

NATIONAL FOSTERING MODEL CONTRACT

Terms of engagement between Contracting Authorities and Independent Fostering Agencies when placing Children and Young People in Foster Care.

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A. BACKGROUND, STRUCTURE AND INSTRUCTIONS

1. BACKGROUND

1.1 This form of the National Fostering Model Contract was developed collaboratively through Contracting Authorities, Independent Fostering Agencies and the Nationwide Association of Fostering Providers working in partnership to create a revised version of the National Fostering Contract which is up to date and fit for purpose. It is available to all Contracting Authorities and Independent Fostering Agencies.

1.2 This Agreement sets out the terms and conditions under which specific Individual Placement Agreements (“IPAs”) can be made between Contracting Authorities and Independent Fostering Agencies.

1.3 Both Parties shall work together and individually in good faith and in the spirit of trust, fairness and mutual cooperation for the benefit of the children/young people accessing the fostering service.

2. STRUCTURE AND INSTRUCTIONS FOR USE

2.1 This Agreement comprises of:

- The National Fostering Model Contract Terms and Conditions herein
- Schedule 1 - The National Fostering Model Contract Service Specification
- Schedule 2 - The Core Cost Specification and model Pricing Schedule
- Schedule 3 - The Individual Placement Agreement (‘IPA’)
- Schedule 4 – Parties and Signatories to the Agreement
- Schedule 5 – Variation Agreement

2.2 Prior to a Child being placed, both parties will sign Schedule 4 – Parties and Signatories to the Agreement. Thereafter any number of Individual Placement Agreements can be made under this Agreement.

2.3 The Provider will complete Schedule 2 - the Core Cost Specification and Model Pricing Schedule effective from 1 April to 31 March. This will detail the prices for new placements made during that period. Schedule 2 will be made available to a Contracting Authority upon request.

2.4 Neither party will make any amendments to this document. Both parties recognise that any variation to the National Fostering Model Contract Terms and Conditions can **only** be made through mutual agreement and by reflecting this on Schedule 5 - The Variation Agreement. For any variation to be binding it must be signed by both parties.

B. PARTIES TO THE AGREEMENT

The Parties to this Agreement will be detailed on Schedule 4 – Parties and Signatories to the Agreement

3. AGREEMENT STATUS

3.1 This Agreement is between the Contracting Authority and the Provider for the provision of foster care services in England.

3.2 The required services to be delivered for the benefit of a Child in care will be detailed in the respective IPA. This shall be completed between the Provider and the Contracting Authority.

3.3 In signing this Agreement the parties will abide by its terms and conditions and specifically under the provisions of each IPA made under this Agreement.

4. DURATION OF THE AGREEMENT

4.1 The Agreement shall commence on the date specified in B. 'Parties to the Agreement'. The agreement period for each IPA shall be defined in each IPA.

4.2 Termination of this Agreement is provided for in Clause 26 and may lead to termination of each IPA.

C. REGISTRATION OF THE PROVIDER AND STATUTORY COMPLIANCE

5. REGISTRATION

5.1 The Provider confirms it is registered with Ofsted and shall notify the Contracting Authority immediately if Ofsted raises any regulatory concern in respect of such registration.

6. STATUTORY COMPLIANCE

6.1 The Provider will comply with all legislative and regulatory requirements in respect of the Services being provided through this Agreement and in particular:

- [Fostering Services: National Minimum Standards \(2011\)](#) or as amended.
- [Fostering Services \(England\) Regulations 2011](#) or as amended.
- [The Care Planning and Fostering \(Miscellaneous Amendments\) \(England\) Regulations 2015](#) or as amended.

D. REFERRALS AND MATCHING

7. REFERRALS

7.1 Prior to seeking a care arrangement for a Child, the Contracting Authority will ensure that the specific type and category of placement being sought is the most appropriate type of care arrangement for the Child. This decision will be informed by an assessment of the Child's needs and by considering the Child's wishes.

7.2 In order for the Provider to consider if they have a potential match for a Child, the Contracting Authority shall provide them with information about the Child and state the type of foster care being sought. The Contracting Authority will ensure that, as far as possible, the referral information is accurate, up to date and informed by the Child and the adults who know the Child well, including as far as possible and appropriate, any current carers, family members and relevant professionals.

7.3 The Contracting Authority shall ensure, as far as is possible, that the following information is contained within the referral information shared with the Provider:

- A comprehensive profile of the Child. This should include the Child's views and wishes with regards to the proposed fostering arrangement.
- If available, an assessment of known / possible risks with information on how best to manage these.
- The purpose of the fostering arrangement.
- The required start date (clarifying if this is flexible or not).
- The anticipated duration of the fostering arrangement.
- Chronology of any care arrangements to date (type of provision and duration).
- If applicable, the reason why the Child's current care arrangement is coming to an end.
- The preferred location of the foster home. Clarity on the maximum distance from the Child's family home and/or education provision that the Child can be placed.
- If appropriate, any locations which must be avoided.
- What the Child knows about the search for a foster home. If the Child is unaware of the search, the referral should include the reason for this along with an explanation of how, when and by whom, the Child will be informed and consulted.
- Requirements for supporting the Child to remain in contact with family members and significant others.
- Location of the Child's school and whether or not the Child must remain at the school or could move to another education provision.
- Any specific skills, knowledge, experience, qualification or environmental adaptations that will be needed to meet the Child's individual needs.
- The desired outcomes for the Child.

7.4 The Contracting Authority shall ensure that information about the Child is shared securely and in line with Data Protection Legislation.

7.5 The Provider will ensure that they have secure and GDPR compliant arrangements for receiving and storing information on the Child. If a fostering arrangement is not made with the Provider, the Provider will ensure that the referral documentation is deleted from their records in accordance with their organisations policy which will comply with Data Protection Legislation.

8. MATCHING

8.1 Should the Provider have a Foster Carer(s) who may be a suitable match, they should forward a comprehensive carer profile to the Contracting Authority for consideration. This should include:

- Carer biography (name(s) of carer/s, ages, ethnicity, religion, personality, hobbies, interests).
- The area in which the carer/s live.
- The Foster Carer's terms of approval.
- Description of the home and surrounding area.
- Other members of the fostering household including birth children, fostered Children, regular visitors to the home and any pets.
- Date the Foster Carer was first approved and number of years fostering.
- Brief summary of the Foster Carers fostering journey, including experience of supporting adoption or reunification plans within the bounds of appropriate confidentiality.
- Date of most recent review and summary of review findings, particular strengths and areas for development.
- Experience of supporting children with specific / complex needs.
- What training (particularly specialist) the Foster Carer has undertaken.
- Any other commitments, limitations or factors that may impact on their ability to foster.
- Support available from their wider network (family, friends, supporting carers).
- A statement confirming that all necessary and relevant health and safety checks and insurances are in place and up to date.

8.2 The Foster Carer assessment (often referred to as the Form F) is not an appropriate document to be used for matching purposes and will not be used as such. The Provider may share any alternative available or reasonable information, including a comprehensive carer profile, to support the matching process. Both the Contracting Authority and Provider will ensure that, by sharing, receiving and storing Foster Carer information, they do not breach their obligations under Data Protection Legislation.

8.3 Where the Provider intends to place a Child with a Foster Carer who already has a foster child placed with them, they will notify and seek agreement from the local authority for the child already placed before making the placement of a further Child.

8.4 The Provider shall also provide the Contracting Authority with a child friendly carer biography. This will include:

- The name(s) of carers, ages, ethnicity, religion, personality, hobbies, interests.
- The area in which the carers live.
- A description of the home and surrounding area, including leisure opportunities.
- Brief details of other members of the fostering household (including pets) and any regular visitors to the home.
- A child friendly version of the carer's fostering journey.

8.5 The Contracting Authority will ensure that the child friendly carer biography is shared with the Child as early as possible. The Contracting Authority will ensure that the Child is appropriately supported to process this information.

8.6 Should the Contracting Authority deem it not appropriate or possible to share the child friendly carer biography with the Child prior to the Child moving to live with the carer(s), the Contracting Authority shall document the reasons for this decision and share this with the Provider.

