

DATED

**PSEUDO DYNAMIC PURCHASING SYSTEM AGREEMENT FOR THE
PROVISION OF CHILDRENS HOME SERVICES**

-

between

LANCASHIRE COUNTY COUNCIL

and

Name of Provider

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THIS AGREEMENT is made the _____ day of _____ 20

BETWEEN

THE PARTIES

- (1) **Lancashire County Council** whose principal place of business is at P.O. Box 78, County Hall, Preston, PR1 8XJ (hereinafter referred to as 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] (hereinafter referred to as "the Provider").

Individually the "Party" and collectively the "Parties".

BACKGROUND

- (1) The Council published a PIN Notice (Ref: 2021/S 000-015091) on the 1st day of July 2021 and a further Find a Tender Contract Notice on the _____ day of _____ 2021 seeking Requests to Participate on a Pseudo Dynamic Purchasing System from prospective providers for the provision of children's home services.
- (2) On the basis of the Provider's Request to Participate, the Council admitted the Provider onto the PDPS to enable it to bid for Service Contracts which will be allocated to the Provider by the Council and other Contracting Body in accordance with the Call-off Procedure.
- (3) All Applicants applying to join the PDPS indicated in their Request to Participate that they would comply with all relevant legislation, codes of conduct and regulations governing the subject matter of the Agreement.
- (4) This Agreement sets out the award and ordering procedure for Service Contracts which may be required by the Council or the Contracting Body, 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 PDPS.
- (5) It is the Parties' intention that the neither the Council nor the Contracting Body 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

- 1.1 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 a plan which the Provider must provide the Council where a Formal Improvement Notice has been served by the Council.

"Agreement " means this Agreement for a pseudo dynamic purchasing system for children's home services together with all schedules and appendices attached hereto.

"Applicable Laws" means all applicable laws, statutes, or regulations, regulatory policies, guidelines or industry codes from time to time which apply to the provision of the Services or with which the Provider must comply with.

"Application" – the submission by an Applicant in response to the Find a Tender Notice seeking admission onto the PDPS.

"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 Service Contract awarded under the PDPS.

"Care Plan" means the document drawn up where a Child is receiving Services which contains information relating to the Child and their family, and the Services which 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" means the charges which shall become due and payable by a Contracting Body to the Provider in respect of the Services in accordance with the provisions of clause 11 of the Service Contract and as further particularised in the Service Contract.

"Child/Children" means Children and Young People being a CLA.

"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 1st day of August 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 sensitive personal 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 Contracting Body 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 8 hereto.

"Find a Tender Notice" means the contract notice published on www.find-tender.service.gov.uk

"Formal Improvement Notice" sets out actions that must be delivered in a specific timeframe as well as detailing 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.

"FOIA" means The Freedom of Information Act 2000.

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

"Good" is a judgement given by Ofsted (or equivalent Regulatory Body) following an inspection of a Home.

"Health Plan" means a plan which is developed to reflect the Child's health needs and is included as part of the Child's overall Care Plan.

"Home" a Provider's Home registered with Ofsted (or equivalent Regulatory Body) for the purposes of providing the Services under this Agreement.

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

"Individual Placement Agreement (IPA)" means an agreement whereby the Council agrees to purchase and the Provider agrees to provide the Services for a Child's individual needs, set out in Schedule 4 of the Call-Off Terms and Conditions , as updated 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 or ITP" means the Council's invitation to Providers to participate in the PDPS.

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

"Location Boundary" means the locations identified within the Invitation to Participate document Section 4.2 Evaluation of Applications.

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

"Month" means a calendar month.

"Offer" means the Offer from the Provider to provide the Services.

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

"PDPS" means this Pseudo Dynamic Purchasing System

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

"Placement" means the Home in which a looked after Child will live.

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

"Price" means the Price for the Services specified within the Pricing Schedule at Appendix 4 of the ITP exclusive of Value Added Tax (VAT) or such other Price as may be agreed between the parties and evidenced in writing when purchasing the Services.

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

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

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

"Referral" means a request for Services which may also be referred to as a Placement Request to the terms of the PDPS, Service Contract.

"Referral Distribution Lists" means those lists that are referred to at clause 3.11.1 in Schedule 2.

"Regulations" means the Public Contracts Regulations 2015 (SI no 102 of 2015).

"Regulated Activity" means in relation to children shall have the same meaning as set out in Part 1 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006 and in relation to vulnerable adults shall have the same meaning as set out in Part 2 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006

"Regulatory Body" means those government departments and regulatory, statutory and other entities, committees, ombudsmen and body 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 Application to join the PDPS.

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

"Retained Placement Agreement" means where a Contracting Body has agreed with a Provider to pay a retainer for an upcoming vacancy in a Home and as more particularly described in section 4.1.4 of the Specification.

"Review" is the process carried out by the Council throughout the term of the Agreement as set out at Schedule 6 of the Agreement.

"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 (where applicable);
- (iii) the Service Contract Data and any documents Annexed to it (where applicable);
- (iiii) the Tender/Offer (where applicable)

"Service Contract Data" means the document at Schedule 4 of the Call Off Terms and Conditions, forming part of the Service Contract and supplementing the Specification, setting out the key details and specifics of the Contracting Body's requirement for Services following the Call-Off Procedure.

"Service User" means any individual notified by a Council 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.

“Staff” shall mean the personnel employed or engaged by the Council or the Provider to carry out obligations under this Agreement, including temporary, agency or self- employed staff, volunteers and students and as applicable all such prospective personnel.

"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 providers that enter into a Subcontract with the Provider.

“Tender” means the documents submitted to the Council by the Provider in response to a mini-competition held by the Council 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 tenth 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 where relevant and applicable "Contracting Body" (as defined in the PDPS) that are permitted to access to the PDPS and to call-off from the PDPS.

"The Council's Placement Finding Service" means the Access to Resources team or any other team that 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

"Waking Watch" means where a member of Staff on duty at night in the Home remains awake and fully alert, supervising the premises and the Children at all times throughout the night.

