

NATIONAL RESIDENTIAL CONTRACT

For the Placement of Children and Young People
In Residential Care Homes

This Contract is supported and recommended for use by;



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A. Parties to the Agreement

This Contract is made on the day of 20 between

1.

Name of Provider:
(Registered Legal Entity)

Registered business address
(as per legal entity details above)

Registered Company Number
/ Registered Charity Number:

("The Provider") and

2.

Name of Local Authority:

| | |
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| Address | |
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("The Purchaser")

Where the Provider operates more than one registered home. This agreement applies to the establishments listed on the following page.

B. Homes included in this Agreement

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| Name of Provider: <i>(Registered Legal Entity)</i> | | |
| <u>Name of Home / Establishment</u> <i>(Registered Name)</i> | | <u>Registered Number</u> |
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Now it is agreed as follows

1. Definitions and Interpretations

1.1 In this Contract the following expressions shall have the meanings hereby ascribed to them.

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| "Absence" "Absent" | or | Means a situation where the Child is not living & sleeping at the Placement in accordance with their Care Plan |
| "Additional Services" | | Means Services that are extra to the Service Specification that are required by a Child after a formal assessment has been undertaken and agreed by both The Purchaser and the Provider representatives. |
| "Advocate" | | Means a person standing in for, or representing the Child's best interest, including a carer or relative. |
| "Authorised Officer" | | Means The Purchaser's representatives specified in the IPA who is authorised to agree the Placement, approve the fees, and sign the IPA. |
| "BACS" | | Means Bank Automated Clearing System. |
| "Best Value Duty" | | Means the obligations of The Purchaser under Part 1 of the Local Government Act 1999, including the statutory instruments and guidance issued by the Secretary of State in relation to this Act. |
| "Caldicott Principles" | | Means a number of general principles that health and social care organisations should use when reviewing its use of client information alongside the Data Protection Act principles. |
| "Care Plan" | | Means a document detailing a Child's specific care needs and requirements for which The Purchaser is responsible or a plan drawn up by the responsible Purchaser for a "Looked After Child" in accordance with Section 5 of the Care Planning, Placement and Case Review (England) Regulations 2010 and incorporating all other relevant plans as detailed in Section 5b of Schedule 5: Individual Placement Agreement. |
| "Core" or "Core Services" or "Core Service Providers" | | "identifies the category of care appropriate and means those Services or Service Providers that represent the Core provision to be delivered under this Contract as specified in the Service Specification, the IPA, the Care Plan and the IEP and/or PEP |
| "Child" "Children" | or | Means any young person aged between 0 and 19 whose needs and care are the responsibility of The Purchaser, who is the subject of a Placement and for whom the Price of the Placement is met by The Purchaser, or by those for whom it is acting. |

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| “Children Act” | Means the Children Act 1989, the Children Act 2004, and all relevant regulations and guidance attached to them |
| “Children’s Home” or “Home” | Mean a residential establishment, including a Nursing Home (see below) that is registered to provide 24 hour care and accommodation for a Child who is unable to live with their family. This also includes Schools that accommodate Children for more than 295 days (including weekends, bank holidays and school holiday periods) a year. |
| “Children’s Homes Regulations” | Means the The Children’s Homes Regulations 2001 (2001/3967) as amended by the Children’s Homes (Amendment) Regulations 2011 (2011/583) governing Children’s Homes in England made by the Secretary of State under sections 1, 22, 25, 34, 35 and 118 of the Care Standards Act 2000(a) |
| “Commencement Date” | Means the date at the beginning of this agreement. |
| “Commercially Sensitive Information” | Means the subset of Confidential Information comprised of information: a. Which is provided by the Provider to The Purchaser; b. That constitutes a trade secret. |
| “Confidential Information” | Means any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information which relates to the business, affairs, properties, assets, trading practices, Services, developments, trade secrets, intellectual property rights, know-how, personnel, customers and suppliers of either Party, [all personal data and sensitive personal data within the meaning of the Data Protection Act 1998] and Commercially Sensitive Information. |
| “Contract” | Means this document which sets out the rights and obligations of the Provider and Purchaser and consists of the Terms and Conditions, Schedule 1 (Service Specifications Parts 1 and 2), Schedule 2 (Contract Monitoring Parts 1 and 2) Schedule 3 (Pricing Schedule), Schedule 4 (Authorised Representatives and Schedule 5 (Individual Placement Agreement), neither of which may be altered without the agreement, confirmed in writing of both Parties. |
| “The Council” or “The Local Authority” | Means the local authority which has responsibility for the Child and shall include its representatives and successors. Also Known as the Purchaser. |
| “Criminal Records Bureau or “CRB” | Means the Bureau established pursuant to Part V of the Police Act 1997. |

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| “Default” | Means any breach of the obligations of either Party (including but not limited to fundamental breach or breach of a fundamental term) or any default, act, omission, negligence or statement of either Party, its employees, agents or sub-contractors in connection with or in relation to the subject matter of the Contract and in respect of which such Party is liable to the other. |
| “Duration of the Contract” | Means the dates specified in this Contract at Clause 2.1.12 during which the Service is to be provided. |
| “Enhanced Criminal Records Bureau Check” or “Enhanced CRB” | Has the meaning given in the Police Act 1997. |
| “Enhanced” or “Enhanced Services” | Means those Services supplementary to the Core Services under this Contract, provided by Core Service Providers where specified in the Service Specification, the IPA, the Care Plan and the IEP and/or PEP |
| “Freedom of Information Act” or “FOIA” | Means the Freedom of Information Act 2000 and any subordinate Legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such Legislation. |
| “Independent Safeguarding Authority” or “ISA” | Means the authority created in response to recommendations (recommendation 19) of the Safeguarding Vulnerable Groups Act 2006. Created to help prevent unsuitable people from working with children and vulnerable adults. |
| “Individual Behaviour Plan” or “IBP” | Means the Individual Behaviour Plan which is the written plan for managing the Child’s behaviour. |
| “Individual Education Plan” or “IEP” | Means the Individual Education Plan which is the plan for a Child’s special educational programme for which the Education Provider is responsible. |
| “Individual Placement Agreement” or “IPA” | Means an order placed by The Purchaser with the Provider for the provision of the Services in the form set out in Schedule 5, arising from an assessment of the Child’s needs, which encompasses the Care Plan and any other written documents and arrangements agreed by both Parties. |
| “Legislation” | Means any applicable Act of Parliament, sub-ordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, exercise of Royal Prerogative, enforceable community right within the meaning of Section 2 of the European Communities Act 1972, by-law, regulatory policy, guidance or industry code, judgement of a relevant court of law, or directives or requirements of any Regulatory Body of which the Provider is bound to comply |

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| “Looked After Child or “LAC” | Means a Child looked after by The Purchaser under the Children Act 1989 as amended. |
| “National Minimum Standards for Children’s Homes” | Means a statement of national minimum standards published by the Secretary of State for Health under section 23 of the Care Standards Act 2000. |
| “National Residential Contract” | Means this Contract that may be used by all local authorities to commission placements in voluntary and independent residential Homes for Children |
| “Nursing Home” | Means a Children’s Home registered as a Care Home Providing Nursing Care under the Care Standards Act 2000. |
| “OFSTED” | Means the Office for Standards in Education, Children Services and Skills of Her Majesty’s Chief Inspector of Schools in England which brings together the duties previously undertaken by the Social Services Inspectorate, the SSI / Audit Commission joint review team and the social care functions of the Commission for Social Care Inspection. |
| “Party” | Means a Party to the Contract and “Parties” shall be construed accordingly. |
| “Personal Education Plan” or “PEP” | Means Personal Education Plan which is the plan for the education of a Looked After Child. |
| “Placement” | Means a specific commitment made by The Purchaser through the completion of Schedule 5 in respect of a Child, and agreed by the Provider for the provision of care and other Services to address a Child’s individual needs in accordance with their Statement, PEP and Care Plan. |
| “Placement Plan” | Means the written plan prepared by the Provider in accordance with Regulation 9 of the Care planning, Placement and Case Review (England) Regulations 2010. |
| “Price” | Means the all fees and costs |
| “Pricing Schedule” | Means Schedule 3 containing a breakdown of the Price. |
| “Provider” or “Service Provider” | Means the person or organisation who is registered to operate the Children’s Home under Part II of the Care Standards Act 2000. |
| “Purchaser” or “The Purchaser” | Means the local authority which has responsibility for the Children who are covered by IPAs and one Party to the Contract and all IPAs under it and shall include its representatives and successors to its functions |
| “Registered | Means a person who is registered under Part II of the Care Standards Act 2000 as the manager of the Home |

