

Schedule 3- PDPS Terms and Conditions and Call-Off Procedure

DATED

**PSEUDO DYNAMIC PURCHASING AGREEMENT FOR THE PROVISION OF CARE LEAVER AND
YOUNG HOMELESS SUPPORTED ACCOMMODATION**

between

LANCASHIRE COUNTY COUNCIL

and

[SERVICE PROVIDER]

PDPS

THIS PDPS is made the _____ day of _____ 20____

BETWEEN

THE PARTIES

(1) **Lancashire County Council** whose principal place of business is at P.O. Box 78, County Hall, Preston, PR1 8XJ (the "Council") and

(2) **[NAME OF PROVIDER]** (Company registration number [XXXXXXX]) of [registered office address of provider] ("the Provider").

BACKGROUND

- (A) The Council published a contract notice in the Official Journal of the European Union seeking Requests to Participate from prospective providers for the provision of Care Leaver and Young Homeless Supported Accommodation Services under various Categories under a PDPS.
- (B) On the basis of the Provider's Request to Participate, the Council admitted the Provider onto the PDPS to enable it to bid for the Categories on a call-off basis.
- (C) All providers applying to join the PDPS indicated in their Requests to Participate that they would comply with all relevant legislation, codes of conduct and regulations governing the subject matter of the PDPS.
- (D) This Agreement sets out the award and ordering procedure for contracts for Care Leaver and Young Homeless Supported Accommodation Services which may be required by the Council, details of the terms and conditions applicable to any Call-Off Contract, and the obligations on the Provider during and after the validity period of the PDPS.

IT IS AGREED as follows:-

1. INTERPRETATION AND NOTICES

1.1 Unless the context otherwise requires, the following words and expressions shall have the following meanings:-

"Agreement" means this means this Agreement together with all schedules and appendices attached hereto

"Auditor" means the National Audit Office or an auditor appointed by the Audit Commission as the context requires.

"Business Day" means 9:00a.m – 5:00p.m on any day (other than a Saturday, Sunday or a public holiday) when banks in London are open for business.

"Call-Off Contract" the legally binding agreement (made pursuant to the provisions of this PDPS) for the provision of Services made between the Council and the Provider comprising:

- (i) the Care Plan/ Pathway Plan/ Support Plan and/or the Individual Placement Agreement;
(ii) the Call-Off Terms and Conditions relevant to that Category; and
(iii) the Tender

"Call-Off Procedure" means the method in which Call-Off Contracts are awarded to providers as set out at Schedule 3;

"Call-Off Terms and Conditions" the terms and conditions at Schedule 1 as applicable to each Category;
 "Care Plan/ Pathway Plan/ Support Plan" means the individualised support requirements of the Service

User;
 User;

"Categories" means the Services divided into Categories as referred to in the OJEU Notice.

"Category Preference Form" means the form supplied to the Provider to enable the Provider to indicate which Categories it would like to receive notifications about.

"Change of Control" means a change of control within the meaning of section 1124 of the Corporation Tax Act 2010.

"Commencement Date" means [REDACTED]

"Confidential Information" means:-

(a) any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information which would or would be likely to prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights, know-how of either Party and all personal data and sensitive personal data within the meaning of Data Protection Legislation; and

(b) commercially sensitive information

"Data Protection Legislation" means (i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the Data Protection Act 2018 to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy

"EIR" means The Environmental Information Regulations 2004.

"FOIA" means The Freedom of Information Act 2000.

"Fraud" means any offence under Laws creating offences in respect of fraudulent acts or at common law in respect of fraudulent acts in relation to this Agreement or defrauding or attempting to defraud or conspiring to defraud the Council.

"Homeless Family" means families, including couples or single people who are pregnant, aged 16 years or over who are homeless and require additional support to be able to develop the skills required to access or maintain accommodation.

"Individual Placement Agreement (IPA)" means:

(a) in relation to Category 6, a document setting out details of a request for the Services following the Call-Off Procedure; and

(b) in relation to the other Categories, a document which may be agreed between the Council and the Service Provider (determined at the Council's sole discretion) detailing key terms relating to the Service User's admission to the Location to receive the Services between the Council and the Provider;

Template IPA's are included at Schedule 2.

"Information" has the meaning given under Section 84 of the Freedom of Information Act 2000.

"Information Sharing Protocol" shall mean the policy in place between the Council and other public bodies which permits the sharing of information about the Provider and other providers relating to concerns about the Services (including safeguarding concerns), the accommodation provided or the Provider itself. A template Information Sharing Protocol is provided at Schedule 5 and any revisions to the same shall be provided to the Service Provider by the Council.

"Intellectual Property Rights" means patents, inventions, trademarks, service marks, logos, design rights (whether registrable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registrable or not in any country (including the United Kingdom) and the right to sue for passing off.

"Invitation to Tender" the Council's invitation to tender for the Services including all the Schedules and Appendices thereto;

"Law" any applicable Act of Parliament, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, enforceable community right within the meaning of Section 2 of the European Communities Act 1972, regulatory policy, statutory guidance or statutory code, judgment of a relevant court of law, or directives or requirements of any Regulatory Body;

"Location" means the area where the Services are provided;

"Minimum Building Standards" means the minimum building standards required of buildings offered by the Provider in the provision of the Services as set out within the accommodation suitability checklist at Schedule 4;

"Month" means a calendar month.

