

DATED _____ **2015**

TAMESIDE METROPOLITAN BOROUGH COUNCIL

- and -

[THE PROVIDER]

**NORTH WEST CARE LEAVER AND YOUNG HOMELESS SUPPORTED ACCOMMODATION
DYNAMIC PURCHASING FRAMEWORK**

Joint Commissioning & Performance Management Team
Directorate of People
Tameside MBC
Council Offices
Wellington Road
Ashton-under-Lyne
Tameside OL6 6DL

Ref: CON/NWCARELEAVERFRAMEWORK/

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FRAMEWORK AGREEMENT

THIS FRAMEWORK AGREEMENT is made the _____ day of _____ 2015

BETWEEN

THE PARTIES

- (1) **TAMESIDE METROPOLITAN BOROUGH COUNCIL** of Council Offices, Wellington Road, Ashton-under-Lyne, OL6 6DL ("the Council") and
- (2) **[NAME OF PROVIDER]** (Company registration number [XXXXXX]) of [registered office address of provider] ("the Provider").

THE PARTICULARS:-

1. THE AIM OF THE AGREEMENT

- 1.1 To provide a dynamic purchasing system to enable local authorities who participate in Placements Northwest listed in Schedule 5 to procure Services to be provided to a Young Person who is or who has been looked after by a Local Authority and who are not yet ready or able to live fully independently;
- 1.2 To meet the assessed needs of each Young Person as documented in their Individual Placement Agreement and to provide the Services to the Young Person as specified in this Agreement including the attached schedules and addendums.

2. THE AGREEMENT

2.1 The Parties agree as follows:

2.1.1 The Provider shall upon request provide the Services to the Commissioner as defined in the Schedules listed which are incorporated into this Framework Agreement:

2.1.1.1 These particulars;

2.1.1.2 Schedule 1 – The Commissioner's Conditions for Services;

2.1.1.3 Schedule 2 – The Service Specification;

2.1.1.4 Schedule 3 – The model Individual Placement Agreement (IPA);

2.1.1.5 Schedule 4 – Application for admission onto the Dynamic Purchasing System;

2.1.1.6 Schedule 5 – Participating Local Authorities;

2.2 The Provider acknowledges that, in entering this Framework Agreement, no form of exclusivity or volume guarantee has been granted by the Council for the Services and that a Commissioner is at all times entitled to enter into other contracts and arrangements with other suppliers for the provision of any or all services which are the same as or similar to the Services. It is intended that Services will be procured by a Commissioner in accordance with clause

2.3 The required Services are to be delivered for the benefit of a Young Person will be detailed in the respective IPA which shall be completed between the Provider and the Commissioner.

The IPA will be subject to review in line with changes to the Young Person's Care Plan and/or Pathway Plan.

3. AGREEMENT PERIOD

- 3.1 This Framework Agreement will commence on the date of this Framework Agreement and the Provider shall be invited to submit bids to provide the Services when invited by a Commissioner.
- 3.2 This Framework Agreement will be for a period of 2 (two) years with an option to extend for a further two periods of 1 (one) year from the date of this Framework Agreement subject to earlier termination pursuant to clause 6 (Termination).
- 3.3 The duration for each IPA shall be defined in each IPA.

4. WARRANTIES

- 4.1 The Provider warrants to the Council and each Commissioner that:
 - 4.1.1 it has full power and authority to enter into this Framework Agreement and any IPA and all governmental or official consents and all necessary consents have been obtained and are in full force;
 - 4.1.2 its execution of this Framework Agreement and any IPA does not and will not contravene or conflict with its constitution, any Law, or any agreement to which it is a Party or which is binding on it or any of its assets;
 - 4.1.3 it has the right to permit disclosure and use of Confidential Information for the purposes of this Framework Agreement;
 - 4.1.4 to the best of its knowledge, nothing will have, or is likely to have, a material adverse effect on its ability to perform its obligations under this Framework Agreement and any IPA;
 - 4.1.5 all information supplied by it to the Council and/or a Commissioner leading up to the execution of this Framework Agreement or an IPA is, to the reasonable knowledge and belief, true and accurate and it is not aware of any material facts or circumstances which have not been disclosed which would, if disclosed, be likely to have an adverse effect on a reasonable public sector entity's decision whether or not to contract with the Provider substantially on the terms of this Framework Agreement.
- 4.2 The Council and each Commissioner warrants to the Provider that:-
 - 4.2.1 it has full power and authority to enter into this Framework Agreement and any IPA and all necessary governmental or official approvals and Consent have been obtained and are in full force and effect;
 - 4.2.2 its execution of this Framework Agreement and any IPA does not and will not contravene or conflict with its constitution, any Law, or any agreement to which it is a Party or which is binding on it or any of its assets;
 - 4.2.3 it has the right to permit disclosure and use of Confidential Information for the purposes of this Framework Agreement;
 - 4.2.4 to the best of its knowledge, nothing will have, or is likely to have, a material adverse effect on its ability to perform its obligations under this Framework Agreement or any IPA.

4.3 The warranties set out in this clause 4 are given on the execution of this Framework Agreement and repeated on every day during the term of this Framework Agreement and/or any IPA.

5. COMMISSIONING OF SERVICES

5.1 A Commissioner may invite each Provider in the applicable Lot to submit express an interest in bidding for work under this Framework Agreement

5.2 The Commissioner shall submit to each Provider the following documents to enable them to submit a bid:-

5.2.1 an anonymised IPA detailing the needs of a Young Person;

5.2.2 instructions to the Provider on the process for submitting bids, including, but not limited to electronic submission, the time and date by which submissions must be received and the criteria the Commissioner proposes to use to evaluate bids and award a Contract.

5.3 Services commissioned under this Framework Agreement are intended to be made on the case specific terms and conditions of an Individual Placement Agreement ("IPA") substantively in the form set out at Schedule 3 of this Agreement incorporating the general terms and conditions of this Framework Agreement as set out in Schedule 1.

6. TERMINATION

6.1 The Council or Provider may terminate this Framework Agreement upon written notice to the other. Following termination under this Clause 6 the Provider shall no longer be invited to submit bids for Services.

6.2 Termination of this Framework Agreement shall be without prejudice to any IPA in existence at the time of termination. The Provider agrees that any IPA may only be terminated in accordance with the terms of clause 21 of Schedule 1.

7. PREVIOUS AGREEMENTS

7.1 Upon signature of this Framework Agreement, any and all previous agreements whether they be verbal or in writing, between the Council and the Provider relating to the subject matter of this Framework Agreement shall cease unless the Parties agree otherwise.

8. COUNTERPARTS

8.1 This Agreement may be executed in any number of counterparts, each of which shall be regarded as an original, but all of which together shall be constitute one agreement binding on all of the Parties, notwithstanding that all of the Parties are not signatories to the same counterpart.

9. SIGNATURES OF AGREEING PARTIES TO THE AGREEMENT

Duly Authorised on behalf of the Council

Signature.....

Name:.....

Designation:.....

Date:.....

Duly Authorised on behalf of the Provider

Signature.....

Name.....

Designation.....

Date.....