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| Manager” | and is responsible for the day-to-day operation of the Home. |
| “Regulation 33 Visits” | The visits undertaken by the registered provider in accordance with Regulation 33 of the Children’s Homes Regulations 2001 as amended. |
| “Regulatory Body” | Means any government departments and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are formally entitled to regulate, investigate, or influence the matters dealt with in the Contract. |
| “Residential Care” | Means a residential establishment which is registered as a Children’s Home and may include residential special schools that accommodate Children for more than 295 days per year. |
| “Review” | Means an agreed process where a representative group of The Purchaser, Provider and Child’s representatives review consultation feedback within a specified period of time after the launch of the National Residential Contract. Amendments to the Terms and Conditions may only be made through this process. |
| “School” | Means an independent school as defined in The Education (Independent School Standards) (England) Regulations 2003, Regulation 4. |
| “Service Provider’s Representative” | Means the person appointed and authorised by the Service Provider to represent the Service Provider for the purposes of the Contract and whose details are set out in Schedule 3.. |
| “Services” | Means the Services to be provided as specified in the Service Specification, the IPA, the Care Plan and the IEP and/or PEP. |
| “Special Educational Needs” or “SEN” | Means Special Educational Needs as defined in section 312 of the Education Act 1996. |
| “Specialist” or “Specialist Services” or “Specialist Service Providers” | identifies the category of care appropriate and means those Services or Service Providers that represent a specialist provision to be delivered under this Contract as specified in the Service Specification, the IPA, the Care Plan and the IEP and / or PEP |
| “Stakeholder” | Means the Child’s parent(s); significant others; Advocate; social worker and/or other professionals with a legal responsibility for the Child and the Provider’s Staff. |

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| “Standard Staff to Child ratio” | means the minimum number of operational staff compared to the maximum number of children provided at all times expressed as a ratio within that setting or any other of the service settings the child will access which are offered as part of the relevant standard core or specialist service. |
| “Statement of Special Educational Needs” or “SEN” | Means the Statement prepared by the local education authority as defined in section 324 of the Education Act 1996. |
| “Statutory Review” or “Annual Review” or “Review” | Means the annual or other review of a Child’s Statement of Special Educational Need or local authority ‘Looked After Child’ Care Plan for any Children that are being looked after and/or educated by the Provider. This may also include any local authority Safeguarding or Professional meeting |
| “Specification” or “Service Specification” | Means the description of the Services to be provided under the Contract and attached as the Specification (Schedule 1). |
| “Staff” | Means all persons employed by the Provider to perform the Contract together with the Provider’s servants, agents and sub-contractors used in the performance of the Contract. |
| “VAT” | Means Value Added Tax or any tax of a similar nature which may replace it . |
| “Variation” | Means any addition to, or modification of, any provision of the Contract. |
| “Working Day” | Means a day other than a Saturday, Sunday or a bank holiday. |

- 1.2** Reference to any enactment, order, regulation or other similar instrument shall be construed as a reference to the enactment, order, regulation or instrument as amended by any subsequent and any successor enactment, order, regulation or instrument.
- 1.3** Words importing one gender include the other gender; words in the singular include the plural and vice versa and words importing individuals shall be treated as importing bodies corporate and vice versa.
- 1.4** The headings used in these Conditions are for ease of reference only and shall not affect the construction of the Contract.
- 1.5** Any Schedule to a document comprised in the Contract shall have full force and effect as if expressly set out in the document to which it is attached.
- 1.6** The Contract may be executed in more than one copy and such copies shall, taken together, constitute a single agreement.
- 1.7** References in this Contract to the "Purchaser" and the "Provider" shall include their respective successors in title and any reference to any government

department or other relevant authority is deemed to include its or their successors.

2. Contract

2. Framework Agreement Status

2.1 Contract.

- 2.1.1 This Contract is a Contract, which may only be altered through a Review, under which the Parties may from time to time agree for the provision of Services for a Child by the Provider. Such Services and any specific contractual terms applicable to the Services shall be set out in Individual Placement Agreements (Schedule 5).
- 2.1.2 The Commencement Date for this Contract shall be as stated in Section A and will continue until termination by either Party in accordance with Clause 15.
- 2.1.3 Under this Contract The Purchaser makes no guarantee that it will make any Placements with the Provider.
- 2.1.4 In the event that any of the terms and conditions of this Contract shall be determined by a competent court of law or any other competent body with appropriate jurisdiction to be invalid, unlawful or unenforceable to any extent, such term, condition or provision will, to that extent, be severed from the remaining terms and conditions which will continue to be valid to the fullest extent permitted by law.
- 2.1.5 In the Contract the definitions and interpretation provisions set out in Clause 1 will apply.
- 2.1.6 In signing this Contract, the Provider and The Purchaser agree to abide by its terms and conditions and the content of all attached schedules. Any standard terms and conditions of the Provider shall not apply to the provision of the Services.
- 2.1.7 Where The Purchaser and the Provider have been Parties to a Contract that precedes this Contract and as a consequence of that Contract The Purchaser entered into an IPA then:
- 2.1.8 This Contract shall supersede all previous contracts between the Purchaser and the Provider in relation to 'spot purchased' Services except those where the Parties agree otherwise in writing.
- 2.1.9 Any pre-existing Individual Placement Agreements/ Schedules between the parties will transfer onto this contract at the existing agreed cost at the point of transfer, except those where the Parties agree otherwise in writing.

2.2 Individual Placement Agreement (IPA)

- 2.2.1 Except where specifically provided to the contrary in an IPA, each IPA will be subject to this Contract. Insofar as any condition in an IPA conflicts with this Contract, the IPA will to the extent only of such IPA prevail. Variations to any IPA made under this Contract may be made in accordance with the terms of

this Contract with the agreement of both Parties.

- 2.2.2 For each Child placed, an IPA will be issued by The Purchaser for completion by the Provider and The Purchaser. Once complete the IPA will be signed by both Parties.
- 2.2.3 The complete IPA should be issued by the date of commencement of the Placement. In the case of emergencies, an IPA will be issued as soon as possible after the date of commencement and in any event no later than 28 Working Days thereafter.
- 2.2.4 Variations to any IPA made under this Contract may be made in accordance with the terms of this Contract with the unqualified agreement of both Parties.
- 2.2.5 The IPA will be reviewed as a minimum in accordance with the statutory requirements. Wherever possible, education, social care, health and other Reviews will take place together. Either Party to the IPA may reasonably request a Review meeting and consider what amendments (if any) are required to be made resulting from changes in the needs of a Child.
- 2.2.6 Urgent Review meetings will be convened in line with the Care Planning, Placement and Case Review Regulations 2010. This will normally be within 5 Working Days and preferably within 72 hours.
- 2.2.7 Following the Review meetings any changes discussed regarding the IPA will not be implemented until relevant documentation has been updated by the Authorised Officer. The updated documentation will reflect the change(s) in assessed need and fair and reasonable cost implications following from the agreed change(s) in assessed need. It will have been authorised by The Purchaser's Authorised Officer and confirmed in writing.
- 2.2.8 Changes to Services provided as identified in this clause will be effective from a date agreed by both Parties and invoices should not reflect any change prior to the agreed date. Any invoices received detailing changes to the Services prior to the agreed date shall not be processed for payment by The Purchaser.

2.3 Sub-Contracting and Assignment by Provider or Change of Control

- 2.3.1 The Provider shall not assign or sub-contract this whole Contract or any part of it without the prior written consent of The Purchaser. Such consent will not be unreasonably withheld or delayed. The Purchaser consents to the sub-contracting of childcare tasks for the purpose of temporarily covering sickness, absence or departure of permanent Staff or for dealing with additional workload on a short-term basis. This consent is subject to the Provider being satisfied that any agency has Staff vetting procedures that fully comply with statutory regulations. The Purchaser also consents to the sub-contracting of domestic or other ancillary tasks provided that this does not result in a breach of this Contract.
- 2.3.2 Where The Purchaser has consented to the Provider sub-contracting any part of the Service, the Provider will remain responsible for any acts, defaults and neglect of any sub-contractor.
- 2.3.3 Where in agreement with The Purchaser the Service is sub-contracted to individuals who are self-employed, the Provider is wholly responsible for ensuring that the obligations under this Contract are fulfilled.