"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 by email to artenquiries@lancashire.gov.uk and confirmed by post 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 its Staff, agents, Sub-Contractor, self-employed staff or personnel employed in connection with the Services will comply with all applicable Laws governing the delivery of the Services;
- 3.1.4 any accommodation that it supplies in relation to the provision of the Services shall be fit for the purpose for which the Service are required;

- 3.1.5 this Agreement is executed by a duly authorised representative of the Provider;
 - 3.1.6 in entering into this Agreement or any Service Contract it has not committed any Fraud;
 - 3.1.7 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;
 - 3.1.8 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;
 - 3.1.9 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;
 - 3.1.10 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;
 - 3.1.11 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 the 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 3 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 Provider of the Services and the Provider shall be eligible to be considered for the award of Service Contracts by the Contracting Body during the Term. The PDPS does not provide any guarantee of Services 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 Call Off Procedure, only Providers identified on the relevant Tier and/or Referral Distribution List by a Contracting Body, in its absolute discretion 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 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 clause 4.5, a Contracting Body, when ordering Services under the Agreement using a mini-competition pursuant to paragraph 4 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 a Tender from eligible, invited Providers by issuing an Invitation to Tender document setting out the Contracting Body's requirements, a copy of the proposed Service Contract (which incorporates the Service Contract Data) and a deadline by which the Tender must be submitted;
 - c) evaluate all Tender submissions received by the Invitation to Tender deadline in accordance with the award criteria set out in the Contracting Body's Invitation to Tender;
 - d) (on conclusion of the Tender submission evaluation process) award a Service Contract to the Provider on the basis of the Award Criteria specified in the Contracting Body's Invitation to Tender;
 - e) prepare and send to the successful Provider via email (or such other system as the Contracting Body may from time to time employ) a notification of award. If the Provider 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 Tender (and so on until all Providers decline and the Contracting Body has to re-procure such Services). If a Provider 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 Contracting Body's notification of award (where the Provider has offered to enter into the Service Contract);

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.

- 4.5 The Contracting Body may make a direct award of a Service Contract (bypassing the mini-competition and submission of a Tender/Offer by the Provider) where:
- a) Service User choice applies, in the circumstances further particularised in paragraph 7 of the Call-Off Procedure; or
 - b) A Direct Award is appropriate in the circumstances further particularised in paragraph 6.1.1 of the Call-Off Procedure;
- 4.6 Where a direct award of a Service Contract is made pursuant to clause 4.5, the provisions of clause 4.4(e) and (f) shall apply where it is deemed necessary by the Council.
- 4.7 The Provider agrees that each Tender submitted by the Provider in relation to a mini-competition for Services held pursuant to this clause 4 shall remain open for acceptance for sixty (60) days (or any other such timescale as required by the Council), from the specified commencement date for such Services (or such other period specified in the Invitation to Tender issued by the Contracting Body in accordance with this clause 4).
- 4.8 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.
- 4.9 The Parties acknowledge and agree that the issue of an Invitation to Tender is an "invitation to treat" by the Contracting Body. Accordingly, the Provider shall submit its Tender as its offer 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 Data.
- 4.10 The Provider acknowledges that, in entering this Agreement, no form of exclusivity or volume guarantee has been granted by the Council for Services from the Provider and that the Contracting Body 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.
- 4.11 Subject to clause 4.5, 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 Placement Request 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 the 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 submitting the best value suitable Offer;
- e) prepare and send to the successful Provider via email (or such other system as the Contracting Body may from time to time employ) a notification of award. If the Provider 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 Tender (and so on until all Providers decline and the Contracting Body has to re-procure such Services). If a Provider 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) An IPA is signed: or
 - (ii) the Placement commences.

5. TERMINATION

- 5.1 For the avoidance of doubt when the term "Council is used in clause 5 it shall exclusively refer to Lancashire County Council. The Council or Provider may terminate this Agreement upon the provision of no less than six (6) Months written notice (or a shorter period if mutually agreed by the Parties to the other. Following termination under this clause 5 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 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, subcontractor, 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) standards are not met;
 - (d) The Provider is failing to address the concerns within the Formal Improvement Notice.
- 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 thirty (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 Regulations; 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), 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 Home received an Ofsted (or equivalent) rating of 'Inadequate' 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 The Council is satisfied that these have been resolved or where there is failure to promptly submit requested information at the tier review.

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 Body 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;

(c) this Agreement;

(d) the Placement Request/Invitation to Tender requiring a Tender (where applicable);

(e) the Offer/Tender/Application (where applicable);

(f) the Invitation to Participate;

(g) any other document referred to in the Service Contract; and

(h) any other document referred to in this Agreement.

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 body 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 Quality Commission (CQC)) for the Regulated Activity which they carry out within the scope of this Agreement and must specify a Home for the purposes of delivering the Services under this Agreement and the Service Contract(s). 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 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 rating for the specific Home. 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 Any Home(s) included on the PDPS Agreement that are rated as 'Inadequate' (or equivalent by any successor body or system of evaluation) will have existing placements reviewed by the Council. The Council will consider the judgement, the

Action Plan of the Provider and the Care Plan of the Child before deciding whether the Placement should continue, or an alternative placement found.

- 10.4 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.
- 10.5 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 (at Schedule 4 of the PDPS).

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 8 of this Agreement as well as

including a range of different circumstances) and deliver it to the Council 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 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 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 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 each Party consents, 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 to 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

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 constitute a duplicate original, but all the counterparts shall together constitute the one Agreement.

- 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.

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**

SCHEDULE 1- CALL-OFF TERMS AND CONDITIONS

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" or the Contract Data Form at Schedule 2 of the Call-Off Contract Terms and Conditions may 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 Body" (as defined in the PDPS) who are permitted to access to the PDPS and to call off from the PDPS.
- 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 PDPS will be scheduled for Call-Off under the terms of this PDPS. Existing service arrangements will not be transferred to the PDPS unless the Placement needs to be recommissioned.
- 2.5. Providers under this PDPS 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 for Service Users (child or young person receiving or using the Service) whose assessed requirements are commissioned by the Council with care and support will be provided in line with the Service User's eligible needs and outcomes and 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. The decision on whether to accept a Placement Offer will always be based first and foremost on suitability of the Provider being able to provide the best possible care and support to the Service User(s). Should more than one Offer at each stage be deemed suitable then the lower cost Offer will be chosen. Providers will be permitted to submit a Price in response to a Placement Request which is no higher than their Price at application for the relevant service category and home size. The Council's Placement Finding Service shall send out the relevant information to the Providers with the Placement Request. Where the Provider requires additional information, this will be requested through the Council's Placement Finding Service.
- 3.3. The Council shall send Placement Requests to Providers in stages as set out below.

- 3.4. For the avoidance of doubt, a Provider may be deemed not capable of performing the Services and therefore must not provide an Offer in response to the Placement Request, for example where the Provider has been suspended from the PDPS.
- 3.5. The Provider must respond to all requests submitted by the Council via 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, and must provide the Impact Risk Assessment as defined in the Call-off Terms and Conditions if requested by the Contracting Body.
- 3.6. 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. It is anticipated that Providers must respond within 24 hours whenever possible but no later than 48 hours.
- 3.7. Following the award decision, the IPA will be shared and the successful Provider(s) will be required to sign the IPA.
- 3.8. Where a Contracting Body other than the Council calls off the PDPS the reference to the Council's In-House Residential Service and Block Contract Providers may not apply.

