

**DATED**

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**FLEXIBLE AGREEMENT FOR THE PROVISION OF FOSTERING AGENCY PLACEMENTS**

between

**LANCASHIRE COUNTY COUNCIL**

and

**[Name of Provider]**

## Contents

1.	INTERPRETATION AND NOTICES .....	4
2.	AGREEMENT.....	10
3.	WARRANTIES .....	10
4.	CALL-OFFS .....	12
5.	TERMINATION .....	14
6.	CONSEQUENCES OF TERMINATION AND EXPIRY.....	16
7.	SUSPENSION FROM THE AGREEMENT AND CONSEQUENCES OF SUSPENSION.....	16
8.	ORDER OF PRECEDENCE.....	17
9.	TRANSFER AND SUB-CONTRACTING.....	17
10.	OFSTED (OR EQUIVALENT REGULATORY BODY) REQUIREMENTS.....	18
11.	CONFIDENTIALITY .....	19
12.	FREEDOM OF INFORMATION.....	19
13.	PUBLICITY .....	20
14.	EXIT MANAGEMENT.....	20
15.	PREVENTION OF BRIBERY .....	21
16.	DISPUTE RESOLUTION.....	22
17.	VARIATIONS TO THE AGREEMENT.....	22
18.	THIRD PARTY RIGHTS.....	22
19.	SEVERANCE .....	23
20.	RIGHTS AND REMEDIES.....	23
21.	WAIVER .....	23
22.	ENTIRE AGREEMENT .....	23
23.	COUNTERPARTS AND ELECTRONIC EXECUTION .....	23
24.	LAW AND JURISDICTION .....	24
	SCHEDULE 1- CALL-OFF TERMS AND CONDITIONS .....	26

SCHEDULE 2- CALL-OFF PROCEDURE ..... 27

SCHEDULE 3- PROVIDER'S APPLICATION..... 35

SCHEDULE 4 EXIT MANAGEMENT PRINCIPLES ..... 36

SCHEDULE 5 - TIERING SYSTEM..... 38

SCHEDULE 6 – INVITATION TO PARTICIPATE ..... 52

DRAFT

**THIS AGREEMENT** is made the \_\_\_\_\_ day of \_\_\_\_\_ 2022

**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) [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] ("the Provider").

individually the "Party" and collectively the "Parties".

## **BACKGROUND**

- (A) The Council published a PIN Notice(Ref: 2021/S 000-013735 ) on the 17th day of June 2021 and a further contract notice on Find a Tender on the day of 2021 seeking Requests to Participate on a Flexible Agreement "Agreement" from prospective providers for the provision of Fostering Agency Placements.
- (B) On the basis of the Provider's Request to Participate, the Council admitted the Provider onto the Agreement to enable it to bid for Service Contracts which will be allocated to the Provider by the Council and other Contracting Bodies in accordance with the Call-off Procedure.
- (C) All providers applying to join the Agreement 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 Agreement.
- (D) This Agreement sets out the award and ordering procedure for Service Contracts which may be required by the Council or the Contracting Bodies, details of the terms and conditions applicable to any Service Contract, and the obligations of the Provider during and after the validity period of the Agreement.
- (E) It is the Parties' intention that the neither the Council nor the Contracting Bodies have any obligation to award Service Contracts to the Provider under this Agreement or at all.

**IT IS AGREED** as follows: -

### **1. INTERPRETATION AND NOTICES**

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

**"Action Plan"** means the plan that a Provider must provide to the Council where they have been given a compliance notice or Inadequate or Requires Improvement judgement from

Ofsted (or equivalent Regulatory Body) or Adequate or below judgement from The Care Inspectorate (or equivalent Regulatory Body), or a plan which the Provider must provide the Council where a Formal Improvement Notice has been served by the Council.

"**Adequate**" is the judgement given by The Care Inspectorate (or equivalent Regulatory Body) following an inspection of the Provider.

"**Agreement**" means this Flexible Agreement for Fostering Agency Placements together with all schedules and appendices attached hereto.

"**Application**" the submission by an Applicant in Response to the Find a Tender Notice seeking admission onto the Agreement at Schedule 3.

"**Annual Tier Review**" means the review of tiers within each lot of the Flexible Agreement as set in the Invitation to Participate document and Tiering System at Schedule 5.

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

"**Best Interests Decision**" has the meaning set out in the Mental Capacity Act 2005.

"**Call-Off Procedure**" means the method by which Service Contracts are awarded to Providers as set out at Schedule 2.

"**Call-Off Terms and Conditions**" the terms and conditions at Schedule 1 and will apply to any IPA awarded under the Agreement.

"**Care Plan**" means the document drawn up where a Child is receiving Services from the Council, which contains information relating to the Child and their family, and what Services must be provided to meet the needs of the Child in relation to future plans for them.

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

"**Charges**" the charges which shall become due and payable by the Contracting Body to the Provider in respect of the Services in accordance with the provisions of clause 11 of the Service Contract.

"**Child/Children**": means Children and Young People being a CLA placed with a Foster Carer pursuant to the terms of this Agreement and the Service Contract.

"**Children Looked After (CLA)**" means a Child who is looked after by the Council as part of an interim or full call order or voluntarily through Section 20 of the Children Act 1989 updated 2004.

"**Commencement Date**" means the 5th day of May 2022.

"**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 Special Category Data within the meaning of Data Protection Legislation; and
- (b) commercially sensitive information

**"Contracting Authority"**: shall mean any contracting authority as defined in Regulation 2 of the Regulations.

**"Contracting Bodies"** means the Council and such other bodies as are identified and/or described in the Find a Tender Notice.

**"Data Protection Legislation"** means all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR; the Data Protection Act 2018 (DPA 2018) (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (*SI 2003/2426*) as amended and the guidance and codes of practice issued by the Information Commissioner or other relevant regulatory authority and applicable to a Party.

**"EIR"** means The Environmental Information Regulations 2004.

**Exit Management Plan:** the plan to be prepared and delivered by the Provider pursuant to clause 14 and in accordance with the principles set out in Schedule 4 hereto.

**"Find a Tender Notice"** means the contract notice published on [www.find-tender.service.gov.uk](http://www.find-tender.service.gov.uk)

**"Formal Improvement Notice"** this will set out actions that must be delivered in a specific timeframe. It will also detail actions that the Council intends to take if continuing concerns are not addressed in full. This may include a change of Tier position or suspension/ removal from this Agreement.

**"Flexible Agreement Providers/Fostering Providers/Providers"** means the organisations who have been appointed onto the Agreement which has been established in accordance with the Public Contracts Regulations 2015 to which this Agreement relates. 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.

**"FOIA"** means The Freedom of Information Act 2000.

**"Foster Carer"** means a carer who is registered with Independent Fostering Agency and Ofsted (or equivalent Regulatory Body) and/or Care Inspectorate.

**"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.

**"Good"** is a judgement given by Ofsted (or equivalent Regulatory Body) and/or the Care Inspectorate (or equivalent Regulatory Body) following an inspection of a Provider;

**"Inadequate"** is a judgement given by Ofsted (or equivalent Regulatory Body) following an inspection of a Provider.

**"Individual Placement Agreement (IPA)"** means an Agreement whereby the Contracting Body agrees to purchase and the Provider agrees to provide the Services for a Child's individual needs, substantially in the form as set out in Schedule 4 of the Call-Off Terms and Conditions . Contracting Bodies may use a different template from time to time.

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

**"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 Participate"** means the Council's invitation to Providers to participate in the Agreement.

**"Invitation to Tender"** means a Contracting Body's invitation to tender to eligible Fostering Providers to compete in a mini-competition for the award of Services under a Service Contract.

**"Law"** means the laws of England and any other laws or regulations, regulatory policies, guidelines or industry codes which apply to the provision of the Services or with which the Provider must comply.

**"Management Reports"** the reports to be prepared and presented by the Provider in accordance with clause 17 of the Call-Off Terms and Conditions to include a comparison of Achieved Service Levels with the Service Levels in the measurement period in question and measures to be taken to remedy any deficiency in Achieved Service Levels.

**"Material Breach"** means a breach of a material obligation under this Agreement.

**"Minimum Criteria"** means the requirements which must be met by an Provider to be awarded a Flexible Agreement as set in the Invitation to Participate document.

**"Month"** means a calendar month.

**"Offer"** means the Offer from the Provider to deliver the Services.

**"Ofsted"** means the Office for Standards in Education and any equivalent or other government body or agency which performs a similar function within a different geographical area or succeeds or replaces it, or is transferred any of the functions of the Office for Standards in Education, or equivalent government bodies, during the Term.

**"Order"** means an order for Services sent by a Contracting Body to the Provider in accordance with the Call-Off Procedure.

**"Provider's Application"** means the response to the ITP as set out at Schedule 3.

**"Provider's Personnel"** means all directors, officers, employees, other workers, agents and consultants of the Provider and of any Sub-Contractors who are engaged in the provision of the Services from time to time.

**"Placement"** means the act of accommodating a Child in a registered and appropriately matched Foster Carer's household for a period of time.

**"Placement Request"** means a request for Offers from Provider(s) to deliver Placement(s);

**"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;
- (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 Agreement or any other contract with the Council; or
- (iv) defrauding, attempting to defraud or conspiring to defraud the Council.

**"Referral"** means a request for the Provider to place a Child with a Foster Carer pursuant to the terms of the Agreement, Service Contract, which for the avoidance of doubt is done via a Referral Form, which may also be referred to as a Placement Request.

**"Referral Form"** means the form which outlines the needs of the Child to enable a Provider to determine if an available Foster Carer can be suitably matched to the needs of the Child. A Provider is required to respond to the Referral Form with an Offer.

**"Registered Household"** means an approved Foster Carer(s) residence that can provide a Child with a safe and secure foster care placement.

**"Regulations"** means The Public Contracts Regulations 2015 (SI no 102 of 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 Agreement 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 provider in response to the Find a Tender Notice seeking admission onto the Flexible Agreement.

**"Requires Improvement"** is a judgement given by Ofsted (or equivalent Regulatory Body) following an inspection of a Provider.

**"Retained Placement Agreement"** means an agreement whereby the Council agrees to pay a retainer fee for a limited time period to secure the use of a placement within a Registered Household This would be entirely at the Provider's discretion to offer and the Contracting Body's discretion to accept.

**"Services"** the services as more particularly described in the Specification, to be supplied by the Provider where appointed in accordance with this Agreement and the Call-Off Procedure.

**"Service Contract"** the legally binding agreement (made pursuant to the provisions of this Agreement) for the provision of Services made between a Contracting Body and the Provider comprising:

- (i) the Call-Off Terms and Conditions;
- (ii) the IPA;
- (iii) the Tender (where applicable);
- (iiii) the Offer (where applicable)

**"Service User"** means any individual notified by a Contracting Body to the Provider as requiring the Services.

**"Specification"** the document detailing the Services to be delivered by the Provider set out at Schedule 1 of the Call-Off Terms and Conditions.



**"Standard Foster Care Placement"** means the Services as described in Schedule 1 of the Call-Off Terms and Conditions..

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

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

**"Sufficiency Duty"** means each Contracting Body is required to have regard to the benefit of having a number of accommodation providers in their area and a range of accommodation capable of meeting different needs.

**"Tender"** means the documents submitted to the Council by the Provider in response to a mini-competition held by the Contracting Body for the provision of Services.

