

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

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Schedule 1 a	Service Specification for Children’s Residential Care and Education Services
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Schedule 2 a	Individual Placement Terms for Children’s Residential Care and Education Services
Schedule 2 b	Individual Placement Terms for Residential Short Breaks
Schedule 2 c	Individual Placement Terms for Day Education

Schedule 3	Individual Placement Agreement for Children’s Residential Care and Education Services
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Schedule 4	Financial Information
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## 1 Interpretation

1.1 In this Framework Agreement, except where the context otherwise requires,

- i) The identified and defined terms set out in Schedule 5 (Identified and Defined Terms) shall apply;
- ii) Words importing the singular shall be deemed to include the plural and vice versa and words importing the masculine gender shall be deemed to include the feminine gender and vice versa unless the context otherwise requires;
- iii) Any reference to a Clause shall be construed as a reference to a Clause herein unless otherwise stated and any reference to a Schedule shall be construed as a reference to a Schedule of this Framework Agreement;
- iv) References to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted and any Guidance issued thereunder;
- v) References to this Framework Agreement or any other documents includes reference to this Framework Agreement or such other documents as varied, amended, supplemented, extended, restated and/or replaced from time to time;
- vi) Should any procedures or other matters relating to quality assurance contained within this Framework Agreement become subject to a national performance or Outcomes reporting framework then such changes shall take precedence over those contained in the Framework Agreement;
- vii) Should any of the defined terms, procedures or any other matter regulated by this Framework Agreement become subject to statutory provision which results in any change to the defined terms or to the manner in which such procedures or other matters require to be dealt with then such changes shall take precedence over that contained in the Framework Agreement;
- viii) References to “persons” shall include natural persons and all entities with legal personality including statutory bodies, partnerships and companies save where the context otherwise requires;
- ix) References to any statutory body shall be taken as a reference to its successor or replacement body established during the Duration of this Framework Agreement or the Duration of any IPA entered into thereunder;
- x) The words “include”, “includes” and “including” are to be construed as if they were immediately followed by the words “without limitation”; and
- xi) Headings and numbering are included for ease of reference only and shall not affect the interpretation or construction of the Framework Agreement. Words starting with a capital letter are used, with the exception of those words at the start of sentences, to denote defined terms.

1.2 The Parties shall exercise their powers, obligations or discretions in terms of the Framework Agreement in a reasonable manner and in accordance with their statutory and regulatory obligations.

## 2 Framework Agreement Status and Duration

2.1 For the avoidance of any doubt, the scope of Services to be provided under this Framework Agreement falls within the definition of a “Part B” service under the Public Contracts (Scotland) Regulations 2012 and therefore the Framework Agreement is not subject to the full requirements of the aforementioned regulations.

- 2.2 Formed on behalf of Purchasers, Scotland Excel has established a Framework Agreement for children’s residential care and education services. Under the terms of the Framework Agreement, Purchasers may enter into Placements for Children and Young People as and when required with Providers participating in the Framework Agreement. Placements are subject to the Individual Placement Terms relative to the type of Service provided contained in either one of Schedule 2a, 2b or 2c and the agreement of an Individual Placement Agreement, in the form set out in Schedule 3.
- 2.3 In general, the Framework Terms set out the rights and obligations between Scotland Excel, acting on behalf of Purchasers, and the Provider in terms of the management of the Framework Agreement. The IPTs set out the rights and obligations between the Purchasers and Providers relative to the Placement entered into.
- 2.4 Under this Framework Agreement, Purchasers shall be under no obligation to make any Placements with the Provider.
- 2.5 Throughout the Duration of the Framework Agreement, Scotland Excel and the Purchasers are at all times entitled to enter into other contracts and arrangements with other organisations for the provision of any or all services which are the same as or similar to the Service.
- 2.6 The Framework Agreement shall begin on the Commencement Date and shall remain in force until the End Date unless it is otherwise extended or terminated in accordance with its terms. These dates form part of the award of participation on the Framework Agreement issued by Scotland Excel.
- 2.7 Scotland Excel may exercise its option to extend the Framework Agreement for up to two (2) further years after the Initial Period. Scotland Excel will notify the Provider of its intention or otherwise to extend the Framework Agreement beyond the Initial Period no less than ninety (90) Days in advance so that the Purchaser and Provider may agree plans for any existing Placements. For the avoidance of doubt, the Agreed Fee payable for any period of extension of the Framework Agreement will be reviewed in accordance with Clause 27.4.
- 2.8 For the avoidance of doubt, the period of any IPA may extend beyond the End Date and the IPT will still apply regardless of the status of the Framework Agreement in accordance with Clause 29 (Arrangements for Placements Extending beyond the Duration of the Framework Agreement).
- 2.9 The IPA shall document arrangements which have been agreed between the Parties for Placement along with the specific education, social care, health, contact and financial arrangements that shall apply in respect of the individual Placement.
- 2.10 In the event of any conflict between the documents within the Framework Agreement, the terms of the IPA shall apply.
- 2.11 The following Clauses of the Framework Terms shall continue to bind the Parties after the expiry of the Framework Agreement where relevant:
- i) Clause 9 (Assistance in Legal Proceedings);
  - ii) Clause 13 (Data Protection);
  - iii) Clause 14 (Confidentiality);
  - iv) Clause 15 (Freedom of Information);
  - v) Clause 22 (Indemnity and Insurance);
  - vi) Clause 37 (Corruption and Collusion); and
  - vii) Clause 39 (Conflicts of Interest).

### **3 Scotland Excel's Obligations**

- 3.1 Scotland Excel will manage the Framework Agreement on behalf of the Purchasers as set out herein including in Clause 25 (Management and Monitoring Arrangements), and will share relevant documents including, without restriction, management reports outlining statistics and trends with Providers and Purchasers.
- 3.2 Scotland Excel will keep under review the operation of the Framework Agreement in consultation with Purchasers, Providers and other stakeholders and make recommendations as part of the contract review process which will be subject to agreement with Providers as set out in Clause 32 (Variations) herein.

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

- 4.1 At all times throughout the Duration, the Provider shall be an independent body and nothing in this Framework Agreement shall create a contract of employment, a relationship of agency or partnership or a joint venture between the Parties. Accordingly no Party shall be authorised to act in the name of, or on behalf of, or otherwise bind any other Party save as expressly permitted by the Framework Agreement.
- 4.2 In the provision of the Service, the Provider shall perform its obligations:
  - i) In accordance with this Framework Agreement and the requirements of each IPA;
  - ii) With appropriately experienced, qualified and trained personnel;
  - iii) In accordance with Good Social Care Practice;
  - iv) In compliance with all applicable Laws and Guidance; and
  - v) In accordance with the National Care Standards and any requirements made by relevant Regulatory Bodies including the Care Inspectorate, Education Scotland or the Registrar of Independent Schools.
- 4.3 The Provider must ensure that its Staff understand and at all times comply with the obligations resulting from this Framework Agreement.
- 4.4 Care Inspectorate Grades:
  - 4.4.1 Throughout the Duration of the Framework Agreement and the Duration of the IPA entered into there under, in relation to the Service the Provider will:
    - i) Where applicable endeavour to attain grade four (4) or above for all quality themes following the first inspection of the Provider by the Care Inspectorate; or
    - ii) Work to ensure that the Service is rated at grade four (4) or above for all quality themes by the Care Inspectorate.

- 4.4.2 Where a Service receives a grade of two (2) or less for any theme (as used by the Care Inspectorate) that Service will be given an opportunity to improve this grade through a robust improvement plan agreed with the Care Inspectorate. Failure to improve grades may result in temporary Suspension of the Provider from participation in the Framework Agreement in accordance with Clause 31.1i) herein.
- 4.4.3 Following re-attainment of a grade of three (3) or above, Scotland Excel will review any temporary Suspension of the Provider from participation in the Framework Agreement taking into account the recommendations made by the Care Inspectorate.

## **5 Statutory Obligations**

- 5.1 The Provider shall adhere to the Law and Guidance.

## **6 Best Value**

- 6.1 The Provider shall agree and hereby acknowledges that the Local Government in Scotland Act 2003 applies to Councils, and the Provider shall use all reasonable endeavours throughout the Duration to ensure its continual improvement in the planning and delivery of the Service with regard to effectiveness, efficiency and economy in meeting the needs of the Child or Young Person.

## **7 Law of Scotland**

- 7.1 The construction, validity, performance and all other matters arising out of and in connection with this Framework Agreement shall be governed by the Law of Scotland. The Parties also submit to the exclusive jurisdiction of the Scottish Courts.