8.7 The Contracting Authority and the Provider shall work together to undertake a joint matching exercise and ensure that each Child is carefully matched to Foster Carers who are best able to meet the Child's assessed needs, increasing the chances of stability for the Child. The matching exercise may include a meeting between both parties to discuss the referral information in further detail and / or to undertake a virtual or physical visit to the Foster Carers and their home. The format of the matching exercise and the timing for this will be dependent on circumstances and the time available. Both parties will work in partnership to ensure this exercise is as effective and efficient as possible.

8.8 When a match is agreed, it is the responsibility of the Contracting Authority to convene and chair a meeting so that a Placement Plan can be agreed. Both parties will endeavour to have this meeting before the Child is placed or, if this is not possible, within 5 days of the Child being placed. If the planning meeting has not taken place within the specified time, the Provider may convene the meeting and the Contracting Authority will ensure that an appropriate worker attends this meeting. At this meeting both parties will jointly agree the information that will inform the Child's Placement Plan.

8.9 The Contracting Authority will ensure that arrangements regarding Delegated Authority are confirmed prior to the Child being placed. The Provider shall not place a Child in its care unless confirmation regarding Delegated Authority arrangements has been received in writing.

E. THE PLACEMENT

9. THE INDIVIDUAL PLACEMENT AGREEMENT (IPA)

9.1 Once a suitable foster home has been found and both the Contracting Authority and Provider agree that the match is appropriate, the Contracting Authority shall complete Schedule 3 - The Individual Placement Agreement ('IPA') in consultation with the Provider.

9.2 The IPA shall detail the price along with a reference to the services to be delivered in accordance with what is stated on the Child's Care Plan, Child Looked After documents and any other written arrangements agreed by both Parties.

9.3 The desired outcomes to be achieved for the Child whilst they are in the foster home will be detailed in referral and matching documents, the Child's Care Plan, placement plan and in the Service Specification. The IPA will make reference to these documents.

9.4 The IPA shall contain contact details of relevant staff for the Provider and for the Contracting Authority. Both parties commit to ensuring that they promptly update each other of all relevant contact details.

9.5 The IPA should be issued prior to the Child being placed. In the case of an emergency, an IPA shall be issued as soon as possible after the date of commencement of the care arrangement but within seven working days.

9.6 The Price (and any applicable Additional Fees) will be payable from the date the Child is placed with the exception to this being any provision made for a retainer as detailed in clause 9.7.

9.7 In the event that a Foster Carer needs to be retained for an agreed period of time prior to the Child being placed, the Contracting Authority and the Provider may agree a retention fee that will be payable over this period. The retention fee and the period to which it relates shall be specified in the IPA.

9.8 The Contracting Authority and Provider will have arrangements in place to ensure that the IPA is electronically signed by both parties within seven working days.

10. WORKING TOGETHER TO PROMOTE AND ENABLE STABILITY

10.1 Both parties will work in partnership with the aim to ensure stability for the Child.

10.2 The Provider shall monitor the fostering arrangement and give regular feedback to the Child's social worker regarding the progress the Child is making.

10.3 The Provider shall inform the Child's social worker as soon as reasonably possible of any matters affecting the maintenance and stability of the arrangement. Should there be any concerns regarding the stability of the fostering arrangement, the Provider will ensure the team in the Contracting Authority with responsibility for identifying and securing placements is copied into relevant correspondence.

10.4 If the matters notified under Clause 10.3 continue to have a disruptive influence on the fostering arrangement, a review of support will take place, as detailed in clause 11, to agree a corrective course of action.

11. REVIEW OF SUPPORT

11.1 The IPA shall be reviewed in conjunction with the Child's statutory care reviews, or more often if agreed by both parties.

11.2 Either party may request that a package of care for an individual Child is jointly reviewed for the following purposes:

11.2.1 To ensure the package of care purchased is being delivered in line with the agreed IPA.

11.2.2 To review whether the care and support being provided continues to meet the Child's assessed needs or if there needs to be an adjustment due to a change in needs and/or circumstances.

11.3 Any review of a package of care for an individual Child will be based on an up to date joint assessment of the Child's needs.

11.4 Any review of a package of care for an individual Child should take place as soon as possible and, in all cases, within 4 weeks of either party making this request. If the requesting party does not receive confirmation of a date to meet within the required timescale, and they are concerned about the impact of any delay on the stability of the fostering arrangement, they will escalate the matter as detailed in clause 29 (Resolution of Disputes between Parties).

11.5 Urgent IPA review meetings shall be convened within five working days and preferably within 72 hours of such a request and both Parties shall use their respective reasonable endeavours to achieve this.

11.6 If either party is seeking to increase or reduce the fee due to a change in a Child's needs or circumstances, they will provide information, including financial, which supports their proposal for a fee amendment. The party will also ensure that the relevant social care professionals and the contract managers named on the Child's IPA are aware of the proposed fee amendment.

11.7 Following a review of support, if it is agreed that the price needs to be increased or decreased, then the amended price and the date from which it will be effective will be reflected in a revised IPA. Both the Contracting Authority and Provider will have arrangements in place to ensure that a revised IPA can be electronically signed by both parties within seven working days.

11.8 Changes to the Services including, where relevant, the Additional Services and the Additional Fees, should not normally be implemented until the amended IPA is signed. In circumstances where this is not practically possible, both Parties shall confirm by email the Services to be provided, their Price and the date of commencement of provision.

11.9 If costs have been incurred by either party prior to the agreement of a revised fee, then both parties will meet to discuss this in good faith.

11.10 Both parties will agree on the appropriate frequency for further reviews of support, these being dependent on the specific needs of the individual Child as informed by the most recent review of the Care Plan and/or by the circumstances of the fostering household.

11.11 Where the Child has consistently refused to take up any Additional Services over a period of 14 days, the Provider is to notify the Contracting Authority at the earliest opportunity of such refusal. After such time the Contracting Authority and Provider will agree whether the Additional Services will continue to be provided or not.

12. ABSENT AND MISSING

12.1 Where the Child is absent or missing from the Foster Carer's home and/or care of the Provider for a continuous period of fourteen (14) days due to hospitalisation, or seven (7) days for other absences:

12.1.1 The Contracting Authority and the Provider shall agree whether or not a place with the Foster Carer(s) shall be retained for an agreed period of time. This decision shall be agreed by both parties in writing.

12.1.2 In the event that the Child's absence continues after the agreed retention period, the IPA shall terminate in accordance with clause 13.7 unless the Contracting Authority and Provider agree otherwise in writing.

12.2 Whilst the arrangement, or any retention arrangement, remains in force, the Provider may not place another child in the absent or missing Child's bedroom.

12.3 The Provider shall ensure that an individualised protocol is developed with the Foster Carer(s) and the Child's social worker detailing the steps that both the Foster Carer(s) and the Provider will take in the event of the Child going missing. The Provider will ensure that the Child is appropriately included in developing this protocol and that it is regularly reviewed and updated as necessary.

12.4 The Child's individual missing protocol will include details on the local authority's arrangements for facilitating any return home interviews. If a return home interview is not facilitated within 72 hours of a Child returning to their foster home, the Provider will ask the Contracting Authority for the reasons for this delay and request that a return home Interview be facilitated as soon as possible. The Contracting Authority will provide the information requested so that a copy of this can be made available to Ofsted if required.

13. TERMINATION OF AN INDIVIDUAL PLACEMENT AGREEMENT

13.1 If either party is of the opinion that a fostering arrangement is not sufficiently meeting a Child's needs and there are no immediate risks of continuing the arrangement in the short term, they will request a meeting as detailed in clause 11 to review the support provided and to consider how stability can be improved.

13.2 Save the exceptional circumstances in clause 13.3, neither party will serve notice on the Individual Placement Agreement unless a meeting to review support has taken place and both parties have agreed that a planned and positive end to the arrangement is in the Child's best interests.

13.3 Either party may terminate the Individual Placement Agreement without a meeting having taken place to review the support provided if the party is able to evidence there is an immediate and significant safeguarding risk to the Child. The party must also evidence that the risk cannot be safely managed within existing available resources and that a delay is likely to have a detrimental impact on the Child and/or others living in the household.

13.4 In the event of 13.3. having occurred, the party serving notice may use their discretion to serve between 0 - 28 days notice. The decision on the number of days to be served will be made following an assessment of the ability of both parties to work together to manage any immediate risks.

