

Date: 23 January 2012

(1) THE KENT COUNTY COUNCIL

-and-

(2) Coram

Contract for the Purchase of Adoption Management Services

Kent County Council

Sessions House

County Hall

Maidstone

Kent ME14 1XQ

TABLE OF CONTENTS

SECTION I - ARTICLES OF AGREEMENT.....	1
SECTION II - CONTRACT TERMS AND CONDITIONS	4
1. DEFINITIONS and INTERPRETATIONS.....	4
2. CONTRACT PERIOD	7
3. STATEMENT OF SERVICES	8
4. THE SERVICES.....	8
5. INTELLECTUAL PROPERTY (IP)	8
6. THE PARTIES' REPRESENTATIVES	9
7. STANDARD OF SERVICE.....	10
8. MONITORING AND REVIEW OF CONTRACT	11
9. CONFIDENTIALITY	11
10. FREEDOM OF INFORMATION	13
11. DATA PROTECTION	13
12. HEALTH AND SAFETY	14
13. SERVICE PROVIDER'S key personnel and other STAFF	15
14. PROVISIONS RELATING TO STAFF GENERALLY	15
15. SAFEGUARDING CHILDREN AND YOUNG PEOPLE	18
16. PURCHASER'S PREMISES	18
17. BRIBERY AND CORRUPTION.....	19
18. EQUAL OPPORTUNITIES.....	19
19. RELATIONSHIP OF PARTIES	20
20. INDEMNITY AND INSURANCE.....	20
21. TUPE	21
22. RE-TENDERING AND HANDOVER.....	21
23. PAYMENT AND AUDIT	22
24. ASSIGNMENT AND SUBCONTRACTING	23
25. TERMINATION	24
26. WAIVER.....	26
27. STATUTORY AND OTHER REGULATIONS.....	26
28. FRAUD.....	26
29. DISPUTE RESOLUTION PROCEDURE	26
30. CHANGE OF LAW	27
31. VARIATION OF THE SERVICES	27

32.	COMPLAINTS PROCEDURE	28
33.	NOTICES	28
34.	LAW and JURISDICTION	29
35.	NO RIGHTS OF THIRD PARTIES	29
36.	FORCE MAJEURE	29
37.	DECLARATION OF INTERESTS	30
38.	CHANGE OF OWNERSHIP	30
39.	GENERAL	30
40.	HUMAN RIGHTS	31
41.	SEVERANCE	31
42.	WARRANTY	32
43.	NOVATION	32
44.	COMPLETE CONTRACT	32
	SCHEDULE 1 Service Specification	33
	SCHEDULE 2 The Pricing and Financial Schedule	56
	SCHEDULE 3 Details of Parties' Representatives	58
	SCHEDULE 4 Confidential and Commercially Sensitive Information	59
	SCHEDULE 5 TUPE	60

SECTION I - ARTICLES OF AGREEMENT

THIS CONTRACT is made on 23 January 2012

AGREEMENT FOR SERVICES

BETWEEN:

- (1) **The Kent County Council** of Sessions House, County Hall, Maidstone, Kent, ME14 1XQ ("the Purchaser")

AND

- (2) **Coram** a registered charity in England and Wales under Charity Registration No. 312278 whose registered office is situated at 49 Mecklenburgh Square, London, WC1N 2QA (hereafter referred to as "the Service Provider");

together "the Parties"

Whereas:

- (A) The Purchaser seeks the provision of adoption management services for KCC Looked After Children ("the Services") set out in the Contract.
- (B) The Purchaser and the Service Provider have agreed that the Service Provider shall provide and the Purchaser shall co-operate with it in providing the Services in the manner and upon the terms hereinafter set out.
- (C) The Purchaser is a Best Value Authority under the Local Government Act 1999 and the functions in respect of which the Purchaser wishes to procure are Best Value functions.

IT IS AGREED as follows:-

1. This Contract constitutes the sole agreement between the Purchaser and the Service Provider for the provision by the Service Provider of the Services.
2. The Service Provider shall provide the Services in accordance with the provisions of the Contract and to the satisfaction of the Purchaser.
3. So long as the Service Provider shall continue to provide the Services in accordance with the provisions of the Contract and to the satisfaction of the Purchaser, the Purchaser shall make to the Service Provider the payments provided for in the Contract.
- 4.1 The Contract is comprised of the Contract Documents which are:-
 - (i) These Articles of Agreement
 - (ii) The Contract Terms and Conditions
 - (iii) The Service Specification
 - (iv) The Pricing and Financial Schedule
 - (v) Details of Parties' Representatives

(vi) Confidential and Commercially Sensitive Information

(vii) TUPE

All of which shall be read as one document

- 4.2 Any reference to any of the Service Provider's personnel shall be deemed to include the Service Provider's directors and staff and its agents and subcontractors.
- 4.3 References to any statute or section or part of any statute include a reference to any statutory amendment modification or re-enactment thereof for the time being in force and to every instrument order direction regulation bye-law permission licence consent condition scheme or other such matter made thereunder or pursuant thereto.
- 4.4 Except where the context otherwise requires words denoting the singular meaning shall include the plural meaning and vice versa and wording denoting any one gender shall include the other gender.
- 4.5 A reference to any Party shall where the context so permits be a reference also to the successors in title and assigns of such Party and/or to any person authorised by such Party.
- 4.6 Any reference to a schedule or clause shall unless the contrary is specified be a reference to the corresponding Schedule or clause of this Contract.
- 4.7 The clause headings in this Contract are for the convenience of the Parties only and shall not affect its interpretation.
- 4.8 If there is any conflict between the terms of this Contract and any of the Appendices, Schedules and/or attachments to this Contract and it is unclear which provision is to take precedence then the provisions shall be interpreted so that they are given precedence in the following order:
- 4.8.1 these Articles of Agreement;
 - 4.8.2 the Contract Terms and Conditions;
 - 4.8.3 the Service Specification;
 - 4.8.4 the Pricing and Financial Schedule;
 - 4.8.5 any Appendices, other Schedules and/or Attachments to this Contract in chronological order.