- 2.3.4 In the event of a proposed change of ownership, the Provider will immediately and in any event before the change takes place, inform The Purchaser.
- 2.3.5 The Service Provider must give notice to the Purchaser if:
- 2.3.5.1 There is a change in the control of the majority of the shares in, or the voting rights amongst, its shareholders or members of its organisation;
 - 2.3.5.2 It merges with another organisation;
 - 2.3.5.3 It transfers any of its business to another organisation;
- 2.3.6. Alternatively The Purchaser may terminate the Contract in accordance with Clause 15.

2.4 Novation by The Purchaser

- 2.4.1 The Purchaser shall be entitled to assign, novate or otherwise dispose of its rights and obligations under this Contract or any part thereof to any contracting Purchaser, private sector body or any other body established under statute (“transferee”) provided that any such assignment, novation or other disposal shall not increase the burden of the Provider’s obligations under this Contract.
- 2.4.2 The Purchaser shall be entitled to disclose to any transferee any Confidential Information of the Provider, which relates to the performance of the Contract by the Provider. In such circumstances The Purchaser shall authorise the transferee to use such Confidential Information only for purposes relating to the performance of the Contract and for no other purposes and shall take all reasonable steps to ensure that the transferee accepts an obligation of confidence.

3. Approval, statutory and other regulations

3.1 Registration and Statutory Compliance

- 3.1.1 The Provider must be registered, licensed or approved under, and shall fully comply with, the provisions of the Children’s Homes Regulations, the National Minimum Standards for Children’s Homes 2011 and all relevant current and future Legislation, Acts of Parliament, amendment or re-enactment of any Act, Statutory Regulation and other such laws and statutory guidance relevant to the provision of this Service. Where a placement is made outside of England the Provider must be registered, licensed or approved in accordance with the equivalent legislation, regulations and standards relevant for Wales, Scotland or Northern Ireland.
- 3.1.2 Any changes to the Provider’s registration status must be notified to The Purchaser immediately.

3.2 Health and Safety

- 3.2.1 The Provider will, at all times, fully comply with current relevant Health and Safety Acts, Health and Safety Regulations and Codes of Practice approved

by the Health and Safety Commission and the requirements laid out in the Specification.

3.2.2 For as long as this Contract is in force, the Provider will have in place a Health and Safety Policy which complies with all statutory requirements.

3.2.3 The Provider must inform The Purchaser immediately in writing if any action is threatened or taken against them by the Health and Safety Executive.

3.3 Equal Opportunities

3.3.1 The Provider will fully comply with the Equality Act 2010 and all other anti-discriminatory Legislation, as amended or re-enacted from time to time, and operate an equal opportunities policy for as long as this Contract is in force and provide The Purchaser with a copy of the policy and updates as requested.

3.3.2 The Provider will ensure that their recruitment, employment and equal opportunities policies comply with all statutory obligations.

3.3.3 The Provider will notify The Purchaser's Authorised Officer immediately in writing as soon as it becomes aware of any investigation of, or proceedings brought against the Provider under equal opportunities Legislation, and co-operate fully and promptly in every way required by the person or body conducting such investigation during the course of that investigation.

3.4 Local Government Ombudsman

3.4.1 Under the Local Government Act 1974, Section 26(1), the local government ombudsman may investigate a complaint about an action taken by a Provider when undertaking work on behalf of The Purchaser.

3.4.2 The Provider will co-operate fully with any such investigation and will reimburse The Purchaser any payment made to a complainant by The Purchaser, either when an investigation by the ombudsman leads to a finding of maladministration and injustice as a result of fault by the Provider, or where a payment is made under the terms of an early settlement of a complaint to the ombudsman without a formal investigation and report.

3.5 Environment

3.5.1 The Provider will endeavour to ensure that during the performance of the Contract they use working methods, equipment, materials and consumables which minimise environmental damage.

3.6 Children's Rights

3.6.1 The Provider will at all times in its performance of the Services and its treatment of Children have regards to, and abide by the principles of the Human Rights Act 1998, the European Convention on Human Rights and the provisions of the Children Act 1989.

3.6.2 The Provider will have a clear policy and procedure in relation to Children's rights that fully comply with:

3.6.2.1 The Children Act 1989 as amended from time to time;

3.6.2.2 The UN Convention on the Rights of the Child (Article 12);

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- 3.6.2.3 The National Standards for The Provision of Children's Advocacy Services 2003;
- 3.6.2.4 The National Minimum Standards for Children's Homes 2011 or as amended.
- 3.6.3 The policy and procedure shall be made clear to Staff by the Provider via induction, training and development, Staff meetings and supervision.
- 3.6.4 The Provider will ensure that information is designed with participation of Children and is produced in a variety of ways to ensure that the needs of Children with specific needs are met e.g. Braille, audio tapes, different languages, pictures and symbols.
- 3.6.5 The Provider shall fully comply with all Legislation, regulatory requirements and codes of practice applicable to the provision of the Services and shall fully comply with all further reasonable written requirements and instructions of The Purchaser in relation to any IPA.

4. Conflict of interest

- 4.1 The Provider will inform The Purchaser in writing if any elected representative of The Purchaser or employee of The Purchaser, are involved in anyway, other than in accordance with the requirements of their official duties, with the Provider at anytime for the Duration of this Contract.
- 4.2 The Provider will ensure that it has a procedure that effectively meets all relevant professional codes of practice relating to conflict of interest and if necessary, will make amendments to practice to ensure that it continues to do so throughout the Duration of the Contract. The Provider will also ensure that this procedure is observed at all times and that it prevents the occurrence of situations not only where a conflict has arisen, but where one is likely to arise. If required by The Purchaser, a separation of duties will be implemented by the Provider to prevent such conflicts of interest.

5. Provider Staff

- 5.1 The Provider will ensure that at all times they have sufficient numbers of people of appropriate ability, qualification, skill, knowledge, training or experience available to provide and supervise the provision of the Services and cater for Staff holidays, sickness and absence.
- 5.2 The Provider must ensure that robust recruitment procedures are in place in line with the National Minimum Care Standards for Children's Homes, in particular Standard 16 and Equality Act 2010, Disability Discrimination Act 1995 and Race Relations Act 2000 Legislation.
- 5.3 The Provider shall ensure that all persons including their Staff whose duties involve access to, or information about, Children are subject to Enhanced CRB, ISA checks and checks by the Provider prior to starting their duties, ensuring full compliance with the Safeguarding Vulnerable Groups Act 2006 or as amended

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- 5.4** The Provider shall ensure that no member of their Staff or sub-contractor is permitted to provide Services until all the necessary checks have been undertaken and the checks are satisfactory.
- 5.5** Any Staff of the Provider whose alleged conduct places a Child at risk or might bring The Purchaser into disrepute will be the subject of immediate investigation by the Provider and dealt with appropriately and the Purchaser shall be informed immediately of the details of the incident and the actions taken to remedy the situation.
- 5.6** The Provider will be responsible for employment, conditions of service, salaries, taxes, national insurance and all levies of any kind relating to the employment of persons employed by the Provider.
- 5.7** The Provider shall ensure that every individual deployed under the Contract in the provision of the Services is instructed in relation to all relevant provisions of the Contract.
- 5.8** The Provider will ensure that Staff are familiar with the Provider's policies and procedures via ongoing supervision and training.