**"Term"** means the period commencing on the Commencement Date and (unless it is otherwise terminated in accordance with the terms of this Agreement or it is otherwise lawfully terminated ending on the ninth anniversary of the Commencement Date.

**"Termination Date"** means the date of expiry or termination of this Agreement.

**"The Council"** means Lancashire County Council. Where "The Council" is referred to this also includes "Contracting Bodies" (as defined in the Agreement) who are permitted to access the Agreement and to call-off from the Agreement.

**"The Contracting Bodies Placement Finding Service"** means the Access to Resources team or any other team who is responsible for sourcing Placements.

**"UK GDPR"** has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.

**"Working Days"** means 9:00a.m – 5.00pm ( or such other hours as may be agreed in writing with the Council) on any day (other than a Saturday, Sunday or a public holiday) when banks in London are open for business.

**"Year"** means a calendar year.

1.2 The interpretation and construction of this Agreement 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 Agreement for ease of reference only and shall not affect the interpretation or construction of this Agreement;

1.3 Any notice required by this Agreement to be given by either Party to the other shall be in writing and shall be given by electronic mail (confirmed by letter). Notices shall be sent to the Council's Contract Management Team (The Access to Resources Team), Lancashire County Council, PO Box 78, County Hall, Fishergate, Preston, Lancashire, PR1 8XJ Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given two (2) Working Days after the day on which the letter was posted (save with the exception of post delivered by second class, in which case service shall be deemed to have occurred on the third Working Day after posting), or 4 hours, in the case of electronic mail or sooner where the other Party acknowledges receipt of such letters, or item of electronic mail.

## **2. AGREEMENT**

2.1 The Parties agree to comply with the terms of this Agreement in consideration of the payment by each Party to the other of the sum of one pound (£1), the receipt and sufficiency of which is acknowledged by each Party.

2.2 This Agreement 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.

2.3 Clause 2.1 shall not apply to any Service Contract made under this Agreement which is due to expire after the end of the Term which shall expire in accordance with the terms of that Service Contract.

## **3. WARRANTIES**

3.1 The Provider warrants to the Council that:

3.1.1 it has full power and authority to enter into this Agreement and any Service Contract and all governmental or official consents and all necessary consents have been obtained and are in full force;

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

3.1.3 it will ensure that it and all Provider's Personnel, employed in connection with the Services will comply with all applicable Laws governing the delivery of the Services;

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

3.1.5 in entering into this Agreement or any Service Contract it has not committed any Fraud;

3.1.6 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) 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;

- 3.1.7 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 Service Contract which may be entered into with a Contracting Body;
- 3.1.8 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 Service Contract which may be entered into with a Contracting Body;
- 3.1.9 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;
- 3.1.10 in the three (3) Years prior to the date of this Agreement: -
  - a) 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;
  - b) it has been in full compliance with all applicable securities laws and regulations in the jurisdiction in which it is established; and
  - c) 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;
- 3.1.12 it shall perform any Service Contract awarded under this Agreement in a conscientious and timely manner in accordance with any standards set out in this Agreement and the Service Contract awarded under it or as is otherwise reasonably required by the Council or a Contracting Body;
- 3.1.13 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);

3.2 The warranties set out in this clause **Error! Reference source not found.** are given on the execution of this Agreement and repeated on every day during the Term of this Agreement and/or any Service Contract.

#### 4. CALL-OFFS

- 4.1 The Council appoints the Provider as a potential supplier of the Services and the Provider shall be eligible to be considered for the award of Orders for Services by Contracting Bodies during the Term. The Flexible Agreement does not provide any guarantee of Orders or any form of exclusivity to Providers from any of the Contracting Bodies.
- 4.2 When admitted to the Agreement and where the award of a Service Contract for those Services is to be the subject of the Call-Off Procedure, only Providers identified on the relevant Lot and Tier by a Contracting Body, and in accordance with the Call-Off Procedure, as being capable of performing the Services shall be eligible to be considered for Services. For the avoidance of doubt, if a Provider has been suspended they will not be invited to take part in the Call-Off Procedure.
- 4.3 Where a Contracting Body has identified a need for Services, it shall
- a) enter into a Service Contract with the Provider for the Services whose terms will be in accordance with the Call-off Terms and Conditions, as further particularised in the Service Contract; and
  - b) award the Service Contract in accordance with the Call-Off Procedure set out in Schedule 2.
- 4.4 Subject to clauses 4.6 and 4.7 a Contracting Body, when ordering Services under the Agreement using a Placement Request pursuant to paragraph 3 of the Call-Off Procedure, shall:
- a) Identify, in accordance with the Call-Off Procedure, the Providers capable of performing the Service Contract for the Services requirements;
  - b) Seek an Offer from eligible, invited Providers by issuing a Placement Request setting out the Contracting Body's requirements, any other documents as required and a deadline by which the Offer must be submitted;
  - c) evaluate all Offers received by the deadline in accordance with the criteria set out in the Call-Off Procedure;
  - d) (on conclusion of the Offer evaluation process) award a Service Contract to the Provider on the basis of the criteria specified in the Call-Off Procedure.
  - e) prepare and send to the successful Provider via the email (or such other system as the Contracting Body may from time to time employ) a notification of award following which the Provider is required, within twenty (20) days (or any other such timescale as required by the Contracting Body), to respond to the Contracting Body. If the Provider declines to deliver the Services, or does not respond to the notification of award, the notification of award shall lapse and the Contracting Body may award the Service Contract to the next Provider that has submitted the best value suitable Offer (and so on until all Providers decline and the Contracting Body has to re-procure such Services). If a Provider accepts the Contracting Body's notification of award within twenty (20) days (or any other such timescale as required by the Council) or commences performance of the Services then the Provider is deemed to have accepted the invitation and agreed to enter into the Service Contract;
  - f) For avoidance of doubt, the Provider is bound by the Service Contract when either of the following occurs, whichever occurs first:
    - (i) The Provider has accepted the award by the Contracting Body within twenty (20) (or any other such timescale as

required by the Contracting Body) days of award notification.

- (ii) An IPA is signed: or
- (iii) the Placement commences.

4.5 Subject to clauses 4.6 and 4.7 a Contracting Body, when ordering Services under the Agreement using a mini-competition pursuant to paragraph 7 of the Call-Off Procedure, shall:

- a) Identify, in accordance with the Call-Off Procedure, the Providers capable of performing the Service Contract for the Services requirements;
- b) conduct a mini-competition seeking an Offer from eligible, invited Providers by issuing a Referral Form document setting out the Contracting Body's requirements any other documents as required and a deadline by which the Offer must be submitted;
- c) evaluate all Offers received by the deadline in accordance with the criteria set out in the Call-Off Procedure;
- d) (on conclusion of the Offer evaluation process) award a Service Contract to the Provider on the basis of the criteria specified in the Call-Off procedure;
- e) prepare and send to the successful Provider via the email (or such other system as the Contracting Body may from time to time employ) a notification of award following which the Provider is required, within twenty (20) days (or any other such timescale as required by the Contracting Body), to respond to the Contracting Body. If the Provider fails to accept the notification of award within twenty (20) days (or any other such timescale as required by the Contracting Body) and /or notifies the Contracting Body that it declines to deliver the Services the notification of award shall lapse and the Contracting Body may award the Service Contract to the next Provider that has submitted the best value suitable Offer (and so on until all Providers decline and the Contracting Body has to re-procure such Services). If a Provider accepts the Contracting Body's notification of award within twenty (20) days (or any other such timescale as required by the Council) or commences performance of the Services then the Provider is deemed to have accepted the invitation and agreed to enter into the Service Contract;

f) where:

- (i) on receipt of the Provider's response to the Contracting Body's notification of award (where the Provider has accepted the invitation and agreed to enter into the Service Contract); or
- (ii) the Provider commences performance of the Services,

the Contracting Body is deemed to have accepted the Provider's Offer to enter into the Service Contract and the Provider shall provide the Services in accordance with the terms of the Service Contract.

- 4.6 The Contracting Body may make a direct award of a Service Contract (bypassing the mini-competition and/or Placement Request process) where Direct Award is appropriate in the circumstances as further particularised at paragraph 8 of the Call-Off Procedure.
- 4.7 Where a direct award is used to award a Service Contract, pursuant to clause 4.6, the provisions of clause 4.4(e) and (f) shall apply.
- 4.8 The Provider agrees that each Offer submitted by the Provider in relation to any Call-Off for Services held pursuant to this Clause 4 shall remain open for acceptance for sixty (60) days from the specified commencement date for such Services (or such other period specified in the Referral Form and/or Invitation to Tender issued by the Contracting Body in accordance with this Clause 4).
- 4.9 Notwithstanding the fact that the Contracting Body has followed the procedure set out above in this Clause 4 for Services, the Contracting Body may cancel, postpone, delay or end the procedure without awarding a Service Contract. Nothing in this Agreement shall oblige the Contracting Body to award a Service Contract.
- 4.10 The Parties acknowledge and agree that the issue of a Referral Form and Invitation to Tender is an "invitation to treat" by the Contracting Body. Accordingly, the Provider shall submit its Offer as its response to the Contracting Body on the terms of the Service Contract. The Parties shall form a contract by entering into a Service Contract incorporating the Call-Off Terms and Conditions and the Service Contract.
- 4.11 The Provider acknowledges that, in entering this Agreement, no form of exclusivity or volume guarantee has been granted by the Contracting Body for Services from the Provider and that the Contracting Bodies are at all times entitled to:
- a) enter into other contracts and agreements with other providers for the provision of any or all of the Services; or
  - b) enter into other contracts and arrangements with other providers for the provision of services which are the same as or similar to the Services.

## 5. TERMINATION

- 5.1 The Council or Provider may terminate this Agreement upon the provision of no less than six (6) Months written notice to the other. Following termination under this clause **Error! Reference source not found.** the Provider shall no longer be invited to submit Offers for Services nor shall the Provider be eligible for the direct award of Services.
- 5.2 The Council may terminate this Agreement by serving written notice on the Provider with effect from the date specified in such notice where: -
- (a) the Provider is using staff/Foster Carers that are not appropriately experienced, certified, qualified and trained in the delivery of the types of Services to which the Agreement relates;
  - (b) the Provider and/or its staff, agents, Sub-Contractor, or personnel employed by the Provider in connection with the Agreement have failed to comply with any applicable Laws;
  - (c) the Ofsted (or equivalent Regulatory Body) and/or Care Inspectorate standards are not met;
  - (d) the Provider is failing to address the concerns within the Formal Improvement Notice.
  - (e) the Provider no longer meets all the Minimum Criteria of the Agreement.

- 5.3 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 or suspend the Referral or acceptance of Service Contracts with immediate effect by giving written notice to the Provider if:
- 5.4.1 the Provider commits a Material Breach of any term of this Agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 30 calendar days after being notified in writing to do so;
  - 5.4.2 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;
  - 5.4.3 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;
  - 5.4.4 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;
  - 5.4.5 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);
  - 5.4.6 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;
  - 5.4.7 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;
  - 5.4.8 the Provider (being an individual) is the subject of a bankruptcy petition or order;
  - 5.4.9 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;
  - 5.4.10 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
  - 5.4.11 the Provider suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.
- 5.5 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:-

- 5.5.1 being notified that a Change of Control has occurred; or
- 5.5.2 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.