IN WITNESS WHEREOF the Parties to this Contract have caused this Contract to be executed as their Deed the day and year first before written.

**SIGNED ON BEHALF OF
THE KENT COUNTY COUNCIL**
By:

.....

Andrew Ireland

Corporate Director

Families & Social Care

.....

Helen Jones

Head of Commissioning

Families & Social Care

**EXECUTED as a DEED by
CORAM
acting by a director and its
secretary/two directors**

]

)
)
)
)

.....
Director

.....
Director/Secretary

SECTION II - CONTRACT TERMS AND CONDITIONS

1. DEFINITIONS AND INTERPRETATIONS

1.1 In this Contract the following expressions have the following meaning:

“Advocate” means a person standing in for, or representing the Service Users best interest.

“Approved” or **“Approval”** means approved or approval in writing.

“Authorised Officer” means the person for the time being appointed by the Purchaser specified as being authorised to administer the Contract on behalf of the Purchaser or such person as may be nominated by the Authorised Officer to act on its behalf.

“BACS” means Bank Automated Clearing System.

“Best Value Duty” means the obligations of the Purchaser under Part 1 of the Local Government Act 1999, including the statutory instruments and guidance issued by the Secretary of State in relation to this Act.

“Commencement Date” means the 23 January 2012.

“Commercially Sensitive Information” means the subset of Confidential Information comprised of information Schedule 4 composed of the types of information:

- (a) which is provided by either Party in confidence for the period set out in Schedule 4; and/or;
- (b) that constitutes a trade secret.

“Confidential Information” means 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 relates to the business, affairs, properties, assets, trading practices, Services, developments, trade secrets, intellectual property rights, know-how, personnel, customers and suppliers of either Party, all personal data and sensitive personal data within the meaning of the Data Protection Act 1998, and Commercially Sensitive Information.

“Conflict of Interest” means a situation in which the Service Provider or a member of its staff has a private, personal or corporate interest which could appear to influence the objective exercise of his or her work towards the provisions of the Service(s).

“Contract” means this document which sets out the rights and obligations of the Service Provider and Purchaser as set out in the Contract Documents.

“Contract Documents” means the documents comprising the Contract which are described in Article 4.1.

“Contract Manager” means the Service Provider’s representative specified in Schedule 3 or any other person substituted by the Service Provider by notice to the Purchaser.

“Contract Standard” means such standard as complies in each and every respect with the terms and conditions of this Contract and the Specification.

“Convictions” means, other than in relation to minor road traffic offences, any previous or pending prosecutions, convictions, cautions and binding over orders (including any spent convictions as contemplated by section 1(1) of the Rehabilitation of Offenders Act 1974 by virtue of the exemptions specified in Part II of Schedule 1 of the Rehabilitation of Offenders Act 1974 (Exemptions) Order 1975 (SI 1975/1023) or any replacement or amendment of that Order).

“Criminal Records Bureau” or **“CRB”** means the Bureau established pursuant to Part V of the Police Act 1997.

“Data Processor” shall have the same meaning as set out in the Data Protection Act 1998.

“Data Protection Legislation” the Data Protection Act 1998 (DPA), the EU Data Protection Directive 95/46/EC, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000, the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner.

“Day” means Monday to Sunday inclusive.

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

“Enhanced Criminal Records Bureau Check” or **“Enhanced CRB”** has the meaning given in the Police Act 1997.

“Environmental Information Regulations” or **“EIR”** means the Environmental Information Regulations 2004.

“Expiry Date” means the date falling two (2) years after the Commencement Date.

“Freedom of Information Act” or **“FOIA”** means the Freedom of Information Act 2000 and any subordinate Legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such Legislation.

“Force Majeure Event” means any event or occurrence which is outside the reasonable control of the Party concerned, and which is not attributable to any act or failure to take preventative action by the Party concerned, including (but not limited to) governmental regulations, fire, flood, or any disaster but does not include any industrial action occurring within the Service Provider’s organisation or any subcontractor’s organisation.

“General Change in Law” means a change in Law which comes into effect after the Commencement Date, where the change is of a general legislative nature (including taxation or duties of any sort affecting the Service Provider) or which would affect or relate to a comparable supply of services of the same or a similar nature to the supply of the Services.

"In writing" shall be interpreted to include any document which is recorded in manuscript, typescript, any electronic communication as defined in Section 15 of the Electronic Communications Act 2000 but excluding mobile telephone text messages.

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

"Insured Risks" means fire, explosion, lightning, earthquake, storm, flood, bursting and overflowing of water tanks, apparatus or pipes, impact by aircraft and articles dropped from them, impact by vehicles riot, civil commotion and any other risks against which the Service Provider decides to insure against from time to time and Insured Risk means any one of the Insured Risks.

"Intellectual Property" or **"IP"** includes but is not limited to patents, inventions, trade marks, 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 but not limited to the United Kingdom) and the right to sue for passing off.

"Key Personnel" those members of the Service Provider's Staff who will act as: County Manager for Adoption, Team Leader for the Adoption Resource Team, Team Leader for the County Adoption Team and Team Leader for the Adoption and Special Guardianship Support Team.

"Law" means any applicable Act of Parliament, sub-ordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, exercise of the Royal Prerogative, enforceable community right within the meaning of Section 2 of the European Communities Act 1972, bye-law, regulatory policy, guidance or industry code, judgement of a relevant court of law, or directives or requirements of any Regulatory Body of which the Contractor is bound to comply.

"Looked After Child" or **"LAC"** means any child looked after by the Purchaser in accordance with its statutory duties under the Children Act 1989 as amended or any other applicable legislation.

"OFSTED" is an independent body with powers under the Education and Inspections Act 2006, to inspect and regulate care for children and young people, and to inspect education and training for learners of all ages.

"Party" means a Party to the Contract and **"Parties"** shall be construed accordingly.

"Person" where the context allows, includes a corporation or an unincorporated association.

"Price" means the fees, exclusive of any applicable Tax, (as set out in Schedule 2) which are payable by the Purchaser to the Service Provider under this Contract.

"Price Schedule" means Schedule 2 containing a breakdown of the Price.

"Purchaser" means The Kent County Council.

"Regulatory Body" means any government departments and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute,

rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in the Contract.

“Request for Information” shall have the meaning set out in FOIA or any apparent request for information under the FOIA or the Environmental Information Regulations.

“Services” mean the Services to be provided as specified in the Specification.

“Service User” means any individual receiving or intended to benefit from the Services and, where appropriate, the term “Service User” shall also include reference to any person who has power of attorney, acts as next of kin, friend or is entitled to act or advocate on behalf of the individual who receives the Service.

“Specification” or **“Service Specification”** means the description of the Services to be provided under the Contract and attached as the Specification in Schedule 1.

“Staff” means all persons employed or engaged by the Service Provider to perform the Contract (including the Key Personnel) together with the Service Provider’s servants, agents and sub-contractors used in the performance of the Contract.

“Tax” means Value Added Tax or any tax of a similar nature which may replace it.

“Tender” means the Service Provider’s tender for the Services.

“Term” means the period of duration of the Contract.

“TUPE” means the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended from time to time and the Acquired Rights Directive (EEC 77/187).

“Variation” means any addition to, or modification of, any provision of the Contract.

“Working Day” means a day (other than a Saturday or Sunday) on which banks are open for domestic business in the City of London.

- 1.2 Reference to any enactment, order, regulation or other similar instrument shall be construed as a reference to the enactment, order, regulation or instrument as amended by any subsequent and any successor enactment, order, regulation or instrument.
- 1.3 Words importing the masculine gender include the feminine gender; words in the singular include the plural and vice versa and words importing individuals shall be treated as importing bodies corporate and vice versa.
- 1.4 The headings used in these Conditions are for ease of reference only and shall not affect the construction of the Contract.
- 1.5 Any Schedule, Annexure, Appendices and/or attachment to a document comprised in the Contract shall have full force and effect as if expressly set out in the document to which it is attached.
- 1.6 The Contract may be executed in more than one copy and such copies shall, taken together, constitute a single agreement.

2. CONTRACT PERIOD

- 2.1 This Contract will start on the Commencement Date and remain in force until the 22 January 2014 unless earlier terminated in accordance with the terms of this Contract,

or as specified in the Specification. The Purchaser may by notice in writing to the Service Provider not less than 6 months before the Expiry Date extend the Contract for a further two years, until 22 January 2016.

- 2.2 Both Parties will remain bound by the Contract until all work-in-progress is completed, unless agreed otherwise or if the termination was the result of a material breach.

3. STATEMENT OF SERVICES

- 3.1 The Service Provider shall deliver the Services in accordance with the Contract and to the reasonable satisfaction of the Purchaser.

- 3.2 The Service Provider shall be deemed to have read all documentation relating to the Contract in order to determine, the quantity and quality of appropriately skilled resources that will be required, and the Service Provider shall obtain an understanding of conditions under which the Services will be carried out. The Purchaser does not warrant the accuracy or sufficiency of any information provided by the Purchaser in connection with the Contract unless expressly stated. The Purchaser will not be liable for claims from the Service Provider for additional payments, in excess of that agreed in the Contract, on account of matters which, the Service Provider may reasonably have determined in advance. The provision of the Services shall progress through to completion according to any programme stated in the Contract or Specification, or as subsequently agreed with the Purchaser.

- 3.3 The Service Provider acknowledges that, in entering this agreement, no form of exclusivity has been granted by the Purchaser and that the Purchaser is at all times entitled to enter into other contracts and arrangements with other providers for the provision of any or all services which are the same as or similar to the Services.

4. THE SERVICES

- 4.1 The Service Provider shall deliver the Services in accordance with the requirements and Contract Standards (if any) set out in the Specification and where no standard is specified in accordance with the best industry practice and within the time (if any) specified in the Contract or Specification.

5. INTELLECTUAL PROPERTY (IP)

- 5.1 Unless otherwise specified in the Specification, title to and intellectual property rights in all new contract material will vest in the Purchaser in accordance with clauses 5.2 and 5.3.

- 5.2 Title to any IP created under and as a product of this Contract ("New IP"), excluding any pre-existing IP of the Service Provider ("Service Provider IP") or any third party ("Third Party IP") will upon its creation be transferred to the Purchaser without need for further assurance.

- 5.3 This Contract does not affect or transfer rights over Service Party IP or Third Party IP but the Service Provider grants, and will ensure that relevant third parties grant to the Purchaser a paid up non-exclusive, non-transferable licence (where such is incorporated into the contract material) in respect of the Service Provider IP and the Third Party IP:

- 5.3.1 to use, reproduce and adapt the same for its own use; and

- 5.3.2 to perform any other act with respect to copyright; and
- 5.3.3 to manufacture, sell, hire or otherwise exploit a product or process or to provide a service or to licence a third party to do any of those things in respect of, the Service Provider IP and the Third Party IP.
- 5.4 Upon the expiration or earlier termination of this Contract, the Service Provider will deliver to the Purchaser all records, contract material and all copies of it (other than to the extent that the Service Provider reasonably requires to retain sufficient documentation to support any advice, report, or opinion the Service Provider may provide to the Purchaser), and if necessary, transfer or have transferred any New IP to the Purchaser.
- 5.5 The Service Provider will ensure that contract material and records are used, copied, supplied or reproduced only for the purposes of this Contract.
- 5.6 Prior to commencing work in relation to the contract material, the Service Provider will obtain from every person who may create New IP in the course of this Contract (whether an employee or otherwise), and provide to the Purchaser, a written assignment from that person to the Purchaser of any New IP which they generate will vest in and be owned by the Purchaser.
- 5.7 If any contract material is produced or reproduced in an electronic format, the Service Provider must deliver it to the Purchaser in a format approved in writing by the Purchaser.
- 5.8 If any contract material is produced or reproduced in an electronic format or stored electronically, the Service Provider must not store it on a foreign computer without keeping the current version of the contract material on separate media as may be specified and delivering it to the Purchaser at the intervals specified in the Specification. All such stored electronic material must be treated as confidential under the terms of the Contract.
- 5.9 The Service Provider must not produce, reproduce or store Contract material in such a way that it is mixed with, attached to or indistinguishable from, material that is not the subject of this Contract.
- 5.10 IP in records supplied to the Service Provider by the Purchaser for reproduction or guidance remains vested in the Purchaser.

6. THE PARTIES' REPRESENTATIVES

- 6.1 The Authorised Officer is authorised to give instructions to the Service Provider on behalf of the Purchaser. Failure of the Purchaser's representative to inspect or call to the attention of the Service Provider any particulars, in which the Services do not comply with the Contract, shall in no way relieve the Service Provider of its obligations under the Contract. The Purchaser may by further written notice or notices to the Service Provider, revoke or amend the delegated authority of any Authorised Officer or appoint a new Authorised Officer.
- 6.2 The Service Provider shall appoint a Contract Manager who is a competent senior representative who shall be in full time overall charge of the Service Provider's performance of the Contract and familiar with all its aspects. Any order or instruction, which the Purchaser may give to the Contract Manager, shall be deemed to have been given to the Service Provider. The Contract Manager shall be deemed to be authorised

to deal with the Purchaser or the Authorised Officer on all matters relating to the performance of the Contract and the carrying out of the Services.

- 6.3 From time to time the Authorised Officer may appoint one or more representatives, to act for the Authorised Officer generally, or for specified purposes or periods. Immediately any such appointment is made, the Authorised Officer shall give written notice thereof to the Service Provider.

7. STANDARD OF SERVICE

- 7.1 The Service Provider warrants and undertakes that it will provide and complete the Service to the standards and in the manner, frequency, quantity and times specified in the Specification.
- 7.2 The Service Provider warrants and undertakes that it shall comply with all of The Council's policies and procedures.
- 7.3 The Service Provider will:
- 7.3.1 Inform itself of the Purchaser's stated requirements in respect of the Services;
 - 7.3.2 Consult regularly with the Purchaser throughout the performance of the Services;
 - 7.3.3 Act promptly and in a professional and courteous manner at all times and exercise skill, care and diligence in performing the Services.
- 7.4 At all times in the performance of the Services, the Service Provider will co-operate fully with any other contractors appointed by the Purchaser or bodies or organisations co-operating with the Purchaser in connection with other services being provided.
- 7.5 The Service Provider shall provide information in a format, medium and at times specified by the Purchaser, related to the performance of the Services (including without limitation the past performance of Services) as may be reasonably required.
- 7.6 If at any time the Service Provider becomes aware of any act or omission or any proposed act or omission by the Purchaser or by any member, official or employee of the Purchaser which prevents or hinders or may prevent or hinder the Service Provider from providing the Services in accordance with this Contract then the Service Provider shall immediately inform the Authorised Officer of that fact. For the avoidance of doubt, the Service Provider's compliance with this clause shall not in any way relieve the Service Provider of any of its obligations under this Contract.
- 7.7 The Purchaser may, where necessary, require the Service Provider to set up and maintain appropriate policies, rules, procedures and quality standards in relation to the employment of its own Staff whilst carrying out their duties in relation to this Contract. For the avoidance of doubt the Purchaser shall have no liability whatsoever to the Service Provider in relation to the implementation of any such policies, rules, procedures and quality standards.
- 7.8 The Service Provider shall comply with the Purchaser's Service monitoring and review obligations and the management of arrangements and information system requirements contained in the Specification

- 7.9 The Service Provider will immediately notify the Authorised Officer of any actual or potential problems relating to the Service Provider that affects or might affect its ability to provide the Services.
- 7.10 The Service Provider must immediately report any suspicion of abuse of Service Users under the age of 18 to Kent County Council Social Services.
- 7.11 The Service Provider will be responsible for providing and maintaining the Services to the Contract Standard at all times and will ensure continuity of supply (at no extra cost to the Purchaser) in accordance with the Specification. The Service Provider must, at all times, have in place contingency plans and arrangements which have the prior approval of the Purchaser to ensure continuity of supply.
- 7.12 The Service Provider will immediately notify the Authorised Officer of any actual or potential industrial action, including strike action, whether such action be of the Service Provider's own Staff or others, that affects or might affect the Service Providers ability at any time to provide the Services.
- 7.13 The Service Provider will be responsible for providing and maintaining the Services to the Contract Standard during industrial action, at no additional cost to the Purchaser.
- 7.14 In the event of the Service Provider being unable to maintain the Services to the Contract Standard, the Service Provider shall, without prejudice to the remedies of the Purchaser, permit the Purchaser and its staff to have access to and unrestricted use of such equipment and materials which being the property of the Service Provider are deemed necessary to maintain the Services by the Purchaser during industrial action, or any other such occurrence, without additional charge.

8. MONITORING AND REVIEW OF CONTRACT

- 8.1 The Service Provider shall comply with the monitoring and review procedures set out in the Specification.

9. CONFIDENTIALITY

- 9.1 The Service Provider shall not make any public statement or press release in connection with this Contract (including the fact that it is party to this Contract) without the prior written approval of the Purchaser, except where it is contained in any submission to any other public body in response to an invitation to tender from that public body.
- 9.2 In respect of any Confidential Information it may receive from the disclosing party ("the Discloser"), the receiving party ("the Recipient") shall ensure that the Recipient and the Recipient's employees shall:
- 9.2.1 keep Confidential Information secret and strictly confidential;
 - 9.2.2 use Confidential Information for the purposes of performing this Contract, and for no other purpose without the prior written agreement of the Discloser; and
 - 9.2.3 not disclose Confidential Information to any person, except as permitted in clause 9.7 below, without the prior written consent of the Discloser.

- 9.3 Nothing in this clause 9 shall be deemed or construed to prevent the Recipient from disclosing Confidential Information relating to this Contract to its employees or sub-contractors on a strictly need-to-know basis.
- 9.4 The Service Provider shall procure that its Staff do not use any of the Purchaser's Confidential Information received otherwise than for the purposes of this Contract
- 9.5 Each party shall immediately upon discovery notify the other party of any unauthorised use or disclosure of Confidential Information and will co-operate in every reasonable way to help regain possession of the Confidential Information or to prevent its further unauthorised use.
- 9.6 The Service Provider shall return or destroy all originals, copies, reproductions and summaries of Confidential Information as requested by the Purchaser.
- 9.7 The provisions of this clause shall not apply to:
- 9.7.1 information which either party can show was already known to it at the Commencement Date and which it did not receive in connection with this Contract;
 - 9.7.2 information obtained by a third party who is lawfully authorised to disclose it;
 - 9.7.3 information which comes into the public domain other than as a result of breach by either party of this clause 9;
 - 9.7.4 information or documents required to be disclosed by law, or to any governmental or regulatory body, including any disclosure to enable a determination to be made under the Dispute Resolution Procedure;
 - 9.7.5 information or documents disclosed to professional advisors for the purpose of taking advice; or
 - 9.7.6 information, the disclosure of which is required to ensure the compliance of the Purchaser with the FOIA, the EIR and/or any applicable guidance or codes of practice.
- 9.8 The Service Provider shall indemnify the Purchaser against all actions, claims, demands, proceedings, damages, costs, losses, charges and expenses whatsoever brought against the Purchaser and arising out of any breach by the Service Provider of this clause 9.
- 9.9 Nothing in this Agreement shall prevent the Purchaser from disclosing the Service Provider's Confidential Information:
- 9.9.1 to any Crown Body or other authority. All Crown Bodies or authorities receiving such Confidential Information shall be further entitled to further disclose the Confidential Information to other Crown Bodies or other authorities on the basis that the information is confidential and is not disclosed to a third party which is not part of any Crown Body or any authority;

- 9.9.2 to any consultant, provider or other person engaged by the Purchaser or any person conducting an Office of Government Commerce gateway review;
- 9.9.3 for the purpose of the examination and certification of the Purchaser's accounts;
- 9.9.4 for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Purchaser has used its resources.

10. FREEDOM OF INFORMATION

- 10.1 The Service Provider acknowledges that the Purchaser is subject to the Freedom of Information Act (FOIA) and the Environmental Information Regulations ("EIR") and shall assist and cooperate with the Purchaser to enable the Purchaser to comply with its Information disclosure obligations. The Service Provider notes and acknowledges the FOIA and the respective Codes of Practice on the Discharge of Public Authorities' Functions and on Management of Records (which are issued under sections 45 and 46 of the FOIA respectively). The Service Provider will act in accordance with the FOIA and these Codes of Practice (and any other applicable codes of practice or guidance notified to the Service Provider from time to time) and the EIR to the extent that they apply to the Service Provider's performance under the Contract.
- 10.2 The Service Provider agrees that:
 - 10.2.1 the decision on whether any exemption applies to a request for disclosure of information is a decision solely for the Purchaser;
 - 10.2.2 it shall transfer to the Purchaser all Requests for Information that it receives as soon as practicable and in any event within two Working days of receiving a Request for Information;
 - 10.2.3 it shall provide the Purchaser with a copy of all Information in its possession, or power in the form that the Purchaser requires within five Working days (or such other period as the Purchaser may specify) of the Purchaser's request; and
 - 10.2.4 it shall provide all necessary assistance as reasonably requested by the Purchaser to enable the Purchaser to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the EIR
- 10.3 The Purchaser will consult the Service Provider in relation to any request for disclosure of the Service Provider's Confidential Information in accordance with all applicable guidance provided that the final decision as to whether such information must be disclosed will lie with the Purchaser.

11. DATA PROTECTION

- 11.1 The Service Provider shall (and shall procure that any of its Service Provider's Personnel involved in the provision of the agreement shall) comply with any notification requirements under the Data Protection Act (DPA) and both Parties shall duly observe all their obligations under the DPA, which arise in connection with the agreement.

- 11.2 Notwithstanding the general obligation in clause 11.1, where the Service Provider is processing Personal Data as a Data Processor for the Purchaser, the Service Provider shall ensure that it has in place appropriate technical and contractual measures to ensure the security of the Personal Data (and to guard against unauthorised or unlawful processing of the Personal Data and against accidental loss or destruction of, or damage to, the Personal Data), as required under the Seventh Data Protection Principle in Schedule 1 to the DPA; and
- 11.2.1 provide the Purchaser with such information as the Purchaser may reasonably require to satisfy itself that the Service Provider is complying with its obligations under the DPA;
 - 11.2.2 promptly notify the Purchaser of any breach of the security measures required to be put in place pursuant to clause 11.2; and
 - 11.2.3 ensure it does not knowingly or negligently do or omit to do anything which places the Purchaser in breach of the Purchaser's obligations under the DPA.
- 11.3 The provisions of this clause shall apply during the continuance of the agreement and indefinitely after its expiry or termination.

12. HEALTH AND SAFETY

- 12.1 The Service Provider shall promptly notify the Purchaser of any health and safety hazards, which may arise in connection with the performance of the agreement. The Purchaser shall promptly notify the Service Provider of any health and safety hazards that may exist or arise at the Purchaser's Premises and that may affect the Service Provider in the performance of the agreement.
- 12.2 While on the Purchaser's Premises, the Service Provider shall comply with any health and safety measures implemented by the Purchaser in respect of staff and other persons working on the Purchaser's Premises.
- 12.3 The Service Provider shall notify the Purchaser immediately in the event of any incident occurring in the performance of the Contract on the Purchaser's Premises where that incident causes any personal injury or damage to property that could give rise to personal injury.
- 12.4 The Service Provider shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety which may apply to staff and other persons working on the Purchaser's Premises in the performance of the agreement.
- 12.5 The Service Provider shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc Act 1974) is made available to the Purchaser on request.
- 12.6 The Purchaser shall be entitled, without prejudice to clause 25 (Termination) of these conditions, to suspend the provision of the Contract or of any part of the Contract, in the event of non compliance by the Service Provider with this clause 12 in the provision

of the Contract, or any part of the Contract, until such time as the Purchaser is satisfied that the non compliance has been rectified.

12.7 The Service Provider shall notify the Purchaser as soon as it becomes aware of any health and safety hazards, child welfare or other issues which arise in relation to the Services.

12.8 The Service Provider shall familiarise themselves with any hazards, which might be encountered in providing the Services.

13. SERVICE PROVIDER'S KEY PERSONNEL AND OTHER STAFF

13.1 The Service Provider shall appoint the persons named as such in the Tender as the Key Personnel. The Key Personnel shall have the authority to act on behalf of the Service Provider on the matters for which they are expressed to be responsible.

13.2 The Service Provider shall not remove or replace any of the Key Personnel unless:

13.2.1 requested to do so by the Purchaser;

13.2.2 the person is on long-term sick leave;

13.2.3 the element of the Services in respect of which the individual was engaged has been completed to the Purchaser's satisfaction;

13.2.4 the person resigns from their employment with the Service Provider; or

13.2.5 the Service Provider obtains the prior written consent of the Purchaser.

13.3 The Service Provider shall inform the Purchaser of the identity and background of any replacements for any of the Key Personnel as soon as a suitable replacement has been identified. The Purchaser shall be entitled to interview any such person and may object to any such proposed appointment within 10 Working Days of being informed of or meeting any such replacement if, in its reasonable opinion, it considers the proposed replacement to be unsuitable for any reason.

13.4 The Service Provider shall ensure that the role of each of its Key Personnel is not vacant (in terms of a permanent representative) for more than 15 Working Days. Any replacement shall be as, or more, qualified and experienced than the previous incumbent and fully competent to carry out the tasks assigned to the Key Personnel whom they have replaced. A temporary replacement shall be identified with immediate effect from the Service Provider or the Purchaser becoming aware of the role becoming vacant.

14. PROVISIONS RELATING TO STAFF GENERALLY

14.1 Throughout the Contract period Service Provider will employ sufficient appropriately trained, qualified and supervised Staff in order to provide the Services and comply with its obligations under this Contract. The Service Provider will ensure that each member of Staff is properly and sufficiently supervised, trained (including without limitation professional development requirements reasonably stipulated by the Purchaser) and instructed (at the Service Provider's expense) as reasonably stipulated by the Purchaser from time to time.

- 14.2 The Service Provider shall ensure that all Staff or persons performing any of the Services who may reasonably be expected in the course of their employment or engagement to have access to children receive adequate training in protection from abuse procedures and:
- 14.2.1 are questioned concerning their Convictions; and
 - 14.2.2 are questioned during the term of their employment concerning any Convictions, which arise during the term of their employment.
- 14.3 The Service Provider will obtain an Enhanced Criminal Record Certificate in compliance with Ofsted CRB requirements and future developments in CRB disclosure to include without limitation the results of a search of the lists:
- 14.3.1 held pursuant to the Protection of Children Act 1999 where the performance of the Services may involve contact with children, and/or
 - 14.3.2 held pursuant to Part VII of the Care Standards Act 2000 where the performance of the Services may involve contact with Vulnerable Adults, and/or
 - 14.3.3 held pursuant to the Safeguarding Vulnerable Groups Act 2006.
- in respect of all Staff or persons performing any of the Services and shall ensure that no person who discloses any Convictions, or who is found to have any Convictions following a request for an Enhanced Criminal Record Certificate, is employed without the Purchaser's prior written consent (such consent not to be unreasonably withheld or delayed).
- 14.4 The Service Provider shall ensure that the Purchaser is kept advised at all times of any member of Staff who receives a Conviction or whose previous Convictions become known to the Service Provider (or any employee of a sub-contractor involved in the provision of the Services).
- 14.5 The Service Provider shall renew Enhanced Criminal Bureau Checks for all Staff every 3 years.
- 14.6 The Service Provider acknowledges that all posts are exempt from the Rehabilitation of Offenders Act 1984.
- 14.7 The Service Provider shall ensure that all Staff engaged with delivering the Services shall possess and when in contact with Service Users display a clear form of identification with photograph which shows the name and job title of the Staff member.
- 14.8 The Purchaser shall not be liable for loss of, or damage to, the personal property of the Service Provider's Staff, howsoever caused.
- 14.9 Any notice, information, instruction or other communication given or made to the Contract Manager shall be deemed to have been given or made to the Service Provider.
- 14.10 The Contract Manager shall be suitably qualified and experienced.
- 14.11 The Service Provider shall forthwith give notice in writing to the Authorised Officer of the identity of the person appointed as Contract Manager and of any subsequent

appointment. Until notice of a subsequent appointment shall have been given the Purchaser shall be entitled to treat as Contract Manager the person last notified to the Authorised Officer as being the Contract Manager.

- 14.12 The Service Provider shall ensure that the Contract Manager, or a competent deputy who is duly authorised to act on its behalf, is available to the Purchaser at all times when any Staff of the Service Provider is on duty for the provision of the specified Services.
- 14.13 The Service Provider shall inform the Authorised Officer of the identity of any person authorised to act for any period as deputy for the Contract Manager before the start of that period.
- 14.14 The Contract Manager or his deputy shall consult with the Authorised Officer and such other of the Purchaser's own supervisory staff as may from time to time be specified by the Authorised Officer as often as may reasonably be necessary for the efficient provision of the Services in accordance with this Contract.
- 14.15 The Service Provider shall provide a telephone number for a senior manager to the Purchaser for use in emergencies including out of office hours, bank holidays and weekends.
- 14.16 The Service Provider shall provide a sufficient complement of supervisory Staff in addition to the Contract Manager, to ensure that the Service Provider's Staff engaged in and about the provision of the Services at the Premises are adequately supervised and properly perform their duties at all times.
- 14.17 The Purchaser (acting reasonably and in good faith) shall be entitled to require the Service Provider to remove from the delivery of the Services any member of Staff:
- (a) who have failed to carry out their duties with reasonable skill and care where such failure has a material impact on the delivery of the Services;
 - (b) whose continuation in their role would (in the Purchaser's opinion) carry a risk to the health, safety or welfare of any person or a risk to property; or
 - (c) for any other good cause
- and the Service Provider shall indemnify the Purchaser in relation to all claims, costs, losses, expenses or liabilities arising from the decision to exclude any member of the Service Provider's Staff from delivery of the Services.
- 14.18 Following the removal of any of the Service Provider's Personnel for any reason, the Service Provider shall ensure such person is replaced promptly (at the Service Provider's cost) with another person with the necessary training and skills to meet the requirements of the Services.

15. SAFEGUARDING CHILDREN AND YOUNG PEOPLE

- 15.1 The Service Provider warrants that at all times for the purposes of this Contract it has no reason to believe that any person who is or will be employed or engaged by the Service Provider in the provision of the Services is barred from the activity in accordance with the provisions of the Safeguarding Vulnerable Groups Act 2006 and any regulations made thereunder, as amended from time to time.
- 15.2 The Service Provider must ensure its staff are familiar with and comply with the Kent and Medway Safeguarding Children Procedures (currently found via <http://www.msrb.org.uk/Files/Procedures/Medway and Kent Safeguarding Procedures.pdf>), and know how to report any concerns.
- 15.3 The Service Provider is required to comply with all Kent County Council current procedures in relation to Safeguarding Looked After Children, Children in Need and Children in Need of Protection.
- 15.4 This will include a duty to provide in individual case alerts and notifications, as appropriate, for any cases that require scrutiny by Child Protection Co-ordinators, Looked After Children Co-ordinators or are subject to a Serious Case Review by the Kent Safeguarding Children's Board.
- 15.5 The Service Provider will need to ensure that its senior managers and Staff are familiar with and maintain up to date records of all Kent County Council's policies and procedures which relate to the safe delivery of this service.
- 15.6 In the case of children and young people under the age of 18, if there is any suspicion of abuse the Service Provider must immediately report this to the relevant Specialist Children's Services district office or the Kent Social Services Out of Hours Service, so that Child Protection procedures can be implemented.
- 15.7 The Service Provider and its Staff must ensure that any issues of Child Protection concerns are referred to Specialist Children's Services, including any concerns involving an unborn child. The Service Provider must ensure that its Staff are aware of the consultation procedures to follow if they are unsure whether their concerns have reached the threshold of Child Protection concern.
- 15.8 The Service Provider and its staff will ensure issues of risk are dealt with quickly and appropriately and links made with senior Specialist Children's Services staff and other appropriate agencies. Such risks will include serious Child Protection issues, mental health risks involving serious self harm, or possible threat to the subject of the search.
- 15.9 The Service Provider must ensure that staff who are believed to have committed any offence defined by regulations are immediately reported to the Independent Safeguarding Authority.

16. PURCHASER'S PREMISES

- 16.1 Any land or premises (including temporary buildings) made available to the Service Provider by the Purchaser in connection with the Agreement, shall be made available to the Service Provider free of charge and shall be used by the Service Provider solely for the purpose of performing its obligations under the Agreement. The Service Provider shall have the use of such land or premises as licensee and shall vacate the same on completion, termination or abandonment of the Agreement.

- 16.2 The Service Provider shall not use the Purchaser's premises for any purpose or activity other than the provision of the Services.
- 16.3 The Service Provider shall (and shall ensure that the Service Provider's Staff) observe and comply with such rules and regulations as may be in force at any time for the use of such premises as determined by the Purchaser, and the Service Provider shall pay for the cost of making good any damage caused by the Service Provider's Staff other than fair wear and tear. For the avoidance of doubt, damage includes damage to the fabric of the buildings, plant, fixed equipment or fittings therein.
- 16.4 The Parties agree that there is no intention on the part of the Purchaser to create a tenancy of whatsoever nature in favour of the Service Provider or its employees, servants, agents, suppliers or sub-contractors and that no such tenancy has or shall come into being and, notwithstanding any rights granted pursuant to the Agreement, the Purchaser retains the right at any time to use in any manner the Purchaser sees fit any premises owned or occupied by it.

17. BRIBERY AND CORRUPTION

- 17.1 The Service Provider shall comply with and ensure that its Staff comply with the provisions of:
- (a) the Bribery Act 2010; and
 - (b) section 182 of the Finance Act 1989
- 17.2 The Service Provider, its employees or agents shall not offer, promise or give any financial advantage to any person to persuade or reward them for doing or not doing anything relating to the award of this Contract or any other contract with the Council. The Service Provider shall not offer, promise or give any financial advantage to any person to persuade or reward them for special treatment to the Service Provider once this Contract has been awarded.
- 17.3 The Purchaser shall be entitled to terminate the Contract with immediate effect by giving notice in writing and to recover from the Service Provider the amount of any loss resulting from such termination, if the Service Provider shall have offered, promised or given any financial advantage, gift or consideration of any kind as an inducement or reward, for doing or forbearing to do, or for having done or forborne to do, any action in relation to obtaining or the execution of the Contract or any other Contract with the Purchaser, or for showing or forbearing to show, favour or disfavour to any person in relation to the Contract or any other Contract with the Purchaser, or if the like acts shall have been done by any person employed by it or on its behalf (whether with or without the knowledge of the Service Provider), or if in relation to any Contract with the Purchaser the Service Provider or any person employed by it or acting on his behalf shall have committed an offence under the Bribery Act 2010 or any amendment of them, replacing legislation or shall have given any fee or reward, the receipt of which is an offence under the sub section (2) of section 177 of the Local Government Act 1972.

18. EQUAL OPPORTUNITIES

- 18.1 The Service Provider and any sub-contractor engaged by the Service Provider must comply with and adopt the Equality Act 2010, and make a policy to comply with employers' statutory obligations and, accordingly must not commit any form of

harassment or victimisation against any person on the grounds of marriage and civil partnership, race, colour, religion or belief, sex, gender reassignment sexual orientation, age or disability, pregnancy and maternity or political difference.

- 18.2 In the event of any finding of unlawful discrimination being made against the Service Provider or any sub-contractor employed by the Service Provider during the Contract Period by any Court or Employment Tribunal, or of any adverse finding in any formal investigation by the Equal Opportunity and Human Rights Commission over the same period, the Service Provider must inform the Council of this finding and must take appropriate steps to prevent repetition of the unlawful discrimination.
- 18.3 The Service Provider must, on request, provide the Council with details of any steps taken under clause 18.2 within five (5) Working Days.
- 18.4 The Service Provider must provide such information as the Council may reasonably request for the purpose of assessing the Service Provider's compliance with the above three Conditions, including if requested, examples of any instructions or other documents, recruitment advertisements or other literature, and details, if appropriate, of monitoring of recruitment and employees.
- 18.5 The Service Provider must at all times provide the Service in accordance with the Council's commitment to equality and equal access to Service for all sections of the community in line with the Council's Key Policy Priorities provided to the Contract in the Specification.
- 18.6 The Service Provider must make sure that no person is denied access to or receives a poorer Service on the grounds of marriage and civil partnership, race, colour, religion or belief, sex, gender reassignment, sexual orientation, age or disability, pregnancy and maternity or political difference.
- 18.7 The Service Provider must establish adequate managerial and supervisory arrangements to ensure that staff are aware of and comply with the Council's Policy Statement on Equal Opportunities in Service delivery.

19. RELATIONSHIP OF PARTIES

- 19.1 Nothing in the Contract will be construed as a legal partnership (within the meaning of the Partnership Act 1890) or as a contract of employment between the Purchaser and the Service Provider.
- 19.2 Save as expressly provided otherwise in the Contract, the Service Provider will not be, or be deemed to be, an agent of the Purchaser and the Service Provider will not hold itself out as having authority or power to bind the Purchaser in any way.

20. INDEMNITY AND INSURANCE

- 20.1 The Service Provider shall indemnify and keep indemnified the Purchaser against all claims, demands, costs, losses and expenses (including but not limited to injuries or damage to any person or property) whatsoever and howsoever arising which may arise out of or in consequence of the Contract or the delivery of the Services provided always that the Service Provider's liability to indemnify the Purchaser as set out shall be reduced proportionately to the extent that the act or neglect of the Purchaser, their servants or agents may have contributed to the loss, injury or damage.

- 20.2 The Service Provider shall at its own cost effect and maintain with a reputable insurance company a policy or policies of insurance providing as a minimum the following levels of cover:
- 20.2.1 public liability insurance with a limit of indemnity of not less than £5 Million in relation to any one claim or series of claims;
 - 20.2.2 employer's liability insurance with a limit of indemnity of not less than £10 Million in relation to any one claim or series of claims;
 - 20.2.3 professional indemnity insurance with a limit of indemnity of not less than £1 Million in relation to any one claim or series of claims;
- (the **Required Insurances**) Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Service Provider.
- 20.3 The Service Provider shall give the Purchaser, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the Required Insurances are in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
- 20.4 If, for whatever reason, the Service Provider fails to give effect to and maintain the Required Insurances, the Purchaser may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Service Provider.
- 20.5 The terms of any insurance or the amount of cover shall not relieve the Service Provider of any liabilities under the Contract.
- 20.6 The Service Provider shall hold and maintain the Required Insurances throughout the Contract period and in the case of Professional Indemnity Insurance for a minimum of six years following the expiration or earlier termination of the Contract.

21. TUPE

Is incorporated into this Agreement in accordance with Schedule 5.

22. RE-TENDERING AND HANDOVER

- 22.1 Within 20 Working Days of being so requested by the Purchaser, the Service Provider shall provide and thereafter keep updated, in a fully indexed and catalogued format, all the information necessary to enable the Purchaser to issue invitations to tender for the future provision of the Services and it shall be the Service Provider's responsibility to obtain all consents or permissions necessary to pass that information to provide to the Purchaser.
- 22.2 Where, in the opinion of the Purchaser, the Transfer of Undertakings (Protection of Employment) Regulations 2006 (the "Regulations") are likely to apply on the termination or expiration of the Contract, the information to be provided by the Service Provider shall include, as applicable, accurate information relating to the Staff or personnel under the control of the Service Provider who would or could be transferred under the Regulations (the "Employees") and such other relevant information as may be reasonably required for disclosure to third parties intending to submit tenders for

any subsequent contract for the provision of the Services it is legally allowed to provide ("the Workforce Information").

- 22.3 The Service Provider shall advise the Purchaser immediately of any changes to the Workforce Information between the date on which it is provided and the Contract expiry date and shall ensure that the information disclosed is accurate and up to date as at the expiry date and that all known existing liabilities relating to the employees have been discharged.
- 22.4 The Service Provider shall indemnify the Purchaser against any claim made against the Purchaser at any time by any person in respect of the liability incurred by the Purchaser arising from any deficiency or inaccuracy in Workforce Information, which the Service Provider is required to provide under clause 22.2 and clause 22.3.
- 22.5 The Service Provider shall, if required by the Purchaser, provide an undertaking and warranty to any person to whom the Service Provider's Staff may transfer pursuant to TUPE to the effect the Service Provider has discharged all its obligations as employer in relation to the employees.
- 22.6 The Service Provider shall co-operate fully with the Purchaser during the handover arising from the completion or earlier termination of the Contract. This co-operation, during the setting up operations period of the new service provider, shall extend to consultation with the employees allowing full access to, and providing copies of all documents, reports, summaries and other information necessary in order to achieve an effective transition without disruption to the routine operational requirements.
- 22.7 Within ten Working Days of being so requested by the Purchaser, the Service Provider shall transfer to the Purchaser, or any person designated by the Purchaser, free of charge, all computerised filing, recordings, documentation, planning and drawings held on software and utilised in the provision of the services. The transfer shall be made in a fully indexed and catalogued disk format to operate on a proprietary software package identical to that used by the Purchaser.

23. PAYMENT AND AUDIT

- 23.1 In consideration of the execution of the Services to the satisfaction of the Purchaser, the Purchaser shall pay or cause to be paid to the Service Provider, at the times and in the manner specified herein below and in the Specification at Schedule 1, the amounts as provided for in Schedule 2 and/or such other sums specified in the Contract.
- 23.2 Unless otherwise provided for in Schedule 2, the Service Provider's application for payment will be against invoices submitted by the Service Provider. The Service Provider's invoice shall detail the Services executed and shall be accompanied by such supporting documentary evidence