3.9. Stages of the Call -Off Procedure for Placement Requests:

3.9.1. For Standard Children's Home Placement Requests:

3.9.1.1. STAGE ONE

- (i) The Placement Request will be circulated where applicable at the same time to the Council's In-House Residential Service, Block Contract Providers (or any other subsequent children's home contracts) and to all Tier 1 Providers.
- (ii) It is up to Providers to carefully consider the Placement Request and to promptly contact the Council's Placement Finding Service or any other team as instructed by the Council to request further information if required.
- (iii) If a Tier 1 Provider delivers other provision (such as a service which includes therapy) and is therefore not classed as a Standard Children's Home Placement, Offers for these Placements should only be put forward when the search has progressed to Stage Three. Any Offers received by the Council's Placement Finding Service from Tier 1 Providers which are not classed as a Standard Children's Home Placement Offer will only be shared with the relevant social worker if the search has reached Stage Three.
- (iv) Offers to provide Services for Standard Children's Home Placements received from Tier 1 Providers will be sent to the social worker for consideration alongside any Offers received from the Council's In-House Residential Service and for Block Contracted placements.
- (v) Offers received will at all times be considered by the social worker in the following order of priority:
 - A. Offers received from the Council's In-House Residential Service and/ any offers received for Block Contracted placements;
 - B. Standard Children's Home Placement Offers received from Tier 1 Providers, including any Offers from a Tier 1 Provider which is a party to a Retained Placement Agreement (Please see 'Use of Retainers' Section of the Service Specification).

3.9.1.2. STAGE TWO

- (i) Should no suitable Stage One Offer be received, the Placement Request will then be circulated to all Providers on the Tier 2 Standard Children's Home Placement list.
- (ii) It is up to Providers to carefully consider the Placement Request and to promptly contact the Council's Placement Finding Service or any other subsequent Team as instructed by the Council to request further information if required.
- (iii) Should a Stage One Offer be received during a Stage Two search, social workers will be asked to prioritise consideration of the Stage One Offer first.
- (iv) If there is a large disparity in cost between Offers received at Stage Two, lower cost Placement Offers will be sent to the social worker first for consideration. If the lower cost Offers are not considered suitable by the social worker, then higher cost Offers will be sent for consideration.

3.9.1.3. STAGE THREE

- (i) Should no suitable Stage Two Offers be received, the Placement Request will be circulated to all Providers on this PDPS or equivalent regional framework.
- (ii) The Placement Request also will be circulated to Providers on the Placements North West DPS.
- (iii) Providers who are on both the PDPS and Placements North West DPS and who wish to make an Offer must do so as per their application for the PDPS.
- (iv) It is up to Providers to carefully consider the Placement Request and to promptly contact the Council's Placement Finding Service or any other subsequent Team as instructed by the Council to request further information if required.
- (v) Whilst the request will continue to be for a Standard Children's Home Placement, Offers which are not classed as Standard (for example if they include therapy or education) will be forwarded onto the social worker for consideration at this stage.
- (vi) Should a Stage One or Stage Two Offer be received during a Stage Three search, the social worker will be asked to prioritise consideration of this Offer ahead of any Stage Three Offers.
- (vii) If there is a large disparity in cost between Offers received at Stage Three, lower cost Placement Offers will be sent to the social worker first for consideration. If the lower cost Offers are not considered suitable by the social worker, then higher cost Offers will be sent for consideration.

3.9.1.4. STAGE FOUR

- (i) Should no suitable Offers be received via Stages 1-3, the Placement Request will be circulated to Providers that have not been appointed onto this PDPS "Off-Contract Providers".
- (ii) If there is a large disparity in cost between Offers received, lower cost Placement Offers will be sent to the social worker first for consideration. If the lower cost Offers are not considered to be suitable by the social worker, then higher cost Offers will be sent for consideration.

3.10. Emergency (Same Day) Children's Home Placement Request

- 3.10.1. The Placement Request will be circulated simultaneously to the Council's In-House Residential Service, Block Contract Providers, all Tier 1 Providers and to Providers on the Tier 2 Emergency (same day) Children's Home Placement list. In exceptional circumstances, the Council reserves the right to send to all providers on the Placements North West DPS and Off-Contract Providers at the same time as Tier 1 and Tier 2 Providers on the PDPS should timescales require this (e.g. Placement required within the hour or where it is recognised that the young person's needs are highly complex).
- 3.10.2. If, the Placement Request is of an emergency nature (required same day), each Provider shall use its best endeavours to respond, within one (1) hour of the Provider receiving the Placement Request. The Placement Finding Service may contact the Providers direct by telephone if the Placement Request is of an emergency nature.
- 3.10.3. Providers must carefully consider the Placement Request and contact the Council's Placement Finding Service to request further information promptly, as required.
- 3.10.4. The timeframe for responses from Providers will be clearly indicated on the email sent with the Placement Request. As a general guide, it is anticipated that responses for emergency (same day) placement Offers will be required by the Council's Placement Finding Service within 1 hour.
- 3.10.5. All Placement Offers will be sent to the social worker as soon as they are received, although the social worker will be instructed to prioritise exploring In-House/ Block Contract and lower cost Offers first.
- 3.10.6. Should no suitable Offers be received, the Placement Request will be circulated to all PDPS Providers and to all providers on the Placements North West DPS.
- 3.10.7. Should suitable Offers still not be received, the Placement Request will be circulated to Off-Contract providers, although the Council reserves the right to send to Off-Contract providers at the same time as Placements North West DPS providers if there are time constraints.

3.11. Placement requests which include Therapy and/ or Education Or For A Child With A Disability.

- 3.11.1. The Placement Request will be circulated at the same time to the Council's In-House Residential Service, Block Contract Providers, all Tier 1 Providers and to Providers on the relevant Tier 2 Referral Distribution Lists as set out below:
 - (i) Children's Home Placement which includes Education;
 - (ii) Children's Home Placement which includes Therapy;
 - (iii) Children's Home Placement which includes both Education and Therapy;
 - (iv) Children's Home Placement for a Child with disabilities.
- 3.11.2. Providers must carefully consider the Placement Request and promptly contact the Council's Placement Finding Service to request further information if required.
- 3.11.3. The timeframe for responses will be clearly indicated on the email sent with the Placement Request and will depend on when the Placement is required. As a general guide, it is anticipated that Providers will respond to the Council's Placement Finding Service within 24 hours wherever possible (and no later than 48 hours).
- 3.11.4. Where a Placement Request specifically requests this, Tier 1 Providers can put forward Placement Offers for provision which includes therapy and/ or education or can meet the needs of a child with a disability.