"OJEU Notice" means the contract notice [REDACTED] published in the Official Journal of the European Union

"Order" shall be an order for Services served by the Council on a Provider. An Order shall be served by the issuance of the Call-Off Terms and Conditions in respect of Categories 1-5, an IPA in respect of Category 6, or a revised IPA where there is a transfer of a Service User between Categories;

"Party" the Council and the Provider;

"PDPS" means the system established in accordance with regulation 34 of the Public Contracts Regulations 2015 to which this Agreement relates.

"Personnel" all directors, officers, employees, agents, consultants and providers of the Provider and/or of any Sub- Contractor engaged in the performance of its obligations under this Agreement;

"Prohibited Act" to directly or indirectly offer, promise or give any person working for or engaged by the Council a financial or other advantage to:

- (a) induce that person to perform improperly a relevant function or activity; or reward that person for improper performance of a relevant function or activity;
- (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this PDPS;
- (c) committing any offence:
 - (i) under the Bribery Act 2010;
 - (ii) under legislation creating offences concerning fraudulent acts;
 - (iii) at common law concerning fraudulent acts relating to this PDPS or any other contract with the Council; or
 - (iv) defrauding, attempting to defraud or conspiring to defraud the Council.

"Providers" the organisations who have been appointed under the PDPS and where applicable this shall include the Provider's employees, Sub-Contractor, agents, representatives, and permitted assigns and, if the Provider is a consortium or consortium leader, the consortium members;

"Provider Visit Template" means a document completed by the Authority detailing the outcome of a visit by the Authority of the Services provided by the Provider at a Location. A template Provider Visit Template is set out at Schedule 5;

"Regulations" The Public Contracts Regulations 2015;

"Regulatory Bodies" means those government departments and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this PDPS or any other affairs of the Council.

"Requests for Information" means a request for information or an apparent request under the FOIA or the Environmental Information Regulations.

"Request to Participate" means the submission by a potential provider in response to the OJEU Notice seeking admission onto the PDPS.

"Services" the services described in the Invitation to Tender, to be supplied by the Provider where appointed in accordance with the PDPS and Call-Off Procedure;

"Service Specifications" the document detailing the Services to be delivered by the Provider in respect of each Category as set out at Schedule 4;

"Service User" means Young People, Homeless Families, or such other category of persons set out in the Service Specification;

"Subcontract" any contract between the Service Provider and a third party pursuant to which the Service Provider agrees to source the provision of any of the Services from that third party.

"Sub-Contractor" means the Providers or service providers that enter into a Subcontract with the Service Provider.

"Tender" the Provider's tender for the Services in response to an Invitation to Tender;

"Term" means the period commencing on the Commencement Date and ending on [REDACTED] or on earlier termination of this Agreement unless the Agreement is extended on more than occasion in accordance with the Regulations, save that the length of the PDPS shall not exceed 10 years.

"Termination Date" means the date of expiry or termination of this PDPS;

"Working Days" means any day other than a Saturday, Sunday or public holiday in England and Wales.

"Year" means a calendar year.

"Young Person" means one of the following:

- (a) 16-21 year olds who are homeless or are threatened with homelessness, or
- (b) 16-24 year olds who are either a Child Looked After or a Care Leaver.

1.2 The interpretation and construction of this PDPS shall be subject to the following provisions:-

1.2.1 words importing the singular meaning include where the context so admits the plural meaning and vice versa;

1.2.2 words importing the masculine include the feminine and the neuter;

1.2.3 the words "include", "includes" and "including" are to be construed as if they were immediately followed by the words "without limitation";

1.2.4 references to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;

1.2.5 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;

1.2.6 headings are included in this PDPS for ease of reference only and shall not affect the interpretation or construction of this PDPS;

1.3 Any notice required by this PDPS to be given by either party to the other shall be in writing and shall be served personally, by fax or by sending it by registered post or recorded delivery to the appropriate address or fax number notified to each other in writing.

1.4 Any notice served personally will be deemed to have been served on the day of delivery; any notice sent by post will be deemed to have been served 48 hours after it was posted and any notice sent by fax will be deemed to have been served 24 hours after it was despatched and otherwise on the following day save where the deemed date of service falls on a day other than a Business Day in which case the date of service will be the following Business Day.

1.5 The required Services for each Service User will be detailed in their Care Plan/ Pathway Plan/ Support Plan or Individual Placement Agreement.

AGREEMENT PERIOD

This PDPS shall take effect on the Commencement Date and (unless it is otherwise terminated in accordance with the terms of this Agreement or it is otherwise lawfully terminated) shall terminate at the end of the Term.

The Council shall be entitled to extend this Agreement on one or more occasions, save that the length of this PDPS shall not exceed 10 years.

Clause 2.1 shall not apply to any Call-Off Contract made under this PDPS which is due to expire after the end of the Term which shall expire in accordance with the terms of that Call-Off Contract.