SCHEDULE 1 - THE COMMISSIONER'S STANDARD CONDITIONS FOR THE SERVICES

**Placements North West Care Leaver Supported
Accommodation Agreement**

Terms and Conditions

1. Definitions

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

“Absent/Absence”	where the Young Person is missing from the Placement, including where this is due to hospitalisation or illness or any other authorised leave of absence.
“Additional Service(s)”	any services agreed by the Parties to be provided by the Provider in addition to the Core Cost Services in relation to any IPA.
“Additional Fee”	the agreed additional fee (forming part of the Price) to be paid by the Commissioner for the provision of Additional Services.
“Authorised Officer”	the representative(s) of the Commissioner and the Provider, appointed to carry out certain functions as part of the Agreement.
“Best Value Duty”	the obligations of the Commissioner 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.
“Breach”	an act or omission constituting a Party failing to fulfill any obligation under the Agreement (as amended);
“Caldicott Principles”	the general principles that health and social care organisations should apply relating to confidentiality and security of client information held.
“Care Plan”	the required plan for any Young Person in care, as drawn up by the Commissioner, that addresses how the Young Person shall be looked after, the Young Person’s needs and requirements and how these needs should be met currently and in the future. This Agreement recommends the use of the Integrated Children’s System – or Young Person’s Care Plan.
“Change of Control”	any change in the ownership/control of the Provider, including a change in the control of the majority of the shares in, or voting rights amongst, its shareholders or members, any constitutional reorganisation, amalgamation or merger; or any transfer of the whole or part of the Provider’s business.
“Controlled Activity”	means in relation to children as defined in Section 21 of the SVGA 2006 and in relation to the vulnerable adults as defined in Section 22 of the SVGA 2006
“Core Cost Services”	the Services covered by the Core Cost Specification detailed in Schedule 2 Part 3 of the Framework Agreement.
“Duration of the Agreement”	the period starting with the day the Service for the Young Person begins under the IPA and ending when the Service to the Young Person ceases or the Agreement is terminated, whichever occurs first.

“ECHR”	the European Convention for the Protection of Human Rights and Fundamental Freedoms.
“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.
“Force Majeure”	<p>means any event or occurrence which is outside the reasonable control of the Party concerned which occurs after the Commencement Date, which is not attributable to any act or failure to take preventative action by the Party concerned, including (but not limited to) :-</p> <ul style="list-style-type: none"> (i) acts of god; (ii) outbreak of hostilities, riot, civil disturbance, acts of terrorism; (iii) fire or explosion; (iv) nuclear contamination unless the Provider is the source of the or cause of the contamination; (v) chemical or biological contamination arising from any of the event above at (ii) above; (vi) pressure waves caused by devices travelling at supersonic speeds: or (vii) any cause or circumstances whatsoever beyond the Party’s reasonable control.
“Framework Agreement”	means the agreement between Tameside Metropolitan Borough Council and the Provider under which a Commissioner can procure Services.
“HRA”	the Human Rights Act 1998.
“Individual Behaviour Plan” (“IBP”)	the written plan for managing the Young Person’s behaviour.
“Individual Education Plan” (‘IEP’)	the plan for a Young Person’s special educational programme, for which the Young Person’s education provider is responsible.
“Individual Placement Agreement” (‘IPA’)	means the agreement for Services under and incorporating the general terms and conditions of the Framework Agreement arising from an assessment of the respective Young Person’s needs, which encompasses the applicable Care Plan, Pathway Plan, LAC documents, IBP, IEP/PEP and any other written arrangements agreed by both Parties.
“Intellectual Property Infringement”	means any infringement or alleged infringement of any Intellectual Property Rights of any third party as a consequence of the use or possession by the Commissioner of the Materials or any other matter or items produced or used by the Provider during the performance of the Services.
“Intellectual Property Rights”	means all and any patents, trademarks, trade names, service marks, copyrights, moral and similar rights, rights in designs,

	database rights, rights in undisclosed or confidential information (including know-how, trade secrets and inventions – whether patentable or not) and all other intellectual property rights of whatsoever nature (whether or not registered or capable of registration) and applications for registration or recordal of such rights anywhere in the world
“Landlord”	means the housing landlord who is the owner of the Property;
“Licence Agreement”	an agreement between the Young Person and the Provider, which sets out the terms of their Placement under this Agreement.
“Local Authority”	means a local authority as defined in section 105(1) of the 1989 Act;
“Materials”	means any and all know-how, works of authorship, and materials, results, devices and processes developed, written, prepared or produced by the Provider (including for the avoidance of doubt, the Staff) in relation to or in the course of the performance of the Services (whether individually, collectively or jointly with the Commissioner and on whatever media) including any and all reports, studies, data, diagrams, computer programmes, charts, specifications, pre-contractual and contractual documents (including all drafts thereof and working papers relating thereto) but excluding ordinary correspondence passing between the Parties
“Party/Parties”	means the Commissioner and the Provider as the context requires.
“Pathway Plan”	the document prepared in accordance with Clause 19b Schedule 2 of the 1989 Act, comprising the advice, assistance and support which the Commissioner intends to provide to a Young Person both while the Child is accessing the Service and after he/she leaves.
“Personal Education Plan” (‘PEP’)	the plan for the education of a Young Person classed as a ‘Looked After Child’.
“Placement”	means the place where the Services are provided to the Young Person as detailed in the IPA;
“Price”	the total of the standard weekly fee, excluding VAT, for Core Cost Services as set out in the IPA, that the Provider is to receive from the Commissioner for the Service and any Additional Fees.
“Property”	property or rented accommodation owned rented or leased by the Provider to enable the provision and delivery of services.
“Provider”	the agency providing the Service/s.

“Commissioner”	means a Local Authority detailed in Schedule 5 of the Framework Agreement which has the responsibility for the Young Person for whom Services are procured which results in an IPA.
“Commissioner Materials”	means all data, documents, papers, materials, software, records, know-how, and other items (in or on whatever media) made available from time to time by the Commissioner to the Provider (including, for the avoidance of doubt, the Staff pursuant to the Agreement).
“Regulated Activity”	means in relation to children as set out in Part 1 of Schedule 4 to the SVGA 2006 and in relation to vulnerable adults as set out in Part 2 of Schedule 4 of the SVGA 2006.
“Regulatory Body”	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 entitled to regulate, investigate, or influence the matters dealt with in the Agreement.
“Review Meetings”	regularly held review meetings involving stakeholders involved in purchasing/providing the Service and which include consultation with the Young Person, and/or significant others.
“SVGA 2006”	means the Safeguarding Vulnerable Groups Act 2006
“Service/Service(s)”	The services detailed in the Service Specification as formalised via the Individual Placement Agreement

“Service Specification”	the specification of the services set out in Schedule 2 of the Framework Agreement, subject to any more specific service definition under each respective IPA.
“Staff”	appropriately qualified and/or trained and competent personnel employed or engaged by the Commissioner or the Provider to carry out obligations under this Agreement, including temporary, agency or self employed staff, volunteers and students and as applicable all such prospective personnel.
“The 2000 Act”	the Leaving Care Act 2000.
“The 2004 Act”	the Children Act 2004.
“The 1989 Act”	the Children Act 1989.
“TUPE Regulations”	the Transfer of Undertakings (Protection of Employment) Regulations 2006, which govern the position of employees on the transfer of an undertaking (which may include the transfer of a business, part of a business, or a defined service).
“Unauthorised Absence”	A situation where the Young Person is Absent is without authority or consent.
“Week”	a whole week i.e. seven successive days.
“Working Days”	Monday to Friday, excluding bank holidays, between the hours of 9 a.m. and 5:30 p.m.
”Young Person”	means an individual aged 16 to 18 years, accessing the Service. By definition, this may extend to a ‘Looked After Child/Child with Disability’ in accordance with Section 22 of the 2004 Act, including those subject to a care order under Section 31 of the 2004 Act and those Looked After on a voluntary basis through an agreement with their parent(s), or other person with parental responsibility, and encompassing unaccompanied asylum-seeking children under the age of 18 who arrive in the country without a parent or guardian and enter the care of a Local Authority, following a full age assessment by the Home Office.