6. Transport

- 6.1** For any transport (excluding public transport), provided for Children, whether directly or via another agency the Provider must ensure that;
- 6.1.1** The driver and/or escort have a current Enhanced CRB and ISA clearance which is re-checked a minimum of every three years, a valid driving licence and current vehicle insurance appropriate to the type of Service being provided. The number of passengers must never exceed the insured or licensed maximum.
- 6.1.2** The vehicle(s) (and any additional equipment on the vehicle) is/are maintained and serviced in accordance with the manufacturer's instructions with full records being kept to verify this and must have a current MOT certificate if appropriate.
- 6.1.3** The vehicle(s) is/are suitable for the type and condition of passengers to be carried; including having seat belts or personal restraints which conform to the relevant British Standard/EU Standard and which are used in all instances.
- 6.1.4** The vehicle(s) is/are always driven safely and with consideration to passengers' needs. This includes conforming to all road traffic Legislation and never driving whilst under the influence of any amount of alcohol, drugs or medication.
- 6.1.5** The driver must always be properly trained in handling the type of vehicle and the nature of the passengers to be carried. The latter will not apply if a suitable escort is provided.
- 6.1.6** All vehicles will carry a first aid kit that conforms to Legislation. Fire extinguishers will also be carried on the vehicles and these will be maintained in accordance with the manufacturer's instructions.

- 6.1.7 In the event of the breakdown of a vehicle or the sickness of a driver it will be the responsibility of the Provider to provide a replacement vehicle and/or driver in order to ensure continuation of the Service. Such replacement vehicle will be of the standard stipulated within this Contract.
- 6.1.8 Children using The Purchaser's or Providers transport must be securely fastened in a seat or harness appropriate to their age, size and weight. Only seats and harnesses bearing the British Kite Mark or European Regulations Mark (EUR 44.03) will be considered appropriate for use. Second hand equipment will not be used unless its history is known and it has full instructions so that it can be fitted and used correctly. The seat or harness must be appropriate for the vehicle in which it is used and be fitted in accordance to the manufacturer's instructions. If Children are to be carried in a four door car then 'child proof' locks must be used.
- 6.1.9 The Provider shall make all reasonable arrangements to ensure the annual review of all driving licences, insurance and where appropriate MOT certificates, are current, insurance includes business use and that the member of Staff has not received sufficient penalty points to be barred from driving or received a court judgement that bars them from driving

7. Records, information & data protection

- 7.1 The Purchaser agrees to the release of information relating to the performance of the Provider to any duly authorised third parties. Such third parties will include any agency, which purchases from, monitors or inspects the Provider. Examples include but are not limited to:
- 7.1.1 Relevant Regulatory Council
 - 7.1.2 Environmental Health Officers
 - 7.1.3 Fire Authorities
 - 7.1.4 Health and Safety Executive Officers
 - 7.1.5 Other Local Council
- 7.2 The Purchaser will provide the Provider with all available relevant information concerning any Child placed, in writing prior to the date of commencement of the Placement. In the case of emergencies, this information will be issued as soon as possible after the date of commencement but within 7 Working Days.
- 7.3 The Purchaser will not knowingly withhold from the Provider any relevant information concerning any Child placed with the Provider for the duration of the Placement.
- 7.4 The Provider will immediately provide any information requested by, or on behalf of The Purchaser, for any purpose connected with this Contract or the conduct of the Provider's duties relating to the provision of the Service, at no additional cost to The Purchaser and delivered in the spirit of cooperation.
- 7.5 The Purchaser and Provider must fully comply with the Data Protection Act

1998 (“Data Protection Legislation”) and the Caldicott Principles.

- 7.6** The Provider and The Purchaser warrant that they will duly observe and co-operate with each other to ensure the observance of all their obligations under Data Protection Legislation which arise in connection with the Contract.
- 7.7** Where in the course of performing this Contract the Provider has access to personal data for, which The Purchaser is the controller as defined by the Data Protection Act 1998, the Provider must ensure that such data is used only for the purpose of performing the Contract. The Provider will provide appropriate technical and organisational measures against unauthorised or unlawful processing, and accidental loss or destruction of, or damage to, such data.
- 7.8** The Provider will facilitate The Purchaser’s full compliance, in connection with this Contract, with The Purchaser’s obligations under the FOIA and fully comply with any reasonable request from The Purchaser for that purpose within 10 Working Days of the request being made.
- 7.9** For the purpose of this Contract Confidential Information will exclude any information that The Purchaser is obliged to disclose to a person under the provisions of the FOIA and any codes of practice and guidance issued by the Government and the Information Commissioner.
- 7.10** Within three weeks of the termination of the Placement, files and records held by the Provider, including Children’s individual records, case notes and information held by the Provider shall be returned to the Purchaser. Where a Placement Review meeting is arranged following a Placement ending, all documents shall be returned within ten Working Days of this meeting.

8. Confidentiality

- 8.1** Both Parties to this Contract agree that information made available as a result of this Contract will not infringe or prejudice the right of the confidentiality of Children and their families, or Provider Staff.
- 8.2** However, both The Purchaser and Provider will have the right (singularly in an emergency or jointly when time allows), to determine when confidentiality must be broken in the best interests of the Child, particularly in respect of their safety and welfare. Where either the Purchaser or Provider have acted singularly they shall inform the other party within the next 3 Working Days in writing providing reasons for their actions.
- 8.3** The Purchaser and the Provider will have a policy on confidentiality fully complying with the Freedom of Information Act 2000 and the key elements of the Data Protection Legislation and will have effective mechanisms in place to ensure full compliance.
- 8.4** Furthermore the Provider will have a robust policy on the maintenance and destruction of files which will consider the need to respond to any future claims for liability against the Provider and meet the requirements of Legislation.
- 8.5** The Provider will return any individual Child information to The Purchaser at the end of the Placement, except for such information as the Provider is

required to retain in accordance with the Children's Homes Regulations.

9. Indemnity and Insurance

- 9.1** The Provider will indemnify and keep indemnified, The Purchaser and its officers and servants against any liability, claim, proceedings expenses, or loss in respect of personal injury to or death of any person whomsoever or damage to property real or personal to whomever, which may arise out of the act, default, or negligence of the Provider, (or it's Staff) and against all actions, claims, demands, proceedings, damages, costs, charges and expenses including any damages or compensation paid by the Purchaser on the advice of its legal advisors to compromise or settle any claim whatsoever in respect thereof, or in relation thereto, provided that the Service Provider shall not be liable for, nor be required to indemnify the Purchaser against any compensation or damages for or in respect of injuries loss or damage resulting wholly from any act default or negligence on the part of the Purchaser, its staff or agents not being the Service Provider or employed by the Service Provider.
- 9.2** The Purchaser will not be liable for any expense, liability, loss or claim resulting from actions of the Child unless it can be shown that The Purchaser knowingly provided incorrect information or knowingly withheld relevant information which was directly attributable to the loss or damage. The Provider will be liable, indemnified and keep indemnified itself and any of its agents for any accidental or non accidental damage caused by the Child.
- 9.3** The Service Provider shall indemnify the Purchaser against all actions, claims, demands, proceedings, damages, costs, charges and expenses whatsoever in respect of any breach by the Service Provider of the Human Rights Act 1988 or a breach of this Clause
- 9.4** Any personal clothing and other personal possessions damaged or lost by The Provider or resulting from the actions or inactions of The Provider must be replaced by The Provider within a reasonable time and to the satisfaction of The Purchaser in the interests of the child.
- 9.5** Without prejudice to its obligation to indemnify The Purchaser in the event of any one occurrence or series of occurrences arising out of one event, the Provider will insure and will maintain such insurance and pay any resulting premiums, in the minimum sum insured of;
- 9.5.1** **Public liability** – a minimum of five million pounds (£5,000,000) in respect of any one claim unlimited in the aggregate.
- 9.5.2** **Employer's liability** – a minimum of ten million pounds (£10,000,000) in respect of any one claim, covering all employees.
- 9.5.3** **Professional indemnity** – a minimum of two million pounds (£2,000,000) in respect of any one claim, to remain in place for a six year period following the termination of the Contract.
- 9.5.4** **Residents Effects Cover** – a minimum of one thousand five hundred pounds (£1500) in respect of any one claim for each Child.
- 9.5.5** **Buildings & Contents Cover** – a minimum sum insured to relate directly to

the value of property real or personal, where a child is resident so as to allow in respect of any one claim for each Child adequate indemnity and the avoidance of loss and to allow for the re-instatement of an establishment belonging to The Provider in the avoidance of a loss of provision to The Purchaser.