- 3.11.5. Offers from both Tier 1 and Tier 2 Providers, including any relevant Placement Offers which are made by a party to a Retained Placement Agreement, will be sent to the social worker for consideration, alongside any Offers received from the Council's In-House Residential Service or for Block Contracted placements.
- 3.11.6. If there is a large disparity in cost between Offers received, lower cost placement Offers will be sent first for consideration to the social worker. If the lower cost Offers, In-House, Block Contract Offers or retained placements are not considered to be suitable by the social worker, then higher cost Offers will be sent for consideration.
- 3.11.7. Should no suitable Offers be received, the Placement Request will be circulated to all PDPS Providers and via the Placements North West DPS.
- 3.11.8. Should suitable Offers still not be received, the Placement Request will be circulated to Off-Contract Providers.

4. Mini Competition

- 4.1.1. For every Service Contract 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.
- 4.1.2. For the avoidance of doubt where a Provider has been suspended from the PDPS or is presently subject to other comparable sanctions in respect of any failings in regard to the performance requirements within the Specification and the PDPS they will not be invited to participate in the Mini-Competition.
- 4.1.3. The proposed Service Contract will substantially be in the form advertised at the outset of the PDPS, though the Mini-Competition documents will provide clarity in respect of:
 - (i) The scope
 - (ii) Any specific requirements
 - (iii) Any other aspect of the Service Contract or Mini-Competition as appropriate
- 4.1.4. 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 days.
- 4.1.5. Providers' Offers shall be submitted in writing, and their content shall not be opened until the stipulated time limit for reply has expired.
- 4.1.6. 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.
- 4.1.7. The quality weighting will range from 0-60%. 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
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Collaborative Working	Weighted at/between 0 and 30%
Placement Stability	Weighted at/between 0 and 20%
Emotional Health and Wellbeing	Weighted at/between 0 and 20%
Service Delivery/ Mobilisation	Weighted at/between 0 and 20%
Risks and Challenges	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 60%

4.1.8. The Price Criteria weighting will range from 40-100%.

4.1.9. All Providers invited to partake in the Mini -Competition will be informed of the outcome of the Mini-Competition.

4.1.10. At award of the Service Contract the Council will complete the Contract Data Form at Schedule 4 of the Call-Off Contract Terms and Conditions with the relevant details for the Services awarded.

5. Not used

6. Direct Award

6.1. Direct Award may be utilised

6.1.1. If any specific factors pertaining to the Services 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 the Provider's service means it can be evidenced there is only one Provider that is capable of meeting the Service User's requirements.
- (iv) Where a Mini-Competition or Placement has taken place and the successful Provider has withdrawn from the Service Contract, or the successful Provider fails to commence the Service Contract, the Council reserves the right to directly award the Service Contract to the Provider with the next highest ranking Offer.
- (v) 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 contract or Placement are not substantially altered; and/or,
- (vi) 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.

6.1.2. The Charges for any Service Contract established through Direct Award will be set by the Council or mutually agreed by the Council and Provider on the basis of an open book costing exercise.

7. Service User Choice

7.1. For the avoidance of doubt Service User Choice includes a decision taken by, or a combination of, the Service User, their family, or a recognised advocate, guardian or social worker or similar SEND professional of the Service User.

7.2. A Service User may be given the choice of Provider where more than one suitable Offer has been received, where there isn't a large disparity in cost and where time allows for this. Where a Service User has indicated a choice of Provider to deliver all or an element of the Services, and the Council is satisfied that the proposed Placement(s);

- (i) Will be held by a Provider that will meet the needs of the Service User(s);
- (ii) Delivers Services which in the absolute discretion of the Council are proportionate to the needs of the Service User(s); and,
- (iii) Can meet the Service Users needs and deliver the Service as described in the Placement Request or mini competition documents;
- (iv) a Service may be agreed.

7.3. The Charges for any Services established through Service User choice will be at or below the Price established within the Providers application for the PDPS with the addition of any annually agreed uplifts or in exceptional circumstances, mutually agreed by the Council and Provider on the basis of an open book costing exercise.

SCHEDULE 3- SERVICE SPECIFICATION

See Schedule 1 to the Call Off Terms and Conditions at Schedule 1

SCHEDULE 4- NORTH WEST CHILDREN'S SERVICES INFORMATION SHARING PROTOCOL

Notification under the North West Children's Services Information Sharing Protocol

Please note: The Issuing Authority must complete the information required in full. Any incomplete notifications may be returned for further information.

SECTION A: Issuing ISP

Issuing Local Authority

<u>Local Authority issuing ISP</u>	
<u>Officer name & email</u>	
<u>Officer telephone number</u>	
<u>Date ISP issued to the provider</u>	
<u>Date ISP issued to Placements North West</u>	
<u>Date ISP to be reviewed by the issuing authority</u>	

Information about the service

<u>Organisation Name</u>	
<u>Company number</u>	
<u>Address</u>	
<u>Host Authority</u>	

Indicate if this ISP relates to the organisation as a whole or a specific service:

<u>Organisation</u>		<u>Service/establishment specific</u>	
<u>Name of home/property/school (if applicable)</u>			
<u>Ofsted URN (if applicable)</u>			

Contract affected by this ISP:

<u>Residential FPS</u>		<u>SaLLs DPS</u>	
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<u>SEND FPS</u>		<u>Fostering FPS</u>	
<u>Off contract</u>			
<u>Other</u>			

Information being made available (initial notifications):

Local Authority concern

<u>Safeguarding concern</u>		<u>Quality concern</u>	
<u>Current criminal investigation</u>		<u>Financial concern</u>	

Ofsted judgements (please provide evidence):

Note: The following process be followed for homes on the Residential and Fostering contracts when an Ofsted inspection is carried out which results in an inadequate key inspection judgement:

- The host Local Authority will raise an ISP and send it to Placements North West (PNW) for circulation to the region (it may be that a placing authority wants to raise the ISP, in this case they should liaise with the host authority to avoid duplication).
- The host Local Authority will inform PNW of the inadequate Ofsted rating and provide a copy of the report or confirmation of the decision from Ofsted
- For homes on the Residential contract PNW will liaise with STAR to suspend the home from the contract

<u>Inadequate Key Inspection judgement received</u>		<u>Interim Inspection judgement received</u>	
<u>Ofsted registration withdrawn</u>		<u>Other please detail below</u>	

Local Authority placement actions taken

<u>Ending placement(s)</u>		<u>Actively reviewing placement(s)</u>	
<u>Suspending new referrals</u>		<u>No actions</u>	
<u>Other actions</u>			

Please detail other actions (providing factual information only) as identified above:

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Local Authority contractual actions taken

<u>Temporary suspension of purchasing arrangements</u>		<u>Temporary restriction of purchasing arrangements</u>	
<u>Permanent ending of contractual arrangements</u>		<u>Voluntary withdrawal from contract by provider</u>	

Placements North West monitoring concern

<u>Provider has failed to meet the Minimum Standards</u>		<u>Provider has not supplied up to date insurance following reasonable requests</u>	
<u>Provider has failed finance checks</u>		<u>Other (detail below)</u>	

Provider response to the ISP

Providers have been given the space below to respond to an ISP if they wish.