2. Interpretations

- 2.1 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.
- 2.2 Words importing the masculine gender include the feminine gender; words in the singular include the plural and vice versa and wording importing individuals shall be treated as importing bodies corporate and vice versa.
- 2.3 The headings used in this Agreement are for ease of reference only and shall not affect the interpretation of the Agreement

- 2.4 Any schedule to a document comprised in the Agreement shall have full force and effect as if expressly set out in the document to which it is attached

A. COMPLIANCE OF THE PROVIDER

3. Regulatory & Statutory Compliance

- 3.1 The provision of the Service by the Provider is made on the clear understanding that the welfare of the Young Person remains paramount. The Service must conform to all Safeguarding Children/Child Protection Acts and/or legislation in line with National and Local guidelines. It is expected that Service requirements and inputs will be adjusted accordingly with any future amendments/additions to such legislation and/or guidelines. The Provider must have properly formulated and recorded procedures to deal with incidents where Young Persons are alleged to be abused or exploited. These procedures must be in line with those currently adopted by the Local Area Safeguarding Committee and any subsequent revision. These procedures should also delineate between child protection enquiries, police investigation of crime and Staff disciplinary investigation.
- 3.2 The Provider shall comply with all Legislation, regulatory requirements and codes of practice applicable and/or relevant to the provision of the categories of Service, as defined within the appropriate service category/addendum. In the provision of the offered Service/s, the Provider will meet all relevant statutory and legal requirements including but not limited to those relating to the care and well-being of a Young Person and/or vulnerable people, employment, health and safety, and environmental health matters. The Service must be provided within the constraints of/and or meet the requirements of the following acts/legislation, on the strict understanding that list acts as a guide, and is neither exclusive nor exhaustive and any other, and/or future appropriate legislation will also apply, under the Terms of this Agreement:
- 3.2.1 The 2000 Act, regulations and Guidance relating to the Act;
 - 3.2.2 The 1989 Act;
 - 3.2.3 The 2004 Act;
 - 3.2.4 Equality Act 2010;
 - 3.2.5 Data Protection Act 1998;
 - 3.2.6 Health and Safety at Work Legislation;
 - 3.2.7 Sexual Offenders Act;
 - 3.2.8 Human Rights Act 1998;
 - 3.2.9 Housing Act 1996;
 - 3.2.10 Housing Act 2004;
 - 3.2.11 Homelessness Act 2002;
 - 3.2.12 Vulnerable Adults ;
 - 3.2.13 Caldicott Principals;
- 3.3 Where applicable, the Service will conform with minimum standards for the provision of a care leaver and young homeless supported accommodation service and any subsequent and/or future amendments.
- 3.4 The Service does not currently require registration with Ofsted or the Care Quality Commission, therefore no personal care or administering of medication will take place within the service unless agreed beforehand by the Commissioner.
- 3.5 Any changes to the Provider's status must be notified to the Commissioner immediately.

4. The Service Setting

- 4.1 If the Provider is responsible for the delivery of static accommodation as part of the Service, the Service environment/ accommodation is to be fit for purpose and compliant with all housing acts/regulations and suitably furnished for habitation, where appropriate. The Provider shall provide furniture and equipment for the use of the Young Person accessing the Service. The Provider is responsible for the repair, maintenance and replacement of such furniture and equipment where appropriate. The Provider shall also be principally responsible for the repair and maintenance of the Property.
- 4.2 In relation to fire safety/risk, the Service setting must be free from the inherent risk of fire and other hazards to an extent that it is consistent with the law and which is reasonable in daily life. Smoke alarms and fire safety equipment, appropriate to the setting, must be present and all such appliances regularly serviced and checked as applicable. Staff involved in providing the Service must be appropriately trained in fire safety – clear written guidance in relation to fire precautions and emergency procedures appropriate to the setting, must be made available to all Staff involved in Service delivery and a Young Person accessing the Service.
- 4.3 In circumstances where a Young Person is also party to a Licence Agreement with the Provider, the terms and conditions of the Licence Agreement will allow for the proper repair and maintenance of the Property excepting where this is identified within any agreement as being the responsibility of the Young Person. The Provider shall provide all appropriate assistance to the Young Person in meeting such obligations and if necessary the Provider may act on behalf of the Young Person in this respect. The Provider may or may not be the Landlord.
- 4.4 Any responsibility of the Young Person, as tenant, for repair and maintenance, will be laid down within the Licence Agreement. The Provider will ensure that the obligations of the Young Person in respect of care and maintenance of the Property will be carried out either by or on behalf of the Young Person as appropriate. The Provider has the principal responsibility on behalf of the Young Person for reporting appropriate repairs and maintenance to the Landlord if the Provider is not the Landlord. The Licence Agreement will also list expectations of both parties and also cover actions if these expectations are unmet/broken. It will specifically outline any form of formal or informal warnings system, parts of the Property that are the Young Persons sole responsibility, privacy issues etc.
- 4.5 The Young Person should sign the Licence Agreement and then a copy should be retained by each party as well as a copy to the Commissioner's nominated Social Worker.

B. THE SERVICE

5 The Individual Placement Agreement (IPA)

- 5.1 The Commissioner will issue the Provider with an IPA for the Services to be provided and/or offered to a Young Person.
- 5.2 The Commissioner shall complete the IPA in consultation with the Provider.
- 5.3 The IPA shall detail the Services to be delivered in accordance with what is stated in the Young Persons Pathway Plan, LAC documents, and any other written arrangements agreed by both Parties.
- 5.4 The IPA shall detail the expected outcomes to be achieved for the Young Person accessing the Services, following the individual outcome assessment and in accordance with the Young Person's Pathway Plan and the Service Specification.

- 5.5 The Commissioner shall provide written notification of the contact details of their relevant Staff in the IPA, who the Provider may need to contact whilst the Young Person is in receipt of the Services and shall promptly update all such notifications.
- 5.6 The IPA shall detail the Price that is to be paid, in line with the price submitted by the Provider as part of the mini competition under clause 5 of the Framework Agreement.
- 5.7 The Price shall include all Services to be provided as specified in the Core Cost Specification as part of the mini competition under clause 5 of the Framework Agreement.
- 5.8 The Provider shall deliver agreed Additional Services that may not be specified in the Core Cost Specification, which may be required in accordance to the Pathway Plan or following a review of the Services. The Commissioner shall pay agreed Additional Fees for Additional Services, where applicable.
- 5.9 Any Additional Services shall be delivered in accordance with an agreed timescale and the expected outcomes to be achieved for the Young Person as detailed in the Young Person's Pathway Plan and Service Specification and will be reviewed accordingly and the particular specification of Additional Services shall, as far as possible, be included in the applicable IPA.
- 5.10 The IPA shall be reviewed as appropriate to incorporate details relating to Additional Services agreed to be required following a Review Meeting, or otherwise after the commencement of the relevant IPA.
- 5.11 In the event that an accommodation needs to be retained for an agreed period of time (to enable the provision of the Service) then prior to the Young Person being placed, the Commissioner 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.
- 5.12 The Price will be payable from the date the Services commences. The IPA should be issued prior to the date of Service commencement. In the cases of emergencies, an IPA shall be issued as soon as possible after the date of commencement of the Service but no later than seven Working Days.
- 5.13 The Commissioner shall complete and sign the IPA and send to the Provider for agreement, who will (subject to any outstanding issues requiring agreement, which both Parties shall use reasonable endeavours to resolve as soon as possible) complete and return a signed copy of the completed IPA to the Provider back within seven Working Days of receipt.

6 Variations to the Agreement, the IPA and Service Reviews

- 6.1 Variations to the Agreement any/or any IPA shall be made in writing and signed and dated by both the Provider and the Commissioner and recorded in a new or amended documents.
- 6.2 Either Party may reasonably request a Review Meeting and consider what variations (if any) are required to be made resulting from changes in the needs or requirements of the Young Person.
- 6.3 Urgent Review Meetings shall normally be convened within five Working Days and preferably within 72 hours of such a request and the Parties shall use their respective reasonable endeavours to achieve this.
- 6.4 The IPA shall be reviewed as a minimum in accordance with the statutory requirements. Wherever possible, education, social care, health and other reviews shall take place together.