- 9.5.6 **Vehicle Insurance Cover**- the Provider and its Staff shall have in place motor vehicle insurance commensurate with the potential liabilities of the Provider relating to the operation of vehicles used for the transport of Children and their visitors.
- 9.5.7 **Malpractice Insurance** – one million pounds (£1,000,000) per occurrence where nursing care is provided, or the Parties agree such insurance is appropriate.
- 9.5.8 **Sub Contractors Liability** – the Provider shall ensure that the same levels of insurance are maintained for any sub contracted Services.
- 9.6 The onus is on the Provider to ensure that its insurance policies are adequate at all times to cover eventualities pertaining to its business.
- 9.7 The Provider will on request provide to The Purchaser documentary evidence that the insurances required by this Clause have been effected and are being maintained. Where The Purchaser is of the opinion that this is not the case, or where evidence of consistent and ongoing cover can not be demonstrated, The Purchaser shall, be entitled to terminate this Contract and or any relevant IPA and may where The Purchaser feels appropriate, give a reasonable period of no more then 28 days to The Provider to undertake and effect such insurances as to meet the terms and conditions of this Contract and in adherence to clause 15.2. During such a period, The Provider shall be liable for all and any costs that would otherwise have been met by such insurances as were required.
- 9.8 Regardless of any other provision of this Contract, neither Party excludes or restricts its liability under this Contract for death or personal injury caused by its own negligence or negligence of its employees or agents acting in the course of their employment or agency or to any extent not permitted by law.
- 9.9 The Provider will take up any other appropriate insurance(s) reasonably required by the Purchaser under this Contract as made known to The Provider, or that the Provider could reasonably be aware of and shall maintain as a minimum, the levels of cover where specified within this clause (clause 9).

10. Financial Arrangements

10.1 Price

- 10.1.1 The tariff of charges payable by The Purchaser to the Provider for each category of care (Core/ Enhanced/ Specialist) shall be set out in Schedule 3 – Pricing Schedule. The individual cost of each child's placement shall be reflected in the IPA with and be relative to, the category of care being provided. The IPA will include any supplementary Services agreed within the Care Plan and/or the IEP and/or the PEP individual to each Child.

- 10.1.2 There shall be no additional costs in relation to Services or in respect of a Child which the Provider has agreed to provide Services for under the given category of care identified in each Individual Placement Agreement. Where the IPA includes or requests any Additional Service to be provided, the take up of which a Child can refuse, Schedule 3 – Pricing Schedule shall determine the cost of that provision, which will be reflected in the IPA so as to give an accurate and true cost, individual to each Child;
- 10.1.2.1 In the event that within any fourteen (14) day period, Specialist or supplementary Services are offered to the Child and have been refused by the Child then;
- (i) The Provider shall within seven (7) days thereafter provide a written report to the Authorised Officer as to the circumstances of such refusal and the steps taken by the Provider to encourage the take up of the Services. Within a further seven (7) days a meeting shall be convened to consider what further steps may be appropriate.
 - (ii) Where following the meeting a decision is made to withdraw any element of the Additional Services, the price shall be reduced pro-rata.
- 10.1.3 Where applicable, any agreed retainer to secure a place for an individual Child, and the length of such a retainer, will be detailed in the IPA.
- 10.1.4 The Provider must ensure that neither it, nor any Provider's Staff, make any charges to the Child or their families or any other persons relative to the Child other than to The Purchaser in respect of this Contract unless it has been agreed in advance, in writing by The Purchaser.
- 10.1.5 The Purchaser will retain ultimate responsibility for ensuring the payment of fines and Court costs imposed by a Court on any child in the care of the Purchaser. Any such costs shall not impact on the Price of the Placement. The Purchaser may delegate this responsibility to the Provider to ensure the Child makes all required payments
- 10.1.6 The Provider will be directly responsible for any fines or Court costs arising from its failure to provide the Services defined in the IPA or its failure to cooperate with the requirements of the Court
- 10.1.7 All amounts due under this Contract are exclusive of VAT.

10.2 Price Review

- 10.2.1 The Provider may review their Price as submitted in the Core Cost Specification and Schedule 3 – Pricing Schedule annually, and submit any proposed changes in Price for The Purchasers consideration by 1st March each year. The Provider can choose not to increase or decrease the Price and charges for Additional Services.
- 10.2.2 Any agreed changes to the prices quoted in Schedule 3 – Pricing Schedule will take effect from 1st April of that year, subject to agreement with The Purchaser.
- 10.2.3 If the Provider requests a Price change resulting from unforeseen changes in government Legislation or regulatory requirements or agreed by the

Purchaser, the Provider must produce evidence sufficiently detailed to prove the level of impact upon it.

10.3 IPA Price Review

10.3.1 Based on agreed changes to the Care Plan, either party may request an increase or decrease of the Price and Additional Service Fees by submission in writing of any proposed changes

10.3.2 Having regard to the actual cost incurred by the Provider, if either Party is not in agreement with the proposed increase or decrease under sub clause 10.3.1 then the Parties shall meet and discuss.

10.3.3 The Provider may request a review of the fees for current placements on an annual basis. The Provider should submit any requested changes to the Pricing Schedules of current IPAs for the Purchaser's consideration in accordance with any regional processes. The Purchaser shall reasonably and promptly consider such proposals.

10.3.3.1 Price shall take effect from 1 April of the relevant year.

10.3.4 Subject to proposals under 10.3 and any contrary agreement (including accepted tender terms governing price in more than one financial year):

10.3.4.1 If the Provider proposes to increase the Price and/or Additional Service Fee, then such increases must be demonstrated by the Provider as being justified and the Purchaser shall be entitled to request the Provider to provide any documents or other information to support the Price increase.

10.3.4.2 If the Provider requests a Price change resulting from unforeseen changes in government legislation or regulatory requirements, the Provider must produce financial records sufficiently detailed to prove the level of impact upon it.

10.3.5 Where applicable, the parties shall ensure that any agreed retainer to secure a place for an individual child/young person and the duration of time for which the retainer will be paid shall be detailed in the IPA.

10.3.6 Where the Care Plan for a child/young person includes a gradual admission then the details of proportional payments will be included in the IPA by the parties.

10.4 Payment Arrangements

10.4.1 The Purchaser will specify the payment arrangements which apply, unless otherwise stated clause 10.4.2 will apply.

10.4.2 The Provider may submit invoices or request payment within fourteen (14) days prior to the end of the month to which they refer, unless otherwise agreed in accordance with sub clause 10.4.1. Any invoices or request payments submitted prior to this point may be returned.

10.4.3 The Purchaser shall pay the Price and, where applicable, the Additional Services fee (together with any VAT payable) within 30 days of receipt of the correctly submitted, undisputed invoice, or in accordance with clause 10.4.1, unless the Purchaser, acting reasonably, is not satisfied that the details shown on the invoice are correct, or that the Service provided has not been in accordance with the Contract. The Purchaser shall notify the Provider within

30 days of receipt of the invoice if they wish to dispute it. In the event of a dispute, the Provider may re-submit an invoice for the undisputed amount, the payment of which will not be withheld.

- 10.4.4 The Purchaser shall not make payments in respect of invoices until the expiry of the period to which they relate, or in accordance with clause 10.4.5.
- 10.4.5 If, for any reason, the Purchaser and the Provider fail to reach agreement on the annual price review for current Placement(s), the Provider must continue to submit invoices at the previously agreed rate until agreement is reached. The disputed amount will not be subject to late payment interest charges as stated in clause 10.4.7.
- 10.4.6 If, for any reason, the Provider fails or is unable to provide the Services, including any agreed Additional Services, to the level and/or standard agreed, the Purchaser reserves the right to reduce the level of payment proportionally. Before taking this step the Purchaser shall consult with the Provider and give details in writing of the breach or failure and the value of the Services lost by the Child and/or loss or expense incurred by the Purchaser.
- 10.4.7 If any sum payable under this Agreement is not paid within 30 days (final date for payment) of the receipt of a correctly submitted and undisputed invoice (subject to clause 10.4.3) that sum will bear interest from the final date for payment until payment is made in full both before and after any judgment at two percent per annum over the Bank of England Reference Rate. The parties agree that this clause 10.4.7 is a substantial remedy for late payment of any sum payable under this Agreement in accordance with Section 8(2) Late Payment of Commercial Debts (Interest) Act 1998.

