individual has been convicted of any criminal offence, a note of previous convictions should be provided. A note of any pending criminal proceedings must also be provided.

## **7 Staff Development and Training**

- 7.1 All residential child care workers and care workers in care homes for adults are required to be Registered with the SSSC or other appropriate Regulatory Body, or to achieve Registration within six months of taking up employment and are also required to undertake relevant Continuous Professional Development and maintain Post Registration Training and Learning (PRTL) in keeping with SSSC Codes of Practice. The Provider shall ensure that such Staff are so registered and confirm to all requirements laid down by the relevant Regulatory Body.
- 7.2 The Provider will ensure that all Staff are trained to deliver the Service to Children and Young People taking account of Child Protection and ensuring that this is evidenced within Staff training records. The Purchaser, in investigating any matter relating to Child Protection, may request the Provider to make available Staff training records and the Provider will forthwith comply timeously with such a request.



- 7.3 The Provider will ensure regular learning and training opportunities are made available to Staff to ensure Staff retain a level of knowledge and competence commensurate with job function and level of responsibility. The Provider will provide training that ensures Staff are informed of changes in relevant Law and Guidance and/or Good Social Care Practice.
- 7.4 The Provider will ensure Staff learning and development is also supported through supervision and reflective practice, with such reflective practice providing the Staff with opportunities to apply training and learning activity upon practice. The Provider will ensure non-qualified Staff are supported to attain any skills and qualifications required of them to meet the registration requirements for the Scottish Social Services Council and other staff Regulatory Bodies. The Provider will keep training records for all such Staff and make such records available for inspection by the Purchaser when required.

## **8 Indemnity and Insurance**

- 8.1 The Provider shall indemnify and keep indemnified the Purchaser against all proceedings, costs, expenses, or loss in respect of personal injury or death or loss of or damage to property which arises out of the performance of any IPAs by the Provider including but not limited to any negligent act, error or omission by the Provider or its Staff in the course of delivery of the Provider's responsibilities and duties under this IPT and any IPA.
- 8.2 Without prejudice to its obligation to indemnify the Purchaser, the Provider is obliged to insure and maintain insurance, for the Duration of the Framework Agreement, including the following minimum requirements:
- i) Third party liability insurance to a minimum indemnity limit of £5 million, as per Clause 22.2i) of the Framework Terms;
  - ii) Where the Provider will carry out activities such as nursing care, first aid, administration of prescribed drugs or medicines and administration of drugs or medicines available without prescription, the Provider will require to evidence an extension with the Provider's public liability cover in relation to the risk of any errors or omissions in carrying out the aforementioned activities.
  - iii) Where required, employer's liability to a minimum indemnity limit of £5 million in accordance with Clause 22.2iii) of the Framework Terms;
  - iv) Where a vehicle is used in the provision of the Service, statutory third party motor vehicle liability insurance to a minimum indemnity of £5 million. Where the Provider permits Staff to use their own private vehicles for the Provider's business, the Purchaser will require a letter from the Provider confirming that if the Purchaser should incur any loss or damage arising out of the Provider's staff use of their own vehicles in performing the obligations of this Framework Agreement, the Provider will indemnify the Purchaser in respect of reasonable costs / losses incurred;
  - v) Professional indemnity insurance to a minimum indemnity of £2 million.

Unless the Provider has complied with Clause 22.2 of the Framework Terms, the Provider will, on request, provide evidence that such cover has been effected and all due premiums have been paid.

- 8.3 Unless the Provider has complied with Clause 22.3 of the Framework Terms, the Provider shall, at least fifteen (15) Days before the renewal anniversary, for each of its insurance policies held for the purposes of the IPA, provide to the Purchaser such evidence as may be necessary to demonstrate that the

insurance requirements herein have been maintained for each subsequent renewal and the premium payments have been made and are up to date.

- 8.4 As detailed in Clause 22.3 of the Framework Terms, the Purchaser may request an increase to the minimum level of insurance cover when making a Placement or agreeing an Individual Service. This requirement will be agreed and specified in the IPA.
- 8.5 Where the Provider provides, with the agreement of the Purchaser, any special therapy for the Child or Young Person, such therapy shall only be carried out by suitably trained, qualified and insured professionals and the Provider shall ensure that such professionals hold and maintain sufficient insurance for the services they provide. The Provider shall ensure that such professionals are registered by/with the appropriate professional body and conform to all requirements laid down by such body.
- 8.6 The Provider shall ensure that in respect of any holidays in the United Kingdom involving an overnight stay, and for any trips or holidays abroad, sufficient travel and related insurances are in place for the Child or Young Person with an insurance carrier registered in the United Kingdom to underwrite the cover purchased.

## **9 Transport**

- 9.1 The Provider shall provide adequate transport arrangements to fulfil its obligations under this Framework Agreement.
- 9.2 The Provider shall ensure that any of its vehicles used in connection with the Service are suitable, appropriate and fit for purpose and are insured in accordance with Clause 8 (Indemnity and Insurance) herein.
- 9.3 The Provider shall ensure that all vehicles used to transport the Child or Young Person (and any additional equipment on the vehicle) are maintained and serviced in accordance with the manufacturer's instructions, with full records being kept to verify this.
- 9.4 Where vehicles belonging to Staff are used in connection with the Service, the Provider shall ensure that such vehicles are suitable, appropriate and fit for purpose and are insured in accordance with Clause 8 (Indemnity and Insurance) herein.
- 9.5 The Provider shall have written policies and procedures in place to ensure the safety of the Child or Young Person when being transported by Staff.
- 9.6 The Provider will ensure that account is taken of any risk assessments in respect of transporting the Child or Young Person and that all of the recommendations in said risk assessment are adhered to at all times. Risk assessments on all Placements will include risks associated with travel.
- 9.7 The Provider should ensure that vehicles are always driven safely and with consideration to the Child or Young Person's needs. This shall include the Provider conforming to all road traffic legislation and drivers never driving whilst under the influence of alcohol or drugs, excessively tired, or otherwise in circumstances of unreasonable risk; and
- 9.8 All drivers and escorts involved in transporting a Child or Young Person must comply with the requirements of the PVG Act as set out in Clause 6 (Staffing) herein.

- 9.9 Where a Child or Young Person qualifies for transport from the NHS to attend for a clinical appointment/treatment the Provider will, where practicable and in accordance with the Child's Plan, ensure this is arranged.
- 9.10 The Agreed Fee shall include all day to day transport costs associated with provision of the Service, including transport to school where this is offered by the Provider as part of the Service, to primary health care services and hospital where these services are needed during the Short Break, activities and outings and holidays.
- 9.11 The Parent or Carer will normally have responsibility for transporting the Child or Young Person to and from the Placement. Where they are unable to do this, the Purchaser will be responsible for transporting the Child or Young Person to and from the Placement unless otherwise agreed or the Provider offers this as part of their Service. Where the Provider is able to offer transport to and from the Placement as an Additional Service, the arrangements and costs for this may be agreed in the IPA.
- 9.12 If the Short Break takes place when the Child or Young Person should be at school and where the Child or Young Person receives transport from the Education Authority to get to school, the Purchaser will first check to see if this can be re-routed to the address of the Short Break for the period of the Short Break. Other than these circumstances, the Parent shall be responsible for getting the Child or Young Person to school unless otherwise detailed in the IPA or unless the Provider offers this as part of their Service. Where appropriate the Child or Young Person shall be encouraged to travel independently to and from school.
- 9.13 Where attendance at reviews is requested and mileage exceeds one hundred (100) miles, the costs of this and any escort will be negotiated with the Purchaser on an individual basis.

## **10 Data Protection**

- 10.1 All Parties shall comply with their respective duties under the Data Protection Act 1998 as amended.
- 10.2 Under this IPT the expressions "personal data", "data controller", "data processor", "processing" and "process" shall have the meanings assigned to them by the Data Protection Act 1998, and the "Seventh Data Protection Principle" shall mean the Seventh Principle set out in Part 1 of Schedule 1 to that Act and shall be referenced in this IPT according to that definition.
- 10.3 In order for the Provider to perform the Service, the Purchaser requires to disclose to the Provider Child's Information in respect of each Child or Young Person it places, and requires the Provider to keep records on the Child or Young Person. The Purchaser is the data controller in respect of the Child's Information. The Provider is the data processor in respect of the Child's Information for purposes required under this IPT, the IPA or the Framework Terms.
- 10.4 If the Provider requires to keep information, including Child's Information, for purposes other than those required under the Framework Agreement, the Provider will be data controller in respect of that information. The Provider is the data controller for information it may hold in respect of its Staff or any other persons it directs in terms of Service under this IPT.
- 10.5 Where the Provider receives Children's Information from a Purchaser through an enquiry or Placement Matching Process and a Placement is not subsequently taken up for the Child or Young Person, the Child's Information received by the Provider must be securely destroyed and evidence provided to the Purchaser of destruction, or returned to the Purchaser in accordance with the Purchaser's requirements.

10.6 As data controller of the Child's Information the Purchaser is responsible for ensuring that all necessary consents for the sharing of that Child's Information are obtained. The Purchaser shall require the Provider to process information on behalf of the Purchaser including, where appropriate, obtaining necessary consents from the Child or Young Person or the person who has a legal right to make a decision on behalf of the Child or Young Person in order to fulfil the instructions given by the Purchaser.

10.7 For the avoidance of doubt, the Provider will ensure that any information provided to Scotland Excel under the terms of this IPT, IPA or Framework Terms or for any other purpose shall be done in an anonymous format in accordance with Clause 13.1.4 of the Framework Terms.

10.8 The Provider shall not be required to pass information to the Purchaser in relation to a Child or Young Person, member of Staff, or any other person, if the disclosure would cause the Provider to breach the terms of the Data Protection Act 1998. The Provider must supply detailed reasons in terms of the said Act in respect of refusing disclosure of said information within a reasonable timescale specified by the Purchaser. Where the cause of the potential breach of the said Act is due to a lack of necessary consent to disclosure of the information, the Provider will use all reasonable endeavours to obtain the necessary consent to disclose the information.

10.9 The Provider hereby warrants:

- i) That as a minimum, all Staff who will or may have access to Child's Information provided under the Framework Agreement have been subject to the relevant Disclosure Scotland processes in accordance with Clause 6 herein
- ii) That processing the Child's Information will satisfy the requirements of the Seventh Data Protection Principle as if the Provider were the data controller in respect of the Child's Information;
- iii) That it will process the Child's Information only in accordance with instructions from the Purchaser;
- iv) That it will ensure that it provides appropriate guidance to Staff in respect of the personal information and sensitive personal information disclosed to them in respect of each Child or Young Person placed with them.

10.10 Data Security and Recording

10.10.1 The Provider will have clear written policy and guidance for Staff on requirements for recording and data security in accordance with Clauses 10 (Data Protection) and 11 (Confidentiality) and will ensure that this is adhered to and reported to the Purchaser in compliance with Clause 17 (Management and Monitoring Arrangements) herein. The Purchaser may request a copy of the Provider's written policy and guidance at any time. The policy will include requirements to ensure that confidential information is held securely and transmitted in accordance with the Purchaser's policies as stated in the IPA. The policy must also take account of the rights of Children and Young People as they grow older to take decisions about information and data pertaining to that Child or Young Person.

10.10.2 The Provider must be able to satisfy the Purchaser that security controls (such as passwords, "firewall" protection and similar) to Child's Information are kept under regular review.