- 6.5 In the event that there is a change in the funding responsibilities between education, social care and health, this shall be addressed at the Young Person's Review Meeting and these changes and the date they are to be in effect from shall be recorded in a variation to the Agreement or a new or amended IPA (as appropriate).
- 6.6 Where the Young Person has consistently refused to take up any Additional Services over a period of 7 days, the Provider is to notify the Commissioner within 2 days of the expiry of the 7 day period, of such refusal. After such time the Commissioner and Provider will agree whether the Additional Services are to continue to be provided or not. The agreed changes shall be specified in a new or amended IPA.
- 6.7 Following Review Meetings any changes discussed regarding the IPA shall not be implemented until all relevant documentation has been updated and agreed to by both Parties in writing. Changes to the Services including, where relevant, the Additional Services, should not normally be implemented until the amended IPA is signed. In circumstances where this is not practically possible, both Parties shall confirm in writing the Services to be provided, the Price and the date of commencement of provision.
- 6.8 In the event of any changes to the Service and the Price, including, where relevant, the Additional Services and the Additional Fees, the Commissioner in consultation with the Provider will complete and sign the amended IPA. The Provider shall sign the amended IPA, if in agreement, and issue the document back to the Commissioner within seven Working Days of receipt.
- 6.9 Invoices must only be reflective of changes in the Services and Price agreed to and charged for from the date the change in Service commenced.

7. Other Factors Affecting the Service

- 7.1 The Provider shall give the Commissioner notification as soon as reasonably possible of any matters affecting the sustainability or provision of the Service.
- 7.2 The Provider shall regularly monitor the provision of the Service and give regular feedback to the Commissioner. If the matters notified under Clause 7.1 continue to have a disruptive influence on the Service, a Review Meeting will be held to agree a corrective course of action.
- 7.3 The Provider and the Commissioner shall ensure that any corrective course of action is acted upon immediately to maintain and provide stability to the Service.
- 7.4 In the event that it is agreed, in the best interests of the Young Person that an alternative Service is required, both Parties will work together to provide a smooth and planned transition between Services.

8 Absences and Unauthorised Absences

- 8.1 Where the Young Person becomes Absent from, or no longer accesses the Service, for a continuous period of twenty one (21) days due to hospitalisation, or seven (7) days for other absences:
- 8.1.1 the IPA shall be reviewed by the Parties in good faith and, if appropriate, the Price may be varied to take regard of the Services actually delivered; or

8.1.2 the Commissioner and the Provider may agree to terminate the IPA in accordance with Clause 21.2

- 8.2 The Commissioner and the Provider shall agree whether or not the Service shall be retained, during the Young Person's Absence for any different agreed period of time. This decision shall be detailed in the amended IPA.
- 8.3 In the event that the Young Person's Absence continues after the agreed retention period the IPA shall terminate in accordance with clause 21.3, unless the Commissioner and Provider agree otherwise in writing.
- 8.4 Whilst the Service, or any retention arrangement, remains in force, the Provider may not allocate the Service to another Young Person, unless otherwise agreed by both Parties.
- 8.5 The Provider shall, where reasonably possible, notify the Commissioner of any planned Absence of the Young Person.
- 8.6 Where the Young Person goes missing, or takes Unauthorised Absence, the Provider shall notify the Commissioner urgently and shall comply with the relevant missing person's protocol.

9. Recruitment, Selection and Vetting of Staff

- 9.1 The Provider shall operate robust systems for the recruitment and selection of their Staff. Upon reasonable request the Provider shall give information to the Commissioner's Authorised Officer regarding their recruitment processes, and Staff development programmes.
- 9.2 The Provider shall provide a mix of qualified and/or experienced Staff. The range of qualifications and level of staffing shall be provided in accordance with the Young Person's agreed Service and appropriate to the category of Service offered.
- 9.3 The Provider will ensure that there is a sufficient number of competent Staff to carry out the tasks as required in the Service Specification and under this Agreement and that they are adequately trained to carry out the tasks required. This includes adequate cover arrangements in the event of Staff sickness, absence and holidays.
- 9.4 The Provider shall ensure that all Staff understands the nature and purpose of the Service that they are providing (including the Provider's policies and procedures). In order to achieve this all Staff must undertake an induction programme and receive on-going training/development and supervision.
- 9.5 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.
- 9.6 The Provider shall introduce and/or keep in place training and development programmes that ensure Staff fulfil the aims of the Service and meet the potential changing needs of the Young Person. The training and development programme should take into account any relevant change in legislation, regulation or guidance concerning the provision of the Services.
- 9.7 The Provider must use reasonable endeavours to ensure that an appropriate infrastructure is in place and maintained to ensure that all requirements of this Agreement and the IPA under it are met and developed.

- 9.8 The Parties acknowledge that the Provider is a Regulated Activity provider with ultimate responsibility for the management and control of the Regulated Activity provided under this Agreement and for the purpose of SVGA 2006.
- 9.9 The Provider shall
- 9.9.1 ensure that all individuals engaged in Regulated Activity are subject to a valid enhanced disclosure check for regulated activity undertaken through the Disclosure and Barring Service (DBS); and
 - 9.9.2 monitor the level and validity of the checks under this clause 9.9 for each member of staff;
 - 9.9.3 not employ or use the services of any person who is barred from, or whose previous conduct or records indicate that he or she would not be suitable to carry out Regulated Activity or who may otherwise present a risk to a Young Person.
- 9.10 The Provider warrants that at all times for the purpose of this Agreement it has no reason to believe that any individual who is or will be employed or engaged by the Provider in the provision of services is barred from the activity in accordance with the provisions of the SVGA 2006 and any regulations made there under.
- 9.11 The Provider shall ensure that no member of Staff is permitted to provide Services until all the necessary checks have been undertaken and the checks are satisfactory. Under no circumstances should a staff member for whom a DBS disclosure has not been received, work either supervised or unsupervised.
- 9.12 The Provider shall immediately provide the Commissioner with any information that it reasonably requests to enable it to be satisfied that the obligations of this Clause 9 have been met.
- 9.13 The Provider shall refer information about any person carrying out the Services to the DBS where it removes permission for such person to carry out the Services (or would have, if such person had not otherwise ceased to carry out the Services) because, in its opinion, such person has harmed or poses a risk of harm to a Young Person.
- 9.14 Where a DBS certificate includes disclosure in relation to a member of Staff or sub-contractor, they shall not be permitted to provide Services under this Agreement until the Commissioner has confirmed to the Provider in writing that it is satisfied that the individual is suitable to provide such Services.
- 9.15 The Provider shall not employ or use any individual who is barred from or whose previous conduct or records indicate that they would not be suitable to carry out the Regulated Activity or Controlled Activity, or who may present a risk to a Young Person.
- 9.16 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 the Young Person or other vulnerable persons and a suitable replacement appointed. The Provider shall inform the Commissioner's Authorised Officer in the event of any such removal and any actual or possible impact on the Young Person.

10 Transport

- 10.1 The Provider shall undertake all reasonable measures to ensure the safety of a Young Person being transported by Provider's Staff.

- 10.2 The Provider will ensure that account is taken of any risk assessments in respect of transporting the Young Person. Risk assessments on all Services offered will include risks associated with travel.
- 10.3 The Provider will ensure that all drivers 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.
- 10.4 The Provider will ensure all vehicles used to transport a Young Person (and any additional equipment on the vehicle) are maintained and serviced in accordance with the manufacturer's instructions, with full records being kept to verify this.
- 10.5 The Provider will ensure all vehicles used to transport a Young Person are suitable for the type and condition of users to be transported, including having seatbelts which conform to the relevant British Standard and which are used in all instances.
- 10.6 The Provider will ensure vehicles are 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.
- 10.7 In the event that the Provider sub-contracts or pays for transport and escort services for a Young Person, the Provider will ensure that the sub-contractor/s comply with all relevant road safety legislation and all drivers and escorts are vetted in accordance with clause 9.9.

11. Managing Finances on Behalf of the Young Person

- 11.1 The Provider shall have a clear policy and procedure in relation to their Staff's involvement in helping to manage a Young Person's personal finances (bank accounts / savings / making payments) including:
 - 11.1.1 Provider's and Staff's roles and process to follow;
 - 11.1.2 Completion of written records;
 - 11.1.3 Resolving differences of view and disputes between the Young Person and the Provider;
 - 11.1.4 Financial investigations / misappropriation of funds;
 - 11.1.5 Process of internal / external investigations;
 - 11.1.6 Informing the Commissioner of any concerns;
 - 11.1.7 Support for a Young Person in managing their finances; and
 - 11.1.8 Support for a Young Person in claiming appropriate benefits or any other entitlements.