13.5 If clause 13.4 does not apply, an Individual Placement Agreement may end by the expiry of the contracted period specified in the IPA or by termination of the following periods of notice in writing by either party:

- 14 days' notice for a Child who has been in the foster home less than a month.
- 28 days' notice for a Child who has been in the foster home for over 1 month.

13.6 Both parties recognise that timescales for transition work can be difficult to manage and as such a more flexible approach may be appropriate. Where both parties are working in partnership to transition a Child to an alternative setting or back to their family home, either party can propose a different notice period to that in clause 13.5. If mutually agreed by both parties, a flexible Rolling Notice period can be established, with a specified period of notice applying at a pre-agreed point in the Child's transition. The details of any Rolling Notice must be agreed in writing by both parties.

13.7 Unless the Provider and Contracting Authority agree otherwise, the Contracting Authority may terminate the Individual Placement Agreement by the giving of seven days' notice to the Provider, in the following circumstances:

13.7.1 Following absence for a continuous period for seven days due to hospitalisation of the Child.

13.7.2 Absence for a continuous period of seven days due to any other reason.

13.8 In the event of the death of a Child, and unless the Provider and Contracting Authority agree otherwise, the Contracting Authority may terminate the Individual Placement Agreement by giving fourteen days' notice to the Provider.

13.9 In the event that Ofsted suspends or cancels a provider's registration with immediate effect, the Provider will immediately inform the Contracting Authority and both parties will convene an urgent meeting the same day to make the necessary arrangements for affected children. All financial arrangements will cease with immediate effect, unless otherwise agreed in writing by both parties.

13.10 In the event of the Contracting Authority serving notice this will be sent to the Provider's registered manager responsible for the Child. The Contracting Authority will also copy in the Providers' contract manager named on the Child's Individual Placement Agreement. In the event of the Provider serving notice, this will be sent to the Child's Social Worker and the Provider will also copy the Contracting Authority's' contract manager named on the Child's IPA.

13.11 When notice is served by either party, the Contracting Authority will convene a notice planning meeting with the Provider as soon as possible. The purpose of this meeting is to agree the actions to be taken by both parties during the notice period so that the Child can experience as positive a transition as possible from their foster home to their next care / support arrangement. Responsibilities and timescales for any actions will also be agreed. If less than 5 working days notice has been served, this meeting will take place immediately. In all other circumstances, a meeting will be convened within 3 working days.

13.12 Payment will automatically cease at the end of the relevant notice period.

14. SUPPORTING A TRANSITION

14.1 In the event that an alternative care arrangement is to be facilitated, both Parties will work together to develop a joint transition plan that is designed in the best interests of the Child (clause 13.11).

14.2 In the event that a Special Guardianship Order with the current Foster Carers for the Child is to be considered, the Contracting Authority shall first inform the Provider of such intention. The Parties shall work together to ensure the appropriate communication and consultation takes place involving all relevant parties.

14.3 Both parties will adhere to the [Fostering Network's Transfer of Carers Protocol](#) and the principles that underpin this. Both parties commit to having conversations as early as is reasonably possible regarding the financial arrangements that may be needed to support Foster Carer(s) who wish to move to an alternative fostering service.

14.4 In the event of Foster Carer(s) deciding to move registration to another independent fostering agency or to a local authority, the [Fostering Network's Transfer of Carers Protocol](#) will come into effect. The IPA arrangements, including Care arrangements, Additional Services, Price and Additional Fees shall, subject to contrary written agreement, remain the same.

F. FINANCIAL ARRANGEMENTS

15. PRICE

15.1 The Price in respect of each individual care placement for a Child shall be set out in each Individual Placement Agreement.

15.2 The Price shall cover all Core Cost Services as detailed in Schedule 2 - The Core Cost Specification and model IPA Pricing Schedule.

15.3 Any agreed Additional Service Fees must be specified in the Individual Placement Agreement, or in a variation to the IPA if Additional Service Fees are agreed following a review of support in accordance with clause 11.

15.4 The Provider shall not make any charges to the Child or their families in respect of this Agreement or any Individual Placement Agreement.

15.5 All amounts due under this Agreement are exclusive of any applicable VAT, which the Contracting Authority shall pay in addition against appropriate VAT invoices or by agreed automated payments.

16. ANNUAL PRICE REVIEW

16.1 With respect to new placements; each year, ideally before 31 January and no later than 31 March (unless they are a newly registered provider which starts to operate during the financial year), the provider will complete a revised Part B of Schedule 2 (The Core Cost Specification and model IPA Pricing Schedule). This will detail the fees that will apply from 1 April to 31 March of the following year for any new placements made during the period. This shall be submitted to the Contracting Authority for consideration.

16.2 With respect to current placements, an annual price review will take place to consider the impact of inflation and any other changing costs. The formula for calculating the uplift percentage is: 50% National Living Wage increase (for the concurrent April when the increase will come into effect) + 50% CPIH taken as a three-month average in August, September and October.

An example of how the uplift may be calculated:

National Living Wage increase (to apply in the coming April): 6.6%

CPIH values for recent months of:

- o August: 3.0%*
- o September: 2.9%*
- o October: 3.8%*

Using the given formula, the uplift percentage to be applied in the April would be calculated as follows:

National Living Wage component: 50% of 6.6% = 3.3%

CPIH component: 50% of (3.0% + 2.9% + 3.8%) / 3 = 1.62%

*Uplift percentage = 3.3% + 1.62% = **4.92%***

16.3 Whilst the Provider has the right to increase their prices for current placements in accordance with the formula in 16.2, the Provider will endeavour to deliver value for money and may use their discretion to apply a fee uplift below the formulated level.

16.4 Both parties may agree to an alternative mechanism for reviewing the prices for current placements. Any alternative mechanism agreed will only be binding if detailed on a Schedule 5 - Variation Agreement and signed by both parties.

16.5 In any circumstances where the Provider and Contracting Authority agree, by jointly signing a Variation Agreement, that the annual price review is to be a negotiated process;

16.5.1 The Contracting Authority shall ensure that any template the Provider is expected to complete is fit for purpose and designed specifically for fostering services. Where possible, the Contracting Authority will ensure this is a common format used also by other placing authorities.

16.5.2 The Contracting Authority will ensure that the Provider is given no less than 4 weeks to complete any required exercise. The deadline for submitting requests will be no later than 31 January.

16.5.3 The Provider will, upon request, complete the template and /or provide any documents or information that supports their request for a price increase.

16.5.4 The Contracting Authority will ensure that any officers analysing the financial data submitted by the Provider have the appropriate experience, skills and understanding.

16.5.5 The Provider will be provided with details of the Contracting Authority's arrangements for considering annual price reviews. This will include details of the timeline for negotiations. The Contracting Authority will inform the Provider of their decision no later than 31 March.

16.5.6 If negotiations are not completed by the time set out in these arrangements, either party will be entitled to escalate the matter in line with clause 29 (Resolution of Disputes between Parties)

16.6 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.

16.7 With respect to current placements, the uplifted placement price resultant from the annual price review will take effect on 1 April, unless agreed otherwise by both parties.

17. PAYMENT ARRANGEMENTS

17.1 Prior to the Child being placed, or within 4 weeks if a Child is placed in an emergency, the Contracting Authority shall inform the Provider of their preferred method of payment. In the event that payment is to be made through an automated process, the Contracting Authority will ensure the Provider has all relevant details and any appropriate support provided to ensure that the Provider can register on the Contracting Authority's automated system within 6 weeks of the Child being placed.

17.2 Where invoicing is permitted, the Provider is entitled to submit invoices monthly in arrears from the placement start date, unless otherwise agreed.

17.3 The Contracting Authority shall pay the Price and, where applicable, the Additional Services Fee (together with any VAT from time to time payable) within 30 days receipt of the correctly submitted, undisputed invoice, or in accordance with clause 17.5 unless the Contracting Authority, acting reasonably, is not satisfied that the payment being requested is correct, or that the Service provided has not been in accordance with this Agreement. If the Contracting Authority wishes to dispute the amount being requested, they will notify the Provider within 30 days of the payment request being received. Both parties will, acting reasonably and in good faith, discuss the disputed invoice and attempt to resolve it and the Provider shall provide any supporting evidence of the invoice to the Contracting Authority. In the event of a dispute, the Provider may re-submit a new payment request for the undisputed amount, the payment of which will not be withheld. Either party retains the right to invoke clause 11 (Review of Support) at this stage.