10.10.3 Unless specified otherwise in the Child's Plan or IPA, in addition to any requirement to obtain the Child or Young Person's consent in accordance with applicable Law and Guidance:-

- i) the Provider shall not; and

- ii) the Provider shall use all reasonable endeavours to ensure that the Child or Young Person does not have the facility to,

release any information or photographs relating to the Child or Young Person, publicly, without the explicit consent of the person(s) having parental rights and responsibilities for the Child or Young Person. This includes the use of any of the Child's Information or image on social networking websites.

10.10.4 The Provider will record sufficient information for the progress of the Individual Service or Placement to be monitored as agreed with the Purchaser in the IPA.

10.11 Subject to Law and Guidance, the Provider will ensure these records are available to the Child's Social Worker and are proactively shared as agreed in the Child's Plan and retained in accordance with Clause 10.12 (Record Retention) below.

10.12 Record Retention

10.12.1 The Provider shall co-operate with the Purchaser in order to ensure the Purchaser can meet its obligations in relation to records management under the Public Records (Scotland) Act 2011 including any recommendations and Guidance issued by the Keeper of the Records of Scotland.

## **11 Confidentiality**

11.1 Access to Child's Information must be restricted by the Provider and only provided to Staff who have a direct requirement to process this for purposes required under the Framework Agreement. The Provider shall ensure that Staff are aware of their obligations under the DPA and the limitations on the use of Child's Information imposed by the Framework Agreement.

11.2 Subject to any contrary rule of Law and the Child's Plan, the Provider shall ensure that a Child or Young Person's Representative has access on written request to any Child's Information pertaining to them held by the Provider.

11.3 Other than as permitted in terms of Clause 10 (Data Protection) and as specifically required for the purposes of performing its obligations under this IPT, the Provider shall ensure that Staff regard as strictly confidential any information obtained in relation to the Purchaser or any Child or Young Person and as such shall not disclose to any unauthorised person at any time either during or after the Duration of the IPA.

11.4 Subject always to any contrary legislation or rule of Law; or any pending civil or criminal investigation or inquiry, the Provider shall be entitled to disclose information relating to a Child or Young Person's personal and medical information to relatives if prior written consent to such disclosure has been obtained from the Child or Young Person and/or Child's Representative or the person who has a legal right to make a decision on behalf of the Child or Young Person as appropriate.

11.5 It shall be the Provider's responsibility to ensure that its Staff observe and comply with the principles of confidentiality referred to in Clauses 11.2 and 11.3 herein and in recognition of these requirements the Provider will obtain an undertaking from Staff not to disclose any information which they may receive in accordance with the provisions of this IPT and any IPA entered into with the Provider.

11.6 Subject to any requirement to disclose information in terms of its statutory duties or force of Law or order from a court of competent jurisdiction, the Purchaser shall also maintain the obligations of

confidentiality in relation to the Child or Young Person and the Provider contained in Clauses 11.3 and 11.4. For the avoidance of doubt the terms of this Clause 11 (Confidentiality) will continue to bind the Parties after the expiry of the Framework Agreement or the IPA, whichever is the later.

## **12 Pre-Placement**

### **12.1 Pre-Existing Placements**

12.1.1 Where the Purchaser and the Provider have entered into arrangements for the provision of related services under any other agreement, they may agree to terminate the provision of services or individual placements in accordance with its terms and arrange for the provision of the Service or Individual Service in accordance with this Framework Agreement, subject to the completion of an IPA.

12.1.2 When considering whether to enter into an IPA subject to this IPT for a pre-existing placement:

- i) The Purchaser and Provider must consider the needs of the Child or Young Person first and foremost; and
- ii) The Purchaser will review the Child or Young Person's needs and current placement prior to discussion with the Provider; and
- iii) The Purchaser will share with the Provider relevant information on the findings from the aforesaid review.

12.1.3 An IPA must be completed for every pre-existing placement to which the terms of the Framework Agreement are to be applied detailing clearly the date from which the arrangement will become a Placement in accordance with this IPT.

## **13 Placement Procedures**

### **13.1 General Provisions**

13.1.1 The Purchaser in choosing a Short Break Service under this Framework Agreement will first take account of the needs of the Child or Young Person and where appropriate their Parent or Carer, together with any rights they have to choose services under the Social Care (Self Directed Support) (Scotland) Act 2013 and the Outcomes that are set out in the Child's Plan and Carer's Assessment. The Purchaser will then consider the ability of the Provider to meet those needs and Outcomes, including information about the quality of the Service, the views of the Child or Young Person and Parent or Carer, the Purchaser's ability to achieve Best Value and finally the availability of places.

13.1.2 The Provider shall operate a robust referral system to administer new Placements. This will include notification of vacancies to a national vacancy list if this is set up in future and ensuring that the information about the Service provided as part of the tender and required by Purchasers for the selection of Placements is kept up to date.

13.2 The Purchaser will ensure that all Children and Young People who require an Individual Service or Placement have their assessed needs matched with an appropriate Service. The Purchaser may refer to the Service information submitted by Providers within the Invitation to Tender to identify appropriate Services. The procedure undertaken for each Individual Service or Placement will vary depending on the individual requirements of the Child or Young Person, their Parent or Carer and the urgency of the

requirement but wherever possible shall be sufficiently detailed so that the Child or Young Person is suitably matched to ensure the delivery of a Service which best meets their needs and Outcomes.

13.3 The Purchaser and Provider will work together to identify any other factors that could impact on the Individual Service or Placement both in terms of quality of care and cost. The Purchaser and Provider will then agree how to address these issues and include this in the Child's Plan and IPA as appropriate prior to the Placement or Individual Service starting or within ten (10) Working Days of the commencement of the Individual Service or Placement where this does not happen in advance.

13.4 Sufficient information will be provided as agreed between the Parties to ensure an effective process can take place to secure the most appropriate Placement with the best chance of stability and success.

13.5 Placements or Individual Service may be made or arranged using one of the following processes:

- i) A direct placement in accordance with Clause 13.6
- ii) The Placement Matching Process in accordance with Clause 13.7
- iii) A Competitive Placement Process in accordance with Clause 13.8

13.6 Direct Placements

13.6.1 Where the Purchaser can determine a suitable Provider from relevant information about Providers participating in the Framework Agreement, the Purchaser may make a Direct Placement with the Provider having regard to Clause 13.1.1.

13.7 Placement Matching Process

- 13.7.1 The Placement Matching Process seeks to help Purchasers make better informed placement decisions based on Provider responses to the issue of anonymised summaries of needs and outcomes specific to individual Children or Young People and where appropriate their Parents or Carers having regard to Clause 13.1.1.
- 13.7.2 In considering potential providers and services, the Purchaser may take account of factors deemed appropriate in a form set out in Schedule 7, provided to Purchasers to assist with making individual Placements or matching a Child or Young Person to an Individual Service. From this information Purchasers may identify a list of potential Providers able to meet the needs and Outcomes of the Child and Young Person and their Parent or Carer.
- 13.7.3 The Purchaser will then will provide anonymous information sufficient for the potential providers it has identified to make a reasonable assessment of how they would meet the needs and Outcomes of individual Children or Young People and their Parents or Carers, together with any requirements for the process, including timescales.
- 13.7.4 Purchasers will then consider the proposals from the Provider, involving the Child or Young Person and their Parents or Carers where possible as set out in Schedule 7a and 7b as appropriate and Clause 13.9.1. It is up to the Purchaser to determine the parameters of the process but this may involve follow up questions or interviews with the Providers as well as visits to the Service before a final decision is made.
- 13.7.5 Where a Placement is urgently required, a shortened version of the Placement Matching Process may be followed.
- 13.7.6 Once a Provider has been selected, the Provider and the Purchaser will agree and complete an IPA under the terms of the Framework Agreement, in accordance with this IPT. The IPA will include confirmation of the Outcomes that have been agreed with the Provider and any Additional Services offered by the Provider to help deliver these Outcomes.
- 13.7.7 The Purchaser will provide feedback to the Provider where they are involved in the Placement Matching Process but the Child or Young Person is not placed with them where this is requested.
- 13.8 Competitive Placement Process
- 13.8.1 Where the Framework Agreement is not precise or specific enough to meet the requirements of the Child or Young Person or Parent or Carer, or the Purchaser, the Purchaser may choose to follow a Competitive Placement Process.
- 13.8.2 Where the Purchaser enters into a Placement or individual service with a Provider following a Competitive Placement Process, the Parties will enter into an IPA which contains the agreed terms including the Service to be provided, the Agreed Fee and any variation agreed as necessary to the IPT or the Service Specification.
- 13.8.3 The Purchaser will notify the Provider(s) in writing as soon as reasonably practicable of its decision in relation to the award of a competitive placement.
- 13.8.4 For the avoidance of doubt, the Purchaser is under no obligation to enter into an Individual Service or Placement following a Competitive Placement Process.
- 13.9 Introductory Visits and Phased Transitions



- 13.9.1 Where a Service appears suitable for a particular Child or Young Person, the Purchaser and Provider where possible, will facilitate an introductory meeting between the Service and Child or Young Person. The Parties will where possible involve the Child or Young Person in agreeing the Individual Service or Placement and will share information with them as deemed appropriate in accordance with Law and Guidance before a decision is made. Subject to Law and Guidance, the Provider shall ensure that it has written information about the Service in a form suitable to be shown, where appropriate, to the Child or Young Person and their Parents or Carer. Any reasonable costs associated with up to three pre-placement introductory meetings/visits will be met by the Provider, or as otherwise agreed by the Purchaser. Costs associated with any introductory meetings/visits required in addition to this will be met by the Purchaser subject to prior written agreement.
- 13.9.2 Overnight stays or full day visits cannot take place until the Placement or Individual Service has been agreed through the creation of an IPA and the first overnight stay or full day visit will constitute the Placement or Individual Service start date unless otherwise agreed.

## **14 The Individual Placement Agreement (IPA)**

- 14.1 An IPA must be completed for every Individual Service or Placement agreed in accordance with the terms herein.
- 14.2 The IPA is the contract between the Purchaser and Provider relative to a Placement made under the Framework Agreement and it sets out the specific arrangements for a Child or Young Person as to the Individual Service to be provided, in accordance with the Child's Plan and Carer's Assessment where relevant. The IPA will contain the information required set out at Schedule 3b (Individual Placement Agreement for Residential Short Breaks) and incorporates this IPT.
- 14.3 The Purchaser will agree and complete the IPA in consultation with the Provider for the Child or Young Person once the Placement or Individual Service has been agreed in principle.
- 14.4 Where the timescales for the Placement are such that it is not possible for the Purchaser to provide all the information required, the Purchaser will indicate on the IPA the timescales for this to be provided or agreed. In an emergency or when the Child or Young Person is not known to social work services the Purchaser shall make every effort to provide up to date information about the Child or Young Person to the Provider within twenty-four (24) hours. Thereafter the Purchaser shall provide to the Provider a comprehensive Child's Plan, Risk Assessment, and Risk Management Plan, medical information and any other relevant documents as soon as is possible.
- 14.5 Once the IPA has been fully completed, it will be kept under review and updated following the process set out in Clause 15 (Reviews and Variations to the IPA) herein to reflect decisions taken through the LAC Review or Placement planning processes.
- 14.6 The Fee will be payable from the date the Individual Service or Placement commences for the Duration of the IPA in accordance with the terms herein. No payment shall be made for the Service or any part thereof unless they are agreed between the Parties and identified within the IPA.
- 14.7 Additional Services & Extras
- 14.7.1 Where the needs of the Child or Young Person cannot be met by the Service alone the Purchaser may agree with the Provider that the Service should be supplemented with an Additional Service or Extra in order to support the Individual Service or Placement. All Additional Services require prior approval through the IPA. For Defined Additional Services, the Purchaser shall pay Supplementary Fees at the

rates as set out in Schedule 4 (Financial Information). For other Additional Services, rates will be subject to agreement between the Purchaser and Provider and then included in the IPA.