WARRANTIES

The Provider warrants to the Council that:

it has full power and authority to enter into this PDPS and any Call-Off Contract and all governmental or official consents and all necessary consents have been obtained and are in full force;

all obligations of the Provider pursuant to this Agreement and under any Call-Off Contract shall be performed by appropriately experienced, certified, qualified and trained staff with all due skill, care and diligence;

it will ensure that it and all its staff, agents, subcontractor, self-employed staff or personnel employed in connection with the Services will comply with all applicable Laws governing the delivery of the Services;

any accommodation that it supplies in relation to the provision of the Services shall meet or exceed the Minimum Building Requirements;

this Agreement is executed by a duly authorised representative of the Provider;

in entering into this Agreement or any Call-Off Contract it has not committed any Fraud;

as at the Commencement Date, all information, statements and representations contained in the Request to Participate (including statements made in relation to the exclusion grounds referred to in regulation 57 of the Regulations and compliance with the Minimum Building Requirements) are true, accurate, and not misleading save as may have been specifically disclosed in writing to the Council prior to the execution of this Agreement and it will promptly advise the Council of any fact, matter or circumstance of which it may become aware which would render any such information, statement or representation to be false or misleading;

no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might affect its ability to perform its obligations under this Agreement and/or any Call-Off Contract which may be entered into with the Council;

it is not subject to any contractual obligation, compliance with which is likely to have an effect on its ability to perform its obligations under this Agreement and/or any Call-Off Contract which may be entered into with the Council;

no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Provider or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Provider's assets or revenue;

in the three (3) years prior to the date of this Agreement:-

it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;

it has been in full compliance with all applicable securities laws and regulations in the jurisdiction in which it is established; and

it has not performed any act or omission with respect to its financial accounting or reporting which could have an adverse effect on the Provider's position as an ongoing business concern or its ability to fulfil its obligations under this Agreement;

3.1.11 it shall perform any Call-Off Contract awarded under this PDPS in a conscientious and timely manner in accordance with any standards set out in this Agreement and the Call-Off Contract awarded under it or as is otherwise reasonably required by the Council;

3.1.12 it shall notify the Council immediately of any circumstances relating to the Provider and/or the Council concerning the Services of which the Provider is aware or anticipates which may justify the Council taking action to protect its interests (including its reputation and standing);

The warranties set out in this clause 0 are given on the execution of this PDPS and repeated on every day during the term of this PDPS and/or any Call-Off Contract.

CALL-OFFS

The Council appoints the Provider as a potential supplier of the Categories and the Provider shall be eligible to be considered for the award of Orders for such Services by the Council during the Term.

When admitted to the PDPS, the Provider shall be eligible to be considered for all Categories. The Provider shall complete a Category Preference Form to indicate which Categories it would like to receive notifications about.

In the circumstances where the Provider wishes to amend the notifications it receives in relation to Categories, it shall submit a new Category Preference Form to the Council. The Council shall update its records in this regard within 14 Working Days of notification.

Where the Council has identified a need for Services, it shall award the Call-Off Contract in accordance with the Call-Off Procedure set out in Schedule 3.

The Provider acknowledges that, in entering this PDPS, no form of exclusivity or volume guarantee has been granted by the Council for Services from the Provider and that the Council is at all times entitled to enter into other contracts and agreements with other Providers for the provision of any of the Services.

Where a Service User is placed with a Provider under a Category which the Council subsequently determines is not meeting the Service User's assessed needs, the Council may transfer the Service User to another Category with the same Provider, provided the Provider is appointed to the PDPS for that Category, without the need to conduct a further competition.

Where a transfer between Categories takes place in accordance with Clause 4.8, the Council shall place an Order by serving a new IPA on the Provider to reflect the change in Services.

TERMINATION

The Council or Provider may terminate this PDPS upon the provision of no less than six (6) months written notice to the other. Following termination under this Clause 0 the Provider shall no longer be invited to submit bids for Services.

The Council may terminate this Agreement by serving written notice on the Provider with effect from the date specified in such notice where:-

the Provider is using staff that are not appropriately experienced, certified, qualified and trained in the delivery of the types of Services which the PDPS relates;

the Provider and/or its staff, agents, subcontractor, or personnel employed by the Provider in connection with the Agreement have failed to comply with any applicable Laws;

The Minimum Building Standards are no longer being met in respect of all of the Locations and the Provider is unable to source any new locations from which the Services could be provided.

Subject to the Council sharing any information in its possession concerning the financial standing of the Provider and providing the Provider with reasonable opportunity to clarify such information, the Council may terminate this Agreement by serving notice on the Provider in writing with effect from the date specified in such notice where (in the reasonable opinion of the Council), there is or seems likely to occur a material detrimental change in the financial standing and/or the credit rating of the Provider which will or may adversely impact on the Provider's ability to comply with its obligations under the Agreement.