10.5 Absence and Unauthorised Absence from the Home

- 10.5.1 Where the Child becomes Absent from the Home and/or care of the Provider for a period of seven (7) days, the IPA will be reviewed and, if appropriate, varied to take regard of the Services required by the Child and the Price varied according to any cost differentials.
- 10.5.2 During any Absence, the Provider may not use the Child's accommodation for any other purpose, unless agreed in advance by the Purchaser in writing
- 10.5.3 The Purchaser and the Provider shall agree in writing whether or not the Placement shall be retained, during the Child's Absence for an agreed period of time. If the Placement is not retained the Purchaser will not be liable for any fees after seven (7) days following the Child's Absence.
- 10.5.4 In the event that the Child's Absence continues after the agreed retention period the IPA shall terminate in accordance with clause 16, by expiry of the contract period unless the Purchaser and Provider agree otherwise in writing.
- 10.5.5 The Provider shall, where reasonably possible, notify the Purchaser of any planned Absence of the Child involving an overnight stay and shall fully comply with the Purchaser's 'sleepover policy'.
- 10.5.6 Where the Child goes missing, or takes unauthorised Absence, the Provider shall notify the Purchaser immediately and shall fully comply with the relevant missing person's protocols.

11. Best Value, Monitoring and Review of Service Provision

11.1 Best Value

- 11.1.1 The Service Provider agrees to ensure continual improvement in the delivery of services as regards economy, efficiency and effectiveness throughout the duration of the Contract.
- 11.1.2 The Service Provider will provide such assistance and information that The Purchaser may reasonably require to enable The Purchaser to discharge and fulfil its Best Value Duty in relation to the Service.

11.2 Monitoring and review of Service Provision

- 11.2.1 The Provider will co-operate with monitoring and evaluation activities undertaken by The Purchaser in relation to this Contract.
- 11.2.2 The Provider will co-operate with supplying timely information as requested by The Purchaser in line with the Monitoring Schedule 2, parts one and two.
- 11.2.3 Specifically, the Provider shall supply The Purchaser by the 1st April each year, the Key Performance Indicator information specified in the Monitoring Schedule 2, part one Care.
- 11.2.4 Monitoring referred to above is additional to any requirements made by the appropriate registration and inspection body or any other Regulatory Body or organisation.
- 11.2.5 The Purchaser and/or any person authorised by The Purchaser, will have the right to visit and inspect, without notice, the Provider and any Child whose care is being funded by The Purchaser under this Contract, without prejudice to the Child's right to privacy.
- 11.2.6 The Provider will ensure that The Purchaser has a copy of the most recent inspection reports from all Regulatory Bodies. Any draft reports, assessments, statutory requirement notices and resulting action plans must be shared within two weeks of receipt by the Provider.
- 11.2.7 Copies of any Provider policies shall be made available to The Purchaser upon request (this will include Regulation 33 reports).
- 11.2.8 The Provider shall maintain and enforce a rigorous quality assurance policy to ensure that the Service is operated to a continuous high standard.
- 11.2.9 The Purchaser is entitled to monitor the Provider's performance of its obligations under this Contract by whatever reasonable means that it considers appropriate, provided that The Purchaser exercises that right in a reasonable and considerate manner, so as not to cause any unreasonable disturbance or inconvenience to either the Provider or the day to day operation of the Service.
- 11.3 The intention of the Contract Performance Monitoring and Evaluation Provisions set out in Schedule 2 is to facilitate, on each general formal review under the Contract, or any specific formal review under an IPA, a means of analysing the performance indicators set out in Schedule 2 on a systematic basis. The Parties shall in this manner identify the ways in which the Service

is meeting the many different care and educational needs of each Child; how far this means, in relation to each need, a satisfactory standard of Service is being provided; any improvements that are required; and any improvements, or developments, that are desirable to maintain and improve the level of service delivery. The Parties shall as an output of each formal review produce in writing an agreed action plan setting out such required and desirable improvements/developments and reasonable means and timescales for their application. The Provider shall make any required improvements and use its best endeavours to fulfil other agreed desirable action points in accordance with the relevant action plan. Each such action plan shall be reviewed at the next and each subsequent formal review and otherwise as agreed between the Parties.

12. Reporting of Notifiable Events

- 12.1** All notifiable events will be reported in accordance with Schedule 5, Regulation 24 Children's Homes Regulations 2011. The Provider will immediately report to The Purchaser's individual who has case management responsibility and if required the Contracts/Commissioning Contact (as detailed in the IPA) any notifiable events and any additional notifiable events as identified in the IPA.
- 12.2** Where it is known that the Registered Manager or Head of Education of the Provider is to be absent for a period exceeding four weeks the Provider will notify The Purchaser, where possible, no less than four weeks prior to the event. The Provider must supply a contingency plan for the interim or permanent period.

13. Corrupt Practices

- 13.1** Neither the Provider nor The Purchaser nor any of their employees or agents shall solicit or accept any gratuity, expensive gifts or tip or any other form of money taking or reward, collection or charge for any part of the Service other than lawful charges notified to The Purchaser.
- 13.2** The following actions on the part of the Provider will constitute a fundamental breach of Contract and empower The Purchaser to terminate this Contract, and to recover from the Provider the amount of any loss directly resulting from such termination and also to exclude the Provider from future Contracts. The Provider:
- 13.2.1** Offering any gift or consideration as an inducement or reward to any representatives of The Purchaser;
- 13.2.2** Offering any improper inducement or exerting unreasonable pressure upon potential Children, Parents, Carers, or others with an interest, to attempt to encourage the potential Child, Parent or Carer to use the Provider; or
- 13.2.3** Taking unreasonable financial advantage of its relationship with a Child.
- 13.2.3** Any breach of the Bribery Act 2010.

14. Resolution of Disputes between Parties

- 14.1** If a dispute arises out of this Contract the Parties will use best endeavours to settle the dispute by negotiation. Discussions will take place between the representatives of The Purchaser and the Provider.
- 14.2** If the dispute cannot be resolved at this level then either Party may request the other to participate in a meeting of their respective senior managers, in order to discuss the dispute and to agree a strategy to resolve it.
- 14.3** In the event that the dispute is not resolved by negotiations within 20 Working Days the Parties shall, before resorting to arbitration proceedings, attempt to resolve the dispute by mediation in accordance with the Centre for Dispute Resolution (CEDR) Model Mediation Procedure.
- 14.4** If the Parties fail to resolve their dispute by mediation, then either Party may serve notice on the other to require the dispute to be referred to arbitration in accordance with the Arbitration Acts 1950 and 1996.
- 14.5** The Parties agree that if an arbitrator is appointed under clause 14.4 then:
- 14.5.1** The decision of the arbitrator will be final and binding on the Parties in the absence of manifest error;
- 14.5.2** The arbitrator will not have exclusive jurisdiction on questions of construction of law;
- 14.5.3** Each of the Parties will bear one half of the costs of the reference to the arbitrator unless the arbitrator directs otherwise.
- 14.6** For the avoidance of doubt, the use of the disputes procedure will not delay, or take precedence over, any use of the default or termination procedures.
- 14.7** For the avoidance of doubt, the performance of the Contract would not be affected by a dispute and the Provider will continue to comply with Contract

15. Conditions of Termination

- 15.1** Normal Termination
- 15.1.1** Bearing in mind the commitment of the Parties to co-operating in order to meet the needs of the Children it is hoped that it would not at any stage become necessary to terminate this Contract due to the Default of either Party. However where termination is for some reason unavoidable, the following provisions will apply.
- 15.1.2** Either Party may terminate the Contract by giving a minimum of 3 months' written notice, within which The Provider and The Purchaser shall make all reasonable effort to assist, facilitate and enable any actions required in respect of the Purchasers own change management measures and the continuity of Services to Children, cooperating to ensure that the interests of Children are met under whatever new arrangements may be proposed.
- 15.1.2.1** The required 3 months' notice may only be varied to a lesser or greater period by mutual written agreement.
- 15.1.3** The Purchaser shall ensure that any and all Placements are ended within the

notice period. Should it reasonably foresee that this may not be practicable, the Purchaser will seek to extend the notice period with mutual consent such consent not to be unreasonably delayed or withheld. If the notice period is extended the Purchaser will pay for the Placement until discharge

15.1.3.1 The Service Provider shall not be entitled to any additional costs unless agreed in writing.

15.1.4 Should, a Child remain in a Placement with The Provider upon the termination date, only such an IPA as is in force for that Child at that time shall remain so past termination, and shall be held in itself to be a continuation of this Contract. Such an IPA shall be required to be terminated in line with Clause 16.1 otherwise it shall be accepted that the IPA continue as if the Contract had not been terminated.