17.4 The Contracting Authority shall not ordinarily make payments in respect of invoices until the expiry of the period to which they relate, or in accordance with clause 17.5. If both parties agree, the

Contracting Authority may opt to make payments to the Provider within an earlier time frame.

17.5 Either party is entitled to request other payment arrangements and such requests shall be given reasonable consideration by the other party. Any alternative arrangement that is agreed shall be set out in a variation to this Agreement.

17.6 If, the Contracting Authority and the Provider, having agreed to the price review being a negotiated process, and this is detailed in a variation signed by both parties, then fail to reach agreement on the Annual Price Review for current placement(s), before 1 April, the Contracting Authority must continue to make payment at the previously agreed rate. This will continue until agreement is reached, at which point payment at the agreed new price will be backdated to 1 April or to the start date of the IPA if this post-dates 1 April.

17.7 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 Contracting Authority and Provider will meet to review the package of care. The Contracting Authority reserves the right to reduce the level of payment proportionally, but only after a review of support has taken place in accordance with clause 11.

17.8 If any undisputed sum payable under this Agreement is not paid within 30 days of the payment being due, and the Provider makes a request for a late payment charge to be applied, in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 and Late Payment of Commercial Debts Regulations 2013, the interest shall be payable by the Contracting Authority.

G. LEADING, MANAGING AND MONITORING THE FOSTERING SERVICE

18. LEADERSHIP

18.1 The Provider will provide leadership that ensures the fostering services are delivered with due skill, care and diligence and in accordance with all applicable laws and regulations (including but not limited to):

- [Fostering Services \(England\) Regulations 2011](#)
- [Fostering Services: National Minimum Standards \(2011\)](#)
- [Schedule 1 - The Agreement Service Specification](#)
- The requirements of this Agreement
- All provisions of each IPA.
- [The Caldicott Principles](#)
- Good Industry Practice

19. RECRUITMENT, SELECTION AND VETTING OF STAFF

19.1 The Provider shall operate robust systems for the recruitment and selection of their Staff and Foster Carers. These systems shall comply with the 2011 Regulations, the National Minimum Standards where applicable and Schedule 1 - the Service Specification.

19.2 The Provider shall comply with all relevant legislation in relation to the delivery of the Services. The Provider shall use all reasonable endeavours to keep abreast of all relevant legislative changes

and re-enactments issued.

19.3 The Provider shall ensure that all their relevant Staff and Foster Carers have a clear understanding of the National Minimum Standards and the 2011 Regulations and related legislation, policies and procedures in relation to foster care.

19.4 The Provider shall acknowledge the role the Foster Carer(s) birth children have when a Child is placed with the foster family, and offer training and support when required.

19.5 As a condition of each IPA, the Provider shall enter into a written foster care placement agreement with the Foster Carer(s) with whom it is intended that the Child is to be placed. Such agreement will meet the requirements of Schedule 5 of the 2011 Regulations, the Child's Care Plan and the requirements of this Agreement.

19.6 The Provider will adhere to the guidance issued by the Disclosure and Barring service and ensure that relevant checks are carried out for all eligible Staff whose duties involve access to, or information about, children.

19.7 The Provider shall ensure that no member of their Staff, Foster Carer or sub- contractor is permitted to provide Services until all the necessary checks have been undertaken and the checks are satisfactory.

19.8 Where a DBS check includes disclosure in relation to a member of staff, sub-contractor or Foster Carer, they shall not be permitted to provide services under this Agreement unless the Provider has completed due diligence and is satisfied that the individual is suitable to provide such Services.

19.9 Any Provider member of Staff or sub-contractor who is found to be unsuitable, as the result of any subsequent checks, shall be immediately removed from access to children or other vulnerable persons and a suitable replacement appointed. The Provider shall make sufficient disclosures about the matter to the Contracting Authority to enable it to properly consider the matter.

19.10 If any Foster Carer is found to be unsuitable as the result of any subsequent checks, the Provider shall ensure that the Child is removed from further contact with such person urgently, that urgent alternative temporary care arrangements are put in place and that a suitable alternative Placement is arranged as soon as possible. The Provider shall inform the Contracting Authority's Authorised Officer immediately in the event of any such removal and of any actual or possible impact on the Child.

20. TRANSPORT

20.1 The Provider shall undertake all reasonable measures to ensure the safety of Children when being transported by either the Foster Carers or Provider's staff.

20.2 The Provider shall ensure that account is taken of any risk assessments in respect of transporting the Child. Risk assessments on all fostering arrangements will include risks associated with travel.

20.3 The Provider shall ensure that all drivers transporting Children have valid licences and current vehicle insurance appropriate to the type of transport being provided, have a current MOT certificate if appropriate and that the number of passengers shall never exceed the insured or licensed maximum.

20.4 The Provider shall ensure all vehicles used to transport Children (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.

20.5 The Provider shall ensure all vehicles are suitable and equipped to transport Children. Vehicles will have seat belts and/or personal restraints, where a which conform to the relevant British Standard and which are used in all instances.

20.6 The Provider shall ensure the transport is always driven safely and with consideration to passengers' needs. This shall include conforming to all road traffic legislation and never driven whilst the driver is under the influence of alcohol and drugs, excessively tired, or otherwise in circumstances of unreasonable risk.

20.7 In the event that the Provider sub-contracts or pays for transport and escort services for Children, the Provider shall use reasonable endeavours to ensure that the sub-contractor/s comply with all relevant road safety legislation and all necessary checks will have taken place for all drivers and escorts.

20.8 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 or Foster Carer has not received penalty points or a court judgement that bars them from driving.

21. REPORTING OF NOTIFIABLE EVENTS

21.1 If any of the Notifiable events take place (Fostering Regulation 2011, Schedule 7) the registered person will, without delay, notify the persons or bodies indicated in the regulations. Where applicable, notifications to Ofsted must be made through the [government portal](#) and a copy of this shall be submitted to the Contracting Authority.

21.2 All notices relating to the IPA will be made in writing and sent immediately to the Child's social worker and to the Contracting Authority's placement / contract manager as per the contact details specified in the IPA.

22. CONFLICTS OF INTEREST

22.1 The Provider shall use all reasonable endeavours to protect the safety and well-being of Children by taking necessary measures to avoid any confusion of roles or situations in which a conflict of interest might arise.

22.2 The Provider shall adopt clear and well-organised procedures to record significant information about personal relationships and take all necessary steps to remove and prevent a conflict of interest.

23. MONITORING ARRANGEMENTS

23.1 The Provider, in accordance with Regulation 35 of the Fostering services (England) regulations 2011, will maintain a system for monitoring the following:

- Compliance in relation to each Child placed with foster carers, with the Child's care plan.
- All accidents, injuries and illnesses of Children placed with foster carers.
- Complaints in relation to Children placed with foster carers and their outcomes.
- Any allegations or suspicions of abuse or neglect in respect of Children placed with foster carers and the outcome of any investigation.
- Recruitment records and the conduct of required checks of new workers.
- Notifications of events listed in Schedule 7 of the Foster Care regulations.
- Any Child missing from a foster carer's home without permission.
- Use of any measures of control, restraint or discipline in respect of Children accommodated in a foster home.
- Medication, medical treatment and first aid administered to any Child placed with foster carers.
- Where applicable, the standard of any education provided by the fostering service.
- Records of assessments.
- Records of fostering panel meetings.
- Records of appraisals of employees.
- Minutes of staff meetings.

23.2 Every six months the Provider will have available, upon request, a monitoring report for the Contracting Authority which will:

- confirm that the matters in 23.1 have been adequately monitored along with a summary of findings.
- include the providers own analysis of their internal monitoring arrangements. This analysis will highlight what the organisation does well and where there are areas for improvement. Where shortfalls have been identified by the Provider, the monitoring report will include the steps they are taking to remedy this, along with timescales for completion.
- provide a high-level overview of the training and supervision provided to staff and carers,
- confirm that there is an effective system in place for reviewing the organisations policies and procedures,
- include a copy or link to the organisations most recent annual safeguarding audit. This information will evidence effective arrangements for safeguarding under section 11 of the Children Act 2004.