5.6 The Council reserves the right to terminate the Agreement where:

- 5.6.1 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
- 5.6.2 the Provider has, at the time of contract award, been in one of the situations referred to in regulation 57(1) of the Regulations, including as a result of the application of regulation 57(2) of the Regulations, and should therefore have been excluded from the procurement procedure.

## **6. CONSEQUENCES OF TERMINATION AND EXPIRY**

- 6.1 Notwithstanding the service of a notice to terminate the Agreement under clause 5, the Provider shall continue to fulfil its obligations under the Agreement until the date of expiry or termination of the Agreement or such other date as required under this clause 6.
- 6.2 Termination or expiry of the Agreement shall not cause any Service Contracts to terminate automatically. For the avoidance of doubt, all Service 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 Agreement shall be without prejudice to any rights, remedies or obligations of either Party accrued under this Agreement 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 Agreements in place with other providers.

## **7. SUSPENSION FROM THE AGREEMENT 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 Agreement or any Service Contract ("Suspension Event") which for the avoidance of doubt will include circumstances where a Provider received an Ofsted (or equivalent Regulatory Body) Rating of 'Inadequate' or Care Inspectorate Rating of 'Weak' or 'Unsatisfactory' or



where a Formal Improvement Notice is issued to the Provider and if continuing concerns are not addressed in full or where there have been significant safeguarding concerns until such time as we are satisfied that these have been resolved or where there is failure to promptly submit requested information at the Annual Tier Review or Management Reports.

- . 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 Agreement, until the Provider demonstrates to the reasonable satisfaction of the Council that it is able to perform the Service, to the required standard.
- 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 Service Contracts entered into with Contracting Bodies in accordance with: -
- 8.1.1 the requirements of this Agreement; and
  - 8.1.2 the Service Contract(s).
- 8.2 In the event of, and only to the extent of, any conflict between the terms and conditions of this Agreement, and the Service Contract, the application of the Clauses shall prevail in the following order:
- (a) The Child's Care Plan
  - (b) the Service Contract and any other document referred to in the Service Contract;
  - (c) this Agreement and any other document referred to in the Agreement;
  - (d) the Placement Request and/or Invitation to Tender requiring a Tender (where applicable);
  - (f) the Invitation to Participate;

## **9. TRANSFER AND SUB-CONTRACTING**

- 9.1 The Agreement is personal to the Provider and the Provider shall not assign, novate or otherwise dispose of the Agreement 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 Agreement.
- 9.2 Subject to clause 9.4, the Council may assign, novate or otherwise dispose of its rights and obligations under this Agreement or any part thereof to:
- (a) any Contracting Authority; or
  - (b) any other body established by the Council or under statute ( such as The Local Government (Structural Changes) (Transfer of Functions, Property, Rights and Liabilities) Regulations 2008) in order substantially to perform any of the functions that had previously been performed by the Council ; or

(c) any private sector body which substantially performs the functions of the Council, provided that any such assignment, novation or other disposal shall not increase the burden of the Provider's obligations under the Agreement.

9.3 Any change in the legal status of the Council such that it ceases to be a Contracting Authority shall not, subject to clause 9.2, affect the validity of the Agreement. In such circumstances, the Agreement shall bind and inure to the benefit of any successor body to the Council.

9.4 If the rights and obligations under the Agreement are assigned, novated or otherwise disposed of pursuant to a body which is not a Contracting Authority or if there is a change in the legal status of the Council such that it ceases to be a Contracting Authority (in the remainder of this clause both such bodies being referred to as the "Transferee"):

(a) the rights of termination of the Council in clause 5 (Termination) shall be available to the Provider in the event of respectively, the bankruptcy or insolvency, of the Transferee; and

(b) the Transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under the agreement or any part thereof with the prior consent in writing of the Provider.

9.5 The Council may disclose to any Transferee any confidential information of the Provider which relates to the performance of the Provider's obligations under the Agreement. In such circumstances the Council shall authorise the Transferee to use such confidential information only for purposes relating to the performance of the Provider's obligations under the Agreement and for no other purpose and shall take all reasonable steps to ensure that the Transferee gives a confidentiality undertaking in relation to such confidential information.

9.6 Each Party shall at its own cost and expense carry out, or use all reasonable endeavours to ensure the carrying out of, whatever further actions (including the execution of further documents) the other Party reasonably requires from time to time for the purpose of giving that other Party the full benefit of the provisions of the Agreement .

## **10. OFSTED (OR EQUIVALENT REGULATORY BODY) REQUIREMENTS**

10.1 The Provider shall maintain at all times throughout the term of this Agreement and the Term of the Service Contract(s) registration with Ofsted (or any equivalent Regulatory Body including the Care Inspectorate) for the Regulated Activity which they carry out within the scope of this Agreement. Failure to comply with this requirement will amount to a Material Breach and the Council may terminate this Agreement pursuant to the provisions of clause 5.4.

10.2 If at any time during the Term of this Agreement or the Term of any Service Contract(s), the Provider is inspected by Ofsted (or equivalent Regulatory Body) and receives an overall rating of "inadequate" or "requires improvement" or Care Inspectorate rating of "adequate" or "weak" or "unsatisfactory" (or equivalent by any successor body or system of evaluation), the Provider shall inform the Council immediately and, within a

timeframe to be stipulated by the Council, is required to produce a robust Action Plan detailing improvement timescales and clear targets in order to regain a Good or better Ofsted (or equivalent Regulatory Body) or Care Inspectorate rating. If the Council is not satisfied with the Provider's response, this shall amount to a Material Breach and the Council may suspend the award of Service Contracts to the Provider or terminate this Agreement pursuant to the provisions of clause 5.4.

- 10.3 Where the Provider is engaged as part of a consortium, all consortium members, subject to Ofsted (or equivalent Regulatory Body) regulation, including the Provider, must maintain the Ofsted (or equivalent Regulatory Body) requirements detailed within this clause 4 throughout the term of this Agreement.
- 10.4 The Council shall have the ability to terminate contracting with the entire consortium or, in the alternate, and at its absolute discretion, require the Lead Member of the consortium to terminate its arrangements with the failing consortium member, allowing the remaining consortium members to continue to deliver the Services.

## **11. CONFIDENTIALITY**

- 11.1 Subject to clause 11.2, the Parties shall keep confidential all matters relating to this Agreement 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 12 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 Agreement;
  - 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 Agreement 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;
  - 11.2.8 by the Council relating to this Agreement and in respect of which the Provider has given its prior written consent to disclosure; and
  - 11.2.9 by the Council to other local authorities under the North West Local Authorities Information Sharing Protocol as detailed at paragraph 4.6 of the Specification.

## **12. FREEDOM OF INFORMATION**

- 12.1 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 Provider's expense) to enable the Council to comply with these information disclosure requirements.

- 12.2 The Provider shall and shall procure that its Subcontractors shall:
- 12.2.1 transfer any Request for Information to the Council as soon as practicable after receipt and in any event within two (2) Working Days of receiving a Request for Information;
  - 12.2.2 provide the Council with a copy of all Information in its possession or power in the form that the Council requires within five (5) Working Days (or such other period as the Council may specify) of the Council requesting that Information; and
  - 12.2.3 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.
- 12.3 In no event shall the Provider respond directly to a Request for Information unless expressly authorised to do so by the Council.
- 12.4 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, July 2018 (**Code**)) be obliged under the FOIA or the Environmental Information Regulations to disclose Information:
- 12.4.1 without consulting with the Provider; or
  - 12.4.2 following consultation with the Provider and having taken its views into account,
- provided always that where clause 12 applies the Council shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Provider advance notice, or failing that, to draw the disclosure to the Provider's attention after any such disclosure.
- 12.5 The Provider shall ensure that all Information produced in the course of the Agreement or relating to the Agreement is retained for disclosure and shall permit the Council to inspect such records as requested from time to time.
- 12.6 The 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 12.

### **13. PUBLICITY**

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

### **14. EXIT MANAGEMENT**

- 14.1 The Provider shall no later than within six (6) weeks after the Commencement Date of the Agreement, prepare and supply a draft Exit Management Plan (which shall be

consistent with the principles set out in Schedule 4 of this Agreement as well as including a range of different circumstances) and deliver it to the Contracting Body for its approval in a format to be determined by the Contracting Body. Any amendments to the Exit Management Plan reasonably required by the Contracting Body shall be made by the Provider forthwith.

- 14.2 The Exit Management Plan will be reviewed and must be tested by the Provider as and when required by the Contracting Body.
- 14.3 The Exit Management Plan will apply if one or many Placements are transferred for a any number of reasons as considered by the Provider. Such reasons could include situations when a child moves from a Placement from one Provider to a new Provider, or if a Provider ceases to trade and all Placements need to be transferred to a new Provider(s), there may be other situations but that would be for the Provider to consider.
- 14.4 Upon exit, the Provider must immediately carry out all steps reasonably required by the Contracting Body to ensure all material information and data relating to the delivery of the Services and to the Service Users, and all other reasonable information as required, is transferred immediately to the Contracting Body or to a successor Provider.

## **15. PREVENTION OF BRIBERY**

- 15.1 The Provider:
  - 15.1.1 shall not, and shall procure that the Provider's Personnel and all Sub-Contractor personnel shall not, in connection with this Agreement and any Service 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 Agreement, excluding any arrangement of which full details have been disclosed in writing to the Council before execution of this Agreement.
- 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 thirty (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 Provider and all persons associated with it or other persons who are supplying services in connection with this Agreement. 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 Provider's 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 six (6) Years following the expiry or termination of this Agreement.

- 15.6 The Council may terminate this Agreement by written notice with immediate effect if the 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 Agreement 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 Agreement, the parties shall meet in good faith and each use best 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 fourteen (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 fourteen (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 AGREEMENT**

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

## **18. THIRD PARTY RIGHTS**

- 18.1 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.

**19. 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.

**20. 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.

**21. 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 Agreement 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 Agreement 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 Agreement. 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 Agreement.

22.3 Nothing in this clause 22 shall operate to exclude Fraud or fraudulent misrepresentation.

**23. COUNTERPARTS AND ELECTRONIC EXECUTION**

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

23.2 Transmission of an executed counterpart of this Agreement (but for the avoidance of doubt not just a signature page) or the executed signature page of a counterpart of this Agreement by email (in PDF, JPEG or other agreed format) shall take effect as the transmission of an executed "wet-ink" counterpart of this Agreement.

23.3 No counterpart shall be effective until each Party has provided to the other at least one executed counterpart.

**24. LAW AND JURISDICTION**

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

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This Agreement has been entered into on the date stated at the beginning of it.

Signed by ..... )  
Name ..... )  
Position..... )

for and on behalf the **Council**

Signed by ..... )  
Name ..... )  
Position ..... )

for and on behalf of the **Provider**

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**SCHEDULE 1- CALL-OFF TERMS AND CONDITIONS**

[See attached to be inserted]

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## **SCHEDULE 2- CALL-OFF PROCEDURE**

1. Defined terms in this Call -Off Procedure shall have the same meaning as those defined terms in the Agreement.

### **2. Call Off Procedure**

2.1. For the avoidance of doubt an Individual Placement Agreement "IPA" Schedule 4 of the Call-Off Contract Terms and Conditions will form part of the Service Contract. The Service Contract will apply to an Individual Placement or a group of Placements or Services.