## **8 Legislative Change**

- 8.1 Subject to Clause 8.2 herein, for the Duration, the Provider shall bear the cost of ensuring that the Service complies with the Law and Guidance and any amendments thereto.
- 8.2 Where any change in the Law or Guidance materially impairs the Provider's ability to supply the Service or materially increases the cost to the Provider of supplying the Service, the Parties shall make any necessary amendments to the Fees in accordance with the Clause 27 (Fees and Fee Settings) herein.

## **9 Assistance in Legal Proceedings**

- 9.1 If requested to do so by Scotland Excel, the Provider shall use best endeavours to co-operate with Scotland Excel, including, but not limited to, the provision of documentation and statements from Staff in connection with any third party legal proceedings, requests received in accordance with the Freedom of Information (Scotland) Act, Ombudsman or other inquiries, arbitrations or court proceedings in which Scotland Excel may become involved or any relevant disciplinary hearing internal to Scotland Excel arising out of the provision of the Service. The Provider shall permit Staff to co-operate and if necessary give evidence in such inquiries, arbitrations, proceedings or hearings.

## **10 Waiver**

10.1 No failure or delay by either Party to enforce any right or remedy to which it is entitled, or to require performance by the other Party of any of the terms of the Framework Agreement shall be a waiver of any such right or remedy nor shall it in any way affect its right subsequently to enforce such provisions.

## **11 Severability**

11.1 In the event that any of the terms and conditions of this Framework 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.

## **12 Remedies Cumulative**

12.1 Except otherwise provided by this Framework Agreement, all remedies available to any Party for Breach of the Framework Agreement are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

## **13 Data Protection**

### **13.1 General Provisions**

13.1.1 All Parties shall comply with their respective duties under the Data Protection Act 1998 as amended.

13.1.2 Under the terms of the Framework Agreement the expressions “personal data”, “data controller”, “data processor”, “processing” and “process” shall have the meanings assigned to them by the DPA, and the “Seventh Data Protection Principle” shall mean the Seventh Principle set out in Parts 1 and 2 of Schedule 1 to the DPA and shall be referenced in this Framework Agreement according to that definition.

13.1.3 In relation to Children’s Information provided to the Provider by the Purchaser, the Provider shall at all times treat the Children’s Information in accordance with Clause 10 (Data Protection) of the relevant IPT.

13.1.4 The Provider will ensure that any information provided to Scotland Excel in accordance with Clause 25 (Management and Monitoring Arrangements) herein, or for any other purpose is done so in an anonymous format.

## **14 Confidentiality**

14.1 The Provider shall at all times comply with the principles of confidentiality outlined in Clause 11 (Confidentiality) of the relevant IPT regarding the relevant information covered by the Clause.

14.2 It shall be the Provider’s responsibility to ensure that its Staff observe and comply with the principles of confidentiality referred to in Clause 11 (Confidentiality) of the relevant IPT. In recognition of these requirements, the Provider will obtain an undertaking from Staff not to disclose any information which they may receive in accordance with the provisions of this Framework Agreement, unless required by Law or with the explicit consent of the Purchaser.



## **15 Freedom of Information**

15.1 No term of this Framework Agreement, whether express or implied, shall preclude Scotland Excel or the Purchaser from making public, if required under the Freedom of Information (Scotland) Act 2002 (referred to in this Clause as the “2002 Act”) or the Environmental Information (Scotland) Regulations 2004 (referred to in this condition as “the EIRS”) or both, any information held relating to the Framework Agreement. In exercising its obligations under the 2002 Act and the EIRS, Scotland Excel or the Purchaser, as the case may be, shall have due regard to the commercial interests of the Provider but without prejudice to its duty to discharge its obligations under the 2002 Act or the EIRS. The interpretation of the 2002 Act and the EIRS by Scotland Excel or the Purchaser, as the case may be, and any exemptions therein will be final and conclusive subject only to any decision or binding ruling on the matter made by the courts or the Office of the Scottish Information Commissioner. The Provider will facilitate compliance by Scotland Excel or the Purchaser, as the case may be, with its obligations under the 2002 Act and the EIRS and comply with any requests from Scotland Excel or the Purchaser, as the case may be, for that purpose.

## **16 Public Media Enquiries**

16.1 Without prejudice to the Purchaser’s or Scotland Excel’s obligations under the Freedom of Information (Scotland) Act 2002, the Provider shall not without the prior written consent of Scotland Excel or the Purchaser, as the case may be, reveal or make public any financial or other confidential information in connection with this Framework Agreement, or any IPA entered hereunder, and shall not knowingly authorise, allow, commit or permit or purport to authorise or permit any person, representative, Staff, or agent, to do the same.

16.2 The Provider will ensure that any comment made in response to a public media enquiry is in the best interests of Children and Young People who are or have been placed in the Service and is done so in accordance with Law and Guidance. Notwithstanding the foregoing generality, the Provider must ensure that any comment made does not contravene Clause 16.1 or reveal the specific details of any particular Placement, Child or Young Person.

## **17 Human Rights**

17.1 The Provider shall at all times comply, in a manner which is proportionate and relevant to the nature of the Framework Agreement, with the obligations which are incumbent upon Scotland Excel and the Purchaser as a ‘public authority’ in terms of the Human Rights Act 1998 (“the 1998 Act”) and of all secondary legislation made under the 1998 Act.

17.2 The Provider shall ensure the observance of this Clause 17 by all Staff and anyone involved in the provision of the Service.

17.3 The Provider shall indemnify Scotland Excel and Purchasers against all losses, costs, expenses and damages and shall keep Scotland Excel and Purchasers indemnified against all liabilities, demands, claims, actions or proceedings incurred as a result of an alleged breach of this Clause 17 by the Provider.

17.4 Scotland Excel may monitor the Provider’s compliance with the 1998 Act at periodic intervals throughout the Duration of the Framework Agreement.

17.5 Scotland Excel may request to be provided with demonstrable evidence as to how the Provider intends to secure compliance with the provisions of Clause 17.1.

## 18 Equalities

- 18.1 The Provider hereby confirms that to the best of its knowledge and belief it has complied with the Equality Act 2010 (the “Act”) and hereby agrees to continue to comply with the Act in a manner which is proportionate and relevant to the nature of the Framework Agreement.
- 18.2 The Provider agrees to provide the Service in a non discriminatory manner and shall promote equality and work towards the Service reflecting best practice as identified in Guidance including the relevant Codes of Practice issued by the Equality and Human Rights Commission.
- 18.3 The Provider may be subject to the requirements of the equality duty under the Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012 in respect of the Service being provided under this Framework Agreement and any IPA entered into there under. Where the requirement to comply with this equality duty exists, compliance with the requirements contained in Clauses 18.1 to 18.4 and Clause 18.10 herein will be evidence to the Purchaser of the Provider meeting this requirement.
- 18.4 The Provider recognises that Scotland Excel has a responsibility to monitor the extent to which the provision of the Service extends to socially excluded groups. In recognition of this, the Provider agrees, where appropriate and practicable, to work towards providing information to Scotland Excel in relation to employment and provision of the Service in respect of the protected characteristics as detailed in the Act, Part 2 Chapter 1.
- 18.5 The Provider shall not discriminate, directly or indirectly or by way of victimisation or harassment against any person on grounds of gender reassignment, age, marriage, and civil partnership, sexual orientation, disability, religion or belief, sex, pregnancy or maternity and race contrary to the Act.
- 18.6 The Provider shall notify Scotland Excel forthwith in writing as soon as it becomes aware of any investigation of, or proceedings brought against, the Provider under the Act. The Provider will inform Scotland Excel of any investigation decision or outcome of any proceedings as soon as practical upon receipt of said decision or outcome being made. The Provider will ensure that when reporting an outcome or decision to Scotland Excel that any Child or Young Person’s anonymity is maintained. For the avoidance of any doubt, this is in addition to the reporting requirements under Clause 17 (Management and Monitoring Arrangements) of the relevant IPT.
- 18.7 Where any such investigation is undertaken by a person or body empowered to conduct such investigation, and /or proceedings are instituted in connection with any matter relating to the Providers performance of the Service being in contravention of the Act, the Provider shall free of charge:
- i) provide any information requested in the timescales allotted;
  - ii) attend any meetings as required and permit the Provider’s Staff to attend;
  - iii) promptly allow access to and investigation of any document or data deemed to be relevant;
  - iv) allow itself and any Staff to appear as witness in any ensuing proceedings; and
  - v) co-operate fully and promptly in every way required by the person or body conducting such investigation during the course of that investigation.
- 18.8 Where any such investigation is conducted or proceedings are brought under the Act which arise directly or indirectly out of any act or omission of the Provider, its agents, Subcontractors or Staff, and where there is a finding against the Provider in such investigation or proceedings, the Provider shall indemnify Scotland Excel with respect to all costs, charges and expenses arising out of or in connection with any such investigation or which Scotland Excel may have been ordered or required to pay to a third party.