23.3 The monitoring information provided will include sufficient detail to satisfy the Contracting Authority that internal monitoring arrangements are robust. The report will not contain any information that can identify individual Children or Foster Carers. Both parties must agree to the sharing of the report with any third parties.

23.4 The Provider will ensure that the Contracting Authority is aware of any regulatory inspection taking place and ensure that they are provided with a copy of the final regulatory report within two weeks of this being published.

23.5 The Provider shall be responsible for monitoring the Child in their foster home and shall use all reasonable endeavours to ensure that the care and services provided are meeting the Child's needs and fulfilling the Child's individual outcomes. This will include ascertaining information on the views of the Child, their Foster Carers and their parents, where deemed appropriate.

23.6 The Provider will provide each Child's social worker with regular reports on the Child at intervals of no less than once a month. These reports will give a holistic overview of developments in the Child's life and include details of any significant progress, or otherwise, on agreed targets.

23.7 The Contracting Authority and Provider agree to meet on an annual basis, or more frequently if agreed by both parties, to discuss the quality of the services being provided. Prior to this meeting the Contracting Authority will have obtained feedback from placing social workers and Independent Reviewing Officers. The Contracting Authority will have read the most recent monitoring information submitted by the Provider and the most recent regulatory report. The Provider may provide the Contracting Authority with any further additional information they feel is relevant to inform this meeting.

23.8 Monitoring meetings will be conducted in the spirit of partnership and through recognising the efforts required by the wider team around the Child. The Contracting Authority will also seek feedback on their role in supporting any fostering arrangements.

23.9 The Contracting Authority will complete a summary of the meeting which provides a picture of the strengths and weaknesses of the service. This will also include any agreed action points for the Provider and/or Contracting Authority along with details of persons responsible and any timescales for completion. This report will be shared with the Provider within a month of the meeting having taken place.

23.10 If, following the provision of the above information and following a monitoring meeting between the Contracting Authority and the Provider, the Contracting Authority continues to have concern about the quality of the service being delivered, they will be entitled to request, within reason, that additional information be provided. The provider will not be required to resubmit any information already provided in their monitoring report. Should the provider feel that the request for additional information is unreasonable, or the Contracting Authority believes the withholding of any information to be unreasonable, either party will be entitled to request a meeting to resolve the dispute in accordance with clause 29.

H. THE CONTRACTUAL ARRANGEMENTS

24. BREACHES OF THE AGREEMENT

24.1 The Provider shall inform the Contracting Authority as soon as reasonably possible if it finds it is unable permanently or temporarily to meet the conditions of this Agreement, and an action plan with timescales shall be agreed by both Parties.

24.2 The Contracting Authority may assist the Provider in continuing to provide the Services to the Child in order to meet the best interests of the Child or where the Provider's inability is of a temporary nature. Such assistance by the Contracting Authority shall not be regarded as a waiver of any breach of the Provider's obligations under this Agreement. The Price for the Services, including any Additional Services Fee, during this period shall be negotiated and any reduced Price or Additional Service Fee shall be agreed to in good faith by both the Contracting Authority and the Provider.

24.3 In the event of a remediable breach of an IPA or this Agreement, which is not a fundamental breach of such seriousness (as defined in 24.5 or 24.6) that it justifies immediate termination, the Contracting Authority may issue a remedy notice in writing requiring the Provider to remedy the breach in a specified manner within a reasonable specified timescale. This timescale will be dependent on the nature of the breach and the remedial action to be taken.

24.4 If the Provider unreasonably fails to remedy the situation in accordance with an agreed action plan and within the agreed timescale then the Contracting Authority shall convene an Agreement review meeting.

24.5 The following Acts, omissions and events may constitute fundamental breaches of the Agreement and/or any IPA by the Provider:

24.5.1 where the Provider favoured, or maliciously disfavoured, any person in relation to the Contract, or any other agreement with the Contracting Authority;

24.5.2 where the Provider fails to meet the reasonable requirements of any relevant Care Standard Authorities and Regulatory bodies, and unreasonably fails to put in place an agreed action plan between the Provider and the Regulatory bodies to put this right, or the Provider unreasonably fails to meet the requirements of the agreed action plan within a reasonable period of time;

24.5.3 where the Provider fails to act, if aware that someone within or supporting the foster home has taken financial advantage of the Child;

24.5.4 where the Provider fails to notify the Contracting Authority if they are made aware that anyone working for the Provider or visiting or living in the foster home is convicted of a Schedule 1 offence under the Children and Young Persons Act 1933, is placed on the Sex Offenders Register or has been identified as posing a risk, or potential risk, to children;

24.5.5 where the Provider fails to notify the Contracting Authority if they are made aware that anyone working for the Provider or living in the Foster Carer(s)'s home has any allegations made against them of a serious nature, resulting in a child protection investigation being carried out.

24.6 The following Acts, omissions and events may constitute fundamental breaches of the Agreement and/or any IPA by either party:

24.6.1 where the party has offered, or gave, or agreed to give any person any gift or consideration of any kind as an inducement or reward in relation to the obtaining of the Agreement or any related Agreements;

24.6.2. where the party, or any person employed by the party or acting on the party's behalf, committed any offence under the Bribery act 2010.

24.6.3 where the party committed a material irremediable breach of any of its obligations under the Agreement or (in the case of a breach which is capable of being remedied) fails to remedy such a breach as is reasonably required and/or as agreed;

24.7 In the event of any Breach of an IPA or the Agreement which is a fundamental breach of such seriousness that it justifies immediate termination (which may include cumulative, or repeated Breaches), given that the best interests of the Child are paramount, the Party with the right to terminate shall, nevertheless, seek to exercise any such right in a manner which shall be consistent with the Child's best interests and the party in breach shall reasonably cooperate in that purpose.

25. INSOLVENCY EVENTS

25.1 The following are Insolvency Events:

25.1.1 where the Provider becomes bankrupt, 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;

25.1.2 where the Provider has an application made under the Insolvency Act 1986 to the court for the appointment of an administrative receiver, or the appointment of such an administrative receiver;

25.1.3 where the Provider has a winding up order made, or (except for the purpose of amalgamation or reconstruction) a resolution for voluntary winding up passed;

25.1.4 where the Provider has a provisional liquidator, receiver, or manager of its business or undertaking duly appointed.

25.1.5 where the Provider has possession taken, by or on behalf of the holders of any debentures secured by a floating charge, or any property comprised in, or subject to, the floating charge;

25.1.6 where the Provider is in circumstances which entitle the Court or a creditor to appoint, or have appointed, a receiver, a manager, or administrative receiver, or which entitle the Court to make a winding up order.

25.2 To ensure continuity of care in the event of insolvency, the Provider will fulfil its obligations under [regulation 33](#) and [regulation 34](#) of the Fostering Services Regulations 2011.

26. TERMINATION OF THE AGREEMENT

26.1 This Agreement between parties, to work in accordance with the terms and conditions set out in this Agreement, may be terminated in the following circumstances:

26.1.1 Either Party may terminate this Arrangement by giving a minimum of three (3) months written notice (or a lesser period by mutual agreement).

26.1.2 Where there has been a Fundamental Breach (as defined in 24.5 or 24.6) of this Agreement, including any fundamental Breach of any IPA, the Party not in Breach may provide written notice to terminate the Agreement with immediate effect.

26.2 Termination of this Agreement will not automatically terminate the IPAs that have already been made under this Agreement. Decisions regarding active IPAs will be made on an individual basis and shall be consistent with each individual Child's best interests.

26.3 Once terminated, no new IPAs will be made under the National Fostering Model Contract until/unless both parties agree. In these circumstances both parties will sign an updated National Fostering Model Contract prior to any new care arrangements being made.

27. BEST VALUE

27.1 The Local Government Act 1999 imposes a requirement on all local authorities to demonstrate that the council is making arrangements that are economic, efficient, and effective, and that it has regard to the need to secure continuous improvement in how it carries out its work. The Provider agrees to use its reasonable endeavours to ensure the continual improvement in the planning and the delivery of the Services with regard to effectiveness, efficiency and economy in meeting the needs of the Children.

27.2 The Provider shall provide such assistance and information that the Contracting Authority may reasonably require to enable the Contracting Authority to discharge and fulfil its Best Value Duty in relation to the Services.