The issuing authority will send the completed Section A of the ISP notification to the provider to give them the opportunity to respond. If a response is received the issuing authority should send this to Placements North West for circulation.

Please include name and position of person providing ISP response

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SECTION B: ISP rescind

Details

<u>Date ISP rescinded</u>	
<u>Officer name and email</u>	

Outcomes

<u>Safeguarding concerns satisfactorily resolved</u>		<u>Quality concerns satisfactorily resolved</u>	
<u>Criminal concerns satisfactorily resolved</u>		<u>Financial concerns satisfactorily resolved</u>	

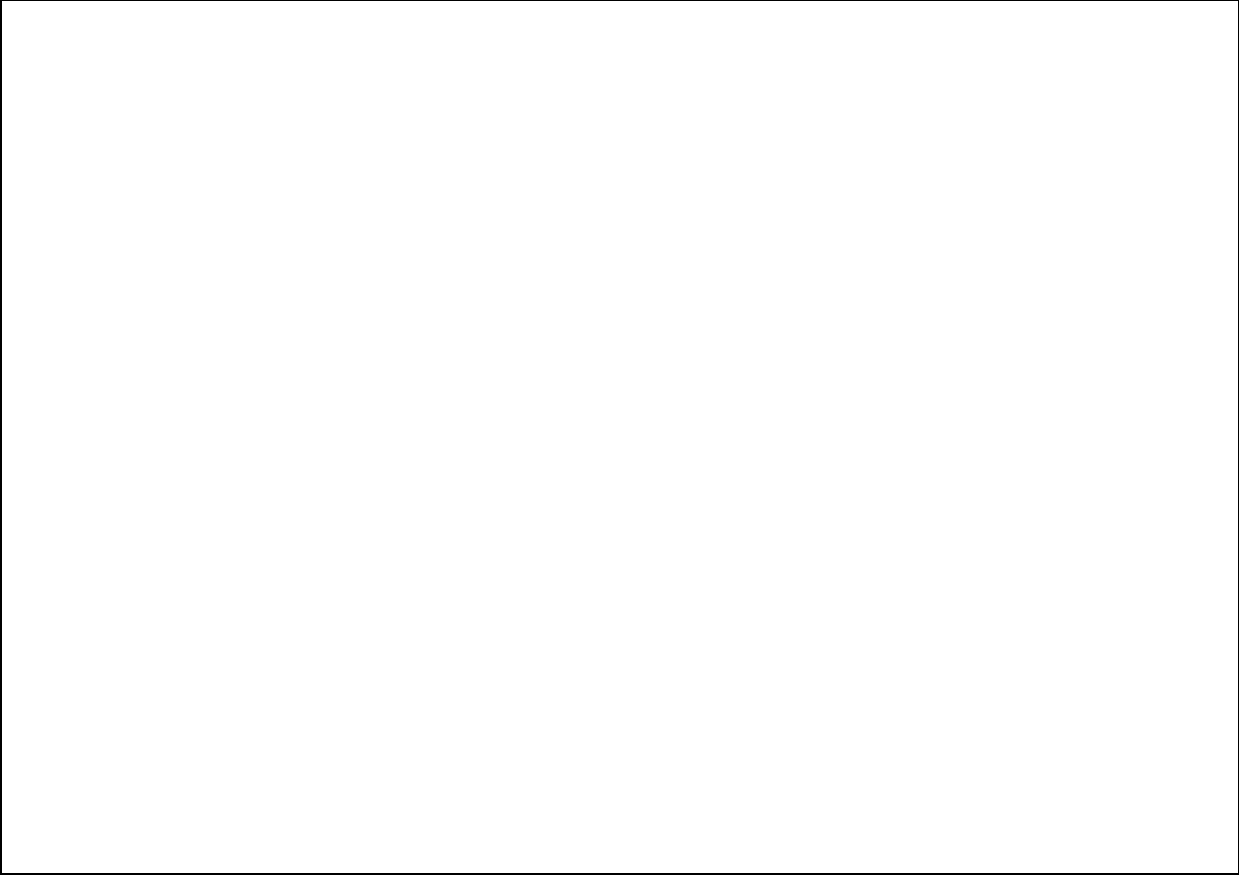
Contractual outcomes

<u>Lifting of suspension of purchasing arrangements</u>		<u>Lifting of restrictions on purchasing arrangements</u>	
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Placement outcomes

<u>No actions</u>		<u>Placement reviews concluded</u>	
<u>Reinstating referrals</u>		<u>Other actions (please detail below)</u>	

Additional Information



Notes on the Information Sharing Protocol (ISP)

Aim

The Protocol aims to:

- Facilitate the timely sharing of information about providers between local authorities where there are events or concerns that may be relevant to their contractual relationship.
- Help authorities to monitor the quality of providers and protect the welfare of children and young people in care.
- Offer a straightforward and consistent approach to information sharing. The approach is intended to be open and transparent.

Anticipated benefits

The benefits of the ISP include:

- Local authorities will have information routinely provided which will inform their contracting with specific providers.
- Providers will benefit by having the reassurance of effective cross authority collaboration and information sharing.
- Service users will benefit because local authorities will receive information that will help to prevent contracts being made or continued with unsuitable providers.

Limitations of the protocol

This notification is provided for information only. It is the responsibility of each authority receiving this information to decide how to use it.

Potential actions receiving authorities may take, include:

- Contacting the authority that sent the notice for more information
- Contacting the provider for further information
- Obtaining further information independently
- Seeking legal advice

The information given above is for the exclusive use of the authorities receiving it.

The notice may impact future referrals, and this is at the discretion of each authority.

Process summary

The ISP process is administered by Placements North West.