18.9 In recognition of Scotland Excel's legal obligation to tackle discrimination and promote equalities and diversity in all its functions and policies, under the Act the Provider may be subject to the requirement to complete a questionnaire and/or provide information to Scotland Excel on the extent and quality of the Provider's equalities and diversity policies. Good practice in this regard will be recognised by Scotland Excel, however, poor practice may result in Scotland Excel issuing a mind to comply letter describing the nature of improvement required and the associated timescales. If the Provider fails to improve practice in this regard Scotland Excel may take further action, up to and including the termination of the Framework Agreement.

18.10 The Provider will extend the obligations under this Clause 18 to any arrangements with Subcontractors.

## **19 Health and Safety**

19.1 The Provider must operate health and safety policies and must perform its obligations under the Framework Agreement in accordance with all current health and safety legislation.

19.2 Where requested by Scotland Excel, the Provider shall provide Scotland Excel with a copy of its health and safety policy statement.

19.3 The Provider shall ensure it adheres to any health and safety reporting requirements in accordance with Law and Guidance: including all serious accidents or health and safety issues concerning any Placement. These must be recorded and reported to the appropriate regulatory authority, including Health and Safety Executive, Environmental Health Officer or Fire Officer as defined under the Reporting of Injuries, Diseases and Dangerous Occurrence Regulations 1995 (RIDDOR).

## **20 Registration**

20.1 It is a material condition of this Framework Agreement that throughout the Duration of the Framework Agreement and Duration of the IPA, the Provider ensures that the Service adheres to all Law and Guidance including holding and maintaining the necessary Registration.

20.2 At all times the Provider and the Service shall adhere to any Registration requirements. Furthermore, the Provider will ensure that any applicable standards, as may be amended from time to time, which are put in place by any Regulatory Body are applied and followed by anyone involved in the delivery of the Service.

20.3 If the Registration is subject to conditions and the Provider fails to comply with any such condition, Scotland Excel will be entitled to terminate the Provider's participation in this Framework Agreement.

20.4 If the Care Inspectorate gives notice to the Provider of a proposal to cancel Registration or if the Care Inspectorate has made summary application to the Sheriff for an order cancelling the Registration then Scotland Excel may, but shall not be bound to, terminate the Provider's participation in this Framework Agreement without Notice irrespective as to whether or not the Provider has made representations to the Care Inspectorate about the cancellation or the period for making such representations has elapsed, or the summary application to the Sheriff is opposed.

20.5 In the event that the Care Inspectorate imposes conditions, serves notice to cancel Registration or to vary categories of Registration:

- i) The Provider shall immediately provide Notice to Scotland Excel and any Purchaser with a Placement;

- ii) Within seven (7) days of receipt from the Care Inspectorate, the Provider will copy to Scotland Excel and any Purchaser with a Placement all relevant documentation issued.

20.6 Where action is taken by Scotland Excel in accordance with this Clause 20, existing Placements shall be treated in accordance with Clause 25 (Suspension) of the relevant IPT.

## **21 Staffing**

- 21.1 The Provider will fulfil its statutory obligations concerning the employment of Staff and at all times ensure it has a sufficient number of suitably trained, qualified and competent Staff in accordance with the Law and Guidance together with any specific terms included in each IPA.
- 21.2 The Provider will comply with the requirements of Clause 6 (Staffing) of the relevant IPT throughout the Duration of the IPA entered into under it.
- 21.3 The Provider will ensure that all Staff who are required to be registered, are registered with the appropriate Regulatory Bodies, hold and maintain the required registration, including without limitation, the Scottish Social Services Council (SSSC), the General Teaching Council Scotland (GTCS) for Teachers, the Health Professions Council and the British Psychological Society for psychologists, the Nursing and Midwifery Council for Nurses and, for example, the British Association of Counsellors and Psychotherapists (BABCP) for staff providing therapeutic interventions.
- 21.4 The Provider will comply with the SSSC Code of Practice and the Code of Practice and Professionalism of the GTCS and take all reasonable steps to secure the compliance by all Staff with any relevant codes of practice and Guidance issued by the relevant Regulatory Bodies.
- 21.5 Volunteers may be used in the provision of the Service as identified in the Service Specification where they meet the standards of fitness as set out in Regulation 9 of the Social Care and Social Work Improvement Scotland (Requirements for Care Services) Regulations 2011 but not as a substitute for staff as defined by the Care Inspectorate's minimum staffing requirements for the provision of the Service.
- 21.6 On request, in situations where issues relating to Staff are impacting on the ability of the Provider to meet the requirements of this Framework Agreement, the Provider will provide to Scotland Excel full details of Staff numbers, professional titles and job descriptions and roles of those participating in or involved in the provision of the Service in such a way as to ensure anonymity.
- 21.7 The Provider will at all times be liable for the actions and omissions of Staff used in the provision of the Service.
- 21.8 For the avoidance of doubt, neither the Provider nor Staff will be deemed to be entitled to act or hold themselves out as agents or employees of Scotland Excel or the Purchaser.

## **22 Indemnity and Insurance**

- 22.1 The Provider shall indemnify and keep indemnified the Purchaser or Scotland Excel and its officers against any claim, expenses, or loss in respect of personal injury or death or loss of or damage to property which arises out of the performance of obligations of this Framework Agreement by the Provider including but not limited to any negligent act error or omission by the Provider or Staff in the course of delivery of the Provider's duties under this Framework Agreement.

22.2 Without prejudice to its obligation to indemnify the Purchaser and Scotland Excel, the Provider is obliged to insure, and maintain insurance, for the Duration of the Framework Agreement, including the following minimum requirements:

- i) Third party liability to a minimum indemnity limit of £5 million;
- ii) Where the Provider will carry out activities such as nursing care, first aid, administration of prescribed drugs or medicines and administration of drugs or medicines available without prescription, the Provider will require to evidence an extension with the Provider's public liability cover in relation to the risk of any errors or omissions in delivering this type of service.
- iii) Where required, employer's liability to a minimum indemnity limit of £5 million. Where the Provider is exempt from this requirement, e.g. as a 'sole trader', then this must be confirmed by the Provider;
- iv) Where a vehicle is used in the delivery of Service, statutory third party motor vehicle liability insurance to a minimum indemnity of £5 million.
- v) Professional indemnity to a minimum indemnity of £2 million.

The Provider will, on request, provide evidence that such cover has been effected and all due premiums have been paid. The submission of satisfactory evidence of cover to Scotland Excel shall relieve the Provider of the corresponding obligation to exhibit such evidence to any Purchaser under this Framework Agreement.

22.3 Notwithstanding Clause 22.2 herein, the Purchaser may request an increase in the minimum level of insurance cover required when making a Placement in accordance with the Clause 8 (Indemnity and Insurance) of the relevant IPT.

22.4 The Provider shall, at least fifteen (15) Days before the renewal anniversary, for each of its insurance policies held for the purposes of this Framework Agreement, provide to Scotland Excel such evidence as may be necessary to demonstrate that the insurance requirements detailed in the Framework Agreement have been maintained for each subsequent renewal and the premium payments have been made and are up to date. The submission of satisfactory evidence of renewal to Scotland Excel shall relieve the Provider of the corresponding obligation to exhibit such evidence to any Purchaser under this Framework Agreement.

22.5 Where the Provider provides, with the agreement of the Purchaser, any special therapy for the Child or Young Person, such therapy shall only be carried out by suitably qualified and insured professionals, and the Provider shall ensure that such individuals hold and maintain sufficient insurance for the services they provide. Each professional shall be registered by/with the appropriate professional body/bodies and conform to all requirements laid down by such body/bodies.

22.6 The Provider shall ensure that in respect of any holidays in the United Kingdom involving an overnight stay, and for any trips or holidays abroad, sufficient travel and related insurances are in place for the Child or Young Person with an insurance carrier registered in the United Kingdom to underwrite such policies.

## **23 Placement Procedures**

23.1 Where a Purchaser requires to make a Placement through this Framework Agreement it shall use the procedures set out in Clause 13 (Placement Procedures) of the relevant IPT. In deciding on a Placement, the Purchaser will at all times consider the needs of the Child or Young Person as paramount.