- 14.7.2 Additional Services or Extras can be agreed by the Parties for new Individual Services or Placements prior to start date of the Placement or at any time during the Duration of the IPA where the needs of the Child or Young Person so require or as a result of a review under Clause 15.4.
- 14.7.3 Additional Services as set out in Schedule 4 (Financial Information) can be agreed as defined in the Schedule by both Parties and detailed in the IPA.
- 14.7.4 Any Additional Services shall be delivered promptly in accordance with agreed timescales and the expected Outcomes to be achieved for the Child or Young Person as detailed in the Child's Plan and will be reviewed accordingly and the particular specification of Additional Services shall, as far as possible, be included in the applicable IPA.
- 14.7.5 Where the Child or Young Person has consistently refused to take up any Additional Services for the period of a specific Placement, the Provider shall notify the Purchaser within seven Days of such refusal. After such time the Purchaser and Provider will agree whether the Additional Services are to continue to be provided for future Placements or not. Any resultant change shall be specified as a continuation of the IPA.
- 14.7.6 The Purchaser and Provider will agree whether any Extras are necessary, the conditions and obligations associated with the Extras, whether this is a one off or ongoing requirement, the Supplementary Fee due (where applicable) and the relevant invoicing arrangement.
- 14.7.7 Where the Extras are agreed as an ongoing requirement, details of the agreement must be detailed in the IPA and reviewed as agreed in the IPA.
- 14.7.8 Any Extras agreed as a single occurrence may be agreed in advance between the Parties without amendment to the IPA where both Parties confirm the requirement and Supplementary Fee in writing.
- 14.7.9 Any Extras shall be executed in accordance with the agreed timescales and conditions reflected in the Child or Young Person's IPA where relevant.

#### 14.8 Provision of Information

- 14.8.1 The Purchaser shall wherever possible share the Child's Plan or other applicable documentation with the Provider once a Placement has been selected along with matters set out in Clause 14.2 herein. Where due to the nature or timescales for making the Placement, the Purchaser is unable to share the Child's Plan, the Purchaser will share what assessment information it has available in accordance with all applicable Laws and Guidance including the circumstances of the referral, the initial Outcomes to be achieved and an initial assessment of risks. Following a Placement made in such circumstances, the Purchaser will update the Child's Plan where one exists or draw one up for the Child or Young Person where it does not at the emergency LAC Review or Placement Meeting and within ten (10) Working Days of the start date of the Child or Young Person's Placement ensuring this covers the matters set out in Clause 14.2 herein.
- 14.8.2 Where due to the nature or timescales for making the Placement, the Purchaser or Parent or Carer is unable to share the Child's Personal Health Record (Red Book) or equivalent, the Purchaser will complete Appendix 1 to Schedule 3, along with the IPA. This will be replaced by the Red Book or equivalent when it becomes available.
- 14.8.3 The Provider shall for all referrals provide the Purchaser with an up to date profile of the Service and any additional information to support the Placement Matching Process, ensuring this includes up to date information.
- 14.9 Placement Stability
- 14.9.1 The Parties hereby acknowledge the importance of Placement stability and will observe the requirement and procedures set out in Section 17 (Placement Stability) of the Service Specification.

## **15 Reviews and Variations to the IPA**

- 15.1 The Purchaser shall allocate a Child's Social Worker to be available to the Child or Young Person and to review and monitor the Individual Service or Placement to a Child or Young Person and shall advise the Provider promptly of any changes thereto. The Provider shall advise the Purchaser of the Key Worker responsible for an overview of the Individual Service provided to the Child or Young Person and advise the Purchaser promptly of any changes thereto.
- 15.2 A Provider and Purchaser may agree to vary this IPT or the Service Specification for a Placement or Individual Service where both Parties agree the variation and this is detailed in the IPA.
- 15.3 Where the Child or Young Person is looked after, the Purchaser and the Provider shall review the needs of the Child or Young Person and IPA as part of the LAC Review process. LAC Review meetings will take place, as a minimum within statutory timescales or more frequently where this is stated in the Child's Plan. The Purchaser and Provider may also hold Placement Meetings with the Child or Young Person and other interested parties as appropriate to discuss the progress of the Placement and address any issues arising from it within the context of the Child's Plan. Minutes and/or outcomes from Placement Meetings will be shared within a reasonable timescale with relevant parties in accordance with Law and Guidance.
- 15.4 In the case of any Short Break that is required in an emergency, for example because of Parent or Carer illness, the Purchaser will be responsible for undertaking an immediate assessment of need, passing on information about known or anticipated risks and planning for intended Outcomes within three (3) Days. If the extent of assessment needed requires additional resources, the Purchaser may request the

Provider to assist with the provision of information over and above what would normally be required if an assessment was in place. Such assistance may be negotiated as an Additional Service.

- 15.5 Where possible, LAC Reviews and Placement Meetings, will be planned, in advance so all parties have adequate notice and time to prepare. The Child or Young Person, the Child's Representative or Parent or Carer, the Purchaser, or the Provider may request a review of the Child or Young Person's care and support needs at any other time having given reasonable notice to the other parties. Where the circumstances require either the Purchaser or Provider to require an urgent Placement Meeting, they will notify the other Party as soon as possible and endeavour to agree a mutually convenient time which shall normally be within 5 Working Days and preferably three (3) Working Days from receipt of such a request.
- 15.6 LAC Reviews and Placement Meetings shall be held in suitable premises that accommodate the requirements of all attendees. The Provider shall ensure that appropriate Staff are available to attend LAC Reviews where appropriate and Placement Meetings.
- 15.7 Wherever possible and where it is in the interests of the Child or Young Person, the Purchaser and Provider will endeavour to ensure that any review of the Child or Young Person's needs by different agencies shall be coordinated. The Purchaser will be responsible for integrating various different plans for the Child or Young Person into a single Child's Plan such as the integrated plan as set out by the Scottish Government under Getting It Right for Every Child.
- 15.8 Following LAC Reviews or Placement Meetings any changes discussed regarding the Child's Plan and IPA shall be implemented within the agreed timescales or otherwise as soon as practical, with all relevant documentation updated and agreed to by both Parties in writing.
- 15.9 A written copy of the decisions and/or outcomes of the LAC Review and Placement Meetings and any resulting amendments as may be necessary to the IPA will be confirmed in writing to the Provider by the Purchaser within fourteen (14) Working Days of the LAC Review or Placement Meeting and to those persons to whom the Purchaser has a statutory duty to notify the results of the LAC Review or Placement Meeting.
- 15.10 The Provider's involvement in LAC Reviews and Placement Meetings shall include the timely submission of written reports which will include information on work undertaken, progress made on meeting Outcomes, risk assessments undertaken and recommendations for the future and participating in the meeting as required.
- 15.11 The Provider shall produce with the Child or Young Person, where appropriate, a Personal Plan of how the Placement shall contribute to the Child's Plan and meet the Outcomes identified in the Child's Plan including needs for stability and permanence. These plans shall be kept up to date and sent to Child's Social Workers prior to all Placement Meetings/ LAC Reviews and where there have been any significant changes in the Child or Young Person's needs.
- 15.12 When the Child's Plan is for the Child or Young Person to return to their family or move on to another service, the Purchaser and Provider, will work together to implement a transition plan.
- 15.13 Where, for any reason, either the Purchaser or Provider has concerns about the suitability of the Placement, the Parties will try to address these or plan an alternative Placement as part of the review process. Where unforeseen concerns or risks arise, the Provider and Purchaser will use all reasonable endeavours to facilitate continuation of the Placement to enable the LAC Review or Placement Meeting to be held.

## **16 Management of the Short Break**

16.1 Providers shall be required to meet the requirements of section 14 (Management of the Short Break) of the Service Specification.

## **17 Management and Monitoring Arrangements**

17.1 The management and monitoring of the IPA requires a partnership approach between the Provider and the Purchaser as set out below. The purpose is to ensure that each Individual Service or Placement is being undertaken in accordance with the IPA, delivering Outcomes for Children and Young People and Parents and Carers supported by the Service and to identify any innovation and/or best practice in delivery of the services. The IPA will have a nomination officer which may be the allocated Child's Social Worker or other professional as the primary contact.

17.2 Monitoring of the Individual Placement Agreement

17.2.1 The Purchaser and Provider shall both be responsible for monitoring the delivery of Outcomes for the Child or Young Person and Parent or Carer and shall use all reasonable endeavours to ensure that it meets the Child or Young Person's and Parent or Carer's needs and Outcomes in accordance with Clause 15 (Reviews and Variations to the IPA).

17.2.2 The Purchaser and Provider may agree Outcome reporting requirements for each Child or Young Person and include these within each IPA.

17.2.3 The Provider shall evidence that the Service meets the monitoring and reporting requirements as detailed in the Framework Agreement and IPA.

17.2.4 The Purchaser may refer to the following documentation for the purposes of monitoring performance which will either be supplied by the Provider or with the Provider's agreement, by the Care Inspectorate, where available:-

- i) Care Inspectorate pre-inspection return and where requested, any supporting documentation;
- ii) The Provider's self evaluation against the National Care Standards;
- iii) Care Inspectorate inspection reports and any associated action plans;
- iv) Variation to Registration;
- v) Copies of any statutory notices received;
- vi) Internal quality assurance procedures and reports;
- vii) External quality assurance certificates, where applicable;
- viii) Internal policy and procedures;
- ix) The complaints and compliments procedure operated by the Provider and the outcome/investigation of any complaints made.
- x) Risk assessments prepared in accordance with the IPA (the Provider must inform the Child's Social Worker of the results of any risk assessment);
- xi) Information on numbers, roles and qualifications of Staff;
- xii) Where applicable, such information as may be required in the reasonable opinion of the Purchasers to demonstrate compliance with the requirements of Clause 33 (TUPE);
- xiii) Copies of the current health and safety policy in accordance with Clause 19 (Health and Safety) of the Framework Terms.

17.2.5 To facilitate monitoring of the IPA and avoid duplication, the Provider will share Care Inspectorate feedback which affects the Child or Young Person placed by the Purchaser. Where any concerns are raised, the Provider will share any action plan submitted to the Care Inspectorate with the Purchaser and advise any subsequent action(s) to address the issues raised.

17.2.6 A nominated officer of the Purchaser may visit the Service to monitor the Individual Placement Terms. The purpose is to discuss any performance issues arising, jointly agree any remedy required and to identify any innovation or best practice in the service delivered.

### 17.3 Monitoring Individual Service and individual Placements

17.3.1 The Provider shall permit the Child's Social Worker allocated to the Child or Young Person access to the information required to monitor the Individual Service or individual Placements.

17.3.2 Once a Placement or Individual Service commences, the Provider shall provide initial Management Information about the Placement or Individual Service in electronic format through the data base provided by Scotland Excel at the next quarterly reporting period as set out in Schedule 6 (Management Information). Once logged on the data base, this initial Management Information will not require to be resubmitted except where it has changed.