2.2. Where "The Council" is referred to this also includes "Contracting Bodies" (as defined in the Flexible Agreement) who are permitted to access the Flexible Agreement and to call off from the Flexible Agreement.

2.3. Service Contracts will at all times be awarded in compliance with the principles of equal treatment and transparency. This Call-Off Procedure necessarily allows for flexibility in the way the Council will formulate and award Service Contracts.

2.4. At the earliest opportunity, any new requirements for Services to be considered for this Flexible Agreement will be scheduled for Call-Off under the terms of this Flexible Agreement. Existing service arrangements will not be transferred to the Flexible Agreement unless the Placement needs to be recommissioned.

2.5. Providers under this Flexible Agreement must be mindful of their overall workload and, if there is a possibility of over-commitment or resource shortages, to provide immediate notice of the same to the Council's Key Personnel.

2.6. Services will be commissioned using one of the Call -Off Procedures set out below:

### **3. Placement Requests**

3.1. Save where one of the other Call -Off Procedures applies Placements will be awarded pursuant to a Placement Request.

3.2. In the event that a Placement is required the Council will send a Referral Form via secure Email or any subsequent system (or other such system as identified by the Council) to the relevant Providers. Where either Lot 2: Enhanced Foster Care or Lot 3 Step Down Foster Care is required, this will be clearly identified in the Placement Request documentation. For the avoidance of doubt any referral where Lot 2 or Lot 3 is not identified will be a Lot 1 Placement Request.

3.3. The decision on whether to accept a Placement Offer will always be based first and foremost on suitability of the Placement according to the needs of the Child/Children, this will take into account one or all of the following:

- a. the geographic location of the Foster Carer
- b. specific experience or skills of the Foster Carer
- c. timeframe of the placement availability
- d. other children or older adults residing in the home
- e. personality, including hobbies and interests, of the Foster Carer

- f. previous knowledge of the Child/Children, if appropriate.
- 3.4. Should more than one Offer at each stage be deemed suitable then the lower Priced Offer for the specific age band and type of placement, (having regard to Schedule 3 Provider's Application and any Charge adjustments) will be chosen.
- 3.5. The Contracting Bodies Placement Finding Service shall send out the relevant information to the Providers with the Placement Request to enable the Provider to identify a suitable Foster Carer. Where the Provider requires additional information, this will be requested through the Council's Placement Finding Service.
- 3.6. The Council shall send Placement Requests to Providers in the relevant Lot.
- 3.7. For the avoidance of doubt, a Service Provider may be deemed not capable of performing the service and therefore must not provide an Offer in response to the Referral Form, for example where the Service Provider is suspended from the Flexible Agreement.
- 3.8. The Provider must respond to all requests submitted by the Council via secure Email or any subsequent systems or alternatively, the method specified by the Council from time to time. If the Provider is unable to accept a commission to provide the Services as described on the Placement Request, they must respond to the Council via Email (or subsequent systems) detailing the reasons why.
- 3.9. The Council shall fix a time limit which is sufficiently long enough to allow responses for each Placement Request to be submitted, taking into account factors such as the complexity of the subject-matter and the time needed to prepare responses.
- 3.10. Emergency notifications will require a response from the Provider within 1 hour of receiving the Referral Form, unless otherwise stipulated by the Council.
- 3.11. Upon receiving an Offer to a Placement Request, the Council reserves the right to continue through the stages of the Call-Off procedure detailed below. This is to ensure a suitable Placement Offer is secured by the Council.
- 3.12. It is the responsibility of the Council to agree that a Placement Offered by the Provider meets the assessed needs of the Child.
- 3.13. Following the award decision, the IPA will be shared and the successful Provider(s) will be required to sign the IPA.
- 3.14. The Providers will put in place arrangements for receiving Placement Requests.
- 3.15. Wherever possible and time allows, the Council will endeavour to provide feedback to Providers if their Offer is unsuccessful.
- 3.16. The Placement Request process may be reviewed during the lifetime of the Flexible Agreement and Providers will be kept informed and consulted on any changes to the Placement Request process as necessary.

#### **4. Stages of the Call -Off Procedure for Placement Requests: Lot 1 Standard Foster Care - Stage one Tier 1**

- 4.1. The Council Placement Finding Service will notify (via provision of a Referral Form) all Providers on Tier 1 of each time it intends to award an IPA for the Services.
- 4.2. Providers will have the opportunity to make themselves available by responding to the Referral Form, with their Offer of an available Placements which meet the needs of the Child referred.
- 4.3. The Council will identify which of the Placements Offered in response to the Referral Form is most suitable, which will take into account one or all of the criteria listed at 3.3 The Council will send confirmation of Placement award and issue the IPA to the successful Provider.
- 4.4. Where more than one Provider is able to offer a suitable Placement, as agreed by the Council, then the lower Priced Offer for the specific age band and type of placement, having regard to Schedule 3 Provider's Application (and any Charge adjustments), will be chosen.
- 4.5. Where the Council is unable to secure a Placement with a Provider on Tier 1, either due to a lack of capacity to accept a Placement and/or no Tier 1 Provider being able to meet the specific needs of the Child, the Council will then issue the Referral Form to Providers on Tier 2. The Referral Request will remain open to Providers on Tier 1 in case a suitable Placement becomes available.

**Lot 1 Standard Foster Care - Stage two Tier 2**

- 4.6. The Council Placement Finding Service will then notify (via provision of a Referral Form) all Providers on Tier 2 of the Placement Request.
- 4.7. Providers will have the opportunity to make themselves available by responding to the Referral Form, with their Offer of an available Placements which meet the needs of the Child referred.
- 4.8. The Council will identify which of the Placements Offered from any Tier 1 and Tier 2 Providers, in response to the Referral Form, is most suitable, which will take into account one or all of the criteria listed at 3.3. The Council will send confirmation of Placement award and issue the IPA to the successful Provider.
- 4.9. Where more than one Provider from Tier 1 or Tier 2 is able to offer a suitable Placement , as agreed by the Council, then the lower Priced Offer for the specific age band and type of placement, having regard to Schedule 3 Provider's Application (and any Charge adjustments), will be chosen.
- 4.10. Where the Council is unable to secure a Placement with a Provider on Tier 1 or Tier 2, either due to a lack of capacity to accept a Placement and/or no Tier 1 or Tier 2 Provider being able to meet the specific needs of the Child, the Council will then issue the Referral Form to Providers on Tier 3. The Referral Request will remain open to Providers on Tier 1 and Tier 2 in case a suitable Placement becomes available.

**Lot 1 Standard Foster Care - Stage three Tier 3**

- 4.11. The Council Placement Finding Service will then notify (via provision of a Referral Form) all Providers on Tier 3 of the Placement Request.
- 4.12. Providers will have the opportunity to make themselves available by responding to the Referral Form, with their Offer of an available Placements which meet the needs of the Child referred.
- 4.13. The Council will identify which of the Placements Offered from any Lot 1 Providers, in response to the Referral Form, is most suitable, which will take into account one or all of the criteria listed at 3.3. The Council will send confirmation of Placement award and issue the IPA to the successful Provider.

**Emergency Placements and Parent and Child Placements**

- 4.14. Where a Placement is identified as an emergency i.e. required the same day, the Council will notify all Providers on Tier 1, Tier 2 and Tier 3 simultaneously.
- 4.15. Where a Placement is identified as a Parent and Child placement, the Council will notify all Providers on Tier 1, Tier 2 and Tier 3 simultaneously.
- 4.16. The Council will identify which of the Placements Offered in response to the Referral Form is most suitable, which will take into account one or all of the criteria listed at 3.3. The Council will send confirmation of Placement award and issue the IPA to the successful Provider.
- 4.17. Where more than one Provider is able to offer a suitable Placement or parent and child Placement, as agreed by the Council, then the lower Priced Offer for the specific age band and type of placement, having regard to Schedule 3 Provider's Application (and any Charge adjustments), will be chosen.
- 4.18. The Council will identify which of the Placements Offered in response to the Referral Form is most suitable, which will take into account one or all of the criteria listed at 3.3. The Council will send confirmation of Placement award and issue the IPA to the successful Provider.

**Lot 2 Enhanced Foster Care - Stage one Tier 1**

- 4.19. The Council Placement Finding Service will notify (via provision of a Referral Form) all Providers in Lot 2 Tier 1 of each time it intends to award an Enhanced Foster Care IPA for the Services.
- 4.20. Providers will have the opportunity to make themselves available by responding to the Referral Form, with their Offer of an available Placements which meet the needs of the Child referred.
- 4.21. The Council will identify which of the Placements Offered in response to the Referral Form is most suitable, which will take into account one or all of the criteria listed at 3.3. The Council will send confirmation of Placement award and issue the IPA to the successful Provider.
- 4.22. Where more than one Provider is able to offer a suitable Placement, as agreed by the Council, then the lower Priced Offer for the specific age band and type of placement, having regard to Schedule 3 Provider's Application (and any Charge adjustments), will be chosen.
- 4.23. Where the Council is unable to secure a Placement with a Provider on Tier 1, either due to a lack of capacity to accept a Placement and/or no Tier 1 Provider being able to meet the specific needs of the Child, the Council will then issue the Referral Form to Providers on Tier 2. The Referral Request will remain open to Providers on Tier 1 in case a suitable Placement becomes available.

**Lot 2 Enhanced Foster Care - Stage two Tier 2**

- 4.24. The Council Placement Finding Service will then notify (via provision of a Referral Form) all Providers on Tier 2 of the Placement Request.
- 4.25. Providers will have the opportunity to make themselves available by responding to the Referral Form, with their Offer of an available Placements which meet the needs of the Child referred.
- 4.26. The Council will identify which of the Placements Offered from any Tier 1 and Tier 2 Providers, in response to the Referral Form, is most suitable, which will take into account one or all of the criteria listed at 3.3. The Council will send confirmation of Placement award and issue the IPA to the successful Provider.

**Lot 3 Step Down to Foster Care – Stage one Tier 1**

- 4.27. The Council Placement Finding Service will notify (via provision of a Referral Form) all Providers in Lot 3 Tier 1 of each time it intends to award a Step Down to Foster Care IPA for the Services.

- 4.28. Providers will have the opportunity to make themselves available by responding to the Referral Form, with their Offer of an available Placements which meet the needs of the Child referred.
- 4.29. The Council will identify which of the Placements Offered in response to the Referral Form is most suitable, which will take into account one or all of the criteria listed at 3.3. The Council will send confirmation of Placement award and issue the IPA to the successful Provider.
- 4.30. Where more than one Provider is able to offer a suitable Placement, as agreed by the Council, then the lower Priced Offer for the specific age band and type of placement, having regard to Schedule 3 Provider's Application (and any Charge adjustments), will be chosen.
- 4.31. Where the Council is unable to secure a Placement with a Provider on Tier 1, either due to a lack of capacity to accept a Placement and/or no Tier 1 Provider being able to meet the specific needs of the Child, the Council will then issue the Referral Form to Providers on Tier 2. The Referral Request will remain open to Providers on Tier 1 in case a suitable Placement becomes available.

### **Lot 3 Step Down to Foster Care – Stage two Tier 2**

- 4.32. The Council Placement Finding Service will then notify (via provision of a Referral Form) all Providers on Tier 2 of the Placement Request.
- 4.33. Providers will have the opportunity to make themselves available by responding to the Referral Form, with their Offer of an available Placements which meet the needs of the Child referred.
- 4.34. The Council will identify which of the Placements Offered from any Tier 1 and Tier 2 Providers, in response to the Referral Form, is most suitable, which will take into account one or all of the criteria listed at 3.3. The Council will send confirmation of Placement award and issue the IPA to the successful Provider.