- 23.2 The terms of this Framework Agreement, subject to mutual agreement by the Parties, may be applied to placements entered into prior to the Commencement Date in line with the terms set out in Clause 12 (Pre-Placement) of the relevant IPT.
- 23.3 The Purchaser and Provider will where appropriate use a matching process to ascertain the suitability of a potential Placement. The procedure for this will vary dependent on the particular circumstances of the case but may follow the Placement Matching Process as set out in Clause 13 (Placement Procedures) of the relevant IPT.
- 23.4 In using the Placement Matching Process, the Provider shall at all times ensure adherence to the provisions to Clauses 10 (Data Protection) and 11 (Confidentiality) of the relevant IPT.
- 23.5 The Placement Matching Process will come to an end either by the Purchaser and Provider entering into an IPA relative to the Child or Young Person, or by a decision being taken not to enter into a Placement.

## **24 Transport**

- 24.1 The Provider shall comply with the requirements of Clause 9 (Transport) of the relevant IPT.

## **25 Management and Monitoring Arrangements**

- 25.1 The management and monitoring of the Framework Agreement requires a partnership approach between all Parties. Monitoring arrangements between Scotland Excel and the Provider are set out in this Clause 25, while monitoring arrangements between the Purchaser and Provider are set out in Clause 17 (Management and Monitoring Arrangements) of the relevant IPT.
- 25.2 The Provider shall have in place internal quality monitoring and quality assurance policies and procedures to ensure the Service is of the quality and standard required by the Framework Agreement and that any Placement meets the Child or Young Person's needs and Outcomes in accordance with Clause 15 (Reviews and Variations to the IPA) of the relevant IPT.
- 25.3 Scotland Excel will provide a database to assist the Provider collate and distribute the Management Information set out in Schedule 6. The Management Information provided to Scotland Excel will be based on the Management Information that requires to be reported to Purchasers. The Management Information will not provide personal or sensitive personal information to Scotland Excel as part of the quarterly or any other information return, unless the Purchasers request that Scotland Excel gather this on their behalf and appropriate written agreements are in place between Scotland Excel and the Purchaser to do so.
- 25.4 Management Information, as detailed in Schedule 6, shall be submitted on a quarterly basis for the following reporting periods, to be received by Scotland Excel no later than fourteen (14) Days following the end of the relevant reporting period:
- i) 1st April to 30th June;
  - ii) 1st July to 30th September;
  - iii) 1st October to 31st December; and
  - iv) 1st January to 31st March.
- 25.5 In addition to the quarterly return, supplementary Management Information as set out in Schedule 6 shall be submitted on an annual basis no later than fourteen (14) days following 30<sup>th</sup> September.

- 25.6 The timely provision of Management Information will form part of the overall measure of Provider performance.
- 25.7 Scotland Excel will monitor the Management Information and liaise with the Provider when necessary.
- 25.8 It is anticipated that over the Duration of this Framework Agreement, the Parties will agree on key performance indicators to measure outcomes, based on SHANARRI indicators. Should a national methodology for reporting the progress on achieving Outcomes for Children and Young People be developed at any time during the Duration of the Framework Agreement, Scotland Excel and the Provider will agree an implementation plan to put this into effect for the Service.
- 25.9 The Provider shall co-operate with supplying any other information as reasonably requested by Scotland Excel in accordance with the requirements of this Clause 25.
- 25.10 Scotland Excel will review Management Information and will produce an annual report for Purchasers. The annual report may include:
- i) Annual spend per Purchaser;
  - ii) Consolidated Management Information;
  - iii) Number of Placements;
  - iv) Statistical overview of the needs of Children and Young People placed;
  - v) Statistical overview of the level of educational attainment;
  - vi) Statistical overview of absences and exclusions from school;
  - vii) Information on transitions, destinations and placement breakdowns; and
  - viii) Average occupancy of the Service across the financial year.
- 25.11 The annual report may also include information from other sources, including:
- i) Information obtained from any other professional bodies or agencies, in accordance with all relevant information sharing protocols, relevant to the services delivered;
  - ii) Information from Regulatory Bodies; and
  - iii) Information from any organisation that purchases from, or monitors or inspects the Provider.
- 25.12 Scotland Excel may share the annual report with any other relevant body with a legitimate interest including Regulatory Bodies, the Association of Directors of Social Work, the Convention of Scottish Local Authorities and Scottish Government subject to requirements of relevant legislation.

## **26 Resolution of Disputes**

- 26.1 In the event of any dispute between Scotland Excel and the Provider, both Parties will use their best endeavours to resolve the dispute between their appropriate nominated representatives.
- 26.2 Either Party may serve a Notice on the other outlining the terms of the dispute and proposing a time and place for a meeting between the Parties' representatives, where the representatives shall attempt in good faith to resolve the dispute.
- 26.3 The other Party shall respond to such a Notice within seven (7) Days of receipt and if the matter is not resolved within fourteen (14) Days of the date of the Notice, the matter may be referred by either Party to the appropriate senior officer of each Party for resolution within twenty-one (21) Days of the date of the Notice. If either Party refuses at any time to participate in the procedures set out in this Clause 26

and in any event the dispute is not resolved within thirty (30) Days of the date of the Notice issued in accordance with Clause 26.2 herein then either Party may refer the dispute to arbitration.

- 26.4 Any reference to arbitration shall be a submission within the meaning of the Arbitration (Scotland) Act 2010 ("the Act") which shall apply excluding rules 22, 26, 29, 32, 35, 41, 43, 46, 47, 51, 52, 58, 69 and 81, unless otherwise agreed in writing by Scotland Excel and the Provider. It is hereby agreed by Scotland Excel and the Provider that for the purposes of the arbitration, the arbitrator shall have the power to make provisional awards as provided in the Act, rule 53. For the avoidance of any doubt, the arbitration proceedings shall be seated in Scotland and shall be governed by, and interpretations made in accordance with Scots Law.
- 26.5 If the Parties are unable to agree upon a single independent arbiter within fourteen (14) Days of the date of the decision to refer the matter to arbitration, then either Party may refer the matter in dispute to an arbiter appointed by the Sheriff Principal of the Sheriffdom in which the IPA is performed or, in the case of disputes not related to an IPA, an arbiter appointed by the Sheriff Principal of the Sheriffdom in which the head office of Scotland Excel is based, whose decision on the matter and any issue relating to the expenses of such arbitration shall be final and binding on the Parties.
- 26.6 For the purpose of resolving disputes in terms of this Clause 26, Scotland Excel and the Provider shall formulate operational guidelines as to the levels of officer hierarchy within the respective organisations to which disputes should be referred.
- 26.7 Where the procedures in this Clause 26 have been exhausted and the dispute remains unresolved, the Provider's participation in the Framework Agreement may be terminated either with immediate effect or within such alternative timescale as the Parties may determine by agreement. In such a case, the requirements of Clause 35 (Breach and Termination of the Framework Agreement) will apply. Providers will be required to liaise with Purchasers in respect of individual Placements in accordance with Clause 27 (Breach and Termination) of the relevant IPT.
- 26.8 Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.

## **27 Fees and Fee Settings**

- 27.1 Fees will be paid to the Provider by the Purchaser in accordance with Clause 21 (The Fees) of the relevant IPT.
- 27.2 Throughout the Duration, the Provider will consider and review with Scotland Excel whether any financial savings can be achieved through efficiency of management, Staffing or any other costs whatsoever pertaining to the provision of the Service.
- 27.3 The Agreed Fee and rates for Supplementary Fees shall not be increased for the Initial Period and shall be those detailed in the letter of award issued to the Provider, unless otherwise agreed under Clause 8.2 herein.
- 27.4 Following expiry of the Initial Period, the Agreed Fee and rates for Supplementary Fees may be reviewed annually. Applications for review must be submitted to Scotland Excel no later than 31 January preceding the proposed date of effect of 1<sup>st</sup> April. Any changes to Fees will take account of both efficiency measures and cost pressures and any adjustment agreed, except as otherwise provided in accordance with this Clause 27. Any increase agreed will be guided by the Retail Price Index (RPI) current at the time



of application. Applications for price increases must comply with any counter-inflation legislation and be accompanied by supporting documentary evidence, to the satisfaction of Scotland Excel. Scotland Excel reserves the right to resile from the Framework Agreement in whole or in part where it considers proposed increases in Fees to be unreasonable.