17.3.3 Thereafter the following information shall be provided on a quarterly basis ending 30<sup>th</sup> June, 30<sup>th</sup> September, 31<sup>st</sup> December and 31<sup>st</sup> March:

- i) Quarterly Management Information as set out in Schedule 6 through the data base provided by Scotland Excel
- ii) Other information agreed with the Purchaser in the IPA by a means to be agreed with the Purchaser. This may include:
  - a) The Child or Young Person's progress against their individual Outcomes for that quarter;
  - b) Any complaints or compliments and details of any upheld complaints by either the Provider or Care Inspectorate;
  - c) Any significant incidents, including circumstances arising, action taken and agreed care plan amendments if required;
  - d) Any Child Protection investigation and the outcome;
  - e) Any changes to the Key Worker or other dedicated Staff which may have an impact on the Child or Young Person;
  - f) The Placement or Individual Service end date, if appropriate;
  - g) The anticipated services to be offered to the Child or Young Person and Parent or Carer following the end of the Placement or Individual Service, e.g. community short-breaks.

17.3.4 The quarterly return will be scrutinised against any other information held by the Purchaser, e.g. care reviews or Care Inspectorate information and may be the subject of further discussion.

17.3.5 Any other records relating to the care of a Child or Young Person for whom the Purchaser is responsible must be made available to the Purchaser on request, including but not limited to:

- i) Decisions relating to the Child or Young Person.
- ii) Maintenance of a record of the Child or Young Person's progress and any records of interactions with the Parent or Carer.

17.3.6 The Provider shall reasonably co-operate with supplying information as requested by the Purchaser in line with the monitoring arrangements under this IPT. Purchasers and Scotland Excel will share such information between themselves and with the Care Inspectorate as appropriate in order to avoid duplication.

#### 17.4 Sharing of Information

17.4.1 Purchasers obtaining information from Providers under this IPT may share information, subject to the Providers' consent which shall not unreasonably be refused, excluding any identifying information for the Child or Young Person, with Scotland Excel and any other relevant bodies with a legitimate interest and entitlement to the information, including but not limited to, the Association of Directors of Social Work, the Centre for Excellence for Looked After Children in Scotland and the Scottish Government. Information obtained by the Purchaser in accordance with this Clause 17 may be shared with other placing Purchasers or Purchasers interested in making a Placement, to avoid duplication and unnecessary bureaucracy through repeated information requests to the Provider.

17.4.2 Purchasers will share information with Scotland Excel in accordance with the terms of membership of each Council with Scotland Excel. This information will not include such detail that would uniquely identify any Child or Young Person being supported by the Service, which will remain between the Provider and the Purchaser. The Purchaser may refer to some or all of the documentation outlined in Clause 17.2.4 of the IPT as appropriate for the purposes of monitoring performance, which shall either be supplied by the Provider, or with the Provider's agreement, supplied by the Care Inspectorate, Registrar of Independent Schools and Education Scotland.

17.4.3 The Purchaser and Provider may meet to discuss and monitor a Placement or Placements made under this IPT. Any monitoring by the Purchaser shall take into consideration the annual report and any other available and/or appropriate monitoring information, address any performance issues and identify innovation and best practice in service delivery. The outcome of the meeting may be shared with Scotland Excel to enable the identification of any trends across the service sectors.

## 18 Absences and unauthorised Absences

18.1 The Provider will follow the requirements on Absence as set out in section 16 (Absences and Unauthorised Absences) of the Service Specification.

## 19 Reporting of Events

19.1 The Provider shall record and report all serious accidents or health and safety issues concerning any Child or Young Person or the premises in which the Individual Service or Placement is delivered in accordance with Clause 4.6 herein.

19.2 The Provider shall immediately inform by telephone the Child's Social Worker or Parent or Carer where this has been agreed in the IPA and anyone else identified in the Child's Plan who should be given notice of any of the following:

- i) Any significant incident or police activity, including allegations or evidence of abuse relating to the Child or Young Person or the care of the Child or Young Person or of other children or young people in the Service;
- ii) Maladministration of, or Fraud related to, the Child or Young Person's funds or property, or serious loss or damage to the Child or Young Person's property;

- iii) Significant changes in the Child or Young Person's needs or circumstances, including exclusion from school;
- iv) Any permanent change in the Key Worker;
- v) Formal complaints in respect of any aspect of the Child or Young Person's care, subject to the consent of the Child or Young Person and/or the Child's Representative;
- vi) Unplanned absence of the Child or Young Person from a Placement;
- vii) The Child or Young Person's admission to or return from hospital as an in-patient;
- viii) Death of the Child or Young Person.

19.3 The Provider will co-operate fully with any investigation carried out by the Purchaser or other regulatory body where a serious incident, including but not limited to incidents listed in Clause 19.2 herein, which have (or there is reason to believe it may have) occurred.

19.4 The Provider shall also submit a written report in the event of any incidents detailed in Clause 19.2 herein to the Purchaser as soon as reasonably practicable.

19.5 The Provider must inform the Purchaser and the Child or Young Person's Parent or Carer (except where otherwise set out in the IPA) of any accident, emergency or other serious incident relating to the Child or Young Person where such an incident occurs during the provision of the Individual Service or Placement.

19.6 In the event of an accident, emergency or other serious incident occurring to a Child or Young Person with a Mental Disorder as defined in the Mental Health (Care & Treatment) (Scotland) Act 2003 the Provider shall immediately notify the Purchaser. The Purchaser will then inform the Mental Welfare Commission.

19.7 If a situation of danger to the Provider's Staff and other children or young people should arise as a result of;

- i) The actions of a Child or Young Person placed by the Purchaser; or
- ii) The actions of a child or young person placed by another Purchaser,

19.8 The Provider shall use best endeavours to manage the situation and shall immediately contact the relevant emergency services, the Parent or Carer where appropriate, the Child's Social Worker or duty social worker, or standby service for the Purchaser. The Provider shall also submit a written report to the Purchaser as soon as reasonably practicable.

19.9 Where notification relative to a Child or Young Person is sent by a Provider to a Purchaser's out of hours service, this shall not be deemed to have satisfied the Notice requirements under Clause 29 (Notices) herein until the Provider issues formal Notice to the appropriate contact detailed in the IPA for the Child or Young Person.

19.10 Where Notice required under this Clause 19 relative to a Child or Young Person is sent by a Provider to a Purchaser's out of hours service, this shall not be deemed to have satisfied the Notice requirements under this Clause 19 until the Provider issues formal Notice to the appropriate contact detailed in the IPA for the Child or Young Person in accordance with this Clause 19.

19.11 Where events occur which have a material effect on the Provider's ability to deliver the Placement or Individual Service, the Purchaser must be notified immediately or as soon as reasonably practicable thereafter. Notification of such events may be made by telephone as long as written Notice is subsequently given in accordance with Clause 29 (Notices). The following is a non exhaustive list of events which must be notified in accordance with this Clause:-



- i) Notice of any risks to the health and safety of Children or Young People
- ii) Notice of Fraud.
- iii) Notice that the Provider has become unfit to provide the Service in terms of Regulation 6 or that someone acting as the Manager of the Service is unfit to so act in accordance with Regulation 7, both of the Social Care and Social Work Improvement Scotland (Requirements for Care Services) Regulations, 2011.
- iv) Notifications from the Care Inspectorate that it is going to impose conditions, serves notice to cancel Registration or to vary categories of Registration:-
- v) Notice of changes in key personnel, such as to the manager of the Service.
- vi) Notice under Clause 34 (Force Majeure and Business Continuity) herein that the Provider finds it is unable permanently or temporarily to meet the conditions of the IPT or any IPA.

19.12 Where Notice is given to the Purchaser in accordance with Clause 19.11 herein and there is concern that such events may have a material effect on the Provider's ability to deliver the Service to Children or Young People placed by other Purchasers, Scotland Excel must also be notified in accordance with Clause 19.11. Notice given to Scotland Excel under this Clause will detail the event and concern generally but must not identify any individual or provide any information which would contain personal data or sensitive personal data as defined in the DPA.

## **20 Complaints and Suggestions**

- 20.1 Where a Child or Young Person or Parent or Carer decides to use their right to complain to the Purchaser, the Purchaser will investigate the complaint timeously and keep the Provider informed where there are consequences for Staff.
- 20.2 The Provider shall provide a complaints and suggestions procedure satisfying any requirements of Purchasers and in accordance with Law and Guidance which covers Staff, and can be easily accessed when necessary including by Staff, Children or Young People, their Parents or Carers and their wider friends and family. The procedure shall at all times fully comply with the National Care Standards and the Social Care and Social Work Improvement Scotland (Requirements for Care Services) Regulations 2011.
- 20.3 The Provider shall have a process for the investigation of complaints in a way which reassures the Child or Young Person (or person making the complaint) that making a complaint will not impact on the Individual Service or Placement provided to them in any way. Any investigations shall be carried out to a standard which is acceptable to the Purchaser and in accordance with the Framework Agreement and the outcomes and conclusions of the Provider's own investigation shall be made available to the person submitting the complaint and the Purchaser upon request.
- 20.4 The Child or Young Person shall also have access to the statutory complaints procedure operated by the Purchaser and shall be made aware of how to make a complaint to the Care Inspectorate and any other relevant regulatory body. Where the Purchaser has a statutory duty to investigate a particular complaint, the Provider must notify the Purchaser as soon as the Provider receives the complaint. The Provider shall co-operate with any investigation resulting from a complaint within the terms of section 5B of the Social Work (Scotland) Act 1968. The Provider shall provide access to its records to the Purchaser in the investigation of such a complaint. The Provider shall implement any corrective actions required, promptly, within the timescales identified by the Purchaser. Where the Provider disagrees with the corrective actions to be taken, the process as set out at Clause 24 (Resolution of Disputes) shall be followed.

20.5 The Provider shall maintain a Complaints Register which shall be available at all reasonable times to the Purchaser.

## **21 The Fees**

21.1 The Fee in respect of each Placement will comprise the Agreed Fee and any Supplementary Fee stated in the IPA and authorised by the Authorised Signatory of the Purchaser to meet the needs of the Child or Young Person as defined in the IPA.

21.2 The Agreed Fee and any Supplementary Fees for Defined Additional Services will be calculated in accordance with Schedule 4 (Financial Information), taking into account the type and dates of Placement.

21.3 The Agreed Fee shall cover all of the provisions of the Service Specification and the Service as defined and as submitted by the Provider as part of the tender process

21.4 The Purchaser shall pay the Provider the Fee for a Placement or Placements in accordance with the terms herein until the expiry of the relevant Notice periods in accordance with Clause 27 (Breach and Termination) unless otherwise agreed.

21.5 The Purchaser shall in no event be liable to make payment for any period of notice where the Placement vacated by a Child or Young Person is occupied by another Child or Young Person.

21.6 Any Supplementary Fees relating to Additional Services or Extras, in respect of an Individual Service or Placement which have been agreed with a Purchaser must be specified in the IPA and separately identified within all invoices submitted for payment.

21.7 Where the requirement for Additional Services has been specified in the IPA and results in any Supplementary Fees, the duration of the Additional Services will be discussed and assessed at each LAC Review or Placement Meeting. Where it is agreed by both the Purchaser and the Provider that there should be an adjustment to the Additional Services and/or Supplementary Fees this will take effect from the date the Additional Services commence, as confirmed in a new or updated IPA.