5.4 Without affecting any other right or remedy available to it, the Council may terminate this Agreement with immediate effect by giving written notice to the Provider if:

5.4.1 the Provider suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 **OR** (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 **OR** (being a partnership) has any partner to whom any of the foregoing apply;

5.4.2 the Provider commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of the Provider with one or more other companies or the solvent reconstruction of the Provider;

5.4.3 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Provider (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the Provider with one or more other companies or the solvent reconstruction of the Provider;

- 5.4.4 an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Provider (being a company);
 - 5.4.5 the holder of a qualifying floating charge over the assets of the Provider (being a company) has become entitled to appoint or has appointed an administrative receiver;
 - 5.4.6 a person becomes entitled to appoint a receiver over the assets of the Provider or a receiver is appointed over the assets of the Provider;
 - 5.4.7 the Provider (being an individual) is the subject of a bankruptcy petition or order;
 - 5.4.8 a creditor or encumbrancer of the Provider attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Provider's assets and such attachment or process is not discharged within 14 (fourteen) days;
 - 5.4.9 any event occurs, or proceeding is taken, with respect to the Provider in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 5.4.1 to clause 5.4.8 (inclusive); or
 - 5.4.10 the Provider suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.
- 2.5 The Provider shall notify the Council immediately if the Provider undergoes or anticipates undergoing a change of control within the meaning of section 1124 of the Corporation Tax Act 2010. ("**Change of Control**"). The Council may terminate this Agreement by giving notice in writing to the Provider with immediate effect within six (6) Months of:-

being notified that a Change of Control has occurred; or

where no notification has been made, the date that the Council becomes aware of the Change of Control,

but shall not be permitted to terminate where the Council approved such a change prior to the Change of Control occurring.

The Council reserves the right to terminate the PDPS where:

the contract has been subject to a substantial modification which would have required a new procurement procedure in accordance with regulation 72(9) of the PCR; or

the Provider has, at the time of contract award, been in one of the situations referred to in regulation 57(1) PCR, including as a result of the application of regulation 57(2), and should therefore have been excluded from the procurement procedure; or

the contract should not have been awarded to the Provider in view of a serious infringement of the obligations under the Treaties and the Public Contracts Directive that has been declared by the Court of Justice of the European Union in a procedure under Article 258 of TFEU.

6. CONSEQUENCES OF TERMINATION AND EXPIRY

- 6.1 Notwithstanding the service of a notice to terminate the PDPS under clause 5, the Provider shall continue to fulfil its obligations under the PDPS until the date of expiry or termination of the PDPS or such other date as required under this clause 6.
- 6.2 Termination or expiry of the PDPS shall not cause any Call-Off Contracts to terminate automatically. For the avoidance of doubt, all Call-Off Contracts shall remain in force unless and until they are terminated or expire in accordance with their own terms.
- 6.3 Termination or expiry of this PDPS shall be without prejudice to any rights, remedies or obligations of either Party accrued under this PDPS prior to termination or expiry.

6.4 In the event of any termination of the Agreement, and without prejudice to any other rights (including the right to recover damages) that may accrue to the benefit of the Council under this Agreement or otherwise, the Council shall be entitled to obtain a refund of any monies paid in respect of any Services which have not been supplied by the Provider in accordance with the terms of the Agreement.

6.5 Termination by the Council in relation to one Provider in accordance with clauses 5.2- 5.6 shall not have the effect of automatically terminating a PDPS in place with other providers.

7. SUSPENSION FROM PDPS AND CONSEQUENCES OF SUSPENSION

7.1 A suspension event shall have occurred if the Council reasonably considers that there has been a breach by the Provider of any obligation under this PDPS ("Suspension Event") which for the avoidance of doubt will include circumstances where a Location specified for use by the Provider does not meet the minimum criteria set out in Minimum Building Requirements and the Provider is unable or unwilling to immediately provide the Services at another Location which meets the Minimum Building Requirements.

7.2 Where a Suspension Event occurs the Council may by written notice to the Provider and with immediate effect suspend the Provider from the PDPS, until the Provider demonstrates to the reasonable satisfaction of the Council that it is able to perform the Service, to the required standard if successful in any Tender exercise.

7.3 During the suspension of any Service under this clause 7, the Provider must comply with any steps the Council reasonably specifies in order to remedy the Suspension Event, including where the Council's decision to suspend pursuant to this clause 7 has been referred to dispute resolution under clause 16 (Dispute Resolution).

8. ORDER OF PRECEDENCE

8.1 The Provider shall perform all Call-Off Contracts entered into with the Council in accordance with:-

8.1.1 the requirements of this PDPS; and

8.1.2 the Call-Off Terms and Conditions.

8.2 In the event of, and only to the extent of, any conflict between the terms and conditions of this PDPS, and the Call-Off Terms and Conditions, the application of the Clauses shall prevail in the following order:

i. Call-Off Terms and Conditions;

ii. PDPS.

9. TRANSFER AND SUB-CONTRACTING

9.1 The PDPS is personal to the Provider and the Provider shall not assign, novate or otherwise dispose of the PDPS or any part thereof without the prior written consent of the Council. The Provider shall not be entitled to subcontract any of its rights or obligations under this PDPS.