### **Additional Services**

- 4.35. As part of any of the Placement Requests, the Council Placement Finding Service may issue a Referral Form that includes a request that a Provider submits an Offer for Additional Services where the Council have deemed these are needed to meet a Child's needs. The Council will notify all the Providers using the stages outlined above for the relevant Lot and Tier.
- 4.36. Providers will have the opportunity to make themselves available by responding to the Referral Form, with their Offer of an available Placement and their Price for the Additional Services which meet the needs of the Child referred.
- 4.37. The Council will identify which of the Placements Offered, in response to the Referral Form, is most suitable, which will take into account one or all of the criteria listed at 3.3. The Council will send confirmation of Placement award and issue the IPA to the successful Provider.
- 4.38. Where more than one Provider is able to offer a suitable Placement with the required Additional Services, as agreed by the Council, then the lower Priced Offer for the specific age band and type of placement, will be chosen.

### **5. Placement Award**

- 5.1. It is the responsibility of the Council to agree that a Placement Offered by the Provider meets the assessed needs of the Child.
- 5.2. The Council and the Provider will work together to plan the admission to the Foster Carers Home in compliance with the Child's best interests, the Placement of Children Regulations and the Council's internal procedures.

- 5.3. Wherever possible, Children must be enabled to visit the Foster Carer's Home and to talk with the Foster Carers in private prior to a Placement decision being made.
- 5.4. Each Child must be given a copy of the children's guide either prior to or at the point of Placement, along with any additional, age appropriate, information
- 5.5. It is the responsibility of the Council to convene and chair a Placement Planning meeting which should take place prior to the Placement start and must take place no later than five (5) Working Days of the Placement start. If the Placement Planning meeting has not taken place within the specified time the Provider may convene the meeting and the Council is required to ensure that an appropriate worker attends this meeting.
- 5.6. The Provider will have a duty of care for all Children until the Children are returned to the care of the Council or person with parental responsibility.
- 5.7. Prior to a Placement having commenced or as soon as practicable for an emergency Placement the IPA will be completed and signed by the Contracting Body and Provider.
- 5.8. Within twenty (20) days of receipt confirmation of Placement Award from the Council, the Provider shall:
  - a) either notify the Council that it is not able to provide the requested available Services; or
  - b) sign the IPA specific to the requested Services.
- 5.9. A Service Contract shall not enter into force, be legally binding or have any other effect unless:
  - a) The Council has issued an award notification to the Provider via email (or other subsequent system); and
    - i. The Provider has accepted the award by the Contracting Body within twenty (20) (or any other such timescale as required by the Contracting Body) days of award notification; or
    - ii. the IPA has been signed by the authorised representatives of both Parties to it; or
    - iii. the Placement has commenced; and
  - b) as at the date of any of (a)(i) to (iii) above, the Flexible Agreement has not been terminated.

## **6. Mini Competition**

- 6.1. Mini Competition may be utilised by the Council if any service specific factors or operational reasons apply including:
  - 6.1.1. The identification and development of other specific service areas in addition to those identified within the Specification to meet the demand and need of a Child/Children
  - 6.1.2. The need to make a block placement arrangement with a Provider(s), which guarantees a specific number of Placements for the Contracting Body.
- 6.2. When a Service Contract is to be awarded by Mini-Competition, the Council shall contact in writing all Providers who are capable of providing the Services and the Mini-Competition documents will be made available to them.
- 6.3. For the avoidance of doubt where a Provider has been suspended from the Flexible Agreement or is presently subject to other comparable sanctions in respect of any failings in regard to the



performance requirements within the Specification and the Flexible Agreement they will not be invited to participate in the Mini-Competition.

- 6.4. The proposed Service Contract will substantially be in the form advertised at the outset of the Flexible Agreement, though the Mini-Competition documents will provide clarity in respect of:
- (i) The Child/Children
  - (ii) Placement type
  - (iii) Number of Placements
  - (iv) Any additional services required
  - (v) Outcomes to be achieved for the Child
  - (vi) Any specific requirements
  - (vii) Any other aspect of the Service Contract or Mini-Competition as appropriate
- 6.5. The Council shall fix a time limit which is sufficiently long to allow responses for each specific Mini Competition to be submitted, taking into account factors such as the complexity of the subject-matter and the time needed to prepare responses. This time limit shall be not less than 10 calendar days.
- 6.6. Providers' Offers shall be submitted in writing, and their content shall not be opened until the stipulated time limit for reply has expired.
- 6.7. The Council 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.
- 6.8. 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. Quality weightings will comprise of:

Quality Criteria	Weighting
Service Delivery/ Mobilisation	Weighted at/between 0 and 20%
Risks and Challenges	Weighted at/between 0 and 20%
Collaborative Working	Weighted at/between 0 and 20%
Service Quality and Monitoring	Weighted at/between 0 and 20%
Social Value	Weighted at/between 0 and 20%
Other criteria as identified at mini-competition stage	Weighted at/between 0 and 100%

- 6.9. The Price Criteria weighting will range from 0-100%.
- 6.10. Alternatively, in the event that the Council determines the value of the Charges, the Mini-Competition evaluation will be conducted on the basis of 100% Quality Criteria. Or where the Council deems appropriate the award criteria may be 100% Price Criteria.
- 6.11. All Providers invited to partake in the Mini -Competition will be informed of the outcome of the Mini-Competition.
- 6.12. At award of the Service Contract the Council will complete an IPA with the relevant details for the Services awarded, which will be issued to the successful Provider for them to sign.

## 7. Direct Award

- 7.1. Direct Award may be utilised
- (a) If any service specific factors or operational reasons apply including:

- (i) A Provider's previous knowledge of the Service User;
- (ii) A Provider's specialism means it can be evidenced there is only one Provider that is capable of meeting the Service User's requirements;
- (iii) Location of Provider's service means it can be evidenced there is only one Provider that is capable of meeting the Service User's requirements.
- (iv) A 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 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 Provider and evidence as to why other Providers are unable to meet the Service User's needs) and in accordance with the definition for Best Interests Decisions.
- (v) Where a Mini-Competition or Placement Request has taken place and the successful Provider has withdrawn from the Placement award, or the successful Provider fails to commence the Placement, the Council reserves the right to directly award the Placement to the next highest ranking Offer.
- (vi) Where no Offer, or no suitable Offer, has been submitted in response to a Mini-Competition or Placement Request, provided that the initial conditions of the Placement are not substantially altered; and/or,
- (vii) Insofar as is strictly necessary where, for reasons of urgency brought about by events unforeseeable by the Council, there is insufficient time to undertake a Mini-Competition or Placement Request.

7.2. The Charges for any Placement established through Direct Award shall be the Price established at the commencement of the Flexible Agreement with the addition of any annually agreed adjustment or in exceptional circumstances, mutually agreed by the Contracting Bodies and Provider on the basis of an open book costing exercise

**SCHEDULE 3- PROVIDER'S APPLICATION**

[to be inserted]

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## Schedule 4 Exit Management Principles

The Exit Management Plan shall include (without limitation) the following:

1. a list, by reference to each part of the Services, of the Provider's Personnel, resources and Key Personnel (if any) used to provide such Services;
2. a detailed programme for the transfer process for use in conjunction with the Contracting Body or (as the case may be) a Successor Provider in the event that the Services (or their equivalent or any part thereof) are to be transferred to the Contracting Body or (as the case may be) a Successor Provider including details of:
  - 2.1 the means to be used to ensure an orderly and prompt transfer of responsibility for providing the relevant Services to the Successor Provider while maintaining continuing provision of the Services throughout the transfer process;
  - 2.2 the process for handing responsibility for any work in progress and/or ongoing liabilities to the Successor Provider;
  - 2.3 the management structure to be employed during transfer;
  - 2.4 arrangements for the transfer of any rights and/or obligations under the Service Contract with the Provider to a Successor Provider including for the avoidance of doubt the Contracting Body;
  - 2.5 plans for communication with the Provider (and the Provider's Personnel) and the Contracting Body's staff and suppliers and Service Users, to avoid any detrimental impact on the Contracting Body's operations as a result of termination of the Service Contract;
  - 2.6 rules and procedures which will be adopted by the Provider to ensure that it does not make inappropriate use of, or gain an unfair advantage as a result of, any information gained by the Provider during any process for the tender of the Services (or their equivalent or any part thereof); and
  - 2.7 plans for provision of contingent support and meeting with the Contracting Body or a Successor Provider for a reasonable period after transfer for the purposes of providing services replacing the Services.
3. **Business Continuity Plan**
  - 3.1 The Provider must have a business continuity plan in place to ensure the delivery of the Service is continuous and consistent for the benefit of Service Users. Under these Terms and Conditions, the Provider must:
    - a. Develop and maintain a sufficient business continuity plan;
    - b. Review the business continuity plan on a regular basis, but not less than once every 3 years; and,
    - c. Provide the Contracting Body with a copy of this plan if requested to do so.
  - 3.2 The business continuity plan must include:
  - 3.3 Identification of service critical functions and the resources required to deliver them, including but not limited to:
    - a. Premises
    - b. People
    - c. ICT Hardware & Software
    - d. Telecommunications equipment

- e. Vehicles
- f. Suppliers/Contractors
- g. Any other critical equipment/supplies.

- 3.4 Identification and assessment of risks that could limit the availability of the above resources and potentially lead to a disruption in the delivery of services appropriate continuity solutions should an impact be experienced supporting information such as key contact numbers, generic and hazard specific action plans, incident management procedures.
- 3.5 The plan must illustrate how to reduce the potential impact of an incident by being prepared to maintain services in the event of the:
- a. Loss or damage to premises
  - b. Loss of key staff
  - c. Loss of IT / data
  - d. Loss of telecommunications
  - e. Loss of hard data / paper records
  - f. Loss of utilities (electricity, water, gas)
  - g. Loss of a key partner or supplier
  - h. Disruption due to a fuel shortage
  - i. Disruption due to severe weather
  - j. Disruption due to pandemic
- 3.6 The Contracting Body shall have the right to carry out an open audit of the business continuity plan with no less than 24 hours' notice.
- 3.7 The Contracting Body may request, and the Provider shall supply the results of any trial of the business continuity plan. If the Contracting Body acting reasonably considers that the Provider's business continuity plan is not sufficiently robust it may require the Provider to make such adjustments as are reasonably necessary to address the defects identified in the business continuity plan.
4. Upon exit, should the Provider fail to provide to the Contracting Body all material information and data relating to the delivery of the Services to the Service User, the Contracting Body will have the right to immediately access the Provider's premises to obtain the information required and the Provider will be obligated to assist in all material ways in order for the Contracting Body to obtain the information required in an efficient manner.

## Schedule 5 - Tiering System

### **Flexible Agreement Tiers**

The allocation of Providers onto the Flexible Agreement Tiers will be in accordance with the Application Evaluation Criteria set out in the ITP documents, this document outlines the circumstances when a Provider may move between tiers during the Term of the Flexible Agreement and is outlined in the tables below.