21.8 The Provider shall not make any charges to the Child or Young Person, Child's Representative or their families in respect of the Individual Service or Placement unless otherwise agreed.

## **22 Fee Variations**

22.1 Where the type of Placement changes, such as a move between units which have a different Agreed Fee, the Agreed Fee will be varied in accordance with Schedule 4 (Financial Information) in accordance with this IPT.

22.2 Where a variation to the Agreed Fee and/or Supplementary Fees for Defined Additional Services is agreed in accordance with Clause 27 (Fees and Fee Setting) of the Framework Terms the variation will:

- i) Apply to any IPA entered into in accordance with this IPT, effective from the 1st of April in the same year in which the variation was agreed ("the effective date"); and
- ii) Apply to both IPAs in existence at the effective date and any IPAs concluded after the effective date, equally.

- 22.3 Variations fees agreed for Extras will be agreed individually between the Purchaser and Provider in accordance with this Clause 22 (Fee Variations).
- 22.4 No proposed increase in fees agreed for Extras will be made without the prior written agreement of the Purchaser to the proposed increase.
- 22.5 The Purchaser reserves the right to terminate the IPA where it considers proposed increases to be unreasonable. In accordance with Clause 27 (Breach and Termination), where termination occurs, both Parties shall ensure they work together to support a smooth and effective transition of the care arrangements for each affected Child or Young Person.

## **23 Invoices and Billing**

- 23.1 Individual Purchasers may agree particular billing and payment arrangements which must be stated on the IPA where different from the process detailed in this Clause 23. Such alternative arrangements shall be no more onerous than the process contained herein.
- 23.2 The Purchaser's address to which invoices will be sent, and any additional information required for invoicing purposes, will be stated in the IPA.
- 23.3 Invoices should be submitted in arrears for each calendar month no sooner than the first Day of the next calendar month.
- 23.3.1 Where Providers have agreed previously with Purchasers as to the timing and phasing of payment which diverge from the requirements of this Clause 23, they may continue with these where they have been agreed as part of the tender process with a view to phased transition to procedures in accordance with Clause 23.3 above.
- 23.4 Valid invoices submitted by the Provider must contain, unless otherwise set out in the IPA, in respect of each Child or Young Person for whom the Purchaser is liable to make any payment:
- i) The Child or Young Person's identifying number (all invoices)
  - ii) Date of commencement of the Individual Service (on the initial invoice only);
  - iii) Duration and type of any Additional Services and Extras and the applicable Supplementary Fee;
  - iv) Dates of any hospitalisation or other Absence during the period of the invoice;
  - v) If Individual Service provision has been terminated during the period of the invoice(s) the date of such termination;
  - vi) The period of charge for the Placement or Placements made as part of the Individual Service or Placement and any Supplementary Fees if the period of charge is different;
  - vii) The total Fee due for the period of the invoice for each Child or Young Person including a breakdown of the Fee into the Agreed Fee and Supplementary Fees.
- 23.5 Payment by the Purchaser will not imply acceptance by the Purchaser that the Individual Service or Placement has been satisfactorily performed.
- 23.6 The Purchaser will make payment of any valid, undisputed invoices no later than thirty (30) Days after receipt.
- 23.7 Should the Provider submit an invoice to the Purchaser which is apparently inaccurate or not in accordance with this Clause 23, the Purchaser may dispute the invoice by giving Notice to the Provider

stating the reason for the dispute. The Purchaser may make part payment for any undisputed part of the invoice, but shall not be required to make any payment until a valid, undisputed invoice is received.

23.8 Should the Provider become aware that any invoice is not accurate; the Provider shall correct the invoice by:

- i) Withdrawing the invoice and re-submitting an valid invoice if practical;
- ii) Providing a balancing entry on the next invoice; or
- iii) Providing a refund and credit note where no further invoices are anticipated.

23.9 The Fees are exclusive of Value Added Tax (VAT) and the amount of any VAT must be shown separately on each invoice. The Purchaser will pay VAT on that part of the Fee for which the Purchaser has a liability.

## **24 Resolution of Disputes**

24.1 In the event of any dispute between the Purchaser and the Provider, both Parties will use their best endeavours to resolve the dispute between their appropriate nominated representatives.

24.2 Where agreement cannot be reached in accordance with Clause 24.1, either Party may initiate the formal resolution of dispute process in accordance with Clause 24 herein.

24.3 Either Party may serve a Notice on the other outlining the terms of the dispute and proposing a time and place for a meeting between the Parties' representatives where the representatives shall attempt in good faith to resolve the dispute and the other Party shall respond to such a Notice within seven (7) Days of receipt.

24.4 If the matter is not resolved within fourteen (14) Days of the date of the Notice, the matter may be referred by either Party to the appropriate senior officer of each Party for resolution within twenty-one (21) Days of the date of the Notice.

24.5 Having followed the procedure in Clauses 24.3 and 24.4 above and where the dispute cannot be resolved, the dispute will be escalated to the relevant senior officer (i.e. Local Authority Placement Manager) and to the Finance Director (or equivalent) of the Provider for resolution within a further five (5) Days or within such alternative timescales as the Parties may both agree in writing.

24.6 If either Party refuses at any time to participate in the procedures set out in this Clause 24 and in any event the dispute is not resolved within thirty (30) Days of the date of the Notice issued in accordance with Clause 24.3 herein then either Party may refer the dispute to arbitration.

24.7 Any reference to arbitration shall be a submission within the meaning of the Arbitration (Scotland) Act 2010 ("the Act") which Act shall apply excluding rules 22, 26, 29, 32, 35, 41, 43, 46, 47, 51, 52, 58, 69 and 81, unless otherwise agreed in writing by the Purchaser and the Provider. It is hereby agreed by the Purchaser and the Provider that for the purposes of the arbitration, the arbitrator shall have the power to make provisional awards as provided in the Act, rule 53. For the avoidance of any doubt, the arbitration proceedings shall be seated in Scotland and shall be governed by, and interpretations made in accordance with, Scots Law.

24.8 If the Parties are unable to agree upon a single independent arbiter within fourteen (14) Days of the date of the decision to refer the matter to arbitration then either Party may refer the matter in dispute to an arbiter appointed by the Sheriff Principal of the Sherifffdom in which the IPA is performed or, in the case

of disputes not related to an IPA, an arbiter appointed by the Sheriff Principal of the Sheriffdom in which the head office of the Purchaser is based, whose decision on the matter and any issue relating to the expenses of such arbitration shall be final and binding on the Parties.

24.9 Where the procedures in this Clause 24 have been exhausted and the dispute remains unresolved, the IPA to which the dispute relates, or all IPAs between the Purchaser and Provider, may be terminated with immediate effect or within such alternative timescale as the Parties may determine by agreement. In such a case, the requirements Clause 27 (Breach and Termination) will apply.

24.10 Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.

## **25 Suspension**

25.1 Distinct from the powers of Suspension by Scotland Excel under the Framework Terms, the Purchaser may nonetheless suspend the making of new Placements with a Provider where it determines that:

- i) A Breach or Material Breach by the Provider creates an immediate or serious risk of harm to a Child or Young Person or a diminution of quality of the Service or any part of it below the standards required at the establishment of this Framework Agreement;
- ii) The Provider has failed to timeously implement any Remedial Action Plan agreed with the Purchaser;
- iii) Notice of assignation, disposal, sub contracting or change of Control (an "event") has been given and the Purchaser has serious concerns about the viability of the arrangement, or where a Provider has failed to provide Notice of an event;
- iv) Where the Provider or Purchaser has given Notice of termination;
- v) Where the Provider is in Material Breach in accordance with Clause 27; or
- vi) Where the Provider fails to achieve and/or maintain the required Care Inspectorate grades in accordance with Clause 4.7 herein.

25.2 Once a decision has been taken to exercise Suspension the Purchaser will:-

- i) Notify the Provider in writing of the reason for the Suspension and the date the Suspension takes effect; and
- ii) Notify the Care Inspectorate, Scotland Excel and other relevant regulatory bodies of the Suspension.

25.3 During any period of Suspension:

25.3.1 The Provider must continue to co-operate with and comply promptly with any reasonable requirements of the Purchaser;

25.3.2 Existing Placements or placements planned as part of the Individual Service may continue subject to the Purchaser and where appropriate the Parent or Carer being satisfied each individual Placement continues to be the most appropriate way to meet the needs of the Child or Young Person concerned; and

25.3.3 The Purchaser shall use reasonable efforts to ensure that no further Children or Young People are referred to the Provider and the Provider shall cease to accept referrals of Children or Young People from the Purchaser unless there are exceptional circumstances where the needs of a particular Child or

Young Person require a new Placement with the Provider to be made and this is agreed by both the Purchaser and Provider.

- 25.4 The Purchaser and, where required, Scotland Excel will work together with the Provider to ensure there is no interruption in the Individual Service being delivered to Children or Young People with existing Placements and to address the issues that led to the Suspension and the Provider shall co-operate fully with the Purchaser and Scotland Excel.
- 25.5 The Purchaser may organise additional reviews for existing Placements within short timescales and will endeavour to agree with the Provider a mechanism or timetable for doing this to ensure that they are able to participate fully.
- 25.6 During the period of Suspension, the Purchaser will keep the Provider informed of its assessment of what progress the Provider has made in addressing the issues that led to Suspension and the likely duration of the Suspension.

## **26 Variation**

- 26.1 Where a Purchaser or Provider requires a variation to this IPT for all Placements to be considered it shall notify Scotland Excel and the request shall be dealt with in accordance with Clause 32 (Variations) of the Framework Terms.
- 26.2 Where a Purchaser or Provider require a variation to this IPT for a specific Placement to be considered it shall notify the other Party of the request and the variation shall be considered in accordance with Clause 15.2 herein.