9.2 The Council shall be entitled to assign, novate, or otherwise dispose of its rights and obligations under the PDPS or any part thereof to any other body (including any private sector body) which substantially performs any of the functions that previously had been performed by the Council provided that such assignment, novation or disposal shall not increase the burden of the Provider's obligations under the PDPS.

10. NOT USED

11. CONFIDENTIALITY

- 11.1 Subject to clause 11.2, the Parties shall keep confidential all matters relating to this PDPS and shall use all reasonable endeavours to prevent their representatives from making any disclosure to any person of any matters relating hereto.
- 11.2 Clause 11.1 shall not apply to any disclosure of information:
 - 11.2.1 required by any applicable law, provided that clause 13 shall apply to any disclosures required under the FOIA or the EIR;
 - 11.2.2 that is reasonably required by persons engaged by a Party in the performance of that Party's obligations under this PDPS;
 - 11.2.3 where a Party can demonstrate that such information is already generally available and in the public domain otherwise than as a result of a breach of clause 11.1;
 - 11.2.4 by the Council of any document to which it is a party and which the Parties to this PDPS have agreed contains no Confidential Information;
 - 11.2.5 to enable a determination to be made under clause 16;
 - 11.2.6 which is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party, and the disclosing party is not under any obligation of confidence in respect of that information;
 - 11.2.7 by the Council to any other department, office or agency of the government, provided that the Council informs the recipient of any duty of confidence owed in respect of the information; and
 - 11.2.8 by the Council relating to this PDPS and in respect of which the Provider has given its prior written consent to disclosure.
 - 11.2.9 information disclosed by the Council to other local authorities under the Information Sharing Protocol or the Provider Visit Template.

13. FREEDOM OF INFORMATION

- 13.1 The Provider acknowledges that the Council is subject to the requirements of the FOIA and the EIR and shall assist and co-operate with the Council (at the Service Provider's expense) to enable the Council to comply with these information disclosure requirements.
- 13.2 The Provider shall and shall procure that its Subcontractors shall:
 - 13.2.1 transfer any Request for Information to the Council as soon as practicable after receipt and in any event within two Working Days of receiving a Request for Information;
 - 13.2.2 provide the Council with a copy of all Information in its possession or power in the form that the Council requires within five Working Days (or such other period as the Council may specify) of the Council requesting that Information; and
 - 13.2.3 provide all necessary assistance as reasonably requested by the Council to enable the Council to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the EIR.
- 13.3 In no event shall the Service Provider respond directly to a Request for Information unless expressly authorised to do so by the Council.
- 13.4 The Provider acknowledges that the Council may (acting in accordance with the Secretary of State for Constitutional Affairs' Code of Practice on the discharge of public authorities' functions under Part 1 of FOIA (issued under section 45 of the FOIA, November 2004) (**Code**)) be obliged under the FOIA or the Environmental Information Regulations to disclose Information:
 - 13.4.1 without consulting with the Provider; or
 - 13.4.2 following consultation with the Provider and having taken its views into account, provided always that where clause 13 applies the Council shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Service Provider advance notice, or failing that, to draw the disclosure to the Service Provider's attention after any such disclosure.
- 13.5 The Service Provider shall ensure that all Information produced in the course of the PDPS or relating to the PDPS is retained for disclosure and shall permit the Council to inspect such records as requested from time to time.
- 13.6 The Service Provider acknowledges that any lists or schedules provided by it outlining Confidential Information are of indicative value only and that the Council may nevertheless be obliged to disclose Confidential Information in accordance with clause 13.

14. PUBLICITY

- 14.1 Unless otherwise directed by the Council, the Service Provider shall not make any press announcements or publicise this PDPS in any way without the Council's prior written consent.
- 14.2 The Council shall be entitled to publicise this PDPS in accordance with any legal obligation on the Council, including any examination of this PDPS by the Auditor or otherwise.
- 14.3 The Service Provider shall not do anything that may damage the reputation of the Council or bring the Council into disrepute.

15. PREVENTION OF BRIBERY

- 15.1 The Provider:
 - 15.1.1 shall not, and shall procure that the Personnel and all Sub-Contractor personnel shall not, in connection with this PDPS and any Call-Off Contract made under it commit a Prohibited Act; and
 - 15.1.2 warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by the Council, or that an agreement has been reached to that effect, in connection with the execution of this PDPS, excluding any arrangement of which full details have been disclosed in writing to the Council before execution of this PDPS.
- 15.2 The Provider shall:
 - 15.2.1 if requested, provide the Council with any reasonable assistance, at the Council's reasonable cost, to enable the Council to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act 2010; and
 - 15.2.2 within 30 Working Days of the Commencement Date, and annually thereafter, certify to the Council in writing (such certification to be signed by an officer of the Provider) compliance with this clause 15 by the Service Provider and all persons associated with it or other persons who are supplying services in connection with this PDPS. The Provider shall provide such supporting evidence of compliance as the Council may reasonably request.
- 15.3 The Provider shall have an anti-bribery policy (which shall be disclosed to the Council) to prevent any Personnel or Sub-Contractors from committing a Prohibited Act and shall enforce it where appropriate.
- 15.4 If any breach of clause 15 is suspected or known, the Provider must notify the Council immediately.
- 15.5 If the Provider notifies the Council that it suspects or knows that there may be a breach of clause 15, the Provider must respond promptly to the Council's enquiries, co-operate with any investigation, and allow the Council to audit books, records and any other relevant documents. This obligation shall continue for 6 years following the expiry or termination of this PDPS.
- 15.6 The Council may terminate this PDPS by written notice with immediate effect if the Service Provider, its Staff or Sub-Contractors (in all cases whether or not acting with the Provider's knowledge) breaches clause 15.
- 15.7 Any notice of termination under clause 15 must specify:
 - 15.7.1 the nature of the Prohibited Act;
 - 15.7.2 the identity of the party whom the Council believes has committed the Prohibited Act;and
 - 15.7.3 the date on which this PDPS will terminate.
- 15.8 Despite clause 16, any dispute relating to:
 - 15.8.1 the interpretation of this clause 15; or
 - 15.8.2 the amount or value of any gift, consideration or commission,shall be determined by the Council and its decision shall be final and conclusive.
- 15.9 Any termination under this clause 15 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Council.