- I. Concern is identified by an authority. This may be the host or the placing authority.
- II. Local authority raises an ISP notification by completing Section A of the ISP notification form.
- III. Local authority shares the ISP notification form with the provider for their comments. (Note: The ISP will be circulated in the first instance without provider comments and an update circulated if a provider submits a response)
- IV. Local authority shares the ISP notification form with Placements North West for circulation to the ISP mailing list.
- V. If provider comments are received the local authority will resend to Placements North West for recirculating.
- VI. Placements North West update the regional ISP spreadsheet. This is circulated once per month.
- VII. Placements North West update contract referral spreadsheets as appropriate. If a provider or home is removed from the contract the referral spreadsheet will be recirculated.
- VIII. When the local authority is ready to rescind an ISP they complete Section B of the ISP notification form.
- IX. Local authority sends completed ISP notification form to Placements North West
- X. Local authority sends completed ISP notification form to the provider for their records
- XI. Placements North West shares the completed form with the ISP mailing list.
- XII. Placements North West updates the regional ISP spreadsheet.
- XIII. Placements North West update the contract referral spreadsheets as appropriate

Roles and responsibilities

Placement North West will act as the lead to co-ordinate the operation of the ISP.

This role includes:

- Updating mailing lists when mailboxes or member authorities change
- Dealing with proposed changes to the Protocol
- Circulating the ISP notifications
- Following up on ISP notifications that are awaiting review

Operating guidelines

These points form the operating guidelines:

- a) If there are safeguarding, quality, criminal and or financial concerns, these will be required to be shared under the Protocol. There is no discretion for member authorities – if certain events occur and circumstances apply they must be communicated under the Protocol. This is essential if effectiveness and consistency are to be achieved
- b) Placements North West will maintain a mailing list of local authority nominated contacts, this will include a minimum of one contact per authority.

- c) A copy of the notification will be sent to the provider involved. If, in **very exceptional circumstances**, it is not possible or appropriate, the fact that the provider has not been informed should be recorded on the notification form. Examples of this may include:
- When a business has closed and the owner has disappeared;
 - Where the authority has initiated closure and to confirm this in another form would aggravate the situation further.
- d) Any provider that is unhappy about any action taken under this Protocol has two sources of direct redress without resorting to legal action:
- The first is the procedure for dispute in the contract.
 - The second is the Local Authority's Complaints procedure if they wish to challenge any decision or action taken under this Protocol
- e) Each authority is independently responsible for what, if any, actions or decisions it makes as a result of the information received.
- f) No member authority can pass on to another authority or organisation, or third party other than those legally entitled to such information, any information obtained as a result of the protocol. If a receiving authority has concerns that another authority should receive information, they must refer the matter back to the original notifying authority.
- g) It is the responsibility of all member authorities to ensure that any information issued or received under this protocol that is held on computer is registered under, and conforms to the requirements of the Data Protection Act.

Information sharing

In no circumstances should any authority receiving information pass this information to other authorities or agencies who are not named below. The issuing LA may decide to issue the ISP to other authorities where there are known placements with a provider. The issuing authority should notify the provider and PNW in advance of sending the notice to an authority not listed below.

Member authorities

Member authorities include those named on the North West regional contracts, primarily the 23 North West local authorities with responsibility for children services as listed below.

Blackburn with Darwen Council, Blackpool Council, Bolton Council, Bury Borough Council, Cheshire East Council, Cheshire West and Chester Council, Cumbria County Council, Halton Borough Council, Knowsley Borough Council, Lancashire County Council, Liverpool City Council, Manchester City Council, Oldham Borough Council, Rochdale Borough Council, Salford City Council, Sefton Council, St Helens Council, Stockport Borough Council, Tameside Borough Council, Trafford Council, Warrington Borough Council, Wigan Borough Council, Wirral Borough Council.

Additional participants include the White Rose Framework.

Joining the ISP

Prospective member authorities will be referred to the Lead Authority for membership into the scheme. Acceptance would require written confirmation from the Lead Authority and the identification of a nominated officer and a designated deputy to undertake the tasks required by the protocol. Prospective member authorities should inform providers of their intention to sign up to the Protocol. This may be part of on-going liaison or require separate communication.

It may be necessary to amend contracts, with other Service Providers' consent, adding a clause that explicitly confirms the Authority's commitment to the Protocol.

Review and updates

The protocol will be reviewed annually by the regional Commissioning Managers group to reflect any statutory or regulation changes that would affect the operation of the protocol.

Any member authority can propose a change to the protocol by putting this in writing to Placements North West placementsnorthwest@bolton.gov.uk.

This would then be circulated to all other members, requesting a written response indicating acceptance or rejection of the proposal. Any change agreed by all members will be implemented. Any changes that are not agreed, or significantly alter the nature of the Protocol, will be referred to the regional Commissioning Managers group.

FAQs

Who raises ISPs?

Ordinarily ISPs are raised by local authorities.

ISPs should be raised by the most appropriate authority which would usually be the host authority for the service or a placing authority. It may be that the host and any placing authorities need to liaise to agree who is the most appropriate.

Where a provider is off contract the ISP can be raised by any local authority.

Who rescinds ISPs?

ISPs can only be rescinded by the authority that raised them.

How long does an ISP last for?

A review date is set for a maximum of three months following the date of the original ISP. An ISP may be extended if required.

Does a provider have to complete the comments section of the ISP?

There is no requirement for a provider to comment but the issuing authority must give the provider an opportunity to do so.

What happens if two ISPs are issued for the same provider?

If the ISPs are issued for the same concern the first notification received will be logged on the ISP spreadsheet. If subsequent ISPs contain additional information they will be circulated for information only. The issuing authority for the first ISP notification will be responsible for rescinding.