## **27 Breach and Termination**

- 27.1 General Provisions

- 27.1.1 Without prejudice to this IPT, the Parties recognise the role of Scotland Excel including the sharing of information by the Purchaser with Scotland Excel in relation to the termination of an IPA pursuant to Clause 35.7 of the Framework Terms.
- 27.1.2 Both Parties must at all times act in accordance with this IPT and each IPA in order to meet the needs of the Child or Young Person and where there are issues attempt to resolve these through good communication or use of the process set out in Clause 24 (Resolution of Disputes).
- 27.1.3 Where appropriate and it is in the best interests of the Child or Young Person and Parent or Carer, the Provider and Purchaser will use all reasonable endeavours to facilitate a continuation of a Placement or Individual Service, utilising additional Staff for a Supplementary Fee (where necessary and subject to prior agreement of both Parties) to enable a LAC Review or Placement Meeting to be held.
- 27.1.4 During any period of Notice of termination the Provider and the Purchaser shall co-operate with each other to ensure that the Child or Young Person's requirements continue to be met; and they shall fully co-operate and consult with Children and Young People and Staff and such other parties as may be necessary if an alternative Service is required.
- 27.1.5 Where termination of a Placement or Individual Service is a planned termination ending on a planned date in accordance with this IPT, the Fee payable will end on the Day the Placement ends.
- 27.2 Following the termination or natural expiry of a Placement or Individual Service:
- 27.2.1 The Provider will hold records relating to the Placement or Individual Service as required by Law and Guidance.
- 27.2.2 Notwithstanding the above, all information provided to the Provider by the Purchaser must be treated in accordance with the express instructions of the Purchaser, and returned to the respective Purchaser, promptly, in accordance with any timescales and in such format(s) as the Purchaser may reasonably require.
- 27.2.3 Where a new service is being arranged for a Child or Young Person, subject to the express instructions of the Purchaser, the Provider may prior to or on termination of the Placement be required to copy appropriate paperwork to the new provider which should take place securely, subject to Law and Guidance.
- 27.3 Unless terminated earlier in accordance with the terms herein, an IPA may come to an end on the End Date of the Framework Agreement or on such subsequent date as may be agreed between the Parties where the Parties agree to extend the Placement beyond the Duration of the Framework Agreement in accordance with Clause 28 (Arrangements for Placements Extending Beyond the Duration of the Framework Agreement) herein.
- 27.4 Breach & Remedial Action Plan

- 27.4.1 Where either Party considers the other to be in Breach, the Party not in Breach will be required to notify the details of the Breach to the other Party who shall use all reasonable endeavours to rectify the Breach within seven (7) Days of notification of the Breach, or such alternative timescales as the Parties may reasonably agree.
- 27.4.2 Where the Party served with the forgoing Notice disputes the fact of the Breach, the procedures set out in Clause 24 (Resolution of Disputes) herein shall be followed.
- 27.4.3 If the Party in Breach is unable to rectify the Breach to the reasonable satisfaction of the other Party within the said seven (7) Days the matter shall be referred to the relevant nominated officers of each Party, who shall use best endeavours to reach a resolution of the matter within a further seven (7) Days.
- 27.4.4 If the nominated officers fail to resolve the matter within the said seven (7) Days, a meeting of both Parties shall be convened within seven (7) Days involving senior officers with line management responsibility for the Nominated Officers in order to reach a solution or formulate a Remedial Action Plan with appropriate timescales for rectification of the Breach.
- 27.4.5 Where a Remedial Action Plan cannot be agreed between the Parties or if the agreed Remedial Action Plan is not given effect timeously to the reasonable satisfaction of the Party not in Breach then the procedures set out in Clause 24 (Resolution of Disputes) shall be invoked.
- 27.5 Material Breach – Capable of Remedy
- 27.5.1 Where a Party has committed a Material Breach affecting one or more IPAs that is capable of remedy, the Party who is not in Material Breach may serve a written Notice on the Party in Material Breach giving that Party a fixed period in which to remedy the Material Breach. The period given shall be determined at the sole discretion of the Party serving the Notice but must be reasonable given the particular circumstances and is always subject to a minimum period of two (2) weeks and a maximum of thirteen (13) weeks.
- 27.5.2 Where a Provider is awarded Care Inspectorate grades of two (2) or below this will be treated as a Material Breach capable of remedy in accordance with the provisions of this Clause 27.5.
- 27.6 Material Breach - Irremediable



- 27.6.1 Without prejudice to the rights and remedies for Breach or Material Breach of the IPA otherwise available to them under this IPT, IPA, or at common law or under statute and without prejudice to the Purchasers' obligations and powers with regard to the safety and well being of any Child or Young Person or group of Children or Young People, the Purchaser and the Provider shall each have the right, such right being exercised at their absolute discretion, to serve written Notice of the other Party to terminate the IPA, if the other Party has committed a Material Breach of the IPA or IPT which is not capable of remedy, or if capable of remedy, has not been remedied to the reasonable satisfaction of the Party serving the Notice within the period specified in the Notice.
- 27.6.2 Where a Purchaser or Provider has the right to terminate the IPA in accordance with this Clause 27 (Breach and Termination) they may also provide Notice of their intention to not enter into any future Placements with that Purchaser or Provider for the Duration of the Framework Agreement.
- 27.7 Where a Purchaser or Provider gives Notice to the other Party in accordance with Clause 29 (Notices) they will also notify Scotland Excel and may also notify the Care Inspectorate and such other relevant Regulatory Bodies, where they consider this to be necessary.
- 27.8 The Purchaser shall advise Scotland Excel and the Care Inspectorate of any Material Breach of the IPA by the Provider subject to Law and Guidance.
- 27.9 Without prejudice to other rights and remedies the Purchaser may have for Material Breach of the IPA available to them under this IPT or at common law or under statute, if the Care Inspectorate gives Notice to the Provider of a proposal to cancel the Registration or if the Care Inspectorate has made Summary Application to the Sheriff for an Order cancelling the Registration then the Provider may, but shall not be bound, to terminate the IPA entered into with the Provider and the Purchaser may, but shall not be bound, to terminate any Child or Young Person's Placement without Notice, irrespective as to whether or not the Provider has made representations to the Care Inspectorate about the cancellation or the period for making such representations has elapsed or the Summary Application to the Sheriff is being opposed.
- 27.10 Nothing in this Clause shall limit the nature and extent of acts considered by a court of law or otherwise to be Material Breaches of this IPT. No granting of time or period of Notice under this Clause shall be deemed to be a waiver of any right the Party granting time or giving Notice may have against the other Party in respect of the other Party's Material Breach of this IPT.
- 27.11 Where the Provider is in Breach, the Purchaser may assist the Provider in continuing to provide or improve the Service in order to meet the best interests of the Child or Young Person or where the Provider's inability to perform the Service is of a temporary nature. Scotland Excel may co-ordinate any related information sharing between Purchasers as appropriate under such circumstances subject to Law and Guidance. Such assistance by the Purchaser shall not be regarded as a waiver of any Breach of the Provider's obligations under this IPT. The Fees for any Placements or the Individual Service during this period shall be subject to negotiation and may be reduced to reflect the reduction in Service for the relevant period.
- 27.12 The termination of 1) the Provider's participation in the Framework Agreement, 2) any agreement entered into in accordance with this IPT, shall not:
- i) Affect liability for any payments due to either Party before the termination date; or
  - ii) Prejudice the rights, duties and liabilities of either Party or rights of any Child or Young Person that have arisen on or before the respective date of termination (subject as otherwise expressly provided in

the IPA and IPT). Those rights shall include the right of the Purchaser or the Provider as the case may be to claim damages against the other Party arising out of that Party's Material Breach of this IPT. The Clauses of this IPT and any relevant inclusions in the IPA which expressly or impliedly have effect after termination will continue to be enforceable notwithstanding termination.

27.13 Where a Material Breach of the IPT occurs, termination of IPAs may take effect immediately unless the Purchaser and Provider agree an alternative period prior to termination.

27.14 Where the Provider receives Notice of termination of an IPA, it must return to the Purchaser information regarding the Placement in accordance with Clause 27.2 herein.

27.15 The following are Material Breaches of the IPA and IPT by the Provider:

- i) Serious non-compliance with the provisions of the Health and Safety at Work etc. Act 1974;
- ii) Operation of the Service without insurance cover as per Clause 8 (Indemnity and Insurance);
- iii) Non-compliance with the requirements of the Equality Act 2010;
- iv) Abuse or neglect of any Child or Young Person; where the Provider fails to notify the Purchaser if they are made aware that anyone working for the Provider or living in the premises of Placement is convicted of a Schedule 1 offence under the Criminal Procedure (Scotland) Act 1995 or is placed on the Sex Offenders Register (unless the Services offered specialise in the Placement of Schedule 1 offenders); and where the Provider fails to notify the Purchaser if they are made aware that anyone working for the Provider has any allegations of a serious nature made against them;
- v) The Provider ceasing to carry on the whole of its business; or disposing of all of its assets (other than in terms of the Framework Agreement); or becoming the subject of a voluntary arrangement under Section 1 of the Insolvency Act 1986; or being unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986; or having a receiver, liquidator (other than for the purposes of reconstruction or amalgamation), administrator or administrative receiver appointed over all or any material part of its undertakings, assets or income; or having a winding up order made in respect of it; or entering into administration; or a resolution for its winding-up being passed by creditors or members; or having a judicial factor appointed; or being apparently insolvent or sequestrated; or signing a trust deed for creditors; or entering into a composition with creditors; or entering into a debt arrangement scheme; or being the subject of any process or event similar or analogous to the events specified above in any jurisdiction outside Scotland;
- vi) Offering any improper inducements or exerting unreasonable pressure upon any person to encourage them or persons whom they represent to be placed in the Service.
- vii) Being convicted of an offence under the provisions of Part 5 of the Public Services Reform (Scotland) Act 2010
- viii) Committing any offence under the Bribery Act 2010;
- ix) Giving any undisclosed or illicit fee or reward to any elected member or officer of Scotland Excel or Purchasers in order to secure an unfair gain or advantage;
- x) Failing to comply with the assignation process as set out in Clause 30 (Assignation, Disposal, Sub Contracting, Change of Control) herein;
- xi) Corruption and Collusion as set out in Clause 37 (Corruption & Collusion) of the Framework Terms;
- xii) Fraud as set out at Clause 38 (Prevention of Fraud) of the Framework Terms;
- xiii) Conflict of interest as set out at Clause 39 (Conflict of Interest) of the Framework Terms;
- xiv) Breach of obligations set out at Clause 4 (Provider's Obligations) herein;
- xv) Breach of obligations set out at Clause 5 (Statutory Obligations) herein;

- xvi) Breach of obligations set out at Clause 6 (Staffing) herein;
- xvii) In the event of any action being necessary in accordance with Clause 34.2 (Business Continuity) herein
- xviii) The issue by the Care Inspectorate of an 'improvement notice' regardless of any appeal/review or equivalent process begun by the Provider;
- xix) Where the Provider fails to meet the reasonable requirements of any relevant regulatory bodies, including the Care Inspectorate, and unreasonably fails to put in place an agreed action plan between the Provider and any relevant regulatory bodies to put this right, or the Provider unreasonably fails to meet the requirements of said agreed action plan within a reasonable period of time;
- xx) The Provider committing a Breach of any of its obligations under this IPT which materially and adversely affects the performance of the IPA or provision of the Service or the Provider committing a series of Breaches of any of its obligations under this IPT the cumulative effect of which is to materially and adversely affect the performance of the IPA or provision of the Service.

27.16 The following are Material Breaches of the IPA and IPT by the Purchaser:

- i) Committing a Breach of any of its obligations under this IPT which materially and adversely affects the performance of the IPA or provision of the Service; or
- ii) Committing a series of Breaches of any of its obligations under this IPT, the cumulative effect of which is to materially and adversely affect the performance of the IPA or provision of the Service.

27.17 Other Termination Events

27.17.1 Without prejudice to any right, the Provider or Chief Social Work Officer for the Purchaser may have to terminate a Placement in accordance with the Law without giving the Notice required under this IPT.

27.17.2 Termination may take place in the event of failure to agree fees in accordance with Clause 23.5 on such written Notice as may be considered appropriate by the Purchaser.

27.17.3 Termination may take place of the IPA entered into under this IPT in accordance with the provisions contained in Clause 28 (Arrangements for Placements Extending Beyond the Duration of the Framework Agreement) herein.

27.17.4 Termination may take place of the IPA entered into under this IPT in accordance with the provisions contained in Clause 30 (Assignment, Disposal, Sub Contracting, Change of Control) herein.

27.17.5 Termination may take place of any IPA entered into under this IPT in accordance with the provisions contained in Clause 34 (Force Majeure and Business Continuity) herein.