12 Reporting of Notifiable Events

- 12.1 All notices relating to the IPA must be made in writing and sent immediately to the Authorised Officer, as per the contact details specified in the IPA.

13. Conflicts of Interest

- 13.1 The Provider shall use all reasonable endeavours to protect the safety and wellbeing of a Young Person by taking necessary measures to avoid any confusion of roles or situations in which a conflict of interest might arise.
- 13.2 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; this includes clear policy in relation to receiving and/or offering gifts/presents.

14. Monitoring Arrangements

- 14.1 The Provider is expected to comply with the North West Regional Minimum Standards for Unregulated Provision and submit to an inspection against the standards when requested. The outcome of any assessment and action plan will be shared with contracting authorities. If the Provider is unable to meet the requirements of the regional standards following an assessment an Information Sharing Protocol notification will be issued, each authority is responsible for deciding what action it takes as a result of information received under this notification.
- 14.2 The Provider agrees that it shall meet, and continue to meet the monitoring and outcomes as detailed in the Service Specification. The Provider shall also co-operate with the Authorised Officers when carrying out monitoring and evaluation activities in relation to this Agreement.
- 14.3 The Provider shall be responsible for monitoring the Young Person's Service and use all reasonable endeavours to ensure that the care and services provided are meeting the Young Person's needs and fulfilling the individual outcomes. This shall include ascertaining information on the views of the Young Person in Placement, and/or significant others as appropriate.
- 14.4 The Provider shall have in place, internal quality monitoring and quality assurance policies and procedures as required by the Commissioner to ensure the Services are of the quality and standard required by this Agreement.
- 14.5 The Provider as a minimum shall provide evidence by way of an annual report on how it has performed against the monitoring criteria, in respect of each IPA, in each financial year to 31st March. The report shall be prepared and made available to the Commissioner by no later than 31st May of each year.
- 14.6 The Commissioner, or any other such person or body duly authorised by them shall monitor the Agreement and all IPAs and the Provider shall reasonably co-operate and use reasonable endeavours to ensure all Staff reasonably co-operate with such monitoring.
- 14.7 The Commissioner agrees that any such person, or body duly authorised by them shall have been trained and have the skills to carry out the monitoring and evaluation procedures they are tasked to do.
- 14.8 The Commissioner and the Provider shall meet annually to monitor the Services. This is subject to other agreed contract monitoring arrangements. The contract monitoring shall take into consideration the KPIs report and any other available and/or appropriate monitoring information, address any performance issues, and review both the Provider's and Commissioner's ability to meet the requirements of the Agreement and each of the IPAs.

- 14.9 The Commissioner's monitoring and evaluation procedures in relation to the Agreement shall also take into account and include:
- 14.9.1 Information obtained from other placing authorities and other professional bodies or agencies, as per information sharing protocols in place.
 - 14.9.2 Investigation of the Provider's compliance with appropriate legislation;
 - 14.9.3 Information from any body that purchases from, or monitors or inspects the Provider.
- 14.10 The Provider shall use reasonable endeavours to: -
- 14.10.1 permit any person authorised by the Commissioner, on production of relevant authorisation, to inspect the Services at any reasonable time, with or without notice, including any premises where the Provider is providing a Service to a Young Person referred by the Commissioner.
 - 14.10.2 permit any person authorised by the Commissioner to gain access to any information required in relation to the services, subject to Data Protection and other legal constraints. The Provider may request the Commissioner's representative to sign a reasonable confidentiality agreement appropriately limiting further disclosure and use of information ;
 - 14.10.3 permit any person authorised by the Commissioner to examine the Provider organisational structure and policies and procedures, and evidence of support provided to the Young Person accessing the Service.
 - 14.10.4 provide immediate access to records of the Young Person and other such records as the Commissioner may reasonably request;
- 14.11 The Provider shall reasonably co-operate with supplying information as requested by the Commissioner in line with the monitoring arrangements under this Agreement.

C. FINANCIAL ARRANGEMENTS

17. Price.

- 17.1 The Price in respect of each IPA shall be set out in each IPA in line with the price submitted by the Provider as part of the mini competition under clause 5 of the Framework Agreement
- 17.2 All amounts due under this Agreement are exclusive of any applicable VAT, which the Commissioner shall pay in addition against appropriate VAT invoices.

18. Annual Price Review

- 18.1 The Provider may propose an increase or decrease the Price and Additional Service Fees annually, and submit any proposed changes to the IPA or the Agreements generally for the Commissioner's consideration by 31st January each year. The Commissioner shall reasonably and promptly consider such proposals.
- 18.2 Any agreed changes to the Price shall take effect from 1 April of the relevant year, subject to agreement of both Parties.
- 18.3 If either Party finds the increase or decrease under clause 18.1 too large or small then the Parties shall meet and discuss this in good faith.

- 18.4 If the Provider proposes to increase the Price then such increases must be demonstrated by the Provider as being justified and the Commissioner shall be entitled to request the Provider to provide any documents or other information to support the increase before agreeing to the proposed increase.
- 18.5 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.

19. Payment Arrangements

- 19.1 The Provider is entitled to submit invoices fourteen (14) days prior to the end of the month to which they refer.
- 19.2 The Commissioner shall pay the Price (together with any VAT from time to time payable) in arrears within 30 days of the period it relates, unless the Commissioner, 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 Agreement. In the event of a dispute, the Provider may re-submit an invoice for the undisputed amount, the payment of which will not be unreasonably withheld.
- 19.3 The Commissioner shall not make payments in respect of invoices until the expiry of the period to which they relate, or in accordance with clause 19.4.
- 19.4 The Provider is entitled to request other payment arrangements from the Commissioner and the Commissioner shall give such payment requests reasonable consideration. Any alternative arrangement that is agreed shall be set out in a side letter to this Agreement.
- 19.5 If, for any reason, the Commissioner and the Provider fail to reach agreement on the annual price review, the Commissioner agrees to pay the invoice(s) less the amount in dispute, until agreement is reached.
- 19.6 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 Commissioner reserves the right to reduce the level of payment proportionally. Before taking this step the Commissioner shall consult with the Provider in good faith and give details in writing of the Breach or failure and the value of the Services lost by the Young Person and/or loss or expense incurred by the Commissioner.
- 19.7 The Provider has responsibility for the ownership, rental/tenancy or leasing of any Property or accommodation procured for the provision of services for this Agreement. In circumstances whereby the Provider has sourced a Property from a third party Landlord, and retains liability for a rental/tenancy agreement for an extended period (for a period no longer than 6 months), an agreement should be reached between the Parties from the outset of the Service, as to the course of action to be taken in respect of funding, should an early termination of an IPA occur which shall apply unless terminated through a fundamental Breach of this Agreement. The Commissioner will retain the right to access the Property for additional Services, if it is agreed that the Commissioner part-fund the rental of the Property for the remaining period of the rental period and the Provider will assign or procure the assignment of the rental/tenancy/licence to the Commissioner on request.

D. EXPIRY, SUSPENSION AND TERMINATION OF IPAs AND BREACHES OF AGREEMENT

20. Suspension

20.1 The Commissioner may, if it considers the Provider is, or may be, in Breach of the Agreement, suspend the Provider. This is to allow for investigation of the potential/actual Breach and, if appropriate, time for remedying its cause. Suspension may also follow from a series of individually minor actual/possible Breaches or one significant actual/possible Breach. The Provider will be immediately informed of the suspension which will continue until the Provider is informed in writing that it has ended. Any resumption of the service may result in the Agreement terms being renegotiated and agreed prior to recommencement.

21. Termination

21.1 The Parties shall act at all times in relation to the Agreement in good faith in order to meet the needs of the Young Person and it is hoped that it would not at any stage become necessary to terminate this Agreement due to the default of either Party. However where termination is unavoidable, both Parties shall support a smooth transition of the care arrangements for each affected Young Person.