Please note this document makes reference to the Appendix 1 of the ITP documents 'Flexible Agreement Application Process Chart.' See references in (brackets)

Table 1

<b>Lot 1 – Standard Foster Care</b> <b>Tier 1 – Area A 'Blackburn with Darwen, Blackpool and Lancashire's Fostering Sufficiency Area (BBL)' (3.2.5)</b> <b>Tier 1 – Area B 'Cumbria's Fostering Sufficiency Area (C)' (3.2.6)</b>	
<b>Description</b>	Top Tier receiving all referrals first, except for certain emergency placements at the Council's discretion and parent and child referrals which will be sent to all Tiers simultaneously.
<b>Qualifying Criteria for a Provider</b>	<p>Must have all of the following:</p> <ul style="list-style-type: none"> <li>• Met all the Tier 1 Essential Criteria (3.2.1):               <ul style="list-style-type: none"> <li>○ Met all the Flexible Agreement Minimum Criteria (1.0)</li> <li>○ an Ofsted (or equivalent Regulatory Body) rating of 'Outstanding' or 'Good' or Care Inspectorate rating of 'Good' or above.</li> <li>○ 5 or more Registered Fostering Households residing in the required Boundary (Map 3 for BBL, Map 2 for C)</li> <li>○ Have a price no more than 10% of the mean average price in Lot 1 (2.0)</li> </ul> </li> <li>• Ranked within the top 12 Applicants for the Tier 1 Additional Criteria (3.2.3)</li> </ul> <p>Please see Stage 3.2.1 the Application Evaluation Criteria Document for further information on the criteria.</p>
<b>When you might move down, be suspended or removed from the Flexible Agreement</b>	<p><b>At any time during the Flexible Agreement:</b></p> <ul style="list-style-type: none"> <li>• Providers receiving a 'Requires Improvement' Ofsted rating (or equivalent Regulatory Body) or Care Inspectorate rating of 'Adequate' in any domain at any time will be moved to Tier 3 immediately and will be required to produce a robust Action Plan.</li> <li>• Providers receiving an 'Inadequate' Ofsted rating or Care Inspectorate rating of 'Weak' or 'Unsatisfactory' in any domain at any time will be suspended from receiving Placement Requests (see Clause 7 of the Flexible Agreement) and will be issued a Formal Improvement Notice. The Provider will be required to produce an Action Plan to the Council. If the Council is not satisfied with the Provider's response, it may be removed from the Flexible Agreement (see Clause 7 of the Flexible Agreement).</li> </ul>

	<ul style="list-style-type: none"> <li>• Where a significant safeguarding concern has occurred, the Council may suspend the Provider from receiving Placement Requests or remove it from the Flexible Agreement (see Clause 5 of the Flexible Agreement).</li> <li>• Providers who are issued with a Formal Improvement Notice and continue to not address the concerns in full, may be moved to a lower Tier, receive a suspension of Placement Requests or be removed from this Flexible Agreement.</li> </ul> <p><b>At the Annual Tier Review:</b></p> <ul style="list-style-type: none"> <li>• Providers whose number of Registered Households residing in the required Tier 1 Essential Criteria Boundary (Map 3 for BBL, Map 2 for C) falls below 5 the following movements will be made: <ul style="list-style-type: none"> <li>a. Providers with 2 or more Registered Households in the Tier 2 Essential Criteria Boundary (Map 4 for BBCL) will be moved to Tier 2.</li> <li>b. Providers where their number of Registered Households falls below 2 for the Tier 2 Essential Criteria Boundary (Map 4 for BBCL) but still meets the Flexible Agreement Minimum Criteria Boundary (Map 1) will be moved to Tier 3.</li> </ul> </li> <li>• Where a Providers current price is more than 10% of the mean average price in Lot 1 they will move down to Tier 3.</li> <li>• If a Provider is not meeting the key performance indicators as defined in the Specification or otherwise required by the Service Contract, the Council reserves the right to issue a Formal Improvement Notice. If continuing concerns are not addressed in full, the Council may move Provider(s) into Tier 2 indefinitely and promote the highest scoring Tier 1 Reserve Provider into Tier 1, the Council acting reasonably at all times and where the alternative remedy would be termination of the Service Contract or the Flexible Agreement.</li> <li>• The Council also reserves the right to move any Provider to Tier 3 if quality or performance issues persist or suspend referrals altogether (See Clause 7 of the Flexible Agreement) or remove the Provider from the Flexible Agreement pursuant to the terms of the Flexible Agreement at Schedule 2 Part 3.</li> <li>• If the Provider does not submit the requested monitoring information set out in the Specification the Council reserves the right to issue a Formal Improvement Notice. If the Provider fails to address the concerns, the Council may suspend Placement Requests until information is provided or if the concerns persist, the Council may move the Provider to Tier 2 or remove it from the Flexible Agreement. (see Clause 5 of the Flexible Agreement).</li> <li>• The Council may decide to reduce the number of Providers in Tier 1.</li> </ul> <p>A Provider may be moved down Tier(s) at the reopening of the Flexible Agreement if the Provider no longer meets the Tier 1 Essential Criteria or chooses not be considered for Tier 1. (subject the Application Evaluation as outlined in Appendix 8 Application Evaluation Criteria)</p>
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Table 2

**Lot 1 – Standard Foster Care**

**Tier 2 - Combined Area A 'Blackburn with Darwen, Blackpool, and Lancashire's Fostering Sufficiency Area' and Area B 'Cumbria's Fostering Sufficiency Area' (BBCL) (3.1 and 3.2.4)**

<p><b>Description</b></p>	<p>Tier receiving all referrals after searches in Tier 1 have not been successful within the specified timeframes, or at the same time as Tier 1 for certain emergency placements at the Council's discretion and for parent and child referrals.</p>
<p><b>Qualifying Criteria for a Provider</b></p>	<p>Must have all of the following:</p> <ul style="list-style-type: none"> <li>• Met all the Tier 2 Essential Criteria (3.1): <ul style="list-style-type: none"> <li>○ met all the Flexible Agreement Minimum Criteria (1.0)</li> <li>○ an Ofsted (or equivalent Regulatory Body) rating of 'Good' or 'Outstanding' or Care Inspectorate rating of 'Good' or above.</li> <li>○ have 2 or more Registered Fostering Households residing in required Boundary (Map 4 BBCL)</li> <li>○ Where a Provider has a price no more than 10% of the mean average price in Lot 1 (2.0)</li> </ul> </li> </ul> <p>Providers in Tier 2 may be Tier 1 Reserves (3.2.4), this means the Provider has applied to be a Tier 1 Provider, but has not scored highly enough within the Tier 1 Additional Criteria to be allocated a place in Tier 1 and is therefore is classified as a Tier 1 Reserve for Area A and/or Area B.</p>
<p><b>How you might move up</b></p>	<p><b>At any time during the Flexible Agreement:</b></p> <ul style="list-style-type: none"> <li>• When a Provider on Tier 1 is moved to a lower Tier or removed from the Lot or Flexible Agreement, the next highest ranked Provider on the Tier 1 Reserve Providers list in Tier 2 may be promoted to Tier 1.</li> </ul> <p><b>At the Annual Tier Review:</b></p> <ul style="list-style-type: none"> <li>• If the Council decides to increase the number of Providers in Tier 1. The next highest ranked Provider(s) of the Tier 1 Reserve Providers may be promoted to Tier 1.</li> </ul> <p>A Provider may be moved up to Tier 1 at the reopening of the Flexible Agreement if the Provider chooses to apply for Tier 1 and they meet the criteria, (subject to the Application Evaluation as outlined in Appendix 8 Application Evaluation Criteria).</p>
<p><b>When you might move down, be suspended or removed from the</b></p>	<p><b>At any time during the Flexible Agreement:</b></p> <ul style="list-style-type: none"> <li>• Providers receiving a 'Requires Improvement' Ofsted rating (or equivalent Regulatory Body) or Care Inspectorate rating of 'Adequate' in any domain at any time will be moved to Tier 3 immediately and will be required to produce a robust Action Plan.</li> <li>• Providers receiving an 'Inadequate' Ofsted rating or Care Inspectorate rating of 'Weak' or 'Unsatisfactory' in any domain at any time will be suspended from receiving Placement Requests (see Clause 7 of the Flexible Agreement). The Provider will be required to produce an Action</li> </ul>



<p><b>Flexible Agreement</b></p>	<p>Plan to the Council. If the Council is not satisfied with the Provider's response, may be removed from the Flexible Agreement (see Clause 5 of the Flexible Agreement).</p> <ul style="list-style-type: none"> <li>• Where a significant safeguarding concern has occurred, the Council may suspend the Provider from receiving Placement Requests or remove it from the Flexible Agreement (see Clause 5 of the Flexible Agreement).</li> <li>• Providers who are issued with a Formal Improvement Notice and continue to not address the concerns in full, may be moved to a lower Tier, receive a suspension of Placement Requests or be removed from this Flexible Agreement.</li> </ul> <p><b>At the Annual Tier Review:</b></p> <ul style="list-style-type: none"> <li>• Providers whose number of Registered Households residing in the required Tier 2 Essential Criteria Boundary (Map 4 for BBCL) falls below 2 will be moved to Tier 3. The Provider must still meet the Flexible Agreement Minimum Criteria.</li> <li>• Providers current price is more than 10% of the mean average price in Lot 1 will move down to Tier 3.</li> <li>• If a Provider is not meeting the key performance indicators as defined in the Specification or otherwise required by the Service Contract, the Council reserves the right to issue a Formal Improvement Notice. If continuing concerns are not addressed in full, the Council may move Provider(s) into Tier 3 indefinitely, the Council acting reasonably at all times and where the alternative remedy would be termination of the Service Contract or the Flexible Agreement.</li> <li>• If the Provider does not submit the requested monitoring information set out in the Specification the Council reserves the right to issue a Formal Improvement Notice. If the Provider fails to address the concerns, the Council may suspend Placement Requests until information is provided or if the concerns persist, the Council may move the Provider to Tier 3 or remove it from the Flexible Agreement. (see Clause 5 of the Flexible Agreement).</li> </ul> <p>A Provider may be moved down to Tier 3 at the reopening of the Flexible Agreement. (subject the Application Evaluation as outlined in Appendix 8 Application Evaluation Criteria)</p>
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Table 3

<p><b>Lot 1 – Standard Foster Care</b></p> <p><b>Tier 3 - Combined Area A 'Blackburn with Darwen, Blackpool, and Lancashire's Fostering Sufficiency Area' and Area B 'Cumbria's Fostering Sufficiency Area' (BBCL) (3.1.2)</b></p>	
<p><b>Description</b></p>	<p>Tier receiving all referrals after searches in Tiers 1 and 2 have not been successful within the specified timescales or at the same time as Tier 1 and 2 for certain emergency placements at the Council's discretion and for Parent and Child referrals.</p>