- 27.5 Where relevant, discussions on variations to Supplementary Fees for Defined Additional Services may also take place as part of the fee review process outlined in Clause 27.4 herein. The procedure for this will be agreed on an individual basis.
- 27.6 No increase in the Agreed Fee or Supplementary Fees will be made without the prior written agreement of Scotland Excel.
- 27.7 As stated in Clause 22 (Fee Variations) of the relevant IPT, any change in the Agreed Fee and/or Supplementary Fees for Defined Additional Services will apply to any IPA made under the Framework Agreement from the 1<sup>st</sup> of April in the same year in which the variation is agreed (“the effective date”), and will apply to both IPAs in existence at the effective date and any made after the effective date equally.
- 27.8 Any decrease in the Agreed Fee or Supplementary Fees must be notified to Scotland Excel and applied immediately.

## **28 Notices**

28.1 Any Notice which is to be given by any Party to another shall be given by letter (sent by hand, post or by the recorded or special delivery service), or by facsimile transmission or by electronic mail unless otherwise agreed between the relevant Parties. The provisions in this Clause 28 do not affect or supersede the obligations of the Provider to comply with the Law and Guidance relative to Child Protection as an entirely separate matter distinct from the obligations under this Framework Agreement.

28.2 Such Notices shall be addressed to the Provider or Scotland Excel in the following manner:

28.2.1 For the Provider

- i) For Notices relating to the operation of the Framework Agreement to the address for correspondence in the tender documents;
- ii) For Notices relating to individual Placements, as detailed in the IPA.

28.2.2 For Scotland Excel, to The Director, Scotland Excel, Renfrewshire House, Cotton Street, Paisley, PA1 1AR

28.3 The Notice or communication shall be deemed to have been given:

- i) Two (2) Working Days after the date of the letter;
- ii) Four (4) hours after sending in the case of electronic mail or facsimile transmission sent between 9am and 5pm on a Working Day or at 10am on the next Working Day when sending is out with these times; or
- iii) At such sooner time where the Provider or Scotland Excel acknowledges receipt of such letters, facsimile transmission or items of electronic mail.

28.4 The Provider or Scotland Excel may change its address for Notices by sending written notification to the other Party. Scotland Excel shall not be responsible for any failure to intimate or delay in intimation

arising out of or in consequence of the Provider's omitting to advise Scotland Excel of a change under this Clause.

28.5 Where events occur which have a material effect on the Provider's ability to deliver the Service, Scotland Excel must be notified immediately or as soon as reasonably practicable thereafter. Notification of such events may be made by telephone as long as formal Notice is subsequently given. The following is a non exhaustive list of events which must be notified in accordance with this Clause 28:

- i) Notice of any risks to, or significant occurrence in relation to, the health and safety of Children following Notice given to the relevant Purchaser/s under Clause 19 (Reporting of Events) of the relevant IPT, where there is concern that this may impact or has affected multiple Children in Placement;
- ii) Notice of any investigation of or proceedings brought against the Provider by any Regulatory Body or notifications that any Regulatory Body is going to impose conditions, serve notice to cancel Registration or to vary categories of Registration;
- iii) Notice of Fraud;
- iv) Notice that the Provider has become unfit to provide the Service in terms of Regulation 6 or that someone acting as the manager of the Service is unfit to so act in accordance with Regulation 7, both of the Social Care and Social Work Improvement Scotland (Requirements for Care Services) Regulations, 2011;
- v) Notice under Clause 34.1 herein that the Provider finds it is unable permanently or temporarily to meet the conditions of the Framework Agreement.

28.6 Notice given to Scotland Excel under Clause 28.5 will detail the event and concern generally but will not identify any individual or provide information which contains personal data and/or sensitive personal data in terms of the DPA.

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

29.1 To ensure continuity for Children and Young People in Placements made under the Framework Agreement, Placements may extend beyond the Duration of the Framework Agreement by agreement between the Parties to the IPA in accordance with Clause 28 (Arrangements for Placements Extending Beyond the Duration of the Framework Agreement) of the relevant IPT.

## **30 Termination of Placements**

30.1 IPAs can be terminated in accordance with Clause 27 (Breach and Termination) of the relevant IPT.

## **31 Suspension**

31.1 Scotland Excel may suspend the Provider's participation in the Framework Agreement where:

- i) A Breach or Material Breach by the Provider creates an immediate or serious risk of harm to a Child or Young Person or diminution of quality of the Service or any part of it below the requirements set out in the tender documents pertaining to this Framework Agreement;
- ii) The Provider has failed to timeously implement any Remedial Action Plan agreed with Scotland Excel;

- iii) Notice of assignment, disposal, sub contracting or change of Control has been given and Scotland Excel has serious concerns about the viability of the arrangement, or where a Provider has failed to provide Notice of the same;
- iv) The Provider or Scotland Excel has given Notice of termination;
- v) The Provider is in Material Breach in accordance with Clause 35 (Breach and Termination of the Framework Agreement) herein.

31.2 Once a decision has been taken to exercise Suspension Scotland Excel will:

- i) Notify the Provider in writing of the reason for the Suspension and the date the Suspension takes effect; and
- ii) Notify the Care Inspectorate, other relevant Regulatory Bodies and Purchasers of the Suspension.

31.3 During any period of Suspension:

31.3.1 The Provider must continue to co-operate with and comply promptly with any reasonable requirements of Scotland Excel;

31.3.2 In accordance with Clause 25 (Suspension) of the relevant IPT, existing Placements may continue subject to the Purchaser being satisfied each individual Placement continues to be the most appropriate way to meet the needs of the Child or Young Person concerned and subject to the requirements of that Clause;

31.3.3 Scotland Excel shall use reasonable efforts to ensure that no further Children or Young People are referred to the Provider and the Provider shall cease to accept referrals of Children or Young People from Purchasers;

31.3.4 Following receipt of notification in accordance with Clause 31.2i) the Provider will notify Scotland Excel of the current Placements made by Purchasers and any such further information as may be reasonably required by Scotland Excel. Such information will not identify any individual or provide information which contains personal data and/or sensitive personal data in terms of the DPA.

31.4 Scotland Excel and relevant Purchasers will work together with the Provider to ensure there is no interruption to the Service being delivered to Children or Young People with existing Placements, and to address the issues that led to the Suspension, and the Provider shall co-operate fully with Scotland Excel and Purchasers.

31.5 During the period of Suspension, Scotland Excel will keep the Provider informed of its assessment of what progress the Provider has made in addressing the issues that led to Suspension and the likely duration of the Suspension.

31.6 Withdrawal of the Notice issued in accordance with Clause 31.2 will be confirmed by Scotland Excel at such time as it becomes reasonably satisfied that the Provider is able to and will perform the Service to the required standard.

31.7 The exercise of any provisions under this Clause 31 shall not prevent Scotland Excel from taking into account the occurrence and the resolution of the circumstances falling within this Clause 31 in Scotland Excel's assessment of the Provider's overall performance.

## 32 Variations

### 32.1 Variation of Framework Terms

32.1.1 The Framework Terms may only be varied with the prior written agreement of Scotland Excel and the Provider.

32.1.2 No terms or conditions put forward at any time by the Provider shall form any part of the Framework Agreement unless specifically agreed in writing by Scotland Excel.

32.1.3 Any condition entered by a Provider or incorporated on any invoice or other communication submitted to the Purchaser which is at variance in any respect with the terms and conditions of the Framework Agreement shall not be binding on the Purchaser unless such condition has been accepted in writing by the Purchaser in accordance with Clause 26 (Variation) of the relevant IPT.

### 32.2 Variation of Framework Agreement – Service requirements

32.2.1 Each party (the “proposing party”) shall be entitled to propose any variation to the Framework Agreement for consideration in relation to the Service requirements. Any such variations could include, but shall not be restricted to, additions, alterations, substitutions or omissions to the Service or changes regarding the delivery or provision of the Service.

32.2.2 The proposing party shall notify the other party in writing of its proposal. If the proposing party is Scotland Excel, the Provider shall confirm in writing within two (2) weeks of receipt of the proposal the effect the variation shall have on the Framework Agreement including any effect on Fees.

32.2.3 To consider any proposed variation, both parties shall have available to them:

- i) the reason for the proposed change;
- ii) full details of the proposed change;
- iii) the price, if any, of the proposed change; and
- iv) details of the likely impact, if any, of the proposed change on other aspects of this Framework Agreement.

32.2.4 The other party shall respond to the proposed change in writing and, if appropriate, representatives of both parties shall meet to discuss the proposed change.

32.2.5 Any change proposed by either party shall constitute an amendment to this Framework Agreement only once it has been accepted in writing by both parties. Until such time, the proposed change shall be neither binding nor implemented. Any work undertaken by the Provider, its Staff or agents in connection with any proposed change to this Framework Agreement, shall be undertaken entirely at the expense and liability of the Provider.