21.2 An IPA may end by the expiry of the term specified in the IPA or by termination on the following periods of notice in writing by either Party:

21.2.1 one day if the Young Person has been accessing the Service for seven days or less;

21.2.2 seven days if the Young Person has been accessing the Service for more than seven days and less than twelve Weeks; and

21.2.3 twenty-eight days if the Young Person has been accessing the Service for more than twelve Weeks.

21.3 The Commissioner may terminate the Agreement by the giving of seven days' notice to the Provider, in the following circumstances:

21.3.1 Absence for a continuous period for twenty eight days due to hospitalisation, unless the Provider and Commissioner agrees otherwise;

21.3.2 Absence for a continuous period of seven days due to any other reason, unless the Provider and Commissioner agree otherwise.

21.4 The Agreement shall terminate automatically:

21.4.1 if a Court or other competent authority decides that the Young Person should be placed in secure accommodation, a secure hospital, or other place of lawful detention for more than 72 hours. This shall include a condition of a court order or legal case conference, which requires residence outside a particular geographic area;

21.4.2 it is agreed in writing by the Parties that the Young Person's needs, safety or welfare can no longer be met by the Service and/or the Service arrangements have irretrievably broken down;

21.4.3 where the Young Person discharges themselves from the Service ;

21.4.4 seven days following death of the Young Person;

- 21.5 By agreement, or by reasonable notice from one Party (which is likely to be of immediate effect), the Agreement shall terminate where both Parties agree or either Party reasonably believes that:
- 21.5.1 a risk assessment has concluded that significant risk cannot be adequately managed within the Service;
 - 21.5.2 the continuation of the Service places the Young Person, or any other person at risk of harm.
- 21.6 Either Party may terminate an Agreement with a lesser period by mutual agreement, and even with immediate effect, when agreed at an urgent Review Meeting, in the following circumstances:
- 21.6.1 The Young Person's needs cannot be met;
 - 21.6.2 The Service has broken down;
 - 21.6.3 There is potential for significant harm to the Young Person or another Young Person accessing the Service; or to the Service's Staff;
 - 21.6.4 A serious behavioural management issue, beyond agreed action to be taken in circumstances as outlined in the Young Person's individual behaviour management plan.
 - 21.6.5 Where support needs change to the extent that they can no longer be accommodated within the Service
 - 21.6.6 Where mutually agreed.
- 21.7 The Agreement may be terminated in the following circumstances:
- 21.7.1 either Party may terminate the Agreement by giving a minimum of three (3) months written notice (or a lesser period by mutual agreement).
 - 21.7.2 on written notice by the Party not in Breach in the event of any fundamental Breach of the Agreement, including any fundamental Breach IPA and the acts, omissions or events listed in Clause 38.4 shall (non-exclusively) constitute such fundamental breaches;

22. Breaches of Contract

- 22.1 In the event of any Breach of the Agreement which is a fundamental Breach (which may include cumulative, or repeated Breaches), given that the best interests of the Young Person 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 Young Person's best interests and the party in Breach shall, as a residual contractual obligation, reasonably co-operate in that purpose.
- 22.2 In the event of a remediable Breach of the Agreement, which is not a fundamental Breach; the Party not in Breach may issue a remedy notice in writing requiring the Party in Breach to remedy the Breach in a specified manner within a reasonable specified timescale.

E. THE CONTRACTUAL ARRANGEMENTS

23. Sub-Contracting, Assignment and Change of Control

- 23.1 The Provider shall not assign or sub-contract, transfer, hold in trust or in any other way dispose of the Agreement or all or any of its rights and/or obligations there under without the Commissioners prior written approval. Neither the granting of any approval nor any sub-contracting of any part of the Agreement shall relieve the Provider of any liability, obligation or duty attributable to the Provider under the Agreement.
- 23.2 The Provider shall be responsible for the acts and omissions of its sub-contractors as though they are its own.
- 23.3 Where the Commissioner has consented to the placing of sub-contracts, copies of each sub-contract shall be sent by the Provider to the Commissioner promptly on request.
- 23.4 The Provider shall indemnify and keep the Commissioner fully and effectually indemnified against all losses, liabilities, claims, demands, proceedings, damages, costs, charges and expenses whatsoever resulting from any act, omission, default or neglect of any sub-contractor.
- 23.5 The provisions of Clause 23.1 shall not extend to the use of consultants and practitioners who provide Services to meet the agreed needs of the Young Person or for temporarily covering sickness, absence or departure of permanent Staff or dealing with additional workload on a short-term basis (provided the Provider complies with all vetting requirements under legal regulations and this Agreement).
- 23.6 In the event of a Change of Control, the Provider shall give immediate notification to the Commissioner and seek consent to assignment of the benefit of this Agreement. The Commissioner will act reasonably and in good faith when considering the proposals (subject to Clause 23.4).
- 23.7 It may be a condition of any approval to any assignment of the benefit of this Agreement, or any substantive sub-contracting of obligations under this Agreement, or any Change of Control involving a change in the legal status of the provider of Services under this Agreement, that the relevant third party shall enter into a direct and/or novation agreement with the Commissioner including such terms and conditions as the Commissioner might reasonably require, at the cost of the Provider.
- 23.8 In the event that there is reason for an emergency takeover of service delivery from the Provider, both Parties will ensure all necessary procedures are undertaken to ensure the safety and well-being of any Young Person accessing a Service with/through the Provider.

24 Warranties by the Provider

- 24.1 The Provider warrants and undertakes to the Commissioner that –
- 24.1.1. it has the right power, capacity and authority (including all necessary licences, permits and consents) to enter into the Agreement and (without prejudice to the generality) to perform the Services;
- 24.1.2. it has the know-how, qualifications, skills, experience and necessary ability to satisfy its obligations under the Agreement and (for the avoidance of doubt) will ensure that all Staff are similarly skilled, experienced and able;
- 24.1.3. it shall discharge its obligations hereunder with all due skill, care and diligence, including compliance with good industry practice;

- 24.1.4. it will perform the Services in a timely and professional manner and in accordance with any timescales set out in the Agreement or as otherwise reasonably stipulated by the Commissioner;
- 24.1.5. it will inform the Commissioner forthwith if any problems arise upon the occurrence of any events which cause or are likely to cause difficulty or delay in the performance and/or completion of the Services in accordance with the Agreement (the Provider using all reasonable endeavours to mitigate any such difficulty or delay);
- 24.1.6. it will take all reasonable steps to ensure that in the performance of its obligations under the Agreement interference with the operations of the Commissioner's functions (or that of its employees or other contractors and suppliers) is kept to a minimum.

25. Value for Money

- 25.1 The Provider agrees to use its reasonable endeavours throughout the Duration of the Agreement 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 Young Person.
- 25.2 The Provider shall provide such assistance and information that the Commissioner may reasonably require to enable the Commissioner to discharge and fulfil its Best Value Duty in relation to the Services.

26. Indemnity provisions and Insurance

- 26.1 The Provider shall indemnify and keep indemnified the Commissioner and its officers against any liability, claim, proceedings expenses, or loss in respect of personal injury or death or loss of or damage to property real or personal, which arises out of any Breach by the Provider and/or any reckless or negligent act or omission of the Provider, its Staff, agents, or sub-contractors in the course of delivery of the Provider's duties under this Agreement and/or any IPA.
- 26.2 Without prejudice to its obligation to indemnify the Commissioner 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:
 - 26.2.1 **General Public liability** – a minimum of £10 million in respect of any one claim unlimited in any one year;
 - 26.2.2 **Sexual abuse/exploitation and molestation** public liability cover – a minimum of £1 million must be provided for in respect of any one claim for proven bodily or mental injury, disease, death or suffering of a Young Person following sexual abuse/exploitation or molestation. This cover may also be taken out as an extension to a professional indemnity policy;
 - 26.2.3 **Medical Malpractice** public liability cover - to a minimum of £1 million in respect of any one claim must be provided for proven bodily or mental injury, following the maladministration to the Young Person of prescribed or non-prescribed drugs. This cover may also be taken out as an extension to a professional indemnity policy;

26.2.4 **Employer's liability** – a minimum of £10 million in respect of any one claim, covering all employees.