28. INDEMNITY PROVISIONS AND INSURANCE

28.1 The Provider shall indemnify and keep indemnified the Contracting Authority and its officers against any liability, claim, proceedings expenses, or loss in respect of personal injury or death or loss of or a damage to property real or personal, which arises out of any breach of Agreement and/or

IPA by the Provider and/or any reckless or negligent act or omission of the Provider, its Staff, agents and/or sub-contractors (including Foster Carers) in the course of delivery of the Provider's duties under this Agreement and/or any IPA.

28.2 Each Party shall indemnify the other against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the indemnified Party arising out of or in connection with the Breach of UK Data Protection Legislation by the indemnifying party, its employees or agents, provided that the indemnified Party gives to the indemnifier prompt notice of such claim, full information about the circumstances giving rise to it, reasonable assistance in dealing with the claim and sole authority to manage, defend and/or settle it.

28.3 Without prejudice to its obligation to indemnify the Contracting Authority the Provider shall insure and shall maintain such insurance to remain in place for a six-year period following the termination of the Agreement and pay any resulting premiums, in the minimum sums and for such categories of as may be agreed by reference to the Provider's actual circumstances and subject to such agreement such sums and categories shall be:

28.3.1 General public liability cover – a minimum of £10 million for any one claim or in accordance with any legal requirement for the time being in force in relation to any one claim;

28.3.2 Employer's liability cover – a minimum of £10 million in respect of any one claim, covering all employees;

28.3.3 Professional indemnity cover – a minimum of £5 million in respect of any one claim. This cover must remain in place following the termination of any IPA for: (i) a 6-year period where the IPA is executed under hand; and (ii) a 12 year period where the IPA is executed as a deed;

28.3.4 The Provider will ensure all Foster Carer Households are adequately insured and maintain adequate insurance. This insurance will cover damage up to £1500.

28.4 Where the Provider provides, with the agreement of the Contracting Authority, any special therapy specified in the Care Plan/Pathway Plan for the Child, such therapy shall only be carried out by suitably qualified professionals. Such professionals shall be registered by/with the appropriate professional bodies and conform to all insurance requirements laid down by such bodies. The Provider's support staff shall only undertake tasks associated with the programme of therapeutic intervention under the ongoing supervision and management of the suitably qualified professional.

28.5 The Provider shall ensure that in respect of any holidays, whether in the UK or worldwide, adequate insurance cover is in place for the Child with a reputable insurance carrier.

28.6 The Provider shall, on reasonable request, provide to the Contracting Authority evidence that the insurance requirements detailed in the previous clauses are current and maintained.

29. RESOLUTION OF DISPUTES BETWEEN PARTIES

29.1 The Contracting Authority and the Provider shall seek to work together in the spirit of mutual cooperation in order to meet the best interests of the Children placed under this Agreement. The Contracting Authority and the Provider shall use their best endeavours to resolve by agreement any dispute arising between them and shall negotiate in good faith at all times.

29.2 In order to resolve a dispute, either Party may use the following procedure:

29.2.1 Request a meeting between representatives of both Parties within 10 working days, or such other period as agreed between the Parties. At this preliminary stage the meeting should be attended by the appropriate social workers, Registered Manager and Contracting Authority Team Manager.

29.2.2 If the dispute remains unresolved after the meeting referred to in sub clause 29.2.1 then a further meeting involving senior representatives of the Parties may be requested within a further 10 working days, or such other period as agreed between the Parties. At this stage the meeting should also be attended by the Provider's Responsible Individual and the Contracting Authority's Service Manager. Appointed Contract Managers for both parties should also attend or send their nominated representatives.

29.2.3 If the dispute remains unresolved after the meeting referred to in sub clause 29.2.2 then a further meeting may be requested within a further 10 working days, or such other period as agreed between the Parties. This meeting should include the Director of Children's Services for the Contracting Authority and a Director for the Provider. Directors may send nominated Senior Managers with delegated authority to make any necessary decisions. Senior leaders will work together to resolve the dispute, making a final decision in the best interests of the Child.

29.2.4 If the dispute is still not resolved within 10 working days of the meeting referred to in sub clause 29.2.3 then the matter shall be referred to independent mediation in accordance with the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedures, as soon as is reasonably practicable. The mediator shall be an individual(s) agreeable to both Parties. The parties shall bear their own legal costs of the dispute resolution procedure but the costs and expenses of mediation shall be shared equally between the Parties.

29.2.5 If, at any stage of the above process, either party has reason to believe that a delay in resolving the dispute could result in a Child being harmed, and they remain concerned about the inaction of the other party, they must follow their legal duties and whistle blow their concerns to the relevant authoritative body. The timeline for resolving the dispute should not be affected by this action.

29.2.6 If the matter cannot be satisfactorily resolved through mediation, it may be referred to an independent arbitrator who is agreed between both Parties, or in default of agreement, nominated by the President of the Chartered Institute of Arbitrators. The arbitrator shall be entitled to make such a decision or award as they think just and equitable having regard to the circumstances then existing.

29.2.7 The decision of the arbitrator (including as to costs) shall be final and binding upon both Parties except in the case of manifest error.

29.2.8 At each stage of the dispute process, the best interests of the Child will remain a priority. If the Child is directly affected by the decision to be made, then the Child's views will be sought

and their inclusion in the process considered. Both parties will commit to ensuring that the Child has access to effective and timely advocacy services.

30. THIRD PARTIES

30.1 The Provider or anyone employed by the Provider shall not hold them out as being the agent or servant of the Contracting Authority, or enter into any Agreement or bind the Contracting Authority to any undertaking unless agreed in writing with the Contracting Authority.

30.2 Nothing in any IPA or this Agreement shall 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 under such agreements.

30.3 The Parties agree and declare that nothing in any IPA or this Agreement 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 except the rights expressly given to Contracting Authorities under this Agreement.

31. NOTICES

31.1 Any verbal notification by either party will be followed in writing immediately and addressed to the appropriate contact person detailed in the IPA. Any notice or other communication by either Party under or in connection with this Agreement will be sufficiently served if served personally on the addressee, sent by secure electronic mail or by pre-paid first class recorded delivery post to the last known address of the relevant Party. If so sent it will, subject to proof to the contrary, be deemed to have been received by the relevant Party on the second business day after the date of posting, or on successful electronic mail, as the case may be. During any period of notice both Parties shall, as detailed in clause 13.11, cooperate to ensure that the interests of the Children will be met under whatever new arrangements may be proposed.

I. LEGISLATION AND FURTHER STATUTORY COMPLIANCE

32. HEALTH AND SAFETY

32.1 The Provider and all persons (including any sub-contractors) employed by the Provider shall, throughout the period of this Agreement, comply fully with the requirements of the Health and Safety at Work Act 1974, the Management of Health and Safety at Work Regulations, and any other acts, regulations and approved codes of practice relating to the health and safety of employees and others who may be affected by the Provider's work activities.

33. EQUALITIES POLICY

33.1 Both parties shall comply with the Equality Act 2010 or subsequent revisions and all other relevant anti-discriminatory legislation.

33.2 Neither party shall unlawfully discriminate either directly or indirectly on such grounds (but not limited to) as race, ethnic or national origin, disability, sex or sexual orientation, gender reassignment, marriage and civil partnerships, care experience, religion or belief, age, pregnancy and maternity.

33.3 Both parties shall operate an equal opportunities policy for the duration of the Agreement Period and shall provide the other party with a copy of the policy and updates when reasonably requested.

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

33.5 The Provider shall notify the Authorised Officer in writing as soon as reasonably possible once it becomes aware of any investigation of, or proceedings brought against them under Equalities Legislation.

34. DATA PROTECTION

34.1 Both parties agree that they will comply with their respective obligations under the Data Protection Legislation and the terms of this Agreement and in particular each party shall designate a data protection officer if required by Data Protection Legislation and shall maintain complete and accurate records and information to demonstrate its compliance with Data Protection Legislation and this clause.

34.2 Both parties acknowledge that for the purposes of Data Protection Legislation, each will have responsibilities as a Controller, a joint Controller and as a Processor for Personal Data under this Agreement.

34.3 Insofar that each party has responsibility as a Controller and/or joint Controller, both parties will ensure that a Data Sharing Agreement is completed and signed by both parties.