### 32.3 Variation to Fees

32.3.1 Requests to vary Fees only will be dealt with in accordance with the provisions of Clause 27 (Fees and Fee Setting).

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

33.1 The Provider will not assign, dispose or otherwise transfer its interests and/or obligations under the Framework Agreement to any other person (hereinafter "assign") without first obtaining the prior consent in writing of Scotland Excel, notwithstanding Clause 33.2, which shall not be unreasonably withheld or delayed subject to:-

- i) The Provider's compliance with the requirements of Clause 33.6.2;
- ii) Scotland Excel's compliance with its procedural requirements permitting assignment;
- iii) Compliance by the Parties with the Law.

33.2 Where a Provider, which has IPAs in place with Purchasers, requires to make a request under this Clause 33, the request will require to also be considered by all Purchasers with existing Placements in accordance with Clause 30 (Assignment, Disposal, Sub Contracting, Change of Control) of the relevant IPT.

33.3 Failure to meet the requirements of Clause 33 herein, including requirements to provide information within stated timescales, will be deemed to be a Material Breach of the Framework Agreement.

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

33.5 Where the Provider is subject to part 28 of the Companies Act 2006 and this restricts the ability of the Provider to comply with the requirements of this Clause 33, the relevant provisions in this Clause will not apply subject to the Provider's compliance with the following requirements:

- i) The Provider must notify Scotland Excel promptly of the position in writing and provide such further information as may be reasonably required by Scotland Excel;
- ii) In disclosing information in accordance with this Clause 33, the Provider must adhere to the requirements of all applicable legislation including without limitation the Companies Act 2006 and the City Code on Takeovers and Mergers ("the Takeover Code"); and
- iii) Copies of any disclosures made in accordance with the requirements of the aforementioned part 28 of the Companies Act 2006, the Takeover Code and all applicable law and guidance must be provided to the Council at the time of issue.

#### **33.6 Assignment/Disposal**

33.6.1 Where the Provider proposes to transfer its interest, or part of its interest, in the Service to another provider with the intention of service continuation:

- i) The Provider must give Scotland Excel no less than thirteen (13) weeks' prior written Notice; and
- ii) Scotland Excel may consent to the proposed assignment upon being satisfied of the proposed assignee's suitability and subject to the necessary consents and, where applicable, certificate of Registration being granted to the proposed assignee by the Care Inspectorate.

33.6.2 In order to enable due consideration of the assignment request, the Provider shall provide Scotland Excel with such information as it may reasonably request no later than thirteen (13) weeks prior to the proposed transfer date including:

- i) The name and address of the proposed assignee together with its relevant company / organisation details (such as its registered company office and company registration number) and details of regulatory approvals;
- ii) Evidence that the proposed assignee can meet the required Service quality levels and financial and economic requirements satisfied by the Provider;
- iii) Proposed date of transfer and details of the nature of the legal relationship between the Provider and proposed assignee;
- iv) Proposed assignee's assessment of existing Service;
- v) Staffing proposals in particular transfer and re-appointment and/or recruitment and arrangements for transition (including the manager of the Service);
- vi) Policies and procedures proposed for use in the management of the Service or confirmation of the application of the existing policies to the Service; and
- vii) Appropriate financial information relative to the proposed assignee in order that Scotland Excel may be satisfied as to the financial viability of the proposed assignee and the continued financial viability of the Service.

33.6.3 If any Purchaser has overpaid the Provider, agreement must be reached about how any sums due will be repaid before consent will be granted to the assignment request. Should agreement not be reached, or where insufficient notice is given, the Purchaser may reclaim any monies owed via any means at its disposal.

33.6.4 Once notification of a proposed assignment has been received, Scotland Excel may exercise its right of Suspension in accordance with Clause 31 (Suspension) herein where it has reasonable concerns that the proposed assignee will not be able to meet the required Service quality levels and financial and economic requirements, and the Provider has not indicated it will continue the Service if the assignment does not go ahead. Suspension in this case will normally come to an end once the Provider and proposed assignee have completed an assignment agreement in accordance with the procedures laid down in this Clause 33.

33.6.5 Until the completion of the assignment in accordance with the procedures laid down in this Clause 33, or until the Framework Agreement with the Provider is terminated:

- i) The proposed assignee must not provide the Service or any part of it and no payments will be made by the Purchaser to the proposed assignee;
- ii) The Provider shall continue to be responsible for the performance of and shall be liable to Scotland Excel and the Purchaser for the acts and omissions of any party to which it may assign, transfer or otherwise dispose of any of its obligations under this Framework Agreement as if they were the acts or omissions of the Provider.

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

- i) Where the Provider is unable to continue to provide the Service to the reasonable satisfaction of Scotland Excel, Scotland Excel may terminate the Provider's participation in the Framework Agreement in accordance with Clause 35.15 herein and any existing IPAs will be dealt with in accordance with Clause 27 (Breach and Termination) of the relevant IPT; or

- ii) Where the Provider is able to continue to provide the Service, the terms of the Framework Agreement will continue to apply.

33.6.7 Where Scotland Excel agrees to assign the Framework Agreement, it will confirm this in writing and the Provider will then be responsible for informing the Purchasers of the assignation date and the details of the assignee.

33.6.8 Where the Providers have Placements with Purchasers, the procedures set out in Clause 30 (Assignation, Disposal, Sub Contracting, change of Control) of the relevant IPT apply.

### 33.7 Factoring Assignee

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

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

33.7.2 The Provider shall notify, or procure that any Factoring Assignee notifies, Scotland Excel and any Purchasers of any variations to the arrangements for payment of the Fees or for handling invoices, in each case in good time to enable Scotland Excel and Purchasers to make arrangements to redirect payments or invoices accordingly. In the absence of such notification, the Purchasers shall be under no obligation to vary their arrangements for payment of the Fee or for handling invoices.

### 33.8 Appointment of Subcontractors

33.8.1 Notwithstanding the generality of Clause 33.1 herein the Provider will not appoint a Subcontractor or change an existing Subcontractor to deliver the part(s) of the Service which are classed as Regulated Work or which require Registration, without the prior consent in writing of Scotland Excel which shall not be unreasonably withheld subject to compliance with the requirements of Clause 6 (Staffing) of the relevant IPT and Clause 21 (Staffing) herein.

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

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

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

33.8.4 Scotland Excel may request such additional information as required to allow it to make its assessment.

33.8.5 Subject to the prompt receipt of such additional information as may be reasonably requested in accordance with this Clause 33, Scotland Excel will advise the Provider of its decision in relation to the appointment of a Subcontractor no more than fourteen (14) Days after the date of receipt of the application referred to in Clause 33.8.2 herein.

33.8.6 Where Scotland Excel consents to the appointment of a Subcontractor, the Provider will:

- i) Be responsible for the performance of and shall be liable to Scotland Excel and Purchasers for the acts and omissions of its Subcontractors;
- ii) Ensure that any Subcontractor appointed complies with the requirements of the Framework Agreement and any IPA entered into thereunder; and
- iii) Ensure that provisions are included in any subcontract in accordance with Clause 30 (Assignment, Disposal, Sub Contracting, Change of Control) of the relevant IPT.

### 33.9 Change of Control

33.9.1 The Provider shall give thirteen (13) weeks' prior written notice to Scotland Excel of a change of Control. In circumstances, where it is not possible to give thirteen (13) weeks' prior written notice, the Provider may give a shorter period of Notice. In such circumstances Notice must be given to Scotland Excel no later than two (2) weeks after the Provider becomes aware of the change of Control.

33.9.2 Where the Provider proposes a change in its Control with the intention of Service continuation, Scotland Excel may require it to provide such further information as it requires, such as that required for assignment in Clause 33.6.2 herein, to determine whether or not the Provider's participation in the Framework Agreement should continue.

33.9.3 Following receipt of notice of a change in Control where Scotland Excel reasonably considers the change of Control will materially and adversely affect the provision of the Service in compliance with the Framework Agreement by the Provider, the Provider's participation in the Framework Agreement may be terminated.

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

34.1 The Provider shall give Scotland Excel thirteen (13) weeks' written Notice of its intention to close or substantially reconfigure the Service.

## **35 Breach and Termination of the Framework Agreement**

35.1 The Provider shall give Notice to Scotland Excel as soon as reasonably practicable if it finds it is unable permanently or temporarily to meet the conditions of the Framework Agreement, and an action plan with timescales shall be agreed by both Parties.