16. DISPUTE RESOLUTION

- 16.1 If a dispute arises between the Council and the Provider in connection with the PDPS, the parties shall each use reasonable endeavours to resolve such dispute by means of prompt discussion at an appropriate managerial level.
- 16.2 If a dispute is not resolved within fourteen (14) days of referral under clause 16.1 then either party may refer it to the Chief Executive or appropriate nominated officer of each party for resolution who shall meet for discussion within 14 days or longer period as the parties may agree.
- 16.3 Provided that both parties consent, a dispute not resolved in accordance with clauses 16.1 and 16.2, shall next be referred at the request of either party to a mediator appointed by agreement between the parties within 14 days of one party requesting mediation with the costs of mediation determined by the mediator.
- 16.4 Nothing in this clause shall preclude either party from applying at any time to the English courts for such interim or conservatory measures as may be considered appropriate.

17. VARIATIONS TO THE PDPS

- 17.1 Any variations to the PDPS must be made in writing and agreed by the Council and all Providers on the PDPS.
- 17.2 Any variation to the PDPS must not amount to a material change in the PDPS or the Services.

18. THIRD PARTY RIGHTS

Except as explicitly provided in this Agreement, a person who is not a party to this agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement. This does not affect any right or remedy of a third party which exists, or is available, apart from that Act.

SEVERANCE

- 19.1 If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this agreement.
- 19.2 If one party gives notice to the other of the possibility that any provision or part-provision of this agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

RIGHTS AND REMEDIES

The rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

WAIVER

No failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

22. ENTIRE AGREEMENT

- 22.1 This PDPS including all Schedules constitutes the entire agreement and understanding between the Parties in respect of the matters dealt with in it and supersedes, cancels or nullifies any previous agreement between the Parties in relation to such matters.
- 22.2 Each of the Parties acknowledges and agrees that in entering into this PDPS it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) other than as expressly set out in this PDPS. The only remedy available to either Party of such statements, representation, warranty or understanding shall be for breach of contract under the terms of this PDPS.
- 22.3 Nothing in this clause 22 shall operate to exclude Fraud or fraudulent misrepresentation.

23. COUNTERPARTS

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

24. LAW AND JURISDICTION

The Parties accept the exclusive jurisdiction of the English courts and agree that the PDPS is to be governed by and construed according to English law.

IN WITNESS WHEREOF this PDPS has been executed as a deed the day and year first before written

THE COMMON SEAL OF
LANCASHIRE COUNTY COUNCIL
 was hereunto affixed
 in the presence of:

)
)
)
)

Authorised Signatory

SIGNED as a deed by
XXXXXXXXXXXXXXXXXX
 acting by a director and its secretary,
 two directors or a director and an
 independent witness

)
)
)
)
)

Director

Director/Secretary

Independent Witness

Name

Address

Occupation

CALL-OFF PROCEDURE UNDER THE PSEUDO DYNAMIC PURCHASING SYSTEM

1. Service Contracts shall be awarded in compliance with the principles of equal treatment and transparency. This Call-Off Procedure outlines the way in which the Authority will formulate and award Service Contracts. This will be carried out in a flexible manner with the intention of providing the best possible support to Service Users whilst at all times in compliance with the principles of equal treatment and flexibility.
2. Specific Requirements
 - 2.1 Service Contracts awarded will be based upon the Service Specification(s) and Service Contract(s). Using the Call-Off Procedure the Authority will refine specific requirements in terms of:
 - (a) The scope;
 - (b) The contracting model;
 - (c) Any specific requirements; and
 - (d) Any other aspect of the proposed Service Contract notified at the point of Call Off, as detailed below:
 - 2.2 *The scope*
 - 2.2.1 The scope will be detailed within the Call-Off where the terms;
 - (a) Will establish which Category/Categories the Service Contract(s) are applicable to.
 - (b) Will establish what Services are to be included in the proposed Service Contract(s) and what Services are to be excluded from the proposed Service Contract(s).
 - (c) Will establish Service Contracts that consist of one of the categories as set out below:
 - (i) A specified number of units and/or placements and/or bed-night places and/or hours, including circumstances where services are to be delivered in a number of flats, tenancies or hybrid provision within a building is the requirement;
 - (ii) Groups of specified numbers of units and/or placements and/or bed-night places and/or hours, including circumstances where Service(s) are to be delivered in a number of flats, tenancies or hybrid service provision, within a number of buildings is the requirement;
 - (iii) A group of named or unnamed individuals (or a combination of named or unnamed individuals), including circumstances where specialist Services for complex behaviours or needs is the requirement;
 - (iv) A single named or unnamed individual including circumstances where specialist Services for complex behaviours or needs is the requirement.
 - (d) Will establish the configuration of Services commissioned in any defined commissioning phase;
 - (e) Will establish the specific district(s), locality/localities, geographical area(s) where Services are to be delivered;