26.3 Where the Provider provides, with the agreement of the Commissioner, any special therapy specific in the Pathway Plan for the Young Person, such therapy shall only be carried out by suitably qualified professionals who are covered by professional indemnity and public liability insurance of a minimum of £5 million. Such professionals shall be registered by/with the appropriate professional body/bodies and conform to all insurance requirements laid down by such body/bodies. The Provider's Staff shall only undertake tasks associated with the programme of therapeutic intervention under the ongoing supervision and management of the suitably qualified professional.

26.4 The Provider must inform the Commissioner immediately of any known "exclusion" clause contained within their insurance policies.

26.5 The Provider must ensure that if a Property and/or accommodation is offered as part of the Service (dependent on type of Service), appropriate buildings insurance is maintained or verified by the Provider.

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

27. Corrupt Practices

27.1 Neither the Provider nor the Commissioner 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 Services other than those notified to and agreed by the Commissioner.

28. Resolution of Disputes Between Parties

28.1 The Commissioner and the Provider shall seek to work together in the spirit of mutual cooperation in order to meet the best interests of the Young Person accessing a Service under this Agreement. The Commissioner 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.

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

28.2.1 request a meeting between authorised representatives of both Parties within 10 Working Days, or such other period as agreed between the Parties;

28.2.2 if the dispute remains unresolved after the meeting referred to in sub clause 28.2.1 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;

28.2.3 if the dispute is still not resolved after the meeting referred to in sub clause 28.2.3 then the matter shall be referred to independent mediation in accordance with the Centre for Dispute Resolution (CEDR) Model Mediation Procedures, as soon as reasonably practicable. The mediator shall be an individual(s) agreeable to both Parties. The mediator's reasonable charges incurred by this shall be shared equally between the Parties;

28.2.4 if the Parties fail to reach agreement in the structured negotiations within twenty-one (21) Working Days of the mediator being appointed or the Party's failure to agree on the appointment of a mediator, then any dispute or difference between them may be referred to the Courts.

29. Notices

29.1 Any verbal notification by the Provider shall be followed as soon as reasonably possible by a notification in writing addressed to the Authorised Officer, as per the email and address specified in the IPA.

29.2 Any notice or other communication by either Party under or in connection with this Agreement shall 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 Provider and if so sent shall, subject to proof to the contrary, be deemed to have been received by the Provider on the second business day after the date of posting, or on the date of successful facsimile transmission, as the case may be.

30. Environment

30.1 The Provider shall endeavour to ensure that during the performance of the Agreement it uses working methods, equipment, materials and consumables that minimise environmental damage.

31. Third Parties

31.1 The Provider or anyone employed by the Provider shall not hold himself or herself out as being the agent or servant of the Commissioner, or enter into any contract or bind or attempt to bind the Commissioner to any undertaking unless agreed in writing by the Commissioner.

31.2 Nothing in 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 by entering into this Agreement.

31.3 Both Parties agree and declare that nothing in 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 under the indemnity provisions in Clause 41.

32. Waiver

32.1 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 Agreement, shall not be a waiver of them or of the right at any time subsequently to enforce all terms and conditions of this Agreement.

F. LEGISLATION AND FURTHER STATUTORY COMPLIANCE

33. Health and Safety

33.1 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.

34. Equal Opportunities

34.1 The Provider shall comply with the Equality Act 2010 and all other relevant anti-discriminatory legislation.

34.2 The Provider shall not unlawfully discriminate either directly or indirectly on such grounds as race, colour, ethnic or national origin, disability, sex or sexual orientation, religion or belief, or age.

34.3 The Provider shall operate an equal opportunities policy for the Duration of the Agreement and shall provide the Commissioner with a copy of the policy and updates when reasonably requested.

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

34.5 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 the Provider under Equal Opportunities Legislation.

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 ECHR.

35.2 The Provider shall not do or permit or allow anything to be done which may result in the Commissioner acting incompatibly with the rights contained within the ECHR and the HRA.

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

36. Young Person's Rights

36.1 The Provider shall at all times in its performance of the Services and its treatment of the Young Person has regard to, and abide by the principles of the HRA.

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

36.2.1 the 1989 Act and the 2004 Act;

36.2.2 the UN convention on the Rights of Children (Article 12);

36.2.3 the National Standards for The Provision of Children's Advocacy Services 2003; and

36.2.4 the National Minimum Standards.

- 36.3 These policies and procedures shall be made clear to Staff via induction, training and development, Staff meetings and supervision.
- 36.4 The Provider shall ensure that information is designed with participation of young people in mind and as required, is produced in a variety of ways to ensure that the needs of any Young Person with specific needs is met e.g. through the use of Braille, audio tapes, different languages, pictures and symbols.
- 36.5 The Provider shall comply with legislation, regulatory requirements and codes of practice applicable to the provision of the Services and shall comply with all further reasonable written requirements and instructions of the Commissioner in relation to the IPA.

37. Data Protection, Confidentiality and the Caldicott Principles

- 37.1 The Provider and the Commissioner shall comply with the Data Protection Act 1998 and any other applicable data protection legislation.
- 37.2 The Commissioner may audit the Provider's compliance with the requirements of this Clause on reasonable notice and/or require the Provider to provide the Commissioner with due evidence of its compliance with the obligations set out in this Clause.
- 37.3 The Provider and the Commissioner must adhere to the Caldicott Principles and shall ensure that the following principles are applied in all circumstances where it is necessary for information to be imparted:
- 37.3.1 justify the purpose(s) for using personal information;
 - 37.3.2 only use personal information when absolutely necessary;
 - 37.3.3 use the minimum amount of personal information that is required;
 - 37.3.4 ensure access to personal information is on a strict "need to know" basis;
 - 37.3.5 ensure everyone with access to personal information is aware of his or her responsibilities; and
 - 37.3.6 ensure everyone with access to personal information understands and complies with legislation that governs personal information.
- 37.4 The Provider and the Commissioner shall maintain the confidentiality of all personal Young Person specific information or information obtained under or in connection with this Agreement, and shall not divulge the same to any third party without the prior written consent of the other Party. Where such information has been provided by a third party e.g. the Young Person's GP then the written permission of the third party shall also be required. This shall not preclude the provision of data which does not identify the Young Person, for statistical and analytical purposes, nor any disclosure required at law.
- 37.5 The Provider shall perform the Services and comply with the terms of this Agreement in such a way as not to cause any injury or damage to the public perception of the leaving care sector or the image or reputation of the Commissioner and shall not do anything which does or may bring the Commissioner into disrepute.
- 37.6 The Provider will return all files, documents and other information to the Commissioner in relation to the Young Person at the cessation of a Service and any duplicates/copies will be retained for the appropriate period of time, dictated by current legislation and insurance requirements.

38. Conditions of Termination of the Agreement

Inability to meet the terms of this Agreement

- 38.1 The Provider shall give notice to the Commissioner as soon as reasonably possible if it finds it is unable permanently or temporarily to provide the services in accordance with the requirements of the Agreement and an action plan with timescales shall be agreed by both Parties.
- 38.2 The Commissioner may assist the Provider in continuing to provide the Services to the Young Person in order to meet the best interests of the Young Person or where the Provider's inability is of a temporary nature. Such assistance by the Commissioner shall not be regarded as a waiver of any Breach of the Provider's obligations under this Agreement. The Price for the Services, during this period shall be negotiated and any reduced Price shall be agreed in good faith by both the Commissioner and the Provider.
- 38.3 If the Provider unreasonably fails to remedy the situation notified to the Commissioner under Clause 38.1 within the agreed timescale then the Commissioner shall convene a Review Meeting.

Fundamental Breaches

- 38.4 Without prejudice to the generality, the following acts, omissions and events may constitute fundamental breaches of the Agreement by the Provider:
- 38.4.1 where the Provider 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;
- 38.4.2 where the Provider favoured, or maliciously disfavoured, any person in relation to the Agreement, or any other contract with the Commissioner;
- 38.4.3 where the Provider, or any person employed by the Provider or acting on the Provider's behalf, committed any offence under the Bribery Act 2010 in relation to the Agreement or any other contract with the Commissioner;
- 38.4.4 where the Provider 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 ;
- 38.4.5 where the Provider fails to meet the reasonable requirements of the Service ,or specific legislation and unreasonably fails to put in place an agreed action plan between the Commissioner and the Provider to put this right, or the Provider unreasonably fails to meet the requirements of the agreed action plan within a reasonable period of time;
- 38.4.6 where the Provider fails to act, if aware that someone within the Placement has taken financial advantage of the Young Person;
- 38.4.7 where the Provider fails to notify the Commissioner if they are made aware that anyone working for the Provider is convicted of a Schedule 1 offence under the Children and Young Persons Act 1933 or is placed on the Sex Offenders Register

(unless the Services offered specialise in the Placement of Schedule 1 offenders);
or

38.4.8 where the Provider fails to notify the Commissioner if they are made aware that anyone working for the Provider has any allegations made against them of a serious nature, that could potentially threaten the safety or well-being of a Young Person.

38.5 One of the following insolvency events occurs:

38.5.1 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;

38.5.2 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;

38.5.3 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;

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

38.5.5 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;

38.5.6 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.

38.6 The termination of the Agreement shall not affect liability for any payments due to either Party before the termination date.

38.7 Termination of the Agreement shall not prejudice the rights of either Party or any Young Person that have arisen on or before the date of termination.

39. Force Majeure

39.1 Neither party shall be liable for delay in performing or failure to perform any of its obligations under the Agreement, if such delay or failure results from a Force Majeure.

39.2 If either Party is prevented or delayed in the performance of any of its obligations under the Agreement by Force Majeure, that Party shall serve notice on the other Party within one (1) day of the occurrence of the Force Majeure specifying the nature and extent of the circumstances giving rise to Force Majeure and shall (subject to service of such notice and to Clause 39.6) have no liability in respect of the performance of such of its obligations as are prevented by Force Majeure during the continuation of such Force Majeure, except that rights and liabilities which have accrued prior to such Force Majeure shall continue to subsist.

39.3 If either Party is prevented from performance of any of its obligations by reason of Force Majeure for a continuous period in excess of fourteen (14) days, either Party may terminate the Agreement forthwith by notice to the other party, in which case (subject to Clause 39.6)

neither Party shall have no liability to the other in respect of the termination except that rights and liabilities which have accrued prior to such termination shall continue to subsist.

39.4 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, which a prudent and diligent Provider could have avoided with the application of reasonable foresight, are not to be considered as events of Force Majeure.

39.5 This Clause 39 does not affect any other of the Commissioner's rights in respect of termination

39.6 Neither Party shall be entitled to relief under this Clause 39 to the extent that it has caused or substantially contributed to any delay or failure in the performance of its obligations, including any failure to place orders or issue instructions when it ought reasonably to have done so.

40. Severability

40.1 In the event that any term, condition, provision or clause of this Agreement shall be nullified or made void by any statute, regulation or order or by the decision or order of any court having jurisdiction, the remaining terms and conditions and provisions shall remain in full force and effect.

40.2 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.

41. Transfer of Undertaking

41.1 Where reasonably requested to do so either Party shall provide all relevant and up to date information in connection with the TUPE Regulations as the requesting Party may require.

41.2 The Party providing information under Clause 41.1 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.

41.3 The Provider shall indemnify the Commissioner 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 his/her 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.

42. Freedom of Information

42.1 The Provider and the Commissioner shall co-operate in all respects so as to ensure compliance with the FOIA.

42.2 The Provider shall respond in a timely manner to a request from the Commissioner for such information required in order to enable the Commissioner to respond to the FOIA request within the time for compliance set out in Section 10 of the FOIA.

42.3 Subject to the operation of the exemptions specified in the FOIA, the Commissioner shall have the right to disclose information relating to this Agreement and the Provider.

43. Governing Law

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

G. ADDITIONAL CLAUSES

44 Step In Rights

44.1 For the avoidance of doubt, if at any time the Provider shall (for whatever reason) fail to provide the Services in accordance with the Agreement the Commissioner may (after notifying the Provider of its intention) perform the Services itself, or obtain the relevant Services from an alternative source of supply, the Provider being responsible to the Commissioner for any additional cost incurred by the Commissioner for any additional costs incurred by the Commissioner in so doing and for providing the Commissioner with all reasonable assistance with regard thereto, if required.

45 Intellectual Property Rights

45.1 All Intellectual Property Rights in any Commissioner Materials shall remain the property of the Commissioner.

45.2 The Commissioner shall be entitled to all Intellectual Property Rights in the Materials, which Intellectual Property Rights the Provider hereby as beneficial owner (and for the avoidance of doubt in consideration of the payment of one pound (£1.00), receipt of which the provider hereby acknowledges) assigns to the Commissioner with full title guarantee with effect from creation.

45.3 For the avoidance of doubt, the Provider waives all or any moral rights which it may have in the Materials, and shall ensure that each of the Staff waives all of their respective moral rights (if any) which exist in relation to the Materials.

45.4 It is a condition of the Agreement that the Services will not infringe any Intellectual Property Rights of any third party and the provider shall during and after the Duration of the Agreement on written demand fully and effectually indemnify and keep indemnified the Commissioner against all actions, proceedings, suits, claims, demands, losses, liabilities, charges, damages, costs and expenses which the Commissioner may suffer or incur as a result of or in connection with any Intellectual Property Infringement except where any such claim relates to the use of data supplied by the Commissioner which is not required to be verified by the Provider under any provision of the Agreement.

45.5 Upon request by the Commissioner and in any event at the termination of the Agreement the Provider shall at its own expense immediately return to the Commissioner all Materials and Commissioner Materials.

45.6 The Provider shall not use the trademarks, names, logos or trade names of the Commissioner (including for the promotion of the Provider's business or within any of its promotional publications) without the prior written approval of the Commissioner.

45.7 The provisions of this Clause 45 shall apply during the continuance of the Agreement and indefinitely after its termination.

46 Fraud

46.1 Nothing in this Agreement or any IPA shall operate to limit or exclude any liability for fraud.

47 Information Sharing Protocol

47.1 The North West Local Authorities operates an Information Sharing Protocol. The protocol aims to facilitate the timely sharing of information about Providers between Children's Services Authorities where there are events or concerns that may be relevant to their contractual relationship. Such information sharing is considered good practice, as it will help Commissioners to monitor the quality of providers and protect the welfare of children and young people in care.

47.2 The Protocol aims to offer a straightforward and consistent approach to information sharing. The approach is intended to be open and understandable. Providers will be informed of any notifications about them under the Protocol.

47.3 Each recipient authority is responsible for deciding what action it takes as a result of information received under the Protocol.

SCHEDULE 2 - THE SERVICE SPECIFICATION

SCHEDULE 3 – THE MODEL INDIVIDUAL PLACEMENT AGREEMENT (IPA)

SCHEDULE 4 – APPLICATION FOR ADMISSION ONTO THE DYNAMIC PURCHASING SYSTEM

SCHEDULE 5 – PARTICIPATING LOCAL AUTHORITIES

Blackburn with Darwen Council

Blackpool Council*

Bolton Metropolitan Borough Council

Bury Metropolitan Borough Council

Cheshire East Council

Cheshire West and Chester Council

Cumbria County Council*

Halton Borough Council

Knowsley Metropolitan Borough Council

Lancashire County Council

Liverpool City Council

Manchester City Council

Oldham Metropolitan Borough Council*

Rochdale Metropolitan Borough Council

Salford City Council

Sefton Council

St Helens Council

Stockport Metropolitan Borough Council

Tameside Metropolitan Borough Council

Trafford Council

Warrington Borough Council

Wigan Metropolitan Borough Council

Wirral Metropolitan Borough Council