35.2 Breach & Remedial Action Plan



- 35.2.1 Where either Scotland Excel or the Provider considers the other to be in Breach of the Framework Agreement, the Party not in Breach will be required to notify the details of the Breach to the other Party who shall use all reasonable endeavours to rectify the Breach within fourteen (14) Days of Notification of the Breach.
- 35.2.2 Where the Party served with the foregoing Notice disputes the fact of the Breach, the procedures set out in Clause 26 (Resolution of Disputes) shall be followed.
- 35.2.3 If the Party in Breach is unable to rectify the Breach to the reasonable satisfaction of the other Party within the said fourteen (14) Days the matter shall be referred to the relevant Nominated Officers of each Party, who shall use best endeavours to reach a resolution of the matter within fourteen (14) Days.
- 35.2.4 If the Nominated Officers fail to resolve the matter within the said fourteen (14) Days, a meeting of both Parties shall be convened within seven (7) Days involving senior officers with line management responsibility for the Nominated Officers in order to reach a solution or formulate a Remedial Action Plan with appropriate timescales for rectification of the Breach.
- 35.2.5 Where a Remedial Action Plan cannot be agreed between the Parties or if the agreed Remedial Action Plan is not given effect timeously to the reasonable satisfaction of the Party not in Breach then the procedures set out in Clause 26 (Resolution of Disputes) shall be invoked.
- 35.3 Material Breach – Capable of Remedy
- 35.3.1 Where a Party has committed a Material Breach of Framework Agreement that is capable of remedy, the Party who is not in Material Breach may serve a written Notice on the Party in Material Breach giving that Party a fixed period in which to remedy the Material Breach. The period given shall be determined at the sole discretion of the Party serving the Notice, but must be reasonable given the particular circumstances and is always subject to a minimum period of two (2) weeks and a maximum of thirteen (13) weeks.
- 35.3.2 Where a Service is awarded Care Inspectorate grades of two (2) or below this will be treated as a Breach capable of remedy under this Clause 35.3.
- 35.4 Material Breach – Irremediable

- 35.4.1 Without prejudice to the rights and remedies for Breach or Material Breach of the Framework Agreement otherwise available to them under the Framework Agreement or at common law or under statute and without prejudice to Scotland Excel's obligations under the Framework Agreement, Scotland Excel and the Provider shall each have the right, such right being exercised at their absolute discretion to serve written Notice on the Nominated Officer of the other Party to terminate the Providers participation in the Framework Agreement if the other Party has committed a Material Breach of this Framework Agreement which is not capable of remedy, or if capable of remedy, has not been remedied to the reasonable satisfaction of the Party serving the Notice within the period specified in the Notice.
- 35.4.2 Where Material Breach occurs as defined in Clause 35.15 herein, termination may take effect immediately, or within such alternative period as the parties shall mutually agree. Termination of IPAs will be in accordance with Clause 27 (Breach and Termination) of the relevant IPT.
- 35.5 Without prejudice to other rights and remedies Scotland Excel may have for Material Breach of the Framework Agreement available to them under the Framework Agreement or at common law or under statute:
- 35.5.1 If the Care Inspectorate gives Notice to the Provider of a proposal to cancel the Registration or if the Care Inspectorate has made Summary Application to the Sheriff for an Order cancelling the Registration then Scotland Excel may, but shall not be bound, to terminate the Providers participation in this Framework Agreement and the Purchaser may, but shall not be bound, to terminate any Child or Young Person's Placement in accordance with Clause 27 (Breach and Termination) of the relevant IPT without Notice, irrespective as to whether or not the Provider has made representations to the Care Inspectorate about the cancellation or the period for making such representations has elapsed or the Summary Application to the Sheriff is being opposed.
- 35.6 Scotland Excel shall advise all Purchasers and the Care Inspectorate of any Material Breach of Framework Agreement by the Provider.
- 35.7 Scotland Excel shall advise all Purchasers of any Material Breach of an IPA where notification from a Purchaser has been received in accordance with this Clause 35.
- 35.8 Where a Provider is in Material Breach of any IPA with a Purchaser(s) and the relevant Purchaser has given Notice of their intention not to make further Placements with that Provider under Clause 29 (Notices) of the relevant IPT, Scotland Excel may terminate the Provider's participation in the Framework Agreement at the sole discretion of Scotland Excel.
- 35.9 Where the Provider's participation in the Framework Agreement is terminated because of Breach, Placements shall be considered in accordance with Clause 27 (Breach and Termination) of the relevant IPT.
- 35.10 Where the Provider is in Breach, the Purchasers may assist the Provider in continuing to provide or improve the Service to the Child or Young Person in order to meet the best interests of the Child or Young Person, or where the Provider's inability to perform the Service is of a temporary nature. Scotland Excel may co-ordinate information sharing between Purchasers as appropriate under such circumstances subject to Law and Guidance. Such assistance by the Purchaser shall not be regarded as a waiver of any Breach of the Provider's obligations under this Framework Agreement. The Fees for the Service during this period shall be subject to negotiation, and may be reduced to reflect the reduction in Service for the relevant period.

35.11 Termination of the Framework Agreement shall not prejudice the rights of either Party that have arisen on or before the date of termination.

35.12 Where the Provider receives Notice of termination of its participation in the Framework Agreement, it must take the following action as soon as possible and no later than the expiry date of said Notice:-

- i) All information provided to the Provider by Scotland Excel must be returned in whatever format the Parties shall agree;
- ii) All information provided to the Provider by a Purchaser must be returned to the respective Purchaser in relation to Children or Young People in Placement in accordance with the IPT;
- iii) The Provider must provide to Scotland Excel an updated report relative to the monitoring information sought in accordance with Clause 25 (Management and Monitoring Arrangements) herein, in such format as Scotland Excel may determine.

35.13 The termination of this Framework Agreement howsoever arising is without prejudice to the rights, duties and liabilities of any Party accrued prior to termination (subject as otherwise expressly provided in this Framework Agreement). Those rights shall include the right of Scotland Excel or Purchaser or the Provider as the case may be to claim damages against the other Party arising out of that Party's Material Breach of the Framework Agreement. The Clauses of this Framework Agreement which expressly or impliedly have effect after termination will continue to be enforceable notwithstanding termination.

35.14 The following are Material Breaches of the Framework Agreement by Scotland Excel:

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

35.15 The following are Material Breaches of Framework Agreement by the Provider:

- i) Serious non-compliance with the provisions of the Health and Safety at Work etc. Act 1974;
- ii) Operation of the Service without insurance cover in accordance with Clause 22 (Indemnity and Insurance) herein;
- iii) Non-compliance with the requirements of the Equality Act 2010;
- iv) Abuse or neglect of any Child or Young Person; where the Provider fails to notify the Purchaser if they are made aware that anyone working for the Provider or living in the premises of Placement is convicted of a Schedule 1 offence under the Criminal Procedure (Scotland) Act 1995 or is placed on the Sex Offenders Register (unless the Services offered specialise in the Placement of Schedule 1 offenders); and where the Provider fails to notify the Purchaser if they are made aware that anyone working for the Provider has any allegations made against them of a serious nature;
- v) The Provider ceasing to carry on the whole of its business; or disposing of all of its assets (other than in terms of this Framework Agreement); or becoming the subject of a voluntary arrangement under Section 1 of the Insolvency Act 1986; or being unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986; or having a receiver, liquidator (other than for the purposes of reconstruction or amalgamation), administrator or administrative receiver appointed over all or any material part of its undertakings, assets or income; or having a winding up order made in respect of it; or entering into administration; or a resolution for its winding-up being passed by creditors or members; or having a judicial factor appointed; or

- being apparently insolvent or sequestrated; or signing a trust deed for creditors; or entering into a composition with creditors; or entering into a debt arrangement scheme; or being the subject of any process or event similar or analogous to the events specified above in any jurisdiction outside Scotland;
- vi) Offering any improper inducements or exerting unreasonable pressure upon any person to encourage them or persons whom they represent to be placed in the Service;
  - vii) Being convicted of an offence under the provisions of Part 5 of the Public Services Reform (Scotland) Act 2010;
  - viii) Committing any offence under the Bribery Act 2010;
  - ix) Giving any undisclosed or illicit fee or reward to any elected member or officer of Scotland Excel or Purchasers in order to secure an unfair gain or advantage;
  - x) Failing to comply with the assignation process as set out in Clause 33 (Assignation, Disposal, Sub Contracting, Change of Control) herein;
  - xi) Corruption or Collusion as set out at Clause 37 (Corruption & Collusion) herein;
  - xii) Fraud as set out at Clause 38 (Prevention of Fraud) herein;
  - xiii) Conflict of interest as set out at Clause 39 (Conflicts of Interest) herein;
  - xiv) Breach of obligations set out at Clause 4 (Provider's Obligations) herein;
  - xv) Breach of obligations set out at Clause 5 (Statutory Obligations) herein;
  - xvi) In the event of any action being necessary in accordance with Clause 40.2 (Business Continuity) herein;
  - xvii) The issue by the Care Inspectorate of an 'improvement notice' regardless of any appeal/review or equivalent process begun by the Provider;
  - xviii) Where the Provider fails to meet the reasonable requirements of any relevant Regulatory Bodies, including the Care Inspectorate, and unreasonably fails to put in place an agreed action plan between the Provider and any relevant Regulatory Bodies to put this right, or the Provider unreasonably fails to meet the requirements of said agreed action plan within a reasonable period of time; or
  - xix) The Provider committing a Breach of any of its obligations under this Framework Agreement which materially and adversely affects the performance of the Framework Agreement or provision of the Service or the Provider committing a series of Breaches of any of its obligations under this Framework Agreement the cumulative effect of which is to materially and adversely affect the performance of the Framework Agreement or provision of the Service.