- (f) May establish Service Contracts with defined provision to flexibly increase or decrease to service volumes or commissioning budget, align to legislative requirements or evolve Services to meet changing needs of Service User(s) based on criteria communicated at the point of call-off;
- (g) May establish Service Contracts for Services that are associated with named accommodation. Where the proposed Service Contract concerns Services provided at named accommodation the associated accommodation will be identified prior to the Call-Off Procedure commencing;
- (h) May establish Service Contracts for accommodation based Services that are not associated with named accommodation and which the Service Provider is free to select;
- (i) Will establish a Service Contract Commencement Date;
- (j) Will establish the length of Initial Term and any number of extension provisions provided at all times that the length of time the Service Contract is in effect, including any extensions, does not exceed 4 years;

2.3 The *charging model*

2.3.1 The charging model will be outlined, where the terms of the Call-Off;

- (a) Will establish the basis upon which the Charges would be paid for specific services. This could include;
 - (i) Where Charges to be paid are variable based upon actual service volumes delivered, and/or,
 - (ii) Where Charges to be paid have fixed elements that are not based upon actual service volumes delivered;
- (b) May establish the basis for the Charges as;
 - (i) hourly rates,
 - (ii) weekly rates,
 - (iii) annual rates,
 - (iv) fixed rates,
 - (v) flexible rates,
 - (vi) performance related but not limited to payment by results or outcome based,
 - (vii) one off additional costs where applicable,
 - (viii) being set by the Authority,
 - (ix) arising out of further competition between Service Providers with the option to use optimal ceiling and/or floor rates,
 - (x) a predetermined range of rates and/or,
 - (xi) Any combination of these options.
- (c) May establish the proposed Service Contract as being inclusive of appropriate incentive arrangements inclusive of reasonable and attainable targets that are unambiguously agreed between the parties, focussing upon mutually beneficial improvements to the efficiency and efficacy of service delivery, and/or;
- (d) May establish the call-off contract with any combination of the above elements.

2.4 *Specific Requirements*

2.4.1 Where the terms of the Call-Off;

- (a) May identify the Services to be provided with or without the use of Individual Support Plans;
- (b) May identify the type or types of accommodation where the Services are to be provided by the Service Provider(s);
- (c) May identify the accommodation where the Services are to be provided by the Service Provider(s);
- (d) May identify the broad location or geographical area where the Services are to be provided by the successful Service Provider(s); and/or,
- (e) May identify additional selection criteria including, but not limited to, specialist experience or qualifications of staff, in the context of commissioning Services for Service Users with complex needs and/or behaviours.

3. Service Contracts under this arrangement are intended to be awarded in one of the three ways described below. Mini Competition will always be the default method of award, unless in exceptional circumstances Service User choice and Direct Award will be considered.

3.1 Mini-Competition

- (a) Service Providers' responses shall be submitted in writing or by email or by the iSupplier e-tendering system.
- (b) The Authority shall award each Service Contract to the Service Provider that has submitted the best tender on the basis of the award criteria set out in the Mini-Competition documents and other factors that will be taken into consideration include Service User choice, location of accommodation and compatibility with other Service Users. In exceptional circumstances such as in the case of emergency placements Service Contracts may be directly awarded.
- (c) The quality weighting will range from 0-100%. Exact weightings will depend on the complexity and nature of the Services to be delivered and will be published with each Mini Competition.
- (d) The Price Criteria weighting will range from 0-100%.
- (e) Participating Service Providers will then be informed of the outcome of the Mini-Competition.
- (f) In the case of Category 6 the Authority reserves the right to conduct the mini competition in two stages;
 - (i) Stage one will be to establish Quality Criteria. Quality weightings will be as set out in paragraph (c).
 - (ii) Stage two will be to establish Price Criteria. Price Criteria weighting will be as set out in paragraph (d).

3.2 Service User Choice

- (a) For the avoidance of doubt Service User Choice includes decisions taken by the Service User their family or Lancashire County Council as corporate parent or a recognised advocate of the Service User.
- (b) Where a Service User or group of Service Users has indicated a choice of Service Provider to supply all or an element of the Services, and the Authority is satisfied that the proposed Service Contract;
 - (i) Will be held by a Service Provider that will meet the needs of the Service User(s);
 - (ii) Forms part of the Authority's Reasonable Offer; and,
 - (iii) Identifies and refines the contract Scope and the Contracting Model as described by this Call-Off Procedure;
 a Service Contract may be agreed.
- (c) The Authority may only rely upon Service User Choice as a method to award a Service Contract in the event that agreement can be reached between the Authority and Service Provider in respect of the Scope and the Charging Model, and in particular any Service Remodelling Plan.