<p><b>Qualifying Criteria for a Provider</b></p>	<p>Must have all of the following:</p> <ul style="list-style-type: none"> <li>met all the Flexible Agreement Minimum Criteria (1.0);</li> <li>an Ofsted (or equivalent Regulatory Body) rating of 'Requires Improvement' or above or Care Inspectorate rating of 'Adequate' or above or a Provider that is newly registered that has not received a published Ofsted or Care Inspectorate rating (or equivalent Regulatory Body)</li> </ul> <p>May also have:</p> <ul style="list-style-type: none"> <li>a price more than 10% of the mean average price in Lot 1 (2.0)</li> </ul>
<p><b>When you might move up</b></p>	<p><b>At any time during the Flexible Agreement:</b></p> <ul style="list-style-type: none"> <li>Providers whose Regulatory Body rating improves as follows will be moved into Tier 2 and if all other Tier 2 Essential Criteria is met: <ul style="list-style-type: none"> <li>Ofsted (or equivalent Regulatory Body) or Care Inspectorate rating improves to Good or above; or</li> <li>given a first rating from Ofsted (or equivalent Regulatory Body) of 'Outstanding' or 'Good' or Care Inspectorate rating of 'Good'.</li> </ul> </li> </ul> <p><b>At the Annual Tier Review:</b></p> <ul style="list-style-type: none"> <li>When a Provider's current price is no longer more than 10% of the mean average price in Lot 1 and if all other Tier 2 Essential Criteria is met.</li> <li>If the Council is satisfied that outcomes and requirements in the Formal Improvement Notice are being met (which have displaced them previously) and if all other Tier 2 Essential Criteria are met. The Council reserves the right to review this process sooner.</li> </ul> <p>A Provider may be moved up to Tier 2 at the reopening of the Flexible Agreement (subject the Application Evaluation as outlined in Appendix 8 Application Evaluation Criteria).</p>
<p><b>When you might be suspended or removed from the Flexible Agreement</b></p>	<p><b>At any time during the Flexible Agreement:</b></p> <ul style="list-style-type: none"> <li>Providers receiving an 'Inadequate' Ofsted rating or Care Inspectorate rating of 'Weak' or 'Unsatisfactory' in any domain at any time will be suspended from receiving Placement Requests (see Clause 7 of the Flexible Agreement). The Provider will be required to produce an Action Plan to the Council. If the Council is not satisfied with the Provider's response, may be removed from the Flexible Agreement (see Clause 5 of the Flexible Agreement).</li> <li>Where a significant safeguarding concern has occurred, the Council may suspend the Provider from receiving Placement Requests or remove it from the Flexible Agreement (see Clause 5 of the Flexible Agreement).</li> <li>Providers who are issued with a Formal Improvement Notice and continue to not address the concerns in full, the Council may suspend Placement Requests or remove the Provider from this Flexible Agreement.</li> </ul> <p><b>At the Annual Tier Review:</b></p> <ul style="list-style-type: none"> <li>Providers whose number of Registered Households residing in the required Flexible Agreement Minimum Criteria Boundary (Map 1 for wider BBCL) will be removed from the Flexible Agreement.</li> </ul>

	<p>If a Provider is not meeting the key performance indicators as defined in the Specification or otherwise required by the Service Contract, the Council reserves the right to issue a Formal Improvement Notice. If continuing concerns are not addressed in full, the Council may suspend Placement Requests until information is provided or if the concerns persist, the Council may remove the Provider from the Flexible Agreement. (see Clause 5 of the Flexible Agreement).</p>
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- If the Provider does not submit the requested monitoring information set out in the Specification the Council reserves the right to issue a Formal Improvement Notice. If the Provider fails to address the concerns, the Council may suspend Placement Requests until information is provided or if the concerns persist, the Council may remove the Provider from the Flexible Agreement. (see Clause 5 of the Flexible Agreement).

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Table 4

<p><b>Lot 2- Enhanced Foster Care</b></p> <p><b>Lot 3 – Step Down into Foster Care</b></p> <p><b>Tier 1 Combined Area A 'Blackburn with Darwen, Blackpool and Lancashire's Fostering Sufficiency Area' and Area B 'Cumbria's Fostering Sufficiency Area'</b></p> <p><b>Lot 2 (3.3.6) / Lot 3 (3.4.6)</b></p>	
<b>Description</b>	Top Tier receiving all referrals first with a higher level of consultation with the Council.
<b>Qualifying Criteria for a Provider</b>	<p>Must have all of the following:</p> <ul style="list-style-type: none"> <li>• Met all the Tier 1 Essential Criteria (3.3.1 / 3.4.1): <ul style="list-style-type: none"> <li>○ Met all the Flexible Agreement Minimum Criteria (1.1)</li> <li>○ an Ofsted (or equivalent Regulatory Body) rating of 'Requires Improvement' or above or Care Inspectorate rating of 'Adequate' or above.</li> <li>○ 2 or more Registered Households residing in required Boundary (Map 4 BBCL)</li> <li>○ Score 2 or more in response to Lot Service Model question.</li> </ul> </li> <li>• Ranked within the top 5 Applicants for the Tier 1 Additional Criteria (3.3.4 / 3.4.4)</li> </ul>
<b>When you might move down, be suspended or removed from the Flexible Agreement</b>	<p><b>At any time during the Flexible Agreement:</b></p> <ul style="list-style-type: none"> <li>• Providers receiving an 'Inadequate' Ofsted rating or Care Inspectorate rating of 'Weak' or 'Unsatisfactory' in any domain at any time will be suspended from receiving Placement Requests (see Clause 7 of the Flexible Agreement) and will be issued a Formal Improvement Notice. The Provider will be required to produce an Action Plan to the Council. If the Council is not satisfied with the Provider's response, the Provider may be removed from the Flexible Agreement (see Clause 5 of the Flexible Agreement).</li> <li>• Where a significant safeguarding concern has occurred, the Council may suspend the Provider from receiving Placement Requests or remove the Provider from the Flexible Agreement (see Clause 7 of the Flexible Agreement).</li> <li>• Providers who are issued with a Formal Improvement Notice and continue to not address the concerns in full, may be moved to a lower Tier, receive a suspension of Placement Requests or be removed from this Flexible Agreement (See Clause 5 of the Flexible Agreement).</li> </ul> <p><b>At the Annual Tier Review:</b></p> <ul style="list-style-type: none"> <li>• Providers whose number of Registered Households residing in the required Tier 1 Essential Criteria Boundary (Map 4 for BBCL) falls below 2 will be removed from this Lot, this may result in the termination of the Flexible Agreement as provided for in clause 7 of the Flexible Agreement.</li> <li>• If a Provider is not engaging at the dedicated Lot 2 provider forums or not attending them, the Council reserves the right to move Providers into Tier 2 indefinitely and promote the next highest scoring Tier 2 reserve Provider into Tier 1. (See KPIs at 7.2.8 of the Service Specification).</li> <li>• If a Provider is not meeting the key performance indicators as defined in the Section 7 of Specification or otherwise required by the Service Contract, the</li> </ul>

	<p>Council reserves the right to issue a Formal Improvement Notice. If continuing concerns are not addressed in full, the Council may move Provider(s) into Tier 2 indefinitely and promote the highest scoring Tier 1 Reserve Provider into Tier 1, the Council acting reasonably at all times and where the alternative remedy would be termination of the Service Contract or the Flexible Agreement.</p> <ul style="list-style-type: none"> <li>• If the Provider does not submit the requested monitoring information set out in the Specification the Council reserves the right to issue a Formal Improvement Notice. If the Provider fails to address the concerns the Council may suspend Placement Requests until information is provided or if the concerns persist, the Council may move the Provider to Tier 2 or be removed from the Flexible Agreement. (see Clause 7 of the Flexible Agreement).</li> <li>• The Council may decide to reduce the number of Providers in Tier 1.</li> </ul> <p>A Provider may be moved down Tier(s) at the reopening of the Flexible Agreement if the Provider no longer meets the Tier 1 Essential Criteria or chooses not to be considered for Tier 1. (subject the Application Evaluation as outlined in Appendix 8 Application Evaluation Criteria)</p>
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Table 5

<p><b><u>Lot 2– Enhanced Foster Care</u></b>  <b><u>Lot 3 – Step Down into Foster Care</u></b>  <b><u>Tier 2 Combined Area A 'Blackburn with Darwen, Blackpool and Lancashire's Fostering Sufficiency Area' and Area B 'Cumbria's Fostering Sufficiency Area'</u></b>  <b><u>Lot 2 (3.3.2) / Lot 3 (3.4.2)</u></b></p>	
<b>Description</b>	Tier receiving all referrals after searches in Tiers 1 have not been successful within the specified timescales
<b>Qualifying Criteria for a Provider</b>	<p>Must have all of the following:</p> <ul style="list-style-type: none"> <li>• Met all the Tier 2 Essential Criteria (3.3.1 / 3.4.1): <ul style="list-style-type: none"> <li>○ met all the Flexible Agreement Minimum Criteria (2.0)</li> <li>○ an Ofsted (or equivalent Regulatory Body) rating of 'Requires Improvement' or above or Care Inspectorate rating of 'Adequate' or above.</li> <li>○ 2 or more Registered Households residing in required Boundary (Map 4 BBCL)</li> <li>○ Score 2 or more in response to Lot Service Model question.</li> </ul> </li> </ul> <p>Providers in Tier 2 may be Tier 1 Reserves, this means the Provider has applied to be a Tier 1 Provider but has not scored highly enough within the Tier 1 Additional Criteria to be allocated a place in Tier 1 and is therefore is classified as a Tier 1 Reserve for the Combined Area A and Area B.</p>

<p><b>When you might move up</b></p>	<p><b>At any time during the Flexible Agreement:</b></p> <ul style="list-style-type: none"> <li>When a Provider on Tier 1 is moved to a lower Tier or removed from the Lot or Flexible Agreement, the next highest ranked Provider on the Tier 1 Reserve Providers list in Tier 2 may be promoted to Tier 1.</li> </ul> <p><b>At the Annual Tier Review:</b></p> <ul style="list-style-type: none"> <li>If the Council decides to increase the number of Providers in Tier 1. The next highest ranked Provider(s) of the Tier 1 Reserve Providers may be promoted to Tier 1.</li> </ul> <p>A Provider may be moved up to Tier 1 at the reopening of the Flexible Agreement if the Provider chooses to apply for Tier 1, (subject the Application Evaluation as outlined in Appendix 8 Application Evaluation Criteria).</p>
<p><b>When you might be suspended or removed from the Flexible Agreement</b></p>	<p><b>At any time during the Flexible Agreement:</b></p> <ul style="list-style-type: none"> <li>Providers receiving an 'Inadequate' Ofsted rating or Care Inspectorate rating of 'Weak' or 'Unsatisfactory' in any domain at any time will be suspended from receiving Placement Requests (see Clause 7 of the Flexible Agreement). The Provider will be required to produce an Action Plan to the Council. If the Council is not satisfied with the Provider's response, may be removed from the Flexible Agreement (see Clause 5 of the Flexible Agreement).</li> <li>Where a significant safeguarding concern has occurred, the Council may suspend the Provider from receiving Placement Requests or be removed from the Flexible Agreement (see Clause 5 of the Flexible Agreement).</li> <li>Providers who are issued with a Formal Improvement Notice and continue to not address the concerns in full, may be moved to a lower Tier, receive a suspension of Placement Requests or be removed from this Flexible Agreement.</li> </ul> <p><b>At the Annual Tier Review:</b></p> <ul style="list-style-type: none"> <li>Providers whose number of Registered Households residing in the required Tier 2 Essential Criteria Boundary (Map 4 for BBCL) falls below 2 will be removed from the Lot, this may result in the termination of the Flexible Agreement as provided for in clause 7 of the Flexible Agreement.</li> <li>If a Provider is not meeting the key performance indicators as defined in the Specification or otherwise required by the Service Contract, the Council reserves the right to issue a Formal Improvement Notice. If continuing concerns are not addressed in full, the Council may remove the Provider from the Lot, the Council acting reasonably at all times and where the alternative remedy would be termination of the Service Contract or the Flexible Agreement.</li> <li>If the Provider does not submit the requested monitoring information set out in the Specification the Council reserves the right to issue a Formal Improvement Notice. If the Provider fails to address the concerns, the Council may suspend Placement Requests until information is provided or if the concerns persist, the Council may remove the Provider from the Flexible Agreement. (see Clause 5 of the Flexible Agreement).</li> </ul>

## **Prior to Flexible Agreement Commencement Date and during the Term of the Flexible Agreement:**

At any time the Council must be informed by the Provider if the following applies:

- Ofsted or Care Inspectorate (or equivalent Regulatory Body) registration or rating has changed, which means they no longer meet the requirements of the Flexible Agreement for the Lot and Tier in which they are placed.
- The number of Registered Households which a Provider has within the required Boundary means they no longer meet the requirements of the Flexible Agreement for the Lot and Tier.