27.17.6 The IPA will terminate immediately:

- i) If the Court or other competent authority decides that the Child or Young Person should receive alternative provision;
- ii) If the Children's Hearing determines that the Child should transfer to another placement; or
- iii) Where it is agreed in writing by the Parties that the Placement has irretrievably broken down for whatever reason; or

- iv) Where the Purchaser chooses to exercise their right to immediate termination under the provisions of Clause 37 (Corruption and Collusion) and Clause 38 (Prevention of Fraud) or Clause 39 (Conflict of Interest) of the Framework Terms; or
- v) Where the Child or Young Person discharges themselves from the Placement or Individual Service (where legally entitled to do so) at the age of sixteen (16) years or above.

27.17.7 Where the Purchaser chooses to exercise their right to immediate termination in accordance with Clause 38.3 (Prevention of Fraud) of the Framework Terms and Clause 27.19 herein, the Purchaser may also recover from the Provider the amount of any loss suffered by the Purchaser resulting from the termination, including the costs reasonably incurred by arranging for the supply of an equivalent to the Service, and any additional expenditure incurred as a result of the Provider's Fraud.

27.17.8 Where a short-term Placement is for a fixed term, it shall terminate automatically at the end of the period specified in the IPA unless the Parties agree to vary the duration or either Party exercises their right to terminate the Placement or Individual Service early in accordance with these Individual Placement Terms.

27.17.9 Where the Purchaser and Provider cannot reach agreement at a review and where the review decision is that the Child or Young Person should move from the Placement, the Purchaser may terminate the Placement, by giving the Provider seven (7) Days Notice in writing or alternatively removing the Child or Young Person and paying to the Provider seven (7) Days payment of the Fee in lieu of Notice, unless otherwise agreed.

27.17.10 For Individual Services the Purchaser shall be entitled to terminate the Individual Service following a LAC Review or Placement Meeting giving four weeks' Notice or less where both parties agree.

27.17.11 For individual Placements of more than two (2) weeks duration, the Purchaser shall be entitled to terminate the Placement following a LAC Review or Placement Meeting giving two (2) weeks' Notice or less where both parties agree.

27.17.12 Notwithstanding Clause 27.5, the Purchaser may terminate the Placement or Individual Service immediately, by Notice in writing to the Provider, and without any Fees payable beyond the termination date if the Purchaser has reason to believe that there is a matter of sufficient concern in relation to Child Protection to suggest that the Child or Young Person may be at risk of harm if they were to remain in the Service.

27.18 Notwithstanding Clause 27.5 the Provider may terminate the Placement or Individual Service immediately, by Notice in writing to the Purchaser if they have determined that the Child or Young Person presents an unacceptable risk to the safety and security of any other Child or Young Person or member of Staff, which cannot be addressed by other means.

27.19 The IPA may be terminated due to termination of the Provider's participation in the Framework Agreement pursuant to Clause 35 (Breach and Termination of the Framework Agreement) of the Framework Terms.

27.20 If a Child or Young Person dies while in the care of the Provider, thereby terminating the Placement and Individual Service, payment of the Fee will end seven (7) Days after the date of death or the planned end date of the Placement, whichever is shorter.

27.21 Material Breach of the Framework Agreement

27.21.1 Where Material Breach of the Framework Agreement occurs as defined in Clause 35 (Breach and Termination of the Framework Agreement) of the Framework Terms and Scotland Excel terminates the Provider's participation in the Framework Agreement, notwithstanding Clause 27.9, termination of any IPAs entered into with the Provider may take effect immediately or within such alternative period as the Parties shall mutually agree, where this is in the best interest of the Child or Young Person.

27.21.2 Where the Framework Agreement comes to an end for whatever reason or Scotland Excel notifies the Purchaser that the Provider's participation in the Framework Agreement has been terminated, the Purchaser and Provider may agree to continue Placements entered into under the Framework Agreement in accordance with Clause 28 (Arrangements for Placements Extending Beyond the Duration of the Framework Agreement) herein.

## **28 Arrangements for Placements Extending Beyond the Duration of the Framework Agreement**

28.1 To ensure continuity for Children and Young People in Placements made under the Framework Agreement, Placements or Individual Services may extend beyond the Duration of the Framework Agreement by agreement between the Parties to the IPA.

28.2 The terms of any future agreement may only be applied to Placements or Individual Services entered into under this Framework Agreement following agreement between the Purchaser and Provider once the Parties have had regard to the needs of the Child or Young Person and are satisfied that the needs and Outcomes of the Child or Young Person can be met by any future agreement.

28.3 Where the Placement or Individual Service extends beyond the End Date of the Framework Agreement it may continue on the basis of this IPT or such other terms as may be agreed between the Purchaser and Provider.

28.4 Subject to Clause 28.2 herein, where both Parties agree, the terms of any future agreement may be applied to Placements or Individual Service entered into under the Framework Agreement. In such an event, Placements or Individual Service subject to this IPT will be terminated on the basis of Clause 28 herein, and a new placement or individual service entered into in accordance with the terms of any replacement or successor arrangement.

## **29 Notices**

29.1 Any Notice which is to be given by either Party to another shall be given by letter (sent by hand, post or by the recorded or special delivery service), or by facsimile transmission or by electronic mail unless otherwise agreed between the relevant Parties. The provisions in this Clause do not affect or supersede the obligations of the Provider to comply with Child Protection procedures.

29.2 Notices relating to IPAs shall be sent to the Provider or the Purchaser at the address detailed in the IPA.

29.3 Any Notice which contains personal data or sensitive personal data (as defined in the DPA) shall be sent securely in a way which complies with Law and Guidance.

29.4 The Notice shall be deemed to have been given:

- i) Two (2) Working Days after the date of the letter;

- ii) Four (4) hours after sending in the case of electronic mail or facsimile transmission between 9am and 5pm on a Working Day or at 10am on the next Working Day when sending is out with these times; or
- iii) At such sooner time where the recipient acknowledges receipt of the relevant Notice.

29.5 The Provider or Purchaser may change its address for Notices by sending written notification to the other Party. The Purchaser shall not be responsible for any failure to intimate or delay in intimation arising out of or in consequence of the Provider's omitting to advise the Purchaser of a change under this Clause.

29.6 Where any Notice required in this IPT is sent by a Provider to a Purchaser's out of hours service, this shall not be deemed to have satisfied the Notice requirements under this Clause 29 until the Provider issues written Notice in accordance with this Clause 29.

29.7 For the avoidance of doubt, where written Notice has been dispensed with in serving an initial Notice of incidents in accordance with Clause 29 (Notices) herein, written Notice must be served as soon as reasonably practicable thereafter in accordance with the requirements of this Clause 29.

### **30 Assignment, Disposal, Sub Contracting, Change of Control**

30.1 The Provider will not assign, dispose or otherwise transfer its interests and/or obligations under this IPT and the IPA to any other person (hereinafter "assign") without first obtaining the prior consent in writing of Scotland Excel on behalf of all Purchasers in accordance with Clause 33 (Assignment, Disposal, Sub Contracting, Change of Control) of the Framework Terms notwithstanding Clause 30.2 and 30.3 herein.

30.2 Where during the Duration of the Framework Agreement the Provider requires to make a request in accordance with this Clause 30, in order to avoid duplication, Scotland Excel will consider any such request on behalf of all Purchasers in accordance with Clause 33 (Assignment, Disposal, Sub Contracting, Change of Control) of the Framework Terms wherever possible. Where this is not possible Scotland Excel will notify the Provider and the request will require to be considered for any existing Placement or Individual Service by the relevant Purchasers in accordance with Clause 30.

30.3 Where a Purchaser and Provider have agreed to continue an IPA entered into under the Framework Agreement following the End Date in accordance with Clause 28 (Arrangements for Placements Extending Beyond the Duration of the Framework Agreement) herein or where, during the Duration of the Framework Terms, Scotland Excel gives notification to the Provider in accordance with Clause 30 (Termination of Placements) of the Framework Terms the Provider will not assign without first obtaining the prior consent in writing of the Purchaser in accordance with the requirements of this Clause.

30.4 Failure to meet the requirements of this Clause 30, including requirements to provide information within stated timescales, is a Material Breach of this IPT in accordance with Clause 30.7 and may result in termination with immediate effect.

30.5 All Notices and/or any remedial action taken under this IPT and any IPA prior to assignment will remain in effect in accordance with its original terms notwithstanding the completion of any assignment or other transfer or change of Control.

30.6 Assignment/Disposal

- 30.6.1 Where the Provider proposes to transfer its interest, or part of its interest, in any IPA to another organisation with the intention of Service continuation:
- i) The Provider must give the Purchaser no less than thirteen (13) weeks' prior written Notice ;  
and
  - ii) The Purchaser may consent to the proposed assignation upon being satisfied of the proposed assignee's suitability and subject to the necessary consents and, where applicable, certificate of Registration being granted to the proposed assignee by the Care Inspectorate together with any other necessary regulatory body approvals.
- 30.6.2 In order to enable due consideration of the assignation request, the Provider shall provide the Purchaser with such information as it may reasonably request no later than thirteen (13) weeks prior to the proposed transfer date including:
- i) The name and address of the proposed assignee together with its relevant company/organisation details (such as its registered company office and company registration number) and details of regulatory approvals;
  - ii) Evidence that the proposed assignee can meet the required Service quality levels and financial and economic requirements satisfied by the Provider;
  - iii) Proposed date of transfer and details of the nature of the legal relationship between the Provider and proposed assignee;
  - iv) Proposed assignee's assessment of existing IPAs;
  - v) Staffing proposals, in particular transfer and re-appointment and/or recruitment and arrangements for transition (including the manager of the Service);
  - vi) Policies and procedures proposed for use in the management of the IPA or confirmation of the application of the existing policies to the IPAs; and
  - vii) Appropriate financial information relative to the proposed assignee in order that the Purchaser may be satisfied as to the financial viability of the proposed assignee and the continued financial viability of the provision of Placements.
- 30.6.3 If the Purchaser has overpaid the Provider, agreement must be reached about how any sums due will be repaid before consent will be granted to the assignation request. Should agreement not be reached, or where insufficient notice is given, the Purchaser may reclaim any monies owed via any means at its disposal.
- 30.6.4 Once notification of a proposed assignation has been received the Purchaser may exercise its right of Suspension in accordance with Clause 25 (Suspension) where it has serious doubts the proposed assignee will be able to meet the required Service quality levels and financial and economic requirements and the Provider has not indicated it will continue the Service if the assignation does not go ahead. Suspension in this case will normally come to an end once the Provider and proposed assignee have completed an assignation agreement in accordance with the procedures laid down in this Clause.
- 30.6.5 Until the completion of the assignation in accordance with the procedures laid down in this Clause, or until the IPA with the Provider is terminated:
- i) The proposed assignee must not provide the Service or any part of it and no payments will be made by the Purchaser to the proposed assignee.
  - ii) The Provider shall continue to be responsible for the performance of and shall be liable to the Purchaser for the acts and omissions of any party to which it may assign, transfer or otherwise

dispose of any obligations under the Framework Agreement as if they were the acts or omissions of the Provider.

30.6.6 In the event that consent is not granted to the assignment, or the assignment is not completed by the Provider and proposed assignee:

- i) And the Provider is unable to continue to provide the Service to the reasonable satisfaction of the Purchaser, the Purchaser may terminate in accordance with Clause 27(Breach and Termination);
- ii) And the Provider is able to continue to provide the Service, this IPT and the IPA will continue to apply.

30.6.7 Where the Purchaser agrees to assign the IPA, it will confirm this in writing and the Provider will then be responsible for informing the Purchaser of the assignment date and the details of the assignee.