3.3 Direct Award may be utilised

- (a) If any service specific factors or operational reasons apply including:
 - (i) Where, at the sole determination of the Authority, it would be significantly detrimental to the health or well-being of one or more Service Users to have a change in Service Provider, a direct award may be made to their existing Service Provider for the services that concern their support. It is anticipated that generally, a Service User may exercise their rights to personal choice of Service Provider but in the event that they do not, the Authority reserves the right to directly appoint a Service Provider, acting reasonably at all times.
 - (ii) A Service Provider's previous knowledge of the Service User, where commissioning services to a new Provider would be detrimental to the Service Users wellbeing;
 - (iii) A Service Provider's specialism in respect to providing tailored support for any individual's requirements, means it can be evidenced there is only one Service Provider that is capable of meeting the Service User's requirements;
 - (iv) Location, in respect to the Lancashire Joint Protocol 2017-2020, of Service Provider's service means it can be evidenced there is only one Service Provider that is capable of meeting the Service User's requirements.
 - (v) A Service Provider is chosen in line with a Court Order or Best Interests Decision made by the active professional(s) involved; with regards to a Best Interests Decision;
 - (A) It has been established in accordance with the Mental Capacity Act that the person lacks capacity to make an informed choice about their specific care provider; and
 - (B) The Best Interests Decision must take all relevant factors into account and be recorded formally (including justifiable reasons for choosing a specific Service Provider and evidence as to why other Service Providers are unable to meet the Service User's needs) and in accordance with the definition for Best Interests Decisions.

- (vi) Where a Mini-Competition has taken place and the successful bidder has withdrawn from the contract the Authority reserves the right to directly award the contract to the next highest ranking provider.
 - (vii) Where no response, or no suitable response, has been submitted in response to a Mini-Competition, provided that the initial conditions of the Service Contract are not substantially altered; and/or,
 - (viii) Insofar as is strictly necessary where, for reasons of urgency brought about by events unforeseeable by the Authority, there is insufficient time to undertake a Mini-Competition,
 - (ix) Insofar as is strictly necessary, in the event that the Authority is in the process of undertaking a mini-competition but there is insufficient time to complete that Mini-Competition prior to the expiry of existing arrangements.
- (b) The Charges for any Service Contract established through direct award will be set by the Authority or mutually agreed by the Authority and Service Provider on the basis of an open book accounting exercise.
 - (c) For the avoidance of doubt the Authority will be able to utilise any legitimate vacancy within its existing Service Contracts without the requirement to undertake any of the processes described in the Call-Off Procedure.

3.4 In addition to 3.1, 3.2 and 3.3 above, applicable to Category 6 only, additional matching requirements and pricing criteria will be introduced in order of:

- (a) Needs of the Service User
- (b) Location of placement and compatibility with other Service Users (as appropriate)
- (c) Lowest priced bid once (a) and (b) have been met.

4. Award of Contract(s) outside of the Pseudo Dynamic Purchasing System

In certain situations it may be required for the Authority to commission services outside of this agreement which may be via a competitive tender process or in some circumstances via direct award, including but not limited to the following:

- (a) Services may be directly awarded where, at the sole determination of the Authority, the specific needs of the Service User cannot be met and/or it would be significantly detrimental to the health or well-being of a Service User to have a change in service provider; for the avoidance of doubt it is accepted that the existing Service Provider may not be a Service Provider under this PDPS.
- (b) Services may be directly awarded by placing a Service User within a suitable vacancy/void within an existing Supported Accommodation Tenancy (a tenancy that is supported by a service provider outside of this PDPS and therefore has a separate contractual relationship).

Definitions and Interpretation

The definitions and rules of interpretation in this clause apply in this agreement.

Authority: means Lancashire County Council.

Best Interests Decision: as defined in the Mental Capacity Act.

Charges: the charges which shall become due and payable by the Authority to the Service Provider in respect of the Services in accordance with the provisions of the Service Contract.

Commencement Date: means the date from which a Service Contract commences.

Individual Support Plans: means the individualised plan outlining the support requirements of the Service User.

Initial Term: the period commencing on the Commencement Date and ending on the completion of the Services as more particularly described in Call-Off Agreement.

Services: the services to be delivered by or on behalf of the Service Provider under the Service Contract, as more particularly described in Service Specifications.

Service Contract: the contractual agreement between the Authority and the Service Provider, resulting from the Call-Off Procedure, which establishes the arrangements under which Services will be delivered.

Service Specification: means a description of the Service(s) to be delivered by or on behalf of the Service Provider.

Service User: an individual who is the recipient of Services delivered by the Service Provider.

Service Provider: a contracting entity appointed to the Pseudo Dynamic Purchasing System.