34.4 To the extent that either party acts as a Processor on behalf of the other, the remainder of this clause shall apply.

34.5 The Processor shall notify the Controller immediately if it considers that any of the Controller's instructions infringe Data Protection Legislation.

34.6 The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Controller, include:

34.6.1 a systematic description of the envisaged processing operations and the purpose of the processing;

34.6.2 an assessment of the necessity and proportionality of the processing operations in relation to the Services;

34.6.3 an assessment of the risks to the rights and freedoms of Data Subjects; and

34.6.4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

34.7 The Processor shall, in relation to any Personal Data processed on behalf of the Controller in connection with its obligations under this Agreement:

34.7.1 process that Personal Data only with the Controllers prior agreement and in accordance with the written instructions of the Controller unless the Processor is required to do otherwise by Law. If it is so required the Processor shall promptly notify the Controller before processing the Personal Data unless prohibited by Law;

34.7.2 ensure that it has in place Protective Measures, which have been reviewed and approved by the Controller as appropriate to protect against a Data Loss Event having taken account of the:

- (i) nature of the data to be protected;
- (ii) harm that might result from a Data Loss Event;
- (iii) state of technological development; and
- (iv) cost of implementing any measures;

34.7.3 ensure that:

- (i) the Processor Personnel do not process Personal Data except in accordance with this Agreement and any additional agreement between the two parties.
- (ii) it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:
 - are aware of and comply with the Processors duties under this Clause;
 - are subject to appropriate confidentiality undertakings with the Processor or any Sub-processor;
 - are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Controller or as otherwise permitted by this Agreement; and
 - have undergone adequate training.

34.7.4 not transfer Personal Data outside of the UK unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:

- (i) the Controller or the Processor has provided appropriate safeguards in relation to the transfer (in accordance with 'Data Protection Legislation) as determined by the Controller;
- (ii) the Data Subject has enforceable rights and effective legal remedies;
- (iii) the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations); and

(iv) the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the processing of the personal Data;

34.7.5 at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the Agreement unless the Processor is required by law to retain the Personal Data.

34.8 Subject to clause 34.8, the Processor shall notify the Controller immediately (and in any event, within 24 hours) of becoming aware if it:

- (i) receives a Data Subject Access Request (or purported Data Subject Access Request);
- (ii) receives a request to rectify, block or erase any Personal Data;
- (iii) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
- (iv) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;
- (v) receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
- (vi) becomes aware of a Data Loss Event.

34.9 The Processor's obligation to notify under clause 34.7 shall include the provision of further information to the Controller in phases, as details become available.

34.10 Taking into account the nature of the processing, the Processor shall provide the Controller with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 34.8 (and insofar as possible within the timescales reasonably required by the Controller) including by promptly providing:

- (i) the Controller with full details and copies of the complaint, communication or Request;
- (ii) such assistance as is reasonably requested by the Controller to enable the Controller to comply with a Data Subject Access Request within the relevant timescales set out in Data Protection Legislation;
- (iii) the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
- (iv) assistance as requested by the Controller following any Data Loss Event;
- (v) assistance as requested by the Controller with respect to any request from the Information Commissioner's Office or any consultation by the Controller with the Information Commissioner's Office.

34.11 The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller's designated auditor.

34.12 Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Processor must:

- (i) notify the Controller in writing of the intended Sub-processor and processing;
- (ii) obtain the written consent of the Controller;

- (iii) enter into a written agreement with the Sub-processor which give effect to the terms that apply to the Sub-processor;
- (iv) provide the Controller with such information regarding the Sub-processor as the Controller may reasonably require.

34.13 The Processor shall remain fully liable for all acts or omissions of any Sub- Processor.

34.14 The Controller may, at any time on not less than 30 Working Days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).

34.15 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Controller may on not less than 30 Working Days' Notice to the Processor amend this Agreement to ensure that it complies with any Guidance issued by the Information Commissioner's Office.

35. HUMAN RIGHTS

35.1 The Provider shall not do or permit or allow anything to be done which is incompatible with the rights contained within the European Convention on Human Rights 1950 ("ECHR").

35.2 The Provider shall not do or permit or allow anything to be done which may result in the Contracting Authority acting incompatibly with the rights contained within the ECHR and the Human Rights Act 1998 ("HRA").

35.3 The Provider shall indemnify the Contracting Authority against any loss, claims and expenditure resulting from the Provider's breach of Clauses 35.1 and 35.2.

36. CHILDREN'S RIGHTS

36.1 Both parties shall at all times have regards to, and abide by the principles and the provisions of the Human Rights Act 1998, the European Convention on Human Rights and the provisions of the Children Act 1989.

36.2 The Provider shall have clear policies and procedures in relation to Children's rights that comply with:

- The Children Act 1989 as amended from time to time
- The UN Convention on the Rights of the Child (Article 12)
- The National Standards for The Provision of Children's Advocacy Services 2003
- Fostering Services: National Minimum Standards (2011) or as amended
- Fostering Services (England) Regulations 2011 or as amended
- The Children and Young Persons Act 2008.

- Specific requirements relating to Placement planning for looked after Children contained in the Children Act 1989 regulations.

36.3 The policies and procedures shall be made clear to appropriate Staff and Foster Carers by the Provider via induction, training and development, meetings and supervision.

36.4 The Provider will ensure that information is designed with participation of Children and is produced in a variety of ways, as may be necessary, to ensure that the needs of Children with specific needs are met e.g., Braille, audio tapes, different languages, pictures and symbols.

36.5 The Provider shall fully comply with all Legislation, regulatory requirements and codes of practice applicable to the provision of the Services in relation to any IPA.

37. THE CALDICOTT PRINCIPLES

37.1 The Provider and the Contracting Authority must adhere to the [Caldicott Principles](#) published on the Government website and shall ensure that the principles are applied in all circumstances where it is necessary for information to be imparted.

38. FORCE MAJEURE

38.1 The Provider and the Contracting Authority will be released from their respective obligations in the event of force majeure: national emergency, war, prohibitive Government regulation or any other cause beyond the reasonable control of the parties or either of them that renders the performance of this Agreement impossible.

38.2 For the avoidance of doubt, it is hereby expressly agreed that industrial relations difficulties, and failure to provide adequate premises, equipment, materials, consumables, and or staff or similar matters, are not to be considered as events of force majeure.

39. SEVERABILITY

39.1 If any term, condition or provision contained in this Agreement shall be held to be invalid, unlawful or unenforceable to any extent, such term, condition or provision shall not affect the validity, legality or enforceability of the remaining parts of this Agreement.

40. TRANSFER OF UNDERTAKING

40.1 Where reasonably requested to do so either Party shall provide all relevant and up to date information in connection with the Transfer of Undertakings (Protection of Employment) regulations TUPE as the requesting Party may require.

40.2 The Party providing information under Clause 40.1 shall not unreasonably withhold or delay the provision of information requested and shall not knowingly do or omit to do anything that may adversely affect an orderly transfer of responsibility for provision of the Services.

40.3 The Provider shall indemnify the Contracting Authority 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 transferred under TUPE in relation to the expiry or termination of this Agreement or any IPA in respect of their employment with the Provider, or any breach of TUPE Regulations by the Provider, provided that the Provider shall in any such case be given the opportunity at its own cost to defend or settle any such claim.

40.4 Where the expiry or termination of this Agreement or any IPA results in any transfer of any employee of the Provider (or any subcontractor of the Provider), the Contracting Authority shall as a condition of the Agreement in respect of the successor service procure an indemnity from the successor provider against all reasonable costs, expenses and liabilities incurred as a result of any claim made by any such employee in respect of their employment with the successor provider, or any breach of TUPE Regulations by the successor provider, provided that the successor provider shall in any such case be given the opportunity at its own cost to defend or settle any such claim.

41. CHANGE OF OWNERSHIP

41.1 Upon entering into any formal agreement with a new owner or manager, the Provider shall ensure that the Contracting Authority is notified of the change of ownership or management at the earliest opportunity.

41.2 In the event that there is a change in the ownership of the Service Provider, the Service Provider shall ensure that any agreement with the new owners requiring a Deed of Novation will be prepared and executed at no expense to the Contracting Authority.