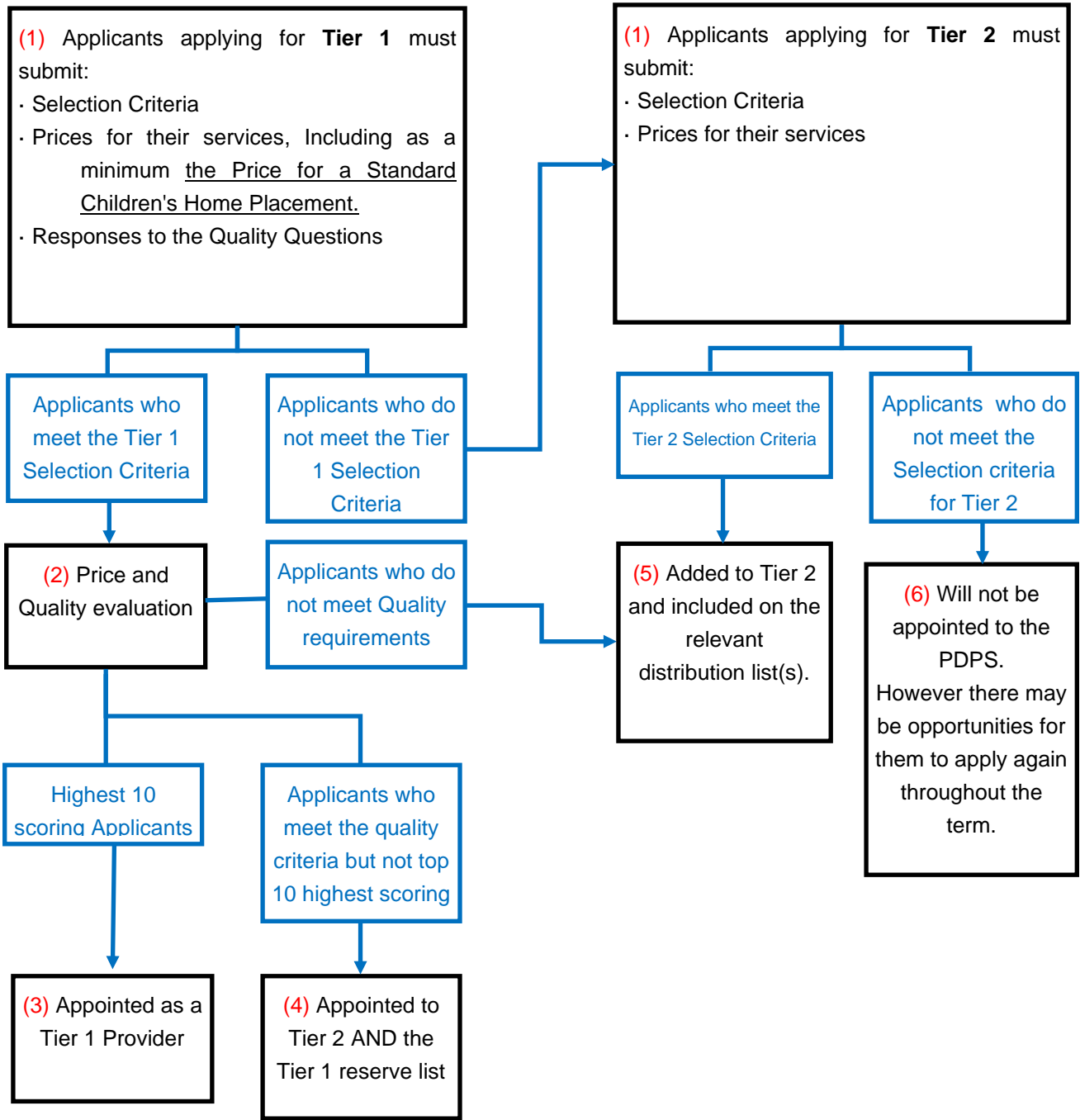
How often is the ISP spreadsheet sent out?

Placements North West will circulate the spreadsheet monthly.

SCHEDULE 5 – PROVIDERS APPLICATION

SCHEDULE 6 – PDPS TIERING SYSTEM

1. PDPS Applications and appointment to Tiers



- (1) Applications—See Section 4.1 of the ITP for more information
- (2) Price and Quality Evaluation— See Appendix 6 - Application Evaluation Criteria
- (3) Tier 1 Provider—See the Specification (within the Call Off Terms and Conditions) for more information in relation to Tier 1 requirements
- (4) Tier 1 reserve list— See the Specification for more information
- (5) Tier 2 Providers—See the Specification for more information in relation to Tier 2 requirements
- (6) PDPS—See Section 4 of the ITP for more information regarding Applications during the term of the Agreement.

1.1. Please see the Invitation to Participate document for further information in relation to Tiers, Applications and Evaluation of Applications.

2. Applications during the Term of the Agreement

2.1. New Applicants can apply to be part of the PDPS following the Application Process as described in the ITP and the Application Evaluation Criteria document.

2.2. For existing Providers wishing to add new provision, the Provider will need to confirm if their Application for the PDPS remains the same other than the stated new provision, and that they meet the required criteria for the relevant Tier, and will also be subject to the same price evaluation described in the Application Evaluation Criteria.

2.3. Tier 2 Applications

The PDPS will be open. This means that the Council will allow new Applicants to apply to join Tier 2 at any time which will be evaluated at specified periods throughout the course of the term and allow existing Providers to add new types of provision. It is expected that the evaluation will be every 3 months, or more frequently where required (unless otherwise stipulated by the Council):

- New Applicants will be assessed against the criteria for joining Tier 2 and added to Tier 2 where these criteria are met;
- It is an expectation that Applicants will apply for any new provision within the Location Boundary to be part of the PDPS. Existing Providers applying to add new types of provision will be assessed in line with the evaluation criteria for Tier 2.

2.4. Tier 1 Applications

There will be opportunities for new Applicants (who have applied at a later date) or existing Providers (who previously had not met Tier 1 criteria but who now can) to be able to apply to be on the Tier 1 reserve list, which the Council intends to evaluate annually (unless otherwise stipulated by the Council). Providers already on the reserve list or Tier 1 will maintain their 'quality' score but their 'price' score may change due to not applying for or receiving a Price uplift, adding additional provision which may impact on a Provider's average Price score or as a result of other Providers joining the reserve list or Tier 1. These factors may impact on their position on the reserve list or Tier 1.

3. PDPS maintenance and Provider movement to and from Tier 1 and Tier 1 Reserve List

3.1. Applicants who are not successful in obtaining a place on Tier 1 but otherwise meet the Tier 1 selection criteria will be placed in Tier 2 but added to the Tier 1 reserve list in the order they were ranked. Providers on the Tier 1 reserve list may be invited to join Tier 1 where:

- 3.1.1. A current Tier 1 Provider is removed from Tier 1, leaving a Tier 1 vacancy
- 3.1.2. The Tier 1 reserves list Provider has a higher overall price/quality score than a Tier 1 Provider.

3.2. 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 in the Service Specification). In these circumstances, the opportunity would be offered to the next highest scoring Provider on the Tier 1 reserve list.