15.1.4.1 During such a period, The Provider undertakes to ensure Services are as prescribed within the Child's IPA, Care Plan, IEP and/or PEP and The Purchaser shall undertake to bring about the end of any remaining IPA by removal of the Child within a reasonable time no longer then 28 days following the date of termination

15.1.5 The Service Purchaser may terminate the Contract by notice in writing with immediate effect where:

15.1.5.1 the Service Provider undergoes a change of control, within the meaning of section 416 of the Income and Corporation Taxes Act 1988, which impacts adversely and materially on the performance of the Contract; or

15.1.5.2 the Service Provider undergoes a change of control, within the meaning of section 416 of the Income and Corporation Taxes Act 1988, which impacts adversely and materially on the performance of the Contract; or

15.1.5.3 the Service Provider is a company, if the company passes a resolution for winding up or dissolution (otherwise than for the purposes of and followed by an amalgamation or reconstruction) or an application is made for, or any meeting of its directors or members resolves to make an application for an administration order in relation to it or any party gives or files notice of intention to appoint an administrator of it or such an administrator is appointed, or the court makes a winding-up order, or the company makes a composition or arrangement with its creditors, or an administrative receiver, receiver, manager or supervisor is appointed by a creditor or by the court, or possession is taken of any of its property under the terms of a fixed or floating charge; or

15.1.5.4 where the Service Provider is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;

15.1.5.5 or any similar event occurs under the law of any other jurisdiction within the United Kingdom.

15.1.6 The Purchaser may only exercise their right under clause 15.1.5 within six months after a change of control occurs and shall not be permitted to do so where it has agreed in advance to the particular change of control that occurs. The Service Provider shall notify the Purchaser immediately when any change of control occurs.

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- 15.1.7 If the Service Provider, being an individual, shall die or be adjudged incapable of managing his or her affairs within the meaning of Part VII of the Mental Health Act 1983, the Purchaser shall be entitled to terminate this Contract by notice to the Service Provider or the Service Provider's Representative with immediate effect.
- 15.1.8 Termination of the Contract in any circumstances also terminates any associated IPAs from the date on which the child is removed from the Placement and not before. During the period of notice both Parties will co-operate to ensure that the interests of Children are met under whatever new arrangements may be proposed.
- 15.1.9 Termination of the Contract will have no effect on the liability of either Party to the payment of any sums arising under this Contract prior to the date upon which termination takes effect.

15.2 Breach of Contract

- 15.2.1 The Purchaser is entitled to terminate the Contract with immediate effect and recover from the Provider the amount of any loss resulting from such a termination, if the Provider;
- 15.2.1.1 Persistently Defaults on its obligations under this Contract;
- 15.2.1.2 Commits any other material breach of any of its obligations under the Contract and (in the case of a Default which is capable of being remedied) fails to remedy such a Default within 28 days (or such other time that may be specified) of receiving written notice from The Purchaser specifying the Default complained of and the remedial action required;
- 15.2.1.3 Becomes insolvent, or makes a composition or arrangement with its creditors, or has a proposal in respect of its company for voluntary arrangement for a composition of debts, or scheme or arrangement approved in accordance with the Insolvency Act 1986;
- 15.2.1.4 Has an application made under the Insolvency Act 1986 to the Court for the appointment of an administrative receiver;
- 15.2.1.5 Has a winding-up order made, or (except for the purposes of amalgamation or reconstruction) a resolution for voluntary winding-up passed;
- 15.2.1.6 Has a provisional liquidator, receiver or manager of its business or undertaking duly appointed;
- 15.2.1.7 Has an administrative receiver, as defined in the Insolvency Act 1986, appointed;
- 15.2.1.8 Is in circumstances which entitle the Court or a creditor to appoint, or have appointed, a receiver, a manager or an administrative receiver, or which entitle the Court to make a winding-up order;
- 15.2.1.9 Receives notices of proposed cancellation of their registration under the relevant Legislation as specified at Clause 3 or cease to hold appropriate registration.

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- 15.2.2 Additionally The Purchaser is entitled to terminate the Contract with immediate effect and recover from the Provider the amount of any loss resulting from such a termination, if the Provider, its Registered Manager of the Home or any Director or officer of the Provider:
- 15.2.2.1 Has been convicted of an offence or disqualified under the provisions of the Legislation and associated regulations specified at clause 3 (**Approval, statutory and other regulations**) and any subsequent amendments and additions;
 - 15.2.2.2 Has committed any offence under the Bribery Act 2010;
 - 15.2.2.3 Fails to fully comply with clause 4 (Conflict of Interest) of this Contract.
 - 15.2.2.4 Becomes bankrupt, or makes a composition or arrangement with their creditors.
- 15.2.3 Further The Purchaser is entitled to terminate the Contract with immediate effect and recover from the Provider the amount of any loss resulting from such a termination, if;
- 15.2.3.1 Any of the persons employed at the Home are convicted under the 1st Schedule of the Children and Young Persons Act 1933; or
 - 15.2.3.2 Any of the persons employed at the Home are identified as posing a risk, or potential risk, to children.
- 15.2.4 In these circumstances, related to 15.2.1 to 15.2.3 payment for Services will cease from the date the Contract is terminated.
- 15.2.5 Subject to Clause 15.2.7 and to any adjustment or set-off for damages to cover losses of the Party not in breach The Purchaser shall calculate the monies outstanding to pay the Provider where fees are paid retrospectively or recover from the Provider where fees have in exceptional circumstances been paid in advance.
- 15.2.6 If either party considers that the other is in alleged breach of this Contract or associated IPAs then, unless clause 15.2 is immediately invoked, they will serve written notice of the alleged breach on the other Party.
- 15.2.7 Discussions between the Authorised Officer of The Purchaser and the Service Provider's Representative will take place within 10 Working Days, or such other period that must be mutually agreed in writing.
- 15.2.8 If the issue is not resolved then either:
- 15.2.8.1 A written notice of breach will be served and the Contract will be terminated in accordance with Clause 15.2 or;
 - 15.2.8.2 A written notification of breach will be served upon the other Party specifying a reasonable time limit to rectify the Default and/or take any other particular action required.
- 15.2.9 Termination of the Contract shall not prejudice the rights of either Party or any Child which have arisen on or before the date of termination.

16. Termination of the Individual Placement Agreement (IPA)

- 16.1** An IPA may end by the expiry of the contract period specified in the IPA or by termination on the following periods of notice in writing by either Party
- 16.1.1 one day if the Child has been in the Placement for seven days or less;
 - 16.1.2 seven days if the Child has been in the Placement for more than seven days and less than four weeks; and
 - 16.1.3 six weeks if the Child has been in the Placement for more than four weeks.
 - 16.1.4 A final written assessment will be produced by the Provider before the Child leaves the Home.
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- 16.2** Either Party may terminate an IPA with a lesser period of notice or with immediate effect following review by The Purchaser of the Placement in question, in the following circumstances:
- 16.2.1 The Child's needs cannot be met;
 - 16.2.2 The Placement has broken down;
 - 16.2.3 There is potential for significant harm to the Child or another Child accommodated in the Children's Home; or to Children's Home Staff;
 - 16.2.4 As recommended by the Local Safeguarding Board
 - 16.2.5 Where mutually agreed.
- 16.3** Where the Child is required by Court to live elsewhere, the IPA will be terminated immediately.
- 16.4** Where a Child has died, the IPA shall be terminated 7 days following the date of death. During this time, The Purchaser and the Provider shall work together to make appropriate arrangements and responses to any coroner inquest, funeral arrangements and transfer of personal belongings.
- 16.5** In all such circumstances the Parties will work together to safeguard the interests of the Child until such time as an alternative arrangement can be made. Any varied Services provided and changing costs incurred to maintain a Placement will be agreed at the Review meeting.
- 16.6** The serving of notice for termination of the Contract will automatically terminate any IPA at the expiry of the notice period.
- 16.7** Either Party may terminate the IPA immediately if a Child is 16 years of age and discharges him/herself from the Placement.
- 16.8** In all circumstances, payment for Services under the IPA will cease from the expiry of the notice period for the IPA.