41.3 Where a change of ownership has occurred, the Contracting Authority acting reasonably has the right to terminate this Agreement and any IPAs should the change in ownership directly cause a breach of any clause in this Agreement. Any termination arrangements applied will ensure that adequate notice is served so that children's best interests remain the primary consideration.

42. FREEDOM OF INFORMATION

42.1 The Provider and the Contracting Authority shall cooperate in all respects so as to ensure compliance with the Freedom of Information Act 2000.

43. GOVERNING LAW

43.1 The Agreement shall be governed, interpreted and enforced according to the law of England and Wales.

43.2 Any dispute or claim arising out of or in connection with it or its subject matter shall be governed by and construed in accordance with the law of England and Wales.

43.3 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter.

J. DEFINITIONS AND INTERPRETATIONS

44. DEFINITIONS

44.1 In this Agreement and all IPAs under it the following definitions apply:

Absent/Absence - Where the Child is absent from the foster home, including where this is due to hospitalisation or illness or any other authorised leave of absence.

Additional Fee - The agreed additional fee to be paid by the Contracting Authority for the provision of Additional/Specialist Services.

Additional/Specialist Services - Any services agreed by the Parties to be provided by the Provider in addition to the Standard/Core Services in relation to any IPA and specified in the IPA.

Agency - [A fostering agency registered to provide foster care services.](#)

Agreement - this National Fostering Model Contract; the terms and conditions of engagement between both parties.

Approval/Approved - Approval as a Foster Carer in accordance with Regulation 27 of the 2011 Regulations. This includes assessment in accordance with the 2011 Regulations; the Children (Foster Placement) Regulations 1991 (as amended); Part 3 of the 2000 Act; vol.4 of the 1989 Act Guidance and Regulations and the guidelines set down for Foster Carers by local authorities, the National Foster Care Association, Ofsted and the Independent Fostering Provider. References to a Foster Carer being Approved shall be construed accordingly.

Authorised Officer - The representative(s) of the Contracting Authority, appointed to carry out certain functions as part of the IPA and/or where applicable the National Fostering Model Contract.

Best Industry Practice - means the standards which fall within the upper quartile in the relevant industry for the provision of comparable services which are substantially similar to the Services or the relevant part of them.

Best Value Duty - The obligations of the Contracting Authority 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.

Care Plan - The required plan for any Child in care, as drawn up by the Contracting Authority, that addresses how the Child shall be looked after, the Child's needs and requirements and how these needs should be met currently and in the future.

Child or Children - A child or young person aged 0-18 years inclusive (or older if specifically agreed and stated) named in an IPA, to whom the Services are to be provided.

Consents - means all permissions, consents, approvals, certificates, permits, licences, agreements and authorities (whether statutory, regulatory, third party contractual or otherwise) necessary for the provision of the Services;

Contracting Authority - means any contracting authority as defined in Regulation 2 of the Public Contracts Regulations 2015.

Data Loss Event - any event that results, or may result, in unauthorised access to Personal Data held by the Provider under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach;

Data Protection Legislation - all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR; the Data Protection Act 2018 (DPA 2018) (and regulations made thereunder); the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications).

Data Sharing Agreements - An agreement between the parties sending and receiving data. This will set out the purpose of the data sharing, cover what happens to the data at each stage, set standards and help all the parties involved in sharing to be clear about their roles and responsibilities.

Delegated Authority - Formal written consent given to the Foster Carer, from those with parental responsibility, where this is possible for the Foster Carer to be authorised to make everyday decisions about the Child subject to the law.

FOIA - The Freedom of Information Act 2000 and any subsequent and 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.

Foster Carer - An individual or family approved by the Fostering Panel.

Fostering Panel - A panel constituted under the 2000 Act and Regulation 23 of the 2011 Regulations to approve Foster Carers.

FSA - The Financial Services Authority; an independent non-governmental body, given statutory powers by the Financial Services and Markets Act 2000.

HRA - The Human Rights Act 1998.

Independent Fostering Agency - An independent organisation that provides fostering services to children and young people. The organisation is regulated and inspected by Ofsted to ensure they meet national standards of care and safeguarding.

Independent Reviewing Officer - The person appointed by a responsible authority to carry out the functions mentioned in Section 2(2A) of the 1989 Act, Part 2, Section 118 of the Adoption and Children Act 2002 and the 'The Review of Children's Case (Amendment) (England) Regulations 2004.

IEP - The Individual Education Plan; a plan for a Child's special educational programme, for which the Child's education provider is responsible.

IPA - An Individual Placement Agreement; being a specific agreement between a Contracting Authority and a Provider for specific Placement Services arising from an assessment of the respective Child's needs, which incorporates these National Fostering Agreement Terms and Conditions, the applicable Care and the agreed Placement and/or Pathway Plan, LAC documents, IEP/PEP and any other written arrangements agreed by the Parties.

ISA - The Independent Safeguarding Authority (including any successor body); a body set up to help prevent unsuitable people from working with children and vulnerable adults, working in partnership with the Disclosure and Barring Service.

National Minimum Standards - The Fostering Services National Minimum Standards published by the Department for Education in March 2011 (ref: DFE-00029-2011) and subsequent updates.

Ofsted - The Office for Standards in Education, Children Services and Skills which brings together the duties previously undertaken by the Commission for Social Care Inspectorate (including any successor to its functions). Where Ofsted is referred to in the documentation it also applies to equivalent inspectorate bodies elsewhere in the United Kingdom.

Pathway Plan - The document prepared in accordance with Clause 19b Schedule 2 of the 1989 Act and defined in the 2010 Regulations, comprising the advice, assistance and support which the Contracting Authority intends to provide to a Child both while the Child is in foster care and after they leave foster care.

Party/Parties - A Party/the Parties to this Agreement and to the IPA

PEP - Personal Education Plan; the plan for the education of a Child in Care.

Placement - The allocation of a place by the Provider for a Child with a Foster Carer under an IPA.

Placement Plan - The placement plan defined in Regulation 9 of the 2010 Regulations which sets out how the Placement is intended to contribute to meeting the Child's needs as set out in the Care Plan.

Processor - means a natural or legal person, public authority, agency or other body which processes personal data on behalf of the controller;

Protective Measures - appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it;

Provider - The Independent Fostering Agency party to this Agreement.

Registration - Registration by Ofsted or its successor as the statutory body charged with the task of registration of independent fostering agencies.

Regulated Activity - In relation to children as defined in Part 1 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006.

Review Meeting - Meetings held at intervals governed by the 1989 Act and the 2000 Act, which are fully recorded and which include consultation with the Child, parent/carer and significant others (including the Provider).

Rolling Notice - Where the end date of an IPA is uncertain due to circumstances both parties will pre-agree a notice period that will apply from the date the child leaves their foster home.

Special Guardianship Order - An order giving carers, such as existing Foster Carers, formal responsibility for all aspects of caring for the Child and taking decisions to do with their upbringing, whilst preserving the basic legal link between the Child and their birth family. The order is accompanied by proper access to a full range of support services.

Staff - Appropriately qualified and/or trained and competent personnel employed or engaged by the Contracting Authority or the Provider to carry out obligations under the IPA(s), including temporary, agency or self-employed staff, volunteers and students and, as applicable, all such prospective personnel.

Statement of Purpose - The statement of purpose required by Ofsted which sets out the overall aims of the Provider's fostering service and the Children it provides care for.

Stayover - A period of no more than 24 hours when foster carer(s) and the child(ren) they care for have time apart. This is usually planned and facilitated to support stability.

Sub processor - A sub-processor acts under the instructions of the processor, meaning that they may process individuals' personal data on behalf of the processor. A sub-processor can be a legal person, for example a business, an SME, a public authority, an agency or other body.

Week - A whole week i.e., seven successive days.

Working Days - Monday to Friday, excluding bank holidays, between the hours of 9.00am and 5.00pm.

45. INTERPRETATIONS

45.1. Reference to any enactment, order, regulation or other similar instrument shall be construed as a reference to the enactment, order, regulations or instrument as amended by any subsequent and any successor enactment, order, regulation or instrument.

45.2 In the event of and only to the extent of any conflict between the documents comprising this Agreement, the conflict shall be resolved in accordance with the following order of precedence:

- (i) IPA which shall prevail over
- (ii) These terms and conditions of the National Fostering Agreement.