3.3. The Council intends to carry out a review annually which includes the following (please note the frequency and nature of the review may change as deemed necessary by the Council):

- 3.3.1. The review of Tier 1 Provider Eligibility (for Tier 1 Providers and those on the Tier 1 reserve list). Please note that Tier 1 Provider eligibility will likely be monitored on at least a quarterly basis and a decision to move a Provider out of Tier 1 may be made earlier than the review process should they no longer meet eligibility criteria.
- 3.3.2. The performance of Tier 1 Providers will be considered at the Review. The decision may be made to move a Tier 1 Provider to Tier 2 if their performance is considered to be below Tier 1 expectations (see Service Specification and Key Performance Indicators within the Agreement). However, if the Tier 1 Provider no longer meets the Tier 2 requirements, they will be suspended from the PDPS.
- 3.3.3. The evaluation of Applications for the Tier 1 reserve list and the appointment of successful Providers to the Tier 1 reserve list. Each new Provider that meets the eligibility criteria will be awarded a combined Quality and Price score and added to the reserve list in the order they were ranked.
- 3.3.4. The annual price uplift invitation will be sent to Providers and the application of price uplifts where an uplift has been agreed. (Please see Clause 11 'Charges' of the Agreement). Price uplifts may affect Providers overall score if they are on Tier 1 or the Tier 1 reserve list. (Please see Appendix 6 Evaluation Criteria for more information regarding the Price Evaluation)
- 3.3.5. The identification of the top 10 highest scoring Providers within Tier 1 and the Tier 1 reserve list, and the appointment of those Providers to Tier 1 to replace the existing Tier 1 Providers. The Price uplift and new Providers could affect existing Providers' positions on Tier 1 or the reserves list.

3.4. A Tier 1 Provider may be moved out of Tier 1 in the following circumstances:

- 3.4.1. Tier 1 criteria is no longer met (i.e. the Provider no longer has 65% or more of their Homes in the Location Boundary rated as Good or Outstanding by Ofsted (or equivalent). Should the criteria be re-met, then the Provider would be moved to the Tier 1 reserve list and, depending on their combined Quality/ Price score, may then be reinstated into Tier 1 as part of the next Review process.
- 3.4.2. As a result of the Review process (i.e. a Provider on the Tier 1 reserve list, who wishes to move up to Tier 1, has a higher combined Quality/ Price score than an existing Tier 1 Provider). In this circumstance, the lower scoring Tier 1 Provider would be moved to the Tier 1 reserve list.
- 3.4.3. Continued poor performance against the stated KPIs, following the issuing of a Formal Improvement Notice. In this circumstance, the Provider would be moved to Tier 2. If in due course the Council feels that poor performance has been addressed to their full satisfaction, then the decision may be made to place the Provider on the Tier 1 reserve list and, depending on their combined Quality/ Price score, may mean that a Provider can be reinstated into Tier 1 as part of the next Review process.

3.5. The Council may re-procure Tier 1 after three years. In these circumstances, existing Tier 1 Providers may need to reapply for a place on Tier 1 or may be given the opportunity to confirm that their previous Tier 1 Application (or part of the Application) remains the same as will Providers on the Tier 1 reserve list, and Providers on the Tier 1 reserve list, Tier 2 and Applicants outside of the PDPS will have the opportunity to apply.

SCHEDULE 7 – RETAINED PLACEMENT AGREEMENT (RPA)

Agreement for the Retention of an Agency Children's Home Placement

Under the terms and conditions of the PDPS, a Retained Placement Agreement can be entered into between a contracted Provider and the Contracting Body to support the meeting of specific gaps in provision or harder to source Placements.

A RPA will be issued for each Placement the Contracting Body has agreed to pay a retainer.

This RPA is between the Provider (the Independent Children's Home Provider) and the Contracting Body for the retention of the Children's Home Placement named below.

The RPA will incorporate the Terms and Conditions of the PDPS Agreement, as far as applicable and subject to variation.

This RPA will supersede all other agreements signed in respect of a Retained Placement.

The RPA template may change from time to time.

THIS RPA IS BETWEEN:

The Contracting Body	
The Provider	

1. THE RETAINED PLACEMENT

Name and address of Registered Children's Home at which the Placement is being retained	
Type of Placement being retained (e.g. Solo, Dual)	
Date the RPA starts	
Agreed duration of the RPA	

The Provider agrees to work collaboratively with the Contracting Body to identify a suitable Child for the Retained Placement and not to consider Children from other Local Authorities for the above vacancy for the duration of the RPA.

The Contracting Body will determine which Children they wish to be considered for the above Retained Placement. A clear, justified reason including a copy of the Impact Risk Assessment

(if requested) must be given by the Provider should the decision be made to not put forward an Offer for an identified Child.

The Contracting Body reserves the right to end this Retained Placement Agreement at any time should there be concerns in relation to the ability of the provision to be able to meet demand.

The Contracting Body will not enter into, or continue with, a Retained Placement Agreement for a Placement in a Home that has or receives a rating of Inadequate (from a regulatory body).

Should the Retained Placement fail to be filled during the agreed time period, there would be the option to extend beyond this should both parties agree. In this instance another RPA will be issued.

2. THE PRICE

In accordance with the Service Specification and any Price submitted by the Provider, the Contracting Body shall pay the Provider the following sums:

Weekly Retained Placement Cost	£
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3. PAYMENT

Please see Clause 11 (Charges and Payment) of the Agreement for information in relation to the payment terms.

If you have any queries regarding the RPA for the Council, please contact the Council's Access to Resource Team Email – artenquiries@lancashire.gov.uk Phone – 01772 531293.

4. SIGNATORIES TO THE AGREEMENT AND APPROVAL FOR FUNDING

The Provider and the Contracting Body agree to retain the named Placement in accordance with the details set out above.

For the purposes of this Retained Placement Agreement (RPA), the date the agreement commences may not be affected or altered in any way by the date of signature of this agreement.

The Contracting Body

Name of organisation	
Name of signatory	
Position	
Signature	
Date	

The Provider

Name of organisation	
Name of signatory	
Position	
Signature	
Date	

AMENDMENTS AND VARIATIONS

Amendments and variations to the RPA must be made in writing by the requesting party and agreed by the Contracting Body and the Provider in advance of the variation to the RPA taking effect.

Any variations to the Services and Prices must be detailed in a revised version of the RPA. The revised RPA will replace the original RPA and must be signed by both parties before any additional Prices become payable.

SCHEDULE 8 - 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; and
 - 2.4 arrangements for the transfer of any rights and/or obligations under the Agreement 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 Agreement;
 - 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 this Agreement 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 be implemented in the event an impact is 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.
- 3.8 The Provider shall also develop and maintain and implement a business continuity plan which shall include (without limitation) the following:
- a) plans to explore use of temporary management resources from the Council to assist the Provider to maintain Services provision;
 - b) plans to be developed by both Parties for any wider assistance available to maintain the provision of Services;
 - c) procedures and evidence to be provided by the Provider confirming that any Regulatory Body have been informed and approve the temporary measures being utilised to maintain service provision;
 - d) plans to provide the Council with reasonable access to Service Users records pertaining to the Agreement to allow confirmation of the details of the provision of Services to individual Service Users and establish if any local arrangements have been agreed between the Service User and the Provider for the manner and timing of the service they receive; and
 - e) plans to provide such data required in respect of Service Users to assist in the potential reallocation of service provision to the Successor Provider.

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.