### 35.16 Termination by Notice

35.16.1 Either Party may give Notice to the other of the termination of its participation in the Framework Agreement. Such Notice must be provided in writing, in advance, and will take effect on the date specified in the Notice which shall be no less than ninety (90) Days from the date on which the Notice was given. For the avoidance of any doubt any IPA may continue beyond the Duration of the Framework Agreement in accordance with Clause 29 (Arrangements for Placements Extending Beyond the Duration of the Framework Agreement).

35.17 Nothing in this Clause shall limit the nature and extent of acts considered by a court of law or otherwise to be Material Breaches of this Framework Agreement. No granting of time or period of Notice under this Clause shall be deemed to be a waiver of any right the Party granting time or giving Notice may have against the other Party in respect of the other Party's Material Breach of this Framework Agreement.

## **36 TUPE**

- 36.1 Without prejudice to the Provider's obligations under the Transfer of Undertakings (Protection of Employment) Regulations 2006 ("TUPE") , at any time within twenty (20) Working Days of being requested to do so by Scotland Excel, the Provider shall fully and accurately disclose to Scotland Excel all "employee liability information" as defined by TUPE .
- 36.2 The Party providing information under this Clause 36 will not unreasonably withhold or delay the provision of information requested and will not knowingly do or omit to do anything that may adversely affect an orderly transfer of responsibility for provision of the Service.
- 36.3 The Provider will indemnify Scotland Excel and/or any successor provider against all reasonable costs, expenses and liabilities incurred as a result of any claim made by any employee of the Provider prior to being transferred under TUPE in relation to the expiry or termination of this Framework Agreement or any IPA in respect of his/her employment with the Provider, or any breach TUPE by the Provider, arising out of or in consequence of the supply of false, inaccurate or incomplete employee liability information in response to a request by Scotland Excel under Clause 36.1, provided that the Provider will in any such case be given the opportunity at its own cost to defend or settle any such claim.

## **37 Corruption and Collusion**

- 37.1 Scotland Excel shall be entitled to terminate a Provider's participation in the Framework Agreement and a Purchaser will be entitled to terminate any IPA entered into under it with immediate effect and to recover from the Provider the amount of any loss resulting from such termination if:
- i) The Provider, its representative, associate, affiliated companies, subsidiary, related companies or organisations (whether with or without the knowledge of the Provider) have practised collusion in tendering or refraining from tendering for the Framework Agreement or any IPA or any other contract with Scotland Excel or Purchaser or have employed any corrupt or illegal practices either in the obtaining or the carrying out of the Framework Agreement or any IPA or any other contract; or
  - ii) The Provider or any person employed by or acting on behalf of the Provider (whether or not with the Provider's knowledge) has offered or given or agreed to give, to any person any gift or consideration of any kind as an inducement or reward for doing or refraining from doing any act in relation to the obtaining or carrying out of the Framework Agreement or providing the Service or for showing or refraining from showing favour or disfavour to any person in relation to the Framework Agreement or any other contract with Scotland Excel or Purchaser or if in relation to any contract with Scotland Excel or Purchaser the Provider or any person employed by or acting on behalf of the Provider has committed an offence under the Prevention of Corruption Acts 1889 to 1916 or shall have given any fee or reward, the receipt of which is an offence under sub-section (2) of section 68 of the Local Government (Scotland) Act 1973.
- 37.2 The Provider shall comply with all the requirements of the Bribery Act 2010 and any form of Guidance issued in respect of the Bribery Act 2010. Scotland Excel reserves the right to cancel the Framework Agreement and, where relevant, the Purchaser reserves the right to cancel any IPA entered into there under, without incurring any penalty whatsoever and to recover from the Provider the amount of any loss resulting from such cancellation if the Provider or his representative (whether with or without the knowledge of the Provider) shall have acted in a manner contrary to the requirements under the Bribery

Act 2010 in respect of any direct or indirect business carried out for the purposes of the Framework Agreement or any IPA entered into there under.

## **38 Prevention of Fraud**

- 38.1 The Provider shall take all reasonable steps, in accordance with Good Social Care Practice, to prevent any Fraud by Staff or anyone else involved in provision of the Service and the Provider (including its shareholders, members and directors) in connection with the receipt of monies from the Purchaser.
- 38.2 The Provider shall notify Scotland Excel immediately if it has reason to suspect that any Fraud has occurred or is occurring or is likely to occur.
- 38.3 If the Provider or its Staff commits Fraud in relation to the Framework Agreement:
- i) Scotland Excel may terminate the Provider's participation in the Framework Agreement and recover from the Provider the amount of any loss suffered by Scotland Excel resulting from the termination, including (where relevant) the costs reasonably incurred by arranging for the supply of Services and any additional expenditure incurred as a result of the Provider's Fraud;
  - ii) The Purchaser may terminate the IPA and recover from the Provider the amount of any loss suffered by the Purchaser resulting from the termination, including the costs reasonably incurred in arranging an alternative placement and any additional expenditure incurred as a result of the Provider's Fraud in relation to a Placement; and/or
  - iii) The Purchaser will recover in full from the Provider any loss sustained in consequence of any Breach of this condition.

## **39 Conflicts of Interest**

- 39.1 The Provider shall take appropriate steps to ensure that neither the Provider nor any member of Staff, agent or supplier is placed in a position where in the reasonable opinion of Scotland Excel there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Provider or such persons and the duties owed to Scotland Excel under the provisions of the Framework Agreement. The Provider will disclose to Scotland Excel full particulars of any such conflict of interest which may arise within fourteen (14) Days of the matter coming to the attention of the Provider.
- 39.2 Scotland Excel reserves the right to terminate the Provider's participation in the Framework Agreement immediately by notice in writing and/or to take such other steps it deems necessary where, in the reasonable opinion of Scotland Excel there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Provider and the duties owed to Scotland Excel under the provisions of the Framework Agreement.
- 39.3 Where there is a conflict of interest in accordance with the provisions of this Clause 39, IPAs may be terminated by the Purchaser in accordance with Clause 27 (Breach and Termination) of the relevant IPT.

## **40 Force Majeure and Business Continuity**

### **40.1 Force Majeure**

- 40.1.1 If either Party to this Framework Agreement cannot perform any of its obligations when they are due to be performed because of Force Majeure (as defined in Clause 40.1.3 below), and if such Party gives written notice to the other Party specifying the circumstances constituting Force Majeure together with

such evidence as it reasonably can give and specifying the period for which it is estimated that these circumstances shall continue, then the Party in question shall be excused the performance or the practical performance as the case may be of the contractual obligations which are affected by Force Majeure from the date on which it became unable to perform and for so long as Force Majeure continues, subject to the provisions of Clause 40.1.2 herein.

40.1.2 If the period of Force Majeure exceeds fifty-six (56) Days either Party may immediately terminate the Provider's participation in this Framework Agreement.

40.1.3 For the purposes of this Framework Agreement "Force Majeure" shall be deemed to be any circumstances affecting the performance of this Framework Agreement arising from or attributable to acts, events, omissions or accidents beyond the reasonable control of the Party to perform.

#### 40.2 Business Continuity

40.2.1 The Provider shall maintain a business continuity plan, which takes account of the supports reasonably expected to be available from statutory authorities including but not limited to, the civil and emergency planning provisions within the local authority area. The Provider shall provide a copy to Scotland Excel on request. The Provider shall notify Scotland Excel as soon as reasonably practicable of the activation of said plan.