As stated in the tables above, changes to this information may affect a Providers Tier position and may also result in the Application being rejected and/or a Provider being removed from the Lot and/or Flexible Agreement.

### **Ofsted/ Care Inspectorate Rating**

Consortiums:

The Council will only take the rating of the lowest Ofsted/ Care Inspectorate rated consortium member into account.

If any member of a consortium rating falls below the Flexible Agreement Minimum Criteria, the Lead member of the consortium must inform the Council immediately as set out in the above tables. Such a change will not necessarily lead to the consortium being removed from the Flexible Agreement. The consortium will be required to produce an Action Plan and may be given the chance to remedy their Regulatory rating. The Council will have sole discretion as to whether the consortium remains on the Flexible Agreement.

### **Tier 1 Reserve List**

**Lot 1 (3.2.4)**

**Lot 2 (3.3.5)**

**Lot 3 (3.4.5)**

Applicants who are not successful in obtaining a place on Tier 1 but otherwise meet the Tier 1 Essential Criteria for that Lot will be placed in Tier 2 but added to the Tier 1 Reserve List in the order they were ranked according to the Tier 1 Additional Criteria Score. Providers on the Tier 1 Reserve List may be invited to join Tier 1 should demand allow or where a current Tier 1 Provider is removed from Tier 1, leaving a Tier 1 vacancy.

Applicants selected for Tier 1 but who become no longer eligible during the course of the Agreement will be removed from Tier 1. As and when Essential Criteria is re-met, a Provider will be put on the Tier 1 Reserve List.

Tier 1 Providers will be reviewed on an annual basis (unless otherwise determined by the Council as part of the Annual Tier Review process). The decision may be made to move a Tier 1 Provider to Tier 2 (or lower) if their performance is considered to be below Tier 1 expectations (see Service Specification and Key Performance Indicators) or for any other reason. However, if the Tier 1 Provider no longer meets the Tier 2 requirements, they will be moved to Tier 3 (but must still meet the Minimum Criteria of the Flexible Agreement) or suspended from the Flexible Agreement.

Where a Tier 1 Provider is removed from Tier 1, the opportunity to become a Tier 1 Provider may be offered to the highest scoring Provider on the Tier 1 Reserve List. There would be no obligation for a Provider to move up to Tier 1 if they did not feel able to meet the required expectations (as set out the Service Specification). In these circumstances, the opportunity would be offered to the next highest scoring Provider on the Tier 1 Reserve List.

### **Annual Adjustment to Prices**

The prices submitted by Providers at Application stage shall remain fixed until the anniversary of the Flexible Agreement Commencement Date. Thereafter from the first anniversary of the Agreement, the Council shall offer a maximum annual adjustment in respect of all Services to cover inflation. Please see Clause 11 of the Call Off Terms and Conditions for more details.

### **Annual Tier Review per Lot**

Once per annum, at a date/dates to be specified by the Council (but expected to be around the anniversary of the Flexible Agreement Commencement Date and will be after the Annual Adjustment to Prices) the Council will undertake an Annual Tier Review of the Flexible Agreement. This is to ensure the existing Providers still meet the Essential Criteria for the Lot(s) and Tier in which they are currently placed and will take account of the following:

The Council reserves the right to conduct the Tier Review sooner if demand for Placements increase or existing needs are no longer being met.

Providers are required to response to the Annual Tier request for information to enable the review to take place. If a Provider fails to respond, the provider will be considered as not meeting the Tier Essential Criteria and therefore may either change tiers and/or be suspended until the information is received.

*For the avoidance of doubt the performance of Providers against the Specification(s) and KPIs will be monitored throughout the Term of the Flexible Agreement and Providers will be informed of their performance at quartering contract monitoring reviews (see section 7 of the Specification)*



### **Lot 1 Standard Foster Care - Tier 1 Providers**

### **Lot 2 Enhanced Foster Care - Tier 1 Providers**

### **Lot 3 Step Down into Foster Care - Tier 1 Providers**

The Council will review all of the following to ensure the Providers in Tier 1 still meet the required Essential Criteria and is performing the Services as per the Specification requirements:

- Ofsted / Care Inspectorate registration and rating reviewed
  - Lot 1 - See Tier 1 Essential Criteria (Stage 3.2.1 of the Application Evaluation Criteria)*
  - Lot 2 - See Tier 1 Essential Criteria (Stage 3.3.1 of the Application Evaluation Criteria)*
  - Lot 3 - See Tier 1 Essential Criteria (Stage 3.4.1 of the Application Evaluation Criteria)*Any Providers who do not meet the required criteria will be moved to the relevant Tier or may be removed from the Lot. (see Table 1 or 4 above)
- Number of Registered Households
  - Lot 1 - See Tier 1 Essential Criteria (Stage 3.2.2 of the Application Evaluation Criteria)*
  - Lot 2 - See Tier 1 Essential Criteria (Stage 3.3.1 of the Application Evaluation Criteria)*
  - Lot 3 - See Tier 1 Essential Criteria (process chart 3.4.1)*Any providers who do not meet the required criteria will be moved to the relevant Tier or may be removed from the Lot. (see Table 1 or 4 above)
- Performance against the KPIs within 7.2.8 of the Specification.  
Providers who are not meeting the required KPIs will be subject to the sanctions as detailed in the Table 1 or 4 above and Clause 7 of the Flexible Agreement.
- *Lot 1 only - Price Assessment based on Provider's current Price (following the completion of any Inflationary Adjustment) (stage 2.0 of the Application Evaluation Criteria):*
  - A new mean average price will be calculated using Providers in Lot 1 current price (this will follow the same price assessment as per the initial application evaluation – see process chart 2.0).
  - If any Provider in Tier 1 has a current price of more than 10% above the mean average within the Lot, they will be moved to Tier 3.
  - If following the Annual Tier Review this displaces a Tier 1 Provider and the Council wishes to fill this vacancy, the Council may offer the vacant Tier 1 position to the next highest scoring Provider from the Tier 1 reserve list (if they meet the Essential Criteria). If they decline the Council will go to the next placed and so on until the Tier 1 position is filled. (See table 1 above).

If following the Annual Tier Review this displaces a Tier 1 Provider and the Council wishes to fill this vacancy, the Council may offer the vacant Tier 1 position to the next highest scoring Provider from the Tier 1 reserve list (i.e who was placed 13th at the Tier 1 Evaluation). If they decline the Council will go to the 14th placed and so on until the Tier 1 position is filled.

Following the above review, the Council will re-calculate the position of Providers on the Tiers, which will be set for the forthcoming year subject to the guidance set out below at Tables 1-5.

Such changes identified within the Annual Tier Review may lead to a Provider changing their allocated Tier. In addition, changes which alter other Provider's allocated Tier may displace the Provider.

The number of Providers in Tier 1 for all Lots may be reviewed annually (the Council reserves the right to do this sooner). Consideration would be given to the demand of placements required along with the capacity of current Providers within Tier 1 of each Lot.

### **Lot 1 Standard Foster Care - Tier 2 and Tier 3 Providers**

### **Lot 2 Enhanced Foster Care - Tier 2 Providers**

### **Lot 3 Step Down into Foster Care - Tier 2 Providers**

The Council will review all of the following to ensure the Providers in these Tiers still meet the required Tier Criteria and are performing the Services as per the Specification requirements:

- Ofsted / Care Inspectorate registration and rating reviewed  
*Lot 1 Tier 3 – See Flexible Agreement Minimum Criteria (Stage 1.1 of the Application Evaluation Criteria)*  
*Lot 2 Tier 2 – See Tier 2 Essential Criteria (Stage 3.3.1 of the Application Evaluation Criteria)*  
*Lot 3 Tier 2 - See Tier 2 Essential Criteria (Stage 3.4.1 of the Application Evaluation Criteria)*  
Any Providers who do not meet the required criteria will be moved to either Tier 3 (if applicable or may be removed from the Lot. (See table 2, 3 or 5 above)
- Number of Registered Households  
*Lot 1 Tier 3 – See Flexible Agreement Minimum Criteria (Stage 1.1 of the Application Evaluation Criteria)*  
*Lot 2 Tier 2 – See Tier 2 Essential Criteria (Stage 3.3.2 of the Application Evaluation Criteria)*  
*Lot 3 Tier 2 - See Tier 2 Essential Criteria (Stage 3.4.1 of the Application Evaluation Criteria)*  
Any Providers who do not meet the required criteria will be moved to either Tier 3 (if applicable or may be removed from the Lot. (See table 2, 3 or 5 above)
- Performance against the KPIs within 7.2.8 of the Specification.  
Providers who are not meeting the required KPIs will be subject to the sanctions as detail in the Table 2 , 3 or 5 above and Clause 7 of the Flexible Agreement.
- *Lot 1 only* - Price Assessment based on Provider's current Price (following the completion of any Inflationary Adjustment) (*Stage 2.0 of the Application Evaluation Criteria*):

- A new mean average will be calculated using Providers in Lot 1 current price (this will follow the same price assessment as per the initial application evaluation – see process chart 2.0).
- If any Provider in Tier 2 current price is more than 10% above the mean average within the Lot, they will be moved to Tier 3.
- Those Providers within Tier 3 who are now no more than 10% of the average within the Lot will be moved to Tier 2 *if* they satisfy all the Tier 2 Essential Criteria.

### **Every 3 Years Reopen for New Applications and Tier Review for existing Providers**

The Flexible Agreement will remain open for new Applicants following the initial Applicant Return Deadline, and intends for evaluation to take place at least every three years at the Flexible Agreement Commencement Date anniversary, unless otherwise advised by the Council.

The Council reserves the right to do this sooner if demand for placements increases or the existing Flexible Agreement Providers lack capacity and cannot meet Contracting Body's needs.

New Applicants can apply to be part of the Flexible Agreement following the Application Process as describe in the ITP and Application Evaluation Criteria.

For existing Providers they may wish to remain in the Lot/Tier they are currently placed if they still meet the required Criteria. It is also an opportunity for existing Providers to apply for different Lot(s), if not already part of, and be considered for a higher Tier if the Council is satisfied the Provider meets the Minimum and Essential Criteria for the Lot/Tier. It is also an opportunity for existing Providers to re submit their Quality Criteria Application for the Lots they are currently within if they choose to do so. See the ITP documents and Application Evaluation Criteria for more details.

**Schedule 6 – Invitation To Participate**

[See tender advert for Invitation to Participate and appendices (*link*)]

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