### 30.7 Factoring Assignee

30.7.1 Notwithstanding the foregoing, the Provider may assign to another person (the "Factoring Assignee") the right to receive payment of the Fee or any part thereof due to the Provider under this IPT subject to:

- i) The Provider providing a minimum of one (1) invoicing period's advance notice to the Purchaser;
- ii) Deduction of sums in respect of which the Purchaser exercise its right to recover overpayments and any other debts

30.7.2 The Provider shall notify or procure that any Factoring Assignee notifies the Purchaser of any variations to the arrangements for payment of the Fees or for handling invoices, in each case one (1) invoicing period advance notice, to enable the Purchaser to make arrangements to redirect payments or invoices accordingly. In the absence of such notification, the Purchaser shall be under no obligation to vary their arrangements for payment of the Fee or for handling invoices.

### 30.8 Appointment of Subcontractors

30.8.1 The Provider will not appoint a Subcontractor to deliver the part(s) of the Service which are classed as Regulated Work with Children or which require registration with the Scottish Social Services Council or General Teaching Council or registration with another body, without the prior consent in writing of the Purchaser which shall not be unreasonably withheld subject to compliance with the requirements of Clause 6 (Staffing) herein.

30.8.2 The Provider will request consent to appoint a Subcontractor, by written application to the Purchaser, no less than twenty-eight (28) days before the proposed start date of any such subcontract, including:

- i) The name of the proposed Subcontractor;
- ii) The part(s) of the Service to be subcontracted;
- iii) The terms of the proposed subcontract;
- iv) Information pertaining to the suitability of the proposed Subcontractor; and
- v) Where appropriate, the monitoring measures to be put in place by the Provider to ensure that the Subcontractor complies with this IPT and any other relevant terms set out in the IPA as if it was the Provider.



30.8.3 The Purchaser will assess the proposed arrangement and whether it is appropriate to subcontract the part(s) of the Service proposed, taking into account the information submitted, any internal processes and procedures, Good Social Care Practice and relevant professional or regulatory advice.

30.8.4 The Purchaser may request such additional information as required to allow it to make its assessment.

30.8.5 The Purchaser will advise the Provider of its decision in relation to the appointment of a Subcontractor no more than fourteen (14) Days after the date of receipt of the application referred to in Clause 30.8 herein.

30.8.6 Where the Purchaser consents to the appointment of a Subcontractor, the Provider will:-

- i) Be responsible for the performance of and shall be liable to the Purchaser for the acts and omissions of its Subcontractors;
- ii) Ensure that any Subcontractor appointed complies with the requirements of the IPT and the terms of any IPA entered into; and
- iii) Ensure that a provision is included in any subcontract :
  - a) That requires the Subcontractor to apply for the consent of the Purchaser to subcontract anything in the subcontract in terms no less onerous than those set out in Clauses 30.8.2–30.8.5 herein;
  - b) Which requires payment to be made to the Subcontractor within a specified period not exceeding thirty (30) Days from receipt of a valid invoice as defined by the subcontract requirements and provides that, for the purpose of payment alone, where the Purchaser has made payment to the Provider and the Subcontractor's invoice includes services in relation to which the payment has been made by the Purchaser then, to the extent that it relates to such services, the invoice shall be treated as valid and payment shall be made to the Subcontractor without deduction; and
  - c) Which notifies the Subcontractor that the contract forms part of a larger contract for the benefit of the Purchaser and that, should the Subcontractor have any difficulty in securing the timely payment of an invoice, the matter may be referred by the Subcontractor to the Purchaser.
  - d) In the same terms as that set out in this clause 30.8.6 iii)d) subject only to modification to refer to the correct designation of the equivalent party as the Provider and Subcontractor as the case may.

30.9 Change of Control

- 30.9.1 The Provider shall give thirteen (13) weeks' prior written notice to the Purchaser of a change of Control.
- 30.9.2 Where the Provider proposes a change in its Control with the intention of Service continuation, the Purchaser may require it to provide such further information as it requires, which could be similar to that required for assignment in Clause 30.6 (Assignment and Disposal) herein, to determine whether or not the IPA with the Provider should continue.
- 30.9.3 Upon receipt of notice of a change in Control which the Purchaser reasonably considers will materially and adversely affect the provision of the Service by the Provider, it may terminate the IPA.
- 30.9.4 Where the Provider is subject to part 28 of the Companies Act 2006 and this restricts the ability of the Provider to comply with the requirements of this Clause 30, the relevant provisions in this Clause will not apply subject to the Provider's compliance with the following requirements:
- i) The Provider must notify the Purchaser promptly of the position in writing and provide such further information as may be reasonably required by the Purchaser;
  - ii) In disclosing information in accordance with this Clause 30, the Provider must adhere to the requirements of all applicable legislation including without limitation the Companies Act 2006 and the City Code on Takeovers and Mergers ("the Takeover Code") ; and
  - iii) Copies of any disclosures made in accordance with the requirements of the aforementioned part 28 of the Companies Act 2006, the Takeover Code and all applicable law and guidance must be provided to the Purchaser at the time of issue.

### **31 Closure/Substantial Reconfiguration of the Service**

- 31.1 The Provider shall give the Purchaser thirteen (13) weeks written Notice of its intention to close or substantially reconfigure the Service.

### **32 Equalities**

- 32.1 The Provider hereby confirms that to the best of its knowledge and belief it has complied with the Equality Act 2010 (the "Act") and hereby agrees to continue to comply with this Act in a manner which is proportionate and relevant to the nature of this IPT and any IPA hereunder.
- 32.2 The Provider agrees to provide the Service in a non discriminatory manner and shall promote equality and work towards the Service reflecting best practice as identified in Guidance including the relevant statutory Codes of Practice issued by the Equality and Human Rights Commission.
- 32.3 The Provider may be subject to the requirements of the Public Sector Duty under the Equality Act (Specific Duties) (Scotland) Regulations 2012 in respect of the Service being provided by the Purchaser under this IPT and any IPA. Where the requirement to comply with this Public Sector Duty exists, compliance with the requirements of Clauses 32.1 to 32.4 and Clause 32.8 will be evidence to the Purchaser of the Provider meeting this requirement.
- 32.4 The Provider recognises that the Purchaser has a responsibility to monitor the extent to which the provision of the Service extends to socially excluded groups. In recognition of this, the Provider agrees, where appropriate and practicable, to provide monitoring information to the Purchaser in relation to employment and provision of the Service in respect of the protected characteristics as detailed in the Act, Part 2 chapter 1.

- 32.5 The Provider shall not discriminate, directly or indirectly or by way of victimisation or harassment against any person on grounds of gender reassignment, age, marriage, and civil partnership, sexual orientation, disability, religion or belief, sex, pregnancy or maternity and race contrary to the Act.
- 32.6 The Provider shall notify the Purchaser forthwith in writing as soon as it becomes aware of any investigation of, or proceedings brought against, the Provider and any decision or outcome being made from any proceedings under the Act in respect of an IPA made by the Purchaser; for the avoidance of doubt this is in addition to the reporting requirements under Clause 18.6 and 18.7 (Equalities) of the Framework Terms.
- 32.7 Where any investigation is undertaken by a person or body empowered to conduct such investigation, and/or proceedings are instituted in connection with any matter relating to the Provider's performance of the Service being in contravention of the Act, the Provider shall free of charge:
- i) Provide any information requested in the timescales allotted;
  - ii) Attend any meetings as required and permit the Provider's Staff to attend;
  - iii) Promptly allow access to and investigation of any document or data deemed to be relevant;
  - iv) Allow itself and any Staff to appear as witness in any ensuing proceedings; and
  - v) Co-operate fully and promptly in every way required by the person or body conducting such investigation during the course of that investigation.
- 32.8 Where any such investigation is conducted or proceedings are brought under the Act which arise directly or indirectly out of any act or omission of the Provider, its agents or Staff, and where there is a finding against the Provider in such investigation or proceedings, the Provider shall indemnify the Purchaser with respect to all costs, charges and expenses arising out of or in connection with any such investigation or which the Purchaser may have been ordered or required to pay to a third party.
- 32.9 In recognition of the Purchaser's legal obligation to tackle discrimination and promote equalities and diversity in all its functions and policies, under the Act the Provider may be subject to the requirement to complete a questionnaire and/or provide information to the Purchaser on the extent and quality of the Provider's equalities and diversity policies. Good practice in this regard will be recognised by the Purchaser, however, poor practice may result in the Purchaser issuing a mind to comply letter describing the nature of improvement required and the associated timescales. If the Provider fails to improve practice in this regard the Purchaser may take further action, up to and including the termination of any existing IPA in accordance with Clause 27.18.
- 32.10 The Provider will extend the obligations under this Clause 32 to any arrangements with Subcontractors.

### **33 TUPE**

- 33.1 Where reasonably requested to do so at any time the Provider will provide all relevant and up to date information in connection with TUPE as the Purchaser may require.
- 33.2 The Provider, in providing information under this Clause 33 (TUPE) will not unreasonably withhold or delay the provision of information requested and will not knowingly do or omit to do anything that may adversely affect an orderly transfer of responsibility for provision of the Service.
- 33.3 The Provider will indemnify the Purchaser and/or any successor provider against all reasonable costs, expenses and liabilities incurred as a result of any claim made by any employee of the Provider prior to being transferred under TUPE in relation to the expiry or termination of any IPA in respect of his/her

employment with the Provider, or any breach of TUPE by the Provider, provided that the Provider will in any such case be given the opportunity at its own cost to defend or settle any such claim.

## **34 Force Majeure and Business Continuity**

### 34.1 Force Majeure

- 34.1.1 If either Party to the IPA cannot perform any of its obligations when they are due to be performed because of Force Majeure (as defined in Clause 34.1.5 herein), and if such Party gives written Notice to the other Party specifying the circumstances constituting Force Majeure together with such evidence as it reasonably can give and specifying the period for which it is estimated that these circumstances shall continue, then the Party in question shall be excused the performance or the practical performance as the case may be of the contractual obligations which are affected by Force Majeure from the date on which it became unable to perform and for so long as Force Majeure continues, subject to the provisions of Clause 34 herein.
- 34.1.2 If the period of Force Majeure is expected to or exceeds two (2) months from the date of the Notice given in accordance with the Clause 29 (Notices) either Party may serve on the other one (1) month's Notice of termination of the IPA
- 34.1.3 The Purchaser and Provider agree to use their best efforts to ensure that during any period when Force Majeure exists that the needs of the Child or Young Person are accommodated to the fullest extent practicable.
- 34.1.4 The Fees for the Service during the period of Force Majeure shall be subject to negotiation with the Purchaser.
- 34.1.5 For the purposes of this Framework Agreement and any IPAs entered into by Purchasers and Providers "Force Majeure" shall be deemed to be any circumstances affecting the performance of this Framework Agreement arising from or attributable to acts, events, omissions or accidents beyond the reasonable control of the Party to perform.

### 34.2 Business Continuity

- 34.2.1 The Provider will develop, implement, maintain and hold responsibility for processes and procedures in relation to business continuity. The Provider shall maintain a business continuity plan, which takes account of the supports reasonably expected to be available from statutory authorities including but not limited to, the civil and emergency planning provisions within the Council area. The Provider shall provide a copy to the Purchaser on request. The Provider shall notify the Purchaser as soon as reasonably practicable of the activation of said plan.