- 16.9** Subject to any adjustment or set-off for damages to cover losses of the Party not in breach The Purchaser shall calculate the monies outstanding to either pay the Provider where fees are paid retrospectively or, recover from the Provider where fees have exceptionally been paid in advance.
- 16.10** If a child who is placed at the Provider's Home under this Contract becomes Absent from the Home, or becomes missing from the Home, or absconds from the Home (i.e. unauthorised absence), then the Provider shall immediately notify The Purchaser's individual with case management responsibility and if required the Contracts/Commissioning Contact. Unless notice to terminate the IPA has already been served by either of the Parties pursuant to Clause 16.1, the twenty eight (28) days notice shall be deemed to have been served by the Provider which shall commence on the date that the Child in question left the Home unless otherwise agreed between the Parties.

17. Planned / Emergency Closure of Home

- 17.1** The Provider will give The Purchaser no less than 3 months written notice of any proposals to close the Home(s) or any intended closure of the Home(s).
- 17.2** In the event of a potential or actual emergency closure of the Home, the Regulatory Body and The Purchaser must be informed immediately and the Parties will work together to safeguard the interests of the Child until such time as an alternative arrangement can be made.

18. Force Majeure

- 18.1** Neither of the Parties shall be considered to be in breach of this Contract, or under any liability whatsoever for non-performance, part performance, defective performance, or delay in the performance of any service supplied (or to be supplied), or work carried out (or to be carried out) under this Contract, in circumstances where such lack of performance is directly or indirectly caused by, or is as a result of, force majeure (subject however to any express provision of this Contract to the contrary and subject also to the succeeding provisions of this Clause).
- 18.2** For the purposes of this Contract, the phrase 'force majeure' shall mean an irresistible force or compulsion, or an overwhelming power and shall include (without prejudice to the general application of this paragraph) the following events or circumstances (subject however to the succeeding provisions of this section):
- (18.2.1)** emergency regulation
 - (18.2.2)** natural disasters
 - (18.2.3)** war and other hostilities/national emergency (whether war be declared or not), invasion, act of foreign enemies or terrorism;
 - (18.2.4)** national strikes;
 - (18.2.5)** pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds;
 - (18.2.6)** rebellion, revolution, civil commotion, riots or disorder;

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- (18.2.7)** ionising radiation, or contamination by radio-activity from any nuclear fuel, or from any nuclear waste, or from the combustion of nuclear fuel, radio-active, toxic, explosive, or other hazardous properties of any explosive nuclear assembly or nuclear component thereof;
- (18.2.8)** explosives on site and the removal thereof;
- (18.2.9)** any other circumstances of a like nature to the above, which are beyond the reasonable control of either of the Parties.
- 18.3** Any strikes or industrial action of whatever nature involving the Staff of the Provider and its associated companies shall not constitute force majeure.
- 18.4** The Provider acknowledges that it is of fundamental importance that there is no break in the continuity of its performance of the Contract and therefore notwithstanding the relief which is granted to the Provider by Clause 18.2, the Provider shall use its best endeavours in any situation where it has invoked this section, to:
- (18.4.1)** mitigate for the delay and perform the Contract as soon as possible; and
- (18.4.2)** in the meantime provide the best possible substituted performance of the Contract.
- 18.5** The Provider shall not be entitled to relief under this Clause in any circumstances where it has caused, or substantially contributed to, any delay or failure in the performance of its obligations by any Default on its part.
- 18.6** The Provider shall immediately serve notice on the Purchaser of any actual or potential events or circumstances which constitute (or may constitute) force majeure and which affect (or might affect) its ability at any time to fulfil its obligations under this Contract (whether temporarily or permanently).
- 18.7** If as a consequence of force majeure the provision of the whole of the Services is temporarily terminated, or suspended, or (in the opinion of the Purchaser, acting reasonably) substantially disrupted, then with effect from the date that the force majeure occurs and thereafter until such time as the Provider resumes the provision of the Services, the payment to the Provider shall be suspended.

19. Waiver

- 19.1** The failure by either Party to enforce at any time or for any period, any one or more of the terms and conditions of this Contract will not be a waiver of them or of the right at any time subsequently to enforce all terms and conditions of this Contract.

20. Notices

- 20.1** Any verbal notification by the Provider will be followed in writing immediately and addressed to The Purchaser as detailed in the IPA.
- 20.2** Any notice or other communication by either Party under or in connection with this Contract will be sufficiently served if served personally on the addressee, sent by pre-paid first class recorded delivery post, electronic mail or facsimile transmission to the registered office or last known address of the relevant

Party and if so sent will, subject to proof to the contrary, be deemed to have been received by the relevant Party on the second Working Day after the date of posting, or on successful facsimile transmission or electronic mail, as the case may be.

- 20.3** During any period of notice both Parties shall co-operate to ensure that the interests of the Children will be met under whatever new arrangements may be proposed.

21. Transfer of Undertaking

- 21.1** The Provider shall indemnify The Purchaser and/or any successor Provider against all costs, expenses and liabilities incurred by The Purchaser and/or any successor provider arising from any claim by the Provider's Staff or ex-Staff, (and by any claim by any employee or ex-employees of contractors or sub-contractors of the Provider) for breach of Contract, unfair or wrongful dismissal, redundancy or any other claim whether statutory or contractual or otherwise, incurred by or transferred to The Purchaser and/or any successor provider by virtue of the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended) ("The Regulations") or any subsequent or related Legislation.

- 21.2** The Parties acknowledge that the Regulations may apply upon expiry or termination of the Contract for any reason. The Provider shall provide such details relating to the Provider's method of delivery of Services and such information relating to its Staff, including their terms and conditions of employment or service (as applicable) in addition to any other relevant information, as The Purchaser may reasonably request to disclose to third parties (including other tenderers) to enable them, amongst other things, to prepare and make an informed bid.

- 21.3** The Provider shall fully comply with The Purchaser's request in Clause 21.2, at no cost to The Purchaser, as soon as is reasonably practicable and, in any event, within 20 Working Days of being so requested. If the Provider fails to provide this information to The Purchaser within the specified time or such later period as may be agreed in writing by the Authorised Officer, the Provider shall not be permitted to tender for the contract immediately following this Contract.

- 21.4** In the event that the Regulations do apply to the subsequent contract for provision of Services, then the Provider shall ensure that the information disclosed to The Purchaser and other third Parties as The Purchaser may direct is accurate and up-to-date at the point of transfer and that all known liabilities have been discharged.

22. Governing Law

- 22.1** This Contract will be governed, interpreted and enforced according to the Law of England.

23. Third Parties

- 23.1** The Provider or anyone employed by the Provider will not hold themselves out as being the agent or servant, of The Purchaser, or enter into any Contract or bind The Purchaser to any undertaking unless agreed in writing by The Purchaser.

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- 23.2** Nothing in this Contract will create or be deemed to create a legal partnership between the Parties, or any relationship of principle and agent and the Parties are not pursuing a joint venture by entering into this Contract.
- 23.3** Both Parties agree and declare that nothing in this Contract either expressly or purportedly confers any rights upon any third Parties within the meaning of or for the purposes of the Contracts (Rights of Third Parties) Act 1999.

24. Complete Contract

- 24.1** This Contract will be the only valid Contract made between the Provider and Purchaser and will supersede all other arrangements.

25. Signatures of Agreeing Parties to the Contract

1. Duly Authorised Signatory on behalf of the Provider

Signed by: (PLEASE PRINT NAME)

MARK KOTECHA

Designation: (PLEASE PRINT)

DIRECTOR

Signature:

M Kotecha

Dated:

15 AUG

In the presence of: (PLEASE PRINT NAME)

NISHA PATEL

Designation: (PLEASE PRINT)

MD

Signature:

N patel

Dated:

15 AUG

2. Duly Authorised Signatory on behalf of the Purchaser

Signed by: (PLEASE PRINT NAME)

Designation: (PLEASE PRINT)

Signature:

Dated:

In the presence of: (PLEASE PRINT NAME)

Designation: (PLEASE PRINT)

Signature:

Dated: