

**Agreement for the Placement of Children and Young People with In-house Foster Carers**

**TORBAY IN-HOUSE FOSTERING AGREEMENT**

**GENERAL TERMS AND CONDITIONS**

**Contents**

**A. General**

1. Definitions and Interpretation

2. Interpretations

3. Agreement Status

4. Duration of Agreement

**B. Legal Status, Statutory and other Regulation Compliance**

5. Employment Status of the Foster Carer

6. Taxation Status of the Foster Carer

7. Compliance with Fostering Regulations and Guidance

8. Health and Safety

9. Equal Opportunities

10. Human Rights

11. Children’s Rights

**C. Contractual Arrangements**

12. Sub-Contracting, Assignment and Change of Control

13. Conflicts of Interest

14 Indemnity Provisions and Insurance

15. Corrupt Practices

16. Resolution of Disputes between Parties

17. Notices

18. Environment

19. Third Parties

20. Waiver

**D. Matching and Referrals**

21. Matching and Referrals

**E. The Placement**

22. The Individual Placement Agreement (IPA)

23 Variations to the IPA and Placement Reviews

24. Other Factors Affecting the Placement

25. Absences and Unauthorised Absences

26. Reporting Notifiable Events

27. Managing Finances on Behalf of the Child

29. Monitoring Arrangements

**F. Financial Arrangements**

30. Price

31. Price Review

32. Payment Arrangements

**G. Conditions of Termination**

33. Normal Termination

34. Breach of Agreement

35. Default

36. Effect of Termination and Expiry

**H. Termination of the Individual Placement Agreement (IPA)**

41. Termination of Individual Placement Agreement

**I. Records, Information and Data Protection**

42. Data Protection, Confidentiality and the Caldicott Principles

43. Freedom of Information Act

**J. Other Contractual Conditions**

44. Force Majeure

45. Severability

46. Governing Law

**K. Signature of Agreeing Parties to the Agreement**

**THIS AGREEMENT** is made on the day of 20

**BETWEEN:** The Authority and the Foster Carer.

**BACKGROUND:**

(A) The Foster Carer has the necessary skill, knowledge and experience to perform the Services.

(B) In reliance upon that skill, knowledge and experience, the Authority wishes the Foster Carer to provide the Services and the Foster Carer agrees to provide the Services on the following terms.

## A. GENERAL

**1. Definitions and Interpretation**

1.1 This Contract is to be interpreted in accordance with the Definitions and Interpretations, unless the context requires otherwise.

**2. Interpretations**

2.1 In this Agreement, all references to any statute or statutory provision shall be deemed to include references to any statute or statutory provision which amends, extends, consolidates or replaces the same and shall include any orders, regulations, codes of practice, instruments or other subordinate legislation made thereunder and any conditions attaching thereto.

2.2 Any headings to Clauses are for convenience only and shall not affect the meaning of this Agreement. Unless the contrary is stated, references to Clauses shall mean the Clauses of this Agreement and references to Paragraphs shall mean paragraphs of the Schedules to this Agreement.

2.3 In the event of a conflict between any terms in this Agreement, terms shall take priority in the following order:

2.3.2 the General Terms & Conditions set out in this Agreement;

2.3.2 the Service Conditions;

2.3.3 the Individual Placement Agreement;

2.3.4 the Outcomes Frameworks;

2.3.5 the remaining Schedules;

2.4 Where a term of this Agreement provides for a list of items following the word including" or "includes", then such list is not to be interpreted as being an exhaustive list.

2.5 In this Agreement, words importing any particular gender include all other genders, and the term "person" includes any individual, partnership, firm, body corporate, government, governmental body, trust, agency, unincorporated body of persons or association and a reference to a person includes a reference to that person's successors and permitted assigns.

2.6 In this Agreement, words importing the singular only shall include the plural and vice versa.

2.7 Unless expressly stated otherwise, all monetary amounts are expressed in pounds sterling but in the event that pounds sterling is replaced as legal tender in the United Kingdom by a different currency then all monetary amounts shall be converted into such other currency at the rate prevailing on the date such other currency first became legal tender in the United Kingdom.

2.8 Except where an express provision of this Agreement states the contrary, each and every obligation of a Party under this Agreement is to be performed at that Party's cost.

2.9 All references to the Agreement include (subject to all relevant approvals) a reference to the Agreement as amended, supplemented, novated or assigned from time to time.

2.10 The Agreement may be executed in more than one copy and such copies shall, taken together, constitute a single agreement

**3. Agreement Status**

3.1 This Agreement is a Contract, which may only be altered through a Review, under which the Parties may from time to time agree for the provision of Services for a Child by the Foster Carer. Such Services and any specific contractual terms applicable to the Services shall be set out in the Individual Placement Agreement (Schedule 5).

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 Foster Carer and the Authority.

3.3 Under this Agreement the Authority makes no guarantee that it shall make any Placements with the Foster Carer.

3.4 In the event that any of the Terms and Conditions of this Agreement shall be determined by a competent Court of Law or any other competent body with appropriate jurisdiction to be invalid, unlawful or unenforceable to any extent, such term, condition or provision will, to that extent, be severed from the remaining Terms and Conditions which will continue to be valid to the fullest extent permitted by Law.

3.5 In the Agreement the Definitions and Interpretation provisions set out in Clauses 1 and 2 will apply.

3.6 In signing this Agreement the Parties agree to abide by its Terms and Conditions, Schedules and generally in respect of prospective IPA arrangements and specifically under the provisions of each IPA.

3.7 Except where expressly provided otherwise in this Agreement, this Agreement (including the documents referred to in this Agreement) supersedes all prior representations and Agreements or contracts between the Parties (whether written or oral) relating to the subject matter of the Agreement, and sets forth the entire Agreement and understanding between the Parties.

3.8 Any pre-existing Individual Placement Agreements/ Schedules between the parties will be made subject to this Agreement at the agreed cost at the point of transfer, except those where the Parties agree otherwise in writing.

3.9 This Agreement shall supersede all previous Agreements between the Authority and the Foster Carer in relation to the Services, except those where the Parties agree otherwise in writing.

**4. Duration of Agreement**

4.1 The Agreement shall commence on the date specified in Schedule 1. The Agreement Period of each IPA shall be defined in each IPA.

4.2 Termination of the Agreement is provided for in Clauses 33 to 36 and may lead to termination of each IPA.

4.3 Termination of an IPA for breach by the Foster Carer may lead to termination of the Agreement, as provided for in Clause 33 to 36.

**B. LEGAL STATUS, STATUTORY AND OTHER REGULATION COMPLIANCE**

**5. Employment Status of the Foster Carer**

5.1 For the purposes of employment law interpretation. The Foster Carer shall deemed as being self employed for the duration of the Agreement

**6. Taxation Status of the Foster Carer**

6.1 For the purposes of taxation. The Foster Carer shall deemed as being self employed as defined by HMRC for the duration of the Agreement

**7. Compliance with Fostering Regulations and Guidance**

7.1The Foster Carer shall comply with:

7.1.1 all legislative and regulatory requirements in respect of the Foster Care services provided within the scope of each IPA including (but not limited to) the 2011 Regulations and the National Minimum Standards;

7.1.2 the Caldicott Principles

7.1.3 the Fostering Handbook

7.1.4 the Fostering Code of Practice and

7.1.5 all provisions of each agreement with the Authority in respect of each Placement.

**8. Health and Safety**

8.1 The Foster Carer and all persons (including any sub-contractors) employed by the Foster Carer 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 such activities.

8.2 The Foster Carer agrees to comply with regular Health and Safety audits carried out by representatives of the Authority and to commit to any actions that these audits identify.

**9. Equal Opportunities**

9.1 The Foster Carer shall comply with the Equality Act 2010 or subsequent revisions and all other relevant anti-discriminatory legislation.

9.2 The Foster Carer 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.

**10. Human Rights**

10.1 Foster Carer shall not do or permit or allow anything to be done which is incompatible with the rights contained within the European Court of Human Rights and the Human Rights Act.

10.2 Foster Carer shall not do or permit or allow anything to be done which may result in us acting incompatibly with the rights contained within the European Court of Human Rights and the Human Rights Act.

10.3 Foster Carer shall at all times in your care of the Child, have regards to, and abide by the principles of the Human Rights Act.

10.4 Foster Carer shall comply with legislation, regulatory requirements and codes of practice applicable to the provision of the Services pursuant to this agreement and any IPA and shall comply with all further reasonable written requirements and instructions from us.

**11. Children’s Rights**

11.1 Foster Carer shall not do or permit or allow anything to be done which is incompatible with the rights contained within;

11.2.1 The Children Act;

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

11.2.3 The National Standards for The Provision of Children’s Advocacy Services 4203; and

11.2.4 The National Minimum Standards.

11.2 The Parties shall ensure that information is designed with participation of the Children in mind and as required, is produced in a variety of ways to ensure that the needs of any Child with specific needs is met e.g. through the use of Braille, audio tapes, different languages, pictures and symbols.

11.5 The Foster Carer 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 Authority in relation to the IPA.

**C. CONTRACTUAL ARRANGEMENTS**

# 12. Sub-Contracting, Assignment and Change of Control

12.1 The Foster Carer shall not assign or sub-Agreement the benefit or burden of this Agreement or any IPA without the prior written consent of the Authority, such consent not to be unreasonably withheld or delayed.

12.2 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, that the relevant third party shall enter into a direct and/or novation agreement with the Authority including such terms and conditions as the Authority might reasonably require.

12.3 In the event that there is reason for an emergency takeover of service delivery from the Foster Carer, both Parties will ensure all necessary procedures are undertaken to ensure the safety and well-being of any Children placed with the Foster Carer.

**13. Conflicts of Interest**

13.1The Foster Carer 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.

13.2 During this Agreement the Foster Carer will inform the Authority in writing if any elected representative or employee of the Authority is involved in anyway, other than in accordance with the requirements of their official duties, with the Provider at anytime.

**14. Indemnity Provisions and Insurance**

## 14.1 You shall indemnify and keep indemnified us and our officers against any liability, claim, proceedings expenses, or loss in respect of personal injury or death or loss of or damage to property, which arises out of any default by you and/or any reckless or negligent act or omission of you in the course of delivery of your duties under this agreement and/or any IPA.

**14.2** For so long as this agreement continues you must maintain adequate insurance in respect of:-

## Buildings (in which the child will reside).

## Contents (of the buildings in which the child will reside).

## Money.

## Other personal property.

## Motor vehicles (in which the child will travel).

## Household pets (if any).

## Holidays (when travelling abroad with or without the Child).

## General Public liability – a minimum of £2 million in respect of any one claim unlimited in any one year

## 14.3 Such insurance is to be against such risks as are usual in respect of the insurance being obtained and you will ensure that any insurer is aware of the fostering arrangements between us and you.

## 14.4 For the avoidance of doubt should any child placed with you by us cause any damage and/or vitiate any insurance policy you may have taken out any loss suffered will be your sole responsibility and we will not reimburse you.

**15. Corrupt Practices**

15.1 The Foster Carer undertakes to:

15.1.1 comply with all applicable laws and regulations and codes relating to anti bribery and anti corruption including, but not limited to, the Bribery Act 2010;

15.1.2 not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the United Kingdom;

15.2 For the purposes of this Clause 15.1.4, the meaning of whether a person is "associated" with another person shall be determined in accordance with Sections 6(2), 6(5), 6(6) and 8 of the Bribery Act 2010.

15.3 The Authority shall be entitled to terminate the Agreement and IPA forthwith and to recover from the Foster Carer the amount of any loss resulting from such termination if the Foster Carer or a Foster Carer's representative:

15.3.1 has entered into the Agreement if it has knowledge that, in connection with it, any money has been, or will be, paid to any person working for or engaged by the Authority or any other public body by or for the Foster Carer, or that an agreement has been reached to that effect, unless details of any such arrangement have been disclosed in writing to the Authority before the Agreement is entered into;

15.3.2 breaches the undertaking set out in clause 15.1; or

15.3.3 gives any fee or reward the receipt of which is an offence under Section 117(2) of the Local Government Act 1972.

15.4 For the purposes of Condition 15.3, "loss" shall include, but shall not be limited to:

15.4.1 the Authority's costs in finding a replacement service provider;

15.4.2 direct, indirect and consequential losses; and

15.4.3 any loss suffered by the Authority as a result of a delay in its receipt of the Services.

**16. Resolution of Disputes between Parties**

16.1 The Parties 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 Parties shall use their best endeavours to resolve by agreement any dispute arising between them and shall negotiate in good faith at all times.

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

16.2.1 request a meeting between representatives of both Parties within 10 working days, or such other period as agreed between the Parties;

16.2.2 if the dispute remains unresolved after the meeting referred to in sub clause 16.2.1 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;

16.2.3 if the dispute is still not resolved after the meeting referred to in sub clause 16.2.2 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;

16.2.4 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 Institute of Arbitrators. The arbitrator shall be entitled to make such decision or award as he/she thinks just and equitable having regard to the circumstances then existing;

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

**17. Notices**

17.1 Any notice or other document to be given under this Agreement shall be in writing and shall be deemed to have been duly given if left or sent:

17.1.1 by hand; or

17.1.2 by registered post; or

17.1.3 by email,

to Authority’s the Authorised Officer or the Foster Carers or such other person or persons as each Party may from time to time designate by written notice to the other Party for such purpose.

17.2 Any notice or other document shall be deemed to have been received by the addressee:

17.2.1 two (2) Working Days following the date of despatch of the notice or other document by post; or

17.2.2 where the notice or other document is delivered by hand, simultaneously with the delivery; or

17.2.3 where the notice or other document is sent by email, on the next Working Day immediately following the date of transmission of that email.

17.3 To prove the giving of a notice or other document it shall be sufficient to show that it was despatched, delivered or sent (as appropriate).

# 18. Environment

18.1 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.

# 19. Third Parties

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

19.2 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.

19.3 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 Agreements (Rights of Third Parties) Act 1999, except under the indemnity provisions in Clause 14.

**20. Waiver**

20.1 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.

**D. MATCHING AND REFERRALS**

**21. Matching and Referrals**

21.1 All Placements shall be made in accordance with Part 3 and Part 4 of the Care Planning, Placement and Case Review (England) Regulations 2010

21.2 Placements shall be made in accordance with the Authority’s referral procedure for external placements. The Authority shall inform the Provider of relevant requirements, in order to identify a suitable Foster Carer for the Child and the Provider shall use reasonable endeavours to meet such requirements.

21.3 The Authority shall use reasonable endeavours to share accurate and current information on the Child with the Foster Carer, as specified in Schedule 2A (Service Conditions) to facilitate identifying suitable Foster Carers. This is on the basis that such information is available to the Authority for the purpose.

21.4 The Authority shall use reasonable endeavours to match a Child with Disabilities to Foster Carer(s) with the necessary knowledge, skills and ability to care for him/her. Wherever reasonably possible, the Foster Carer(s) should have the necessary adaptations to their home and vehicles, as may be required to cater for the Child’s specific needs.

21.5 The Authority shall work to 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 Placement stability.

21.6 The Parties shall use reasonable endeavours to involve the child in making the placement and sharing information with them as deemed appropriate.

**E. THE PLACEMENT**

**22. The Individual Placement Agreement (IPA)**

22.1 The Authority will issue an IPA for each Child once a suitable Placement has been found.

22.2 The Authority shall complete the IPA in consultation with the Foster Carer.

22.3 The IPA shall detail the Services to be delivered in accordance with what is stated in the Child’s Care Plan, Placement Plan and any other written arrangements agreed by both Parties.

22.4 The IPA shall detail the expected outcomes to be achieved for the Child whilst they are in the Placement, following the Individual Outcome Assessment Provisions in Schedule 3 to this Agreement and in accordance with the Child’s Care Plan and Outcomes Frameworks (Schedule 2B).

22.5 The Authority shall provide written notification of the contact details of their relevant Staff in the IPA, who the Foster Carer may need to contact whilst the Child is in Placement and shall promptly update all such notifications.

22.6 The IPA shall detail the Price that is to be paid, following agreement between the Authority and the Foster Carer. A breakdown of the Price should also be given.

22.7 The Price shall include all services to be provided as specified in the Core Cost Specification.

22.8 The Foster Carer shall deliver agreed Additional Services that may not be specified in the Core Cost Specification, which may be required in accordance to the Care Plan or following a Placement review. The Authority shall pay agreed Additional Fees for Additional Services.

22.22 Any Additional Services shall be delivered in accordance with an agreed timescale and the expected outcomes to be achieved for the Child as detailed in the Child’s Care 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.

22.10 The IPA shall be reviewed as appropriate to incorporate details relating to Additional Services agreed to be required following a service review, or otherwise after the commencement of the relevant IPA.

22.11 The Price (and as applicable Additional Fees) will be payable from the date the Placement commences. The IPA should be issued prior to the date of Placement commencement. In the cases of emergencies, an IPA shall be issued as soon as possible after the date of commencement of the Placement but at a minimum within seven working days.

22.12 The Authority shall complete and sign the IPA and send to the Foster Carer 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 Authority back within five Working Days of receipt.

**23. Variations to the IPA and Placement Reviews**

23.1 Variations to any IPA shall be made in writing and signed and dated by both Parties and recorded in/as a continuation of Section 11 of the IPA.

23.2 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 of the Child.

23.3 Urgent Review Meetings shall normally be convened within 72 hours and held no later than five working days of such a request and the Parties shall use their respective reasonable endeavours to achieve this.

23.4 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.

23.5 In the event that there is a change in the funding responsibilities between education, social care and health, this shall be addressed at the Child’s Review Meeting and these changes and the date they are to be in effect from shall be recorded in/as a continuation of section 11 of the IPA.

23.6 Where the Child has consistently refused to take up any Additional Services over a period of 14 days, the Foster Carer is to notify the Authority at the earliest opportunity of such refusal. After such time the Parties will agree whether the Additional Services are to continue to be provided or not. The agreed changes shall be specified as a continuation of section 11 of the IPA.

23.7 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.

23.8 In the event of any changes to the Service and the Price, including, where relevant, the Additional Services and the Additional Fees, the Parties in consultation will complete and sign the amended IPA. The Foster Carer shall sign the amended IPA, if in agreement, and issue the document back to the Authority within five Working Days of receipt.

23.9 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 in writing the Services to be provided, their Price and the date of commencement of provision.

**24. Other Factors Affecting the Placement**

24.1 The Foster Carer shall give the Authority notification as soon as reasonably possible of any matters affecting the maintenance and stability of the Placement.

24.2 If the matters notified under Clause 24.1 continue to have a disruptive influence on the Placement, a Placement Review Meeting will be held to agree a corrective course of action.

24.3 The Parties shall ensure that any corrective course of action is acted upon immediately to maintain and provide stability to the Placement.

24.4 In the event that it is agreed, in the best interests of the Child that an alternative Placement is to be found, both Parties will work together to provide a smooth and planned transition between Placements.

24.5 In the event that a Special Guardianship Order for the Child is to be considered, the Authority shall inform the Provider of such intention. The Parties shall use reasonable endeavours to ensure the appropriate communication and consultation takes place involving all relevant parties.

24.6 In the event of Foster Carer(s) deciding to move registration to an independent fostering agency or another 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.

**25. Absences and Unauthorised Absences**

25.1 Where the Child becomes Absent from the Foster Carer’s home and/or care of the Foster Carer for a continuous period of fourteen (14) days due to hospitalisation, or seven (7) days for other absences:

25.1.1 the IPA shall be reviewed in good faith and, if appropriate, the Price may be varied to take regard of the Services actually delivered; or

25.1.2 the Parties may agree to terminate the IPA in accordance with Clause 42.

25.2 The Parties shall agree whether or not the Placement shall be retained, during the Child’s Absence for an agreed period of time. This decision shall be detailed in the amended IPA.

25.3 In the event that the Child’s Absence continues after the agreed retention period the IPA shall terminate in accordance with Clause 42, by expiry of the Agreement Period, unless the Parties agree otherwise in writing.

25.4 Whilst the Placement, or any retention arrangement, remains in force, another child may not be placed in the Absent Child’s Placement.

25.5 The Foster Carer shall, where reasonably possible, notify the Authority of any planned Absence of the Child involving an overnight stay and shall comply with the Authority’s ‘sleepover policy’.

25.6 Where the Child goes missing, or takes unauthorised Absence, the Foster Carer shall notify the Authority urgently and shall comply with the relevant missing person’s protocol and Schedule 7 Regulation 36(1) of The Fostering Services (England) Regulations 2011 (notifiable incidents).

**26. Reporting of Notifiable Events**

26.1 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. All notices shall be made in accordance with Regulation 36(1) and Schedule 7 of the 4211 Regulations.

26.2 You must notify us immediately upon becoming aware of any of the following:-

# 26.2.1 The death of the Child.

# 26.2.2 If the Child is absent or missing from your home without your prior knowledge or consent for any period.

# 26.2.3 If the Child is absent from your home for a period exceeding 7 days whether planned or unplanned.

## 26.2.4 All accidents, injuries and illnesses suffered by the Child where the Child requires treatment at hospital.

## 26.2.5 Any allegations or suspicions of abuse being suffered by the Child.

## 26.2.6 Any actual or suspected involvement of the Child in child exploitation or prostitution.

## 26.2.7 The use of any measure of control, restraint or discipline in respect of the Child.

## 26.2.8 Any occasion where it has been necessary for the police to attend your home.

## 26.2.9 Any matters which you consider could materially affect the maintenance or stability of the Child’s placement with you.

## 26.2.10 The outbreak at your home of any infectious disease which in the opinion of a GP is sufficiently serious to be notified.

## 26.2.11 Any allegation or suspicion that the Child has committed a serious offence.

26.2.12 Any person who you have not previously notified us of who will have regular access or information about the Child.

**27. Managing Finances on Behalf of the Child**

27.1 The Foster Carer shall support the Children in managing personal finances (bank accounts / savings / making payments). Such support shall include but not be limited to:

27.1.1 Completion of written records;

27.1.2 Resolving differences of view and disputes between the Child and the Foster Carer and/or the Authority;

27.1.3 Informing the Authority of any concerns;

27.1.4 Support for the Child in claiming Disability Living Allowance and any other entitlements.

27.1.5 Support for the Child where the Child’s personal finance are subject to financial investigations;

27.1.6 Support for the Child where the Child’s personal finance are subject to a process of internal / external audit;

27.2 The Parties shall ensure that an audit of the child’s/ young person’s personal property takes place at the start and end of a placement and at least annually.

**28. Monitoring Arrangements**

28.1 The Foster Carer agrees that they shall meet, and continue to meet the monitoring and outcomes of the services being delivered as detailed in the Service Conditions (Schedule 2A), the Outcomes Frameworks (Schedule 2B) and the Individual Outcomes Assessment Provisions (Schedule 3). The Foster Carer shall also co-operate with the Authorised Officer when carrying out monitoring and evaluation activities in relation to this Agreement.

28.2 The Foster Carer shall be responsible for monitoring the Child in Placement and use all reasonable endeavours to ensure that the care and services provided are meeting the Child’s needs and fulfilling the individual outcomes. This shall include ascertaining information on the views of the Child in Placement, their parents or significant others where deemed appropriate.

28.3 The Provider also undertakes to use its reasonable endeavours to provide additional information as required by the Authority from time to time.

28.4 The Authority undertakes to use its reasonable endeavours to apply the Individual Outcome Assessment Provisions as set out in Schedule 3 to its monitoring procedures.

28.5 The Authority and Provider may agree from time to time which areas of the Service Delivery and Outcome Assessment Provisions are most appropriate for the scale and nature of their relationship. As a minimum this will include all KPIs. The Parties may agree to add specific additional monitoring information to the Service Delivery Outcome Assessment.

28.6 The Parties undertake to work together to develop the Service Delivery and Individual Outcomes Assessment Provisions on a collaborative basis during the life of the Agreement so as to be an effective tool for monitoring outcomes performance.

28.7 To ensure compliance with the legal requirements for the care of Children in foster care, the Authority, or any other such person or body duly authorised by them shall monitor the Agreement and all IPAs and the Foster Carer shall reasonably co-operate with such monitoring.

28.8 The Authority 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.

28.9 The Parties shall meet annually to monitor the Services. This is subject to other agreed monitoring arrangements. The Agreement 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 Parties’ ability to meet the requirements of the Agreement and each of the IPAs.

28.10 The Foster Carer shall: -

28.10.1 permit any person authorised by the Authority, on production of relevant authorisation, to enter and inspect at any reasonable time, with or without notice, any premises where the Foster Carer is providing foster care to a Child placed by the Authority;

28.10.2 permit any person authorised by the Authority to gain access to the information required, subject to Data Protection and other legal constraints. The Foster Carer may request the Authority’s representative to sign a reasonable confidentiality agreement appropriately limiting further disclosure and use of information;

28.10.3 provide immediate access, or access as soon as is reasonably possible, to records of Children and other such records as the Authority may reasonably request;

28.11 The Foster Carer shall reasonably co-operate with supplying information as requested by the Authority in line with the monitoring arrangements under this Agreement.

28.12 Within three weeks of the termination of the placement, files and records held by the Foster Carer, including children’s individual records, case notes and information held by Foster Carer shall be returned to the Authority. Where a disruption meeting is arranged, all documents shall be returned within three weeks of this meeting.

**F. FINANCIAL ARRANGEMENTS**

**29. Price**

**29.1 Price as per Individual Placement Agreement (Schedule 5):**

29.1.1. The Price in respect of each IPA shall be set out in each IPA.

29.1.2 The Price shall cover all Core Cost Services as detailed in the Core Cost Specification.

29.1.3 Any Additional Service Fees must be specified in the IPA.

29.1.4 The Foster Carer shall not make any charges to the Child or their families in respect of this Agreement or any IPA.

29.1.5 All amounts due under the IPA are exclusive of any applicable VAT, which the Authority shall pay in addition against appropriate VAT invoices.

29.1.6 The Parties may reasonably request a price review in respect of the Individual Placement Agreement at any point during the term of the Placement.

**29.2 Price as per Pricing Schedule (Schedule 4)**

29.2.1The Authority shall detail their pricing structure and the validity period to which it applies, in Schedule 4, for prospective IPAs.

**30. Price Review**

30.1 Based on agreed changes to the Care Plan and/or Foster Carer Tiering, either Party may propose an increase or decrease of the Price and Additional Service Fees by submission in writing of any proposed changes.

30.2 Having regard to the actual cost incurred by the Foster Carer and if either Party finds the increase or decrease under sub clause 30.1 too large or small then the Parties shall meet and discuss this in good faith.

30.3 Either Party may request a review of the fees for current placements on an annual basis. The Foster Carer should submit any requested changes to the Pricing Schedules of current IPAs for the Authority’s consideration in accordance with the IPA variation process in Clause 24. The Authority shall reasonably and promptly consider such proposals.

30.4 Any Price change arising from Clause 30.3 shall take effect 42 Working Days after the Parties have agreed to such changes.

30.5 Subject to proposals under 30.3 and any contrary agreement:

30.5.1 If the Foster Carer proposes to increase the Price and/or Additional Service Fee, then such increases must be demonstrated by the Foster Carer as being justified and the Authority shall be entitled to request the Foster Carer to provide any documents or other information to support the Price increase before agreeing to the proposed increase. The provision of such material will not automatically result in the Authority agreeing such increases.

30.5.2 If the Foster Carer requests a Price change resulting from unforeseen changes in government legislation or regulatory requirements the Foster Carer must produce financial records sufficiently detailed to prove the level of impact.

**31. Payment Arrangements**

31.1 The Authority will pay the Foster Carer the agreed Price for the services detailed in each IPA weekly on a weekly basis 4 days in arrears and 3 days in advance.

31.2 All payments with no exception unless otherwise agreed in writing will be made via the BACS payment system.

31.3 No monies will be paid by the Authority to the Foster Carer unless otherwise agreed in writing until the Foster Carer has provided their bank details and been placed on the BACS system by the Authority.

31.4 The Authority shall be permitted to deduct and withhold from any sum due to Foster Carer pursuant to this Agreement or any IPA any sum due from the Foster Carer pursuant to this agreement or any IPA, including but not limited to any overpayment that may have been made by the Authority.

31.5 Unless otherwise agreed by the Parties in writing. No Remuneration shall be payable to the Foster Carer for any period during which the child is not being cared for by the Foster carer. This would include but not be limited to periods where the child is receiving respite care from a third party.

31.6 The Foster Carer is to notify the Authority as soon as possible should the Foster Carer consider any overpayment has been made. Should the Authority become aware of any overpayment having been made the Foster Carer in the event we are unable to reclaim the overpayment pursuant to Clause 31.4 the matter will be passed to Torbay Council’s Corporate Debt Team.

31.7 Specific arrangements for the Price payable to the Foster Carer in respect of any placement will be included in the IPA for each Child.

31.8 If any sum payable under this Agreement is not paid within 42 days that sum will bear interest from the final date for payment until payment is made in full both before and after any judgment at two percent per annum over the Bank of England Reference Rate. The parties agree that this clause 31.6 is a substantial remedy for late payment of any sum payable under this Agreement in accordance with Section 8(2) Late Payment of Commercial Debts (Interest) Act 1988.

**G. CONDITIONS OF TERMINATION**

**32. Normal Termination**

32.1 Bearing in mind the commitment of the Parties to co-operating in order to meet the needs of Children and Young People 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 for some reason unavoidable, the following provisions will apply.

32.2 Either the Parties may terminate the Agreement providing for a period of not less than 3 months prior to termination, within which the Parties shall make all reasonable effort to assist, facilitate and enable any actions required in respect of the Authority’s own change management measures and the continuity of Services to Children and Young People, co-operating to ensure that the interests of Children and Young People are met under whatever new arrangements may be proposed.

32.3 Any period agreed pursuant to clause 32.2 may be varied to a lesser or greater period by agreement between the Parties in writing

32.4 Where termination is pursuant to clause 32.2, the Authority shall ensure that any and all Placements are ended within the agreed period. Should it become apparent that this may not be practicable, the Parties will seek to extend the period by mutual consent such consent not to be unreasonably delayed or withheld; if the period is extended the Authority will pay for the Placement until discharge.

32.5 The Foster Carer shall not be entitled to any additional costs unless agreed in writing.

32.6 Should a Child or Young Person remain in a Placement with the the Foster Carer after the termination date, only such an IPA as is in force for that Child or Young Person at that time shall operate, and shall be held in itself to be a continuation of this Agreement. Such an IPA may be terminated in accordance with Clause 41.1 but shall otherwise continue as if the Agreement had not been terminated.

32.7 During a continuation period detailed in Clause 32.6, the Foster Carer undertakes to ensure Services are as prescribed within the Child or Young Person’s IPA and Support Plan and the Authority shall undertake to bring about the end of any remaining IPA by removal of the Child or Young Person within a reasonable time and in all events no longer than 28 days following the date of termination.

32.8 Without affecting any other right or remedy available to it, either Party may terminate this agreement with immediate effect by giving written notice to the other Party if:

32.8.1 the other Party commits a material breach of any term of this agreement or a relevant IPA which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 10 days after being notified in writing to do so; and

32.8.2 the other Party repeatedly breaches any of the terms of this agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this agreement.

32.9 Without affecting any other right of remedy available to the Authority. The Authority may terminate this Agreement with immediate effect by giving written notice to the Foster Carer if the Foster Carer is convicted of a criminal offence or accepts a police caution that involves one of the following types of behaviour.

32.9.1 Violence

32.9.2 Abuse

32.9.4 Sexual misconduct

32.9.5 The supplying of illegal drugs

32.9.6 Viewing or creating child pornography

32.9.7 Any offence involving dishonesty

32.9.8 Any offence which could result in a prison sentence

32.9.9 Any other behaviour which the Authority or its representatives reasonably consider to be inappropriate for a Foster Carer

32.10 For the purposes of clause 32.8.1, material breach means a breach that the Authority considers (acting reasonably) could have a serious effect on the Child. The following will also amount to a material breach save in exceptional circumstances:-

32.10.1 If the Foster Carer offered, given, or agreed to give any person any gift or consideration of any kind as an inducement or reward in relation to the obtaining a placement;

32.10.2 If the Foster Carer has favoured, or maliciously disfavoured, any person in relation to the Agreement, or any other Agreement with the Authority;

32.10.3 If the Foster Carer, or any person employed by the Foster Carer or acting on the Foster Carer’s behalf, committed any offence under the Prevention of Corruption Acts of 1789, 1906 and 1916 in relation to the Agreement or any other Agreement with Torbay Children’s Services

32.10.4 If the Foster Carer fails to act, if aware that someone within the Placement has taken financial advantage of the Child;

32.10.5 If the Foster Carer fails to notify the Authority on becoming aware that anyone working for Foster Carer or living with the Foster Carer is convicted of a Schedule 1 offence under the Children and Young Person’s Act 1932, is placed on the Sex Offenders Register or has been identified as posing a risk, or potential risk, to Children or

32.10.6 If Foster Carer fails to notify the Authority on becoming aware that anyone working for the Foster Carer or living with the Foster Carer has any allegations made against them of a serious nature, resulting in a Child Protection investigation being carried out.

32.10.7 If the Foster Carer is found to be unsuitable to be a Foster Carer as the result of any subsequent checks, the Authority or it’s representatives may make.

32.11 If the Foster Carer, being an individual, shall die or be adjudged incapable of managing his or her affairs within the meaning of Part VII of the Mental Health Act 1983, the Council shall be entitled to terminate this Agreement with immediate effect by notice to the Foster Carer or the Foster Carer’s Representative.

32.12 Subject to Clause 32 termination of the Agreement in any circumstances also terminates any associated IPAs from the date on which the Child or Young Person is removed from the Placement and not before. During any period during which a Child or Young Person remains in a Placement (notwithstanding termination) both Parties will co-operate to ensure that the interests of the Child or Young Person are met under whatever new arrangements may be proposed.

32.13 Termination of the Agreement will have no effect on the liability of either Party to the payment of any sums arising under this Agreement prior to the date upon which termination takes effect.

**33 Breach of Agreement**

33.1 The Authority is entitled to terminate the Agreement with immediate effect and recover from the Foster Carer the amount of any loss resulting from such a termination, if the Foster Carer;

33.1.1 persistently Defaults on its obligations under this Agreement;

33.1.2 commits any other material breach of any of its obligations under the Agreement and (in the case of a Default which is capable of being remedied) fails to remedy such a Default within 10 working days (or such other time that may be specified) of receiving written notice from the Authority specifying the Default complained of and the remedial action required;

33.2 Additionally the Authority is entitled to terminate the Agreement with immediate effect and recover from the Foster Carer the amount of any loss resulting from such a termination, if the Foster Carer:

33.2.1 has been convicted of an offence or disqualified under the provisions of the Legislation and associated regulations specified at Clause 5 to Clause 11 and any subsequent amendments and additions;

33.2.2 has committed any offence under the Bribery Act 4210;

33.2.3 fails to fully comply with Clause 13 (Conflict of Interest) of this Agreement.

33.2.4 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;

.

33.3 Further the Authority is entitled to terminate the Agreement with immediate effect and recover from the Foster Carer the amount of any loss resulting from such a termination, if;

33.3.1 any of the persons employed by the Provider are convicted under the 1st Schedule of the Children and Young Persons Act 1933; or

33.3.2 any of the persons employed by the Provider are identified as posing a risk, or potential risk, to Children or Young People.

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

33.4.1 where the Foster Carer 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;

33.4.2 where the Foster Carer favoured, or maliciously disfavoured, any person in relation to the Agreement, or any other Agreement with the Authority;

33.4.3 where the Foster Carer, or any person employed by the Foster Carer or acting on the Foster Carer’s behalf, committed any offence under the Bribery Act 4210 in relation to the Agreement or any other Agreement with the Authority;

33.4.4 where the Foster Carer 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;

33.4.5 where the Foster Carer 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 Foster Carer and the Regulatory bodies to put this right, or the Foster Carer unreasonably fails to meet the requirements of the agreed action plan within a reasonable period of time;

33.4.6 where the Foster Carer fails to act, if aware that someone within the Placement has taken financial advantage of the Child;

33.4.7 where the Foster Carer fails to notify the Authority if they are made aware that anyone working for the Foster Carer or living in the Placement is convicted of a Schedule 1 offence under the Children and Young Person’s Act 1933, is placed on the Sex Offenders Register or has been identified as posing a risk, or potential risk, to children or

33.4.8 where the Foster Carer fails to notify the Authority if they are made aware that anyone working for the Foster Carer 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.

**34 Default**

34.1 Without prejudice to any other right or remedy it may possess, either Party (the Non-Defaulting Party) shall be entitled to immediately terminate this Agreement either in its entirety or in respect of an individual Service by written notice to the other Party (the Defaulting Party) upon the happening of any of the following events:

34.1.1 the Defaulting Party ceasing to perform its obligations under this Agreement either completely or, in the case of partial termination, in respect of a certain Service(s) only; or

34.1.2 the Defaulting Party breaching any of its obligations under this Agreement which were capable of remedy but which the Defaulting Party has failed to remedy within **twenty (42)** Working Days of receipt of notice from the Non-Defaulting Party identifying such breach; or

34.1.3 the Defaulting Party committing a non-remedial breach of this Agreement; or

34.1.4 the Defaulting Party breaching its obligations under Clauses 5 to 11; or

34.1.5 the Provider committing a breach of Clause 42 in respect of confidentiality; or

34.1.6 the Defaulting Party committing a Prohibited Act.

**35 Effect of Termination and Expiry**

35.1 In the event that following the occurrence of an event entitling a Party (the "First Party") to terminate this Agreement in whole or in part pursuant to this Clause and the First Party wishes to terminate this Agreement, then without prejudice to any of its other rights or remedies, the First Party:

35.1.1 will notify the other Party (the "Other Party") in writing of its intention to terminate this Agreement and/or Service(s) (as appropriate) specifying the date upon which this Agreement will terminate (the "Termination Date"); and

35.1.2 the Foster Carer shall continue to provide the Services until the Termination Date, save where any breach of this Agreement by the Authority substantially frustrates or renders it impossible for the Foster Carer to perform its obligations under this Agreement.

35.2 Upon expiry of this Agreement through effluxion of time, or on earlier termination under the provisions of this Clause (Clause 35) (either in respect of the whole of this Agreement or in respect of the relevant Service or Services in the case of partial termination), and without prejudice to any other provisions of the Agreement:

35.2.1 the Parties shall co-operate fully in achieving an orderly and efficient handover of the relevant Services to the Authority or any Replacement Provider (as directed by the Authority);

35.2.2 the Foster Carer shall deliver to the Authority all documents, records (including Care Plan, IEP and/or PEP) and other relevant data relating to the provision of the relevant Services on the Expiry Date or the Termination Date (as appropriate); and

35.2.3 the Authority shall be relieved of its obligation to pay for the relevant Services with effect from the Expiry Date or the Termination Date (as appropriate); and

35.2.3 each Party shall immediately pay to the other Party all sums due under this Agreement in respect of the relevant Services; and

35.2.4 the Provider shall take reasonable steps to mitigate any costs which the Authority incurs as a result of termination or expiry of this Agreement.

36. In these circumstances, related to Clause 32 to 35 payment for Services will cease from the date the Agreement is terminated.

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

38. Subject to Clause 37 and to any adjustment or set-off for damages to cover losses of the Party not in breach the Council shall calculate the monies outstanding to pay the Provider where fees are paid retrospectively or recover from the Provider where fees have in exceptional circumstances been paid in advance.

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

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

**H. TERMINATION OF THE INDIVIDUAL PLACEMENT AGREEMENT**

**41. Termination of Individual Placement Agreement**

41.1 The Parties shall act at all times in relation to the Agreement and each IPA in good faith in order to meet the needs of the Children 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 Child.

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

41.2.1 **One (1)** day if the Child has been in the Placement for **seven (7)** days or less;

41.2.2 **Seven (7)** days if the Child has been in the Placement for more than **seven (7)** days and less than **twelve (12)** Weeks;

41.2.3 **Fourteen (14)** days if the Child has been in the Placement for more than **twelve (12)** Weeks but less than **six (6)** calendar months; and

41.2.4 **Twenty-eight (28)** days if the Child has been in the Placement for more than **six (6)** calendar months.

41.3 Either Party may terminate an IPA with a lesser period of notice or with immediate effect following review of the placement by the Authority of the Placement in question, in the following circumstances:

41.3.1 The Child’s needs cannot be met;

41.3.2 The placement has broken down;

41.3.3 There is potential for significant harm to the Child or another Child accommodated in the Home; or to Home Staff;

41.3.4 As recommended by the Local Safeguarding Board;

41.3.5 Where mutually agreed

41.4 The IPA shall terminate automatically:

41.4.1 If the Court or other competent authority decides that the Child should be placed in secure accommodation, a secure hospital, or other place of lawful detention for more than **seventy-two (72)** hours. This shall include a condition of a court order or legal case conference, which requires residence outside a particular geographic area;

41.4.2 It is agreed in writing by the Parties that the Child’s needs, safety or welfare can no longer be met by the Placement and/or Placement arrangements have irretrievably broken down;

41.4.3 Where the Child discharges themselves from the Placement at the age of 16 years or above;

41.4.4 Seven days following death of the Child;

41.4.5 On termination of the Agreement.

41.5 In all such circumstances the Parties will work together to safeguard the interests of the Child until such time as an alternative arrangement can be made. Any varied services provided and changing costs incurred to maintain a placement will be agreed at the Review Meeting.

41.6 In all circumstances, payment for Services under the IPA will cease from the expiry of the notice period for the IPA.

41.7 Subject to any adjustment or set-off for damages to cover losses of the Party not in breach the Authority shall calculate the monies outstanding to either pay the Provider where fees are paid retrospectively or, recover from the Provider where fees have exceptionally been paid in advance.

41.8 Where a Child who is placed with a Foster Carer under this Agreement and associated IPA becomes absent, or becomes missing, or absconds (i.e. unauthorised absence), then the Foster Carer shall immediately notify the Authority’s individual with Case Management responsibility and if required the Authorised Officer and Agreement Manager. Unless notice to terminate the IPA has already been served by either Party pursuant to Clause 41.2, the **twenty eight (28)** days’ notice shall deemed to have been served which shall commence on the date that the Child in question left the Placement unless otherwise agreed in writing between the Parties.

# I. RECORDS, INFORMATION AND DATA PROTECTION

**42. Data Protection, Confidentiality and the Caldicott Principles**

42.1 The Foster Carer shall comply with the Data Protection Act 1998 and any other applicable data protection legislation.

42.2 The Authority may audit your compliance with the requirements of this Clause on reasonable notice and/or require you to provide us with due evidence of your compliance with the obligations set out in this Clause to include security of data storage, (physically or electronically).

42.3 The Foster Carer 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:

42.3.1 Justify the purpose(s) for using personal information;

42.3.2 Only use personal information when absolutely necessary;

42.3.3 Use the minimum amount of personal information that is required;

42.3.4 Ensure access to personal information is on a strict “need to know” basis;

42.3.5 Ensure everyone with access to personal information is aware of his or her responsibilities; and

42.3.6 Ensure everyone with access to personal information understands and complies with legislation that governs personal information.

42.4 The Foster Carer shall maintain the confidentiality of all personal Child specific 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 Authority or (subject to the Child’s age and understanding) the Child. This shall not preclude the provision of data which does not identify the Child, for statistical and analytical purposes, nor any disclosure required at law by a Court of competent jurisdiction.

42.5 The Foster Carer 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 fostering sector or the image or reputation of the Authority and shall not do anything which does or may bring the Authority into disrepute.

42.6 In accordance with the Regulations, the Authority will retain records compiled in relation to the Foster Carer for at least ten years at all times complying with the requirements of the Data Protection Act 1998 with respect to confidentiality and allowing the Foster Carer access on request the information the Authority hold about Foster Carer.

**43. Freedom of Information**

43.1 The Parties shall co-operate in all respects so as to ensure compliance with the FOIA.

43.2 The Foster Carer shall respond in a timely manner to a request from the Authority for such information required in order to enable the Authority to respond to the FOIA request within the time for compliance set out in Section 10 of the FOIA.

43.3 Subject to the operation of the exemptions specified in the FOIA, the Authority shall have the right to disclose information relating to this Agreement and the Foster Carer.

**J. OTHER CONTRACTUAL CONDITIONS**

**44. Force Majeure**

44.1 The Parties will be released from their respective obligations in the event of 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 the Agreement impossible.

44.2 For the avoidance of doubt, it is hereby expressly agreed that industrial relations difficulties, and failure to provide adequate premises, equipment, materials, consumables, or similar matters, which a prudent and diligent Foster Carer could have avoided with the application of reasonable foresight, are not to be considered as events of Force Majeure.

**45. Severability**

45.1 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.

45.2 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.

# 46. Governing Law

46.1 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter shall be governed by and construed exclusively in accordance with the Law of England and Wales.

46.2 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*.*

**K. Signatures of Agreeing Parties to the Agreement**

**EXECUTED by Torbay Council by**:

Signed (Authorised Officer) …………………………………

Name/Position …………………………………

Date …………………………………

**EXECUTED by [INSERT FOSTER CARER 1 NAME] by**:

Signed (Authorised Officer) …………………………………

Name/Position …………………………………

Date …………………………………

In the presence of:

Signed …………………………………

Name/Position …………………………………

Address: ................................................

................................................

................................................

................................................

Date …………………………………

**EXECUTED by [INSERT FOSTER CARER 2 NAME] by**:

Signed (Authorised Officer) …………………………………

Name/Position …………………………………

Date …………………………………

In the presence of:

Signed …………………………………

Name/Position …………………………………

Address: ................................................

................................................

................................................

................................................

Date …………………………………

**Or (if Contract value is in excess of £50,000)**

|  |  |
| --- | --- |
| **Executed as a deed by affixing the common seal of Torbay Council in the presence of:**  .................................................  [Name]  [Position] | [COMMON SEAL] |

**EXECUTED by [INSERT FOSTER CARER 1 NAME] by**:

Signed (Authorised Officer) …………………………………

Name/Position …………………………………

Date …………………………………

In the presence of:

Signed …………………………………

Name/Position …………………………………

Address: ................................................

................................................

................................................

................................................

Date …………………………………

**EXECUTED by [INSERT FOSTER CARER 2 NAME] by**:

Signed (Authorised Officer) …………………………………

Name/Position …………………………………

Date …………………………………

In the presence of:

Signed …………………………………

Name/Position …………………………………

Address: ................................................

................................................

................................................

................................................

Date …………………………………

## DEFINITIONS

## 1. In this Agreement and all IPAs, save where the context requires otherwise, the following words, terms and expressions shall have the meanings given to them below:

**“Absent/Absence”**

means where the Child is missing from the Placement, including where this is due to hospitalisation or illness or any other authorised leave of absence.

**“Additional Service(s)”**

means any services agreed by the Parties to be provided in addition to the Core Cost Services in relation to any IPA.

**“Additional Fee”**

means the agreed additional fee to be paid by the Authority for the provision of Additional Services.

**“Approval/Approved”**

means approval as a Foster Carer in accordance with Regulation 16 of the 4211 Regulations. This includes assessment in accordance with Regulation 15 of the 4211 Regulations and The Children Act Volume 4, Guidance and Regulations: Fostering Services and approval according to the guidelines set down for foster carers by local authorities and Ofsted. References to a Foster Carer being Approved shall be construed accordingly.

**“Assessment Report”**

means all information gathered and collated into a formal written report in connection with an application for Approval.

**“Authorised Officer”**

means the representative(s) of the Authority, appointed to carry out certain functions as part of the Agreement.

**“Authority”**

means the Local Authority (named as a Party to this Agreement) which has responsibility for the Child and shall include its representatives and successors

**“Authority Representative”**

means the person appointed and authorised by the Authority to represent the Authority for the purposes of the Agreement and whose details are set out in Schedule 1 and 5.

**“BACS”**

means Bank Automated Clearing System

**“Best Value Duty”**

means the obligations of the 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.

**“Breach”**

means an act or omission constituting a Party failing to fulfil any obligation under, as applicable the Agreement, or, respectively, any IPA;

**“Breakdown”**

means where there has been an irremediable breakdown in a Placement relationship.

**“Cancellation of Registration”**

means the cancellation of the Registration of a Foster Carer by a Fostering Panel

**“Caldicott Principles”**

means the general principles that health and social care organisations should apply relating to confidentiality and security of client information held.

**“Care Plan”**

means the required plan for any Child in Care, as drawn up by the 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 and encompasses all other relevant documents and plans in accordance with Regulation 5 and Schedule 1 of the Care Planning, Placement and Case Review (England) Regulations 2010

“**Care Standards Commission”**

means the National Care Standards Commission (including any successor to its functions).

**“Child or Children”**

means a child or young person aged from 0-17 years inclusive (or older if specifically agreed and stated) named in a respective IPA, to whom the Services are to be provided.

**“Child in Care”**

means a Child looked after in accordance with Section 22 of the 1989 Act, including those subject to a care order under Section 31 of the 1989 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 17 who arrive in the country without a parent or guardian and enter the care of a local authority.

**“Child with a Disability”**

means a Child with a physical, mental or learning impairment that has a substantial and long-term adverse effect on his/her ability to carry out normal day–to-day activities.

**“Contact”**

means as defined in Section 34 of the 1989 Act, contact between a Child and another person or persons including the Child’s parents. Contact shall include visits, stays, outings and communication by letter, e-mail, fax and telephone.

**“Agreement Period”**

means the period as set out in the particular IPA.

**“Core Cost Services”**

means the Services covered by the Core Cost Specification detailed in Schedules 4 and 5 of this Agreement.

**“Day”**

means Monday to Sunday inclusive.

**“Default”**

means any breach of the obligations of either Party (including but not limited to fundamental breach or breach of a fundamental term) or any default, act, omission, negligence or statement of either Party, its employees, agents or sub- contractors in connection with or in relation to the subject matter of the Agreement and in respect of which such Party is liable to the other.

**“Disclosure and Barring Service Check”** or **“DBS”**

has the meaning given in the Police Act 1997 (as amended) and the Safeguarding Vulnerable Groups Act 2006 (as amended)

**"Dispute Resolution Officer"**

means the person identified in Schedule 1 (The Particulars) as the person nominated by each Party for the purposes of Clause 16;

**“ECHR”**

means the European Convention for the Protection of Human Rights and Fundamental Freedoms.

**“Enhanced Disclosure and Barring Service Check”** or **“Enhanced DBS”**

has the meaning given in the Police Act 1997 (as amended) and the Safeguarding Vulnerable Groups Act 2006;

**“Foster Carer(s)”**

means an individual or family approved by Fostering Panel and is providing the Services and one Party to the Agreement and all IPAs under it.

**“Foster Carer(s) Representative”**

means the person appointed and authorised by the Foster Carer to represent the Foster carer for the purposes of the Agreement and whose details are set out in Schedule 1 and 5.

**“Foster Carer Review” or “Annual Review”**

means 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.

**“Fostering Code of Practice”**

means the Fostering Network’s Code of Practice 1999 (as amended) on the recruitment, assessment, approval, training, management and support of Foster Carers, recognised by the 2002 Regulations as being best practice

**“Fostering Handbook”**

means the Torbay Council Foster Care Handbook 2011 as updated and amended.

**“Fostering Panel”** **or “Panel”**

means a Panel constituted under the 2000 Act and Regulation 23 of the 2011 Regulations to approve foster carers either within a local authority (including any successor to its functions).

**“Freedom of Information Act” or “FOIA”**

means the Freedom of Information Act 2000 (as amended) and any subordinate Legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such Legislation;

**“HRA”**

means the Human Rights Act 1998.

**“Independent Reviewing Officer(s) or IRO”**

means the person appointed by a responsible authority to carry out the functions mentioned in Section 15 (2A) of the Children Act 1989, Part 2, Section 117 of the Adoption and Children Act 2002, ‘The Review of Children’s Case (Amendment) (England) Regulations 2004’ and the Care Planning, Placement and Case Review (England) Regulations 2010 .

**“Independent Safeguarding Authority” (‘ISA’)**

means the body set up to help prevent unsuitable people from working with children and vulnerable adults..

**“Individual Behaviour Plan” (“IBP”)**

means the written plan for managing the Child’s behaviour.

**“Individual Education Plan” (‘IEP’)**

means the plan for a Child’s special educational programme, for which the Child’s education provider is responsible.

**“Individual Placement Agreement”(‘IPA’)**

means the respective Agreement for specific placement services under and incorporating the general terms and conditions of this Agreement substantively in the form set out at Schedule 5 to this Agreement, arising from an assessment of the respective Child’s needs, which encompasses the applicable Care Plan, Placement Plan, LAC documents, and any other written arrangements agreed by both Parties.

**“Insolvency Event”**

means an event of bankruptcy or insolvency as listed in Clause 33.

**“Key Performance Indicator” (‘KPI’)**

means those indicators identified in Schedules 2B and 3 to this Agreement as being subject to an annual reporting requirement by the Provider.

**"Law"**

means any applicable Act of Parliament, sub-ordinate legislation within the meaning of Section 21 (1) of the Interpretation Act 1978 (as amended), exercise of the Royal Prerogative, enforceable community right within the meaning of Section 2 of the European Communities Act 1972 (as amended), bye-law, regulatory policy, guidance or industry code, judgment of a relevant Court of Law, or directive or requirements of any Regulatory Body of which the Provider is bound to comply;

**“Looked After Child or “Child Looked After” or “LAC” or “CLA”**

means a Child looked after by the Authority under the Children Act 1989 (as amended);

**"Losses"**

means all damages, losses, liabilities, claims, actions, costs, expenses (including the cost of legal or professional services, legal costs being on an agent/client, client paying basis), proceedings demands and charges whether arising under statute, Agreement or at common law, excluding Indirect Losses;

**"Month"**

means a calendar month;

**“National Minimum Standards”**

means the Fostering Services National Minimum Standards and Regulations 2011 and subsequent updates.

**“OFSTED”**

means Office for Standards in Education, Children Services and Skills which brings together the duties previously undertaken by the Social Services Inspectorate, the SSI/Audit Commission joint review team and the social care functions of the Commission for Social Care Inspection. This is now a function of the DCSF:

**“Outcomes Framework(s)”**

means the national and Local placement outcomes specified in Schedule 3A to this Agreement, subject to any more specific definition under each respective IPA.

**"Overall Expiry Date"**

means the expiry date specified in the Particulars;

**"Particulars"**

means the particulars of the Agreement as set out at Schedule 1;

**"Party"**

means the Authority or the Foster Carer individually and **"Parties"** refers to the Authority and the Foster Carer together. A Party shall include all permitted assigns of the Party in question;

**“Pathway Plan”**

means the document prepared in accordance with Clause 19b Schedule 2 of the 1989 Act, comprising the advice, assistance and support which the Authority intends to provide to a Child both while the Child is in foster care and after he/she leaves foster care.

**“Permanency”**

means where a Placement is intended to be permanent, as expressed in the Care Plan pursuant to a recommendation by the adoption/permanency panel and agreement by the Authority.

### “Personal Education Plan” (‘PEP’)

### means the plan for the education of a Looked After Child.

**“Placement”**

means a specific commitment made by the Authority through the completion of Schedules 2A, 2B, 3A, 3B and 5 in respect of a Child, and agreed by the Foster Carer for the provision of care and other Services to address a Child's individual needs in accordance with their Statement, PEP and Care Plan.

**“Placement of Children Regulations”**

means the Arrangements for the Placement of Children (General) Regulations 1991

**“Placement Plan”**

means the statement described in Regulation 9 and Schedule 2 of the 2010 Care Planning, placement and Case Review (England) Regulations, provided by the Authority and containing all the information which the Authority considers necessary to enable the Foster Carer to care for the Child.

**“Price”**

means the fees, exclusive of any applicable Tax, so detailed herein at Schedule 4 in respect of a Child which the Foster Carer is to receive from the Authority for the Service.

**“School”**

means an independent school as defined in The Education (Independent School Standards) (England) Regulations 2003, Regulation 4.

**"Serious Incident" or “Notifiable Incident”**

means an incident or accident or near-miss where a Child, member of staff or member of the public suffers serious injury, major permanent harm or unexpected death at the Site or where the actions of the Foster Carer or the Authority are likely to be of significant public concern;

**“Service(s)”**

means the services provided by the Provider for the Child in accordance with the respective IPA, including the Core Cost Services and any Additional Services.

**"Services Commencement Date"**

means, in respect of the relevant Services, the commencement date set out in the Service Specification, the IPA, the Care Plan and the IEP and/or PEP which relates to those Services;

**"Services Expiry Date"**

means, in respect of the relevant Services, the expiry date set out in the Service Specification, the IPA, the Care Plan and the IEP and/or PEP which relates to those Services;

**“Short Break(s)”**

means a temporary break in a Placement of not normally more than six Weeks, including periods of less than 24 hours.

**“Short Break Service”**

means an arrangement whereby the Child receives a Short Break from the care of their existing Foster Carer(s). For the avoidance of doubt, the Agreement does not cover Short Break Services provided to Children whose parents are their primary carers.

**"Site"**

means the location(s) where the relevant Services are to be performed, as identified in the relevant Services Specification and the IPA;

**“Special Educational Needs” or “SEN”**

means Special Educational Needs as defined in Section 312 of the Education Act 1996.

**“Special Guardianship Order” or “SGO”**

means the order which gives 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.

**“Standard DBS Check”**

means a disclosure of information which contains certain details of an individual’s convictions, cautions, reprimands or warnings recorded on police central records and includes both 'spent' and 'unspent' convictions

**“Statement of Special Educational Needs” or “Statement”**

means the Statement prepared by the local education authority as defined in section 324 of the Education Act 1996 (as amended).

**“The 2000 Act”**

means the Care Standards Act 2000 as amended.

**“The 2002 Regulations”**

means the Fostering Services Regulations 2002 as amended.

**“The 2004 Act”**

means the Children Act 2004 as amended.

**“The 2011 Regulations”**

means the Fostering Services Regulations 2011 as amended.

### “The 1989 Act”

### means the Children Act 1989 as amended.

**“The Children Act”**

means the 1989 Act and the 2004 Act

**“Torbay In-house Agreement” or “Agreement”**

means this document which sets out the rights and obligations of the Foster Carer and Authority and consists of the Terms and Conditions, Schedule 1 (The Particulars), Schedule 2A (Service Conditions), Schedule 2B (Foster Tiering), Schedule 3A (Outcomes Framework), Schedule 3B (Performance Assessment and Monitoring), Schedule 4 (Pricing Schedule) and Schedule 5 (Individual Placement Agreement), neither of which may be altered**.**

**“Unauthorised Absence”**

the situation where the Child’s Absence is without authority or consent

**“Week”**

means a period of seven successive days.

**"Working Day"**

means any day except for a Saturday, Sunday, Christmas Day, Good Friday or a day which is a Bank Holiday (in England) under the Banking and Financial Dealings Act 1971 (as amended).

**“Year”**

means a period of 12 consecutive calendar months

2. This Agreement sets out standard terms and conditions under which specific Individual Placement Agreements (“IPAs”) can be made by the Authority from a Foster Carer through the Agreement term of such a Agreement.

3 This Agreement comprises the following:

* Agreement Terms and Conditions
* Schedule One – Particulars
* Schedule Two Alpha - Service Conditions
* Schedule Two Bravo – Foster Carer Tiering
* Schedule Three Alpha - Outcomes Frameworks
* Schedule Three Bravo – Performance Assessment & Monitoring
* Schedule Four – Pricing Arrangements
* Schedule Five – Individual Placement Agreement

4 Each such purchase is 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 5 of this Agreement, incorporating the Terms and Conditions of this Agreement.

5 For the avoidance of doubt, this Agreement places no obligations on the Authority to make any placement with a Foster Carer.

6 Both Parties shall work together and individually in good faith and in the spirit of trust, fairness and mutual co-operation for the benefit of the children/young people benefiting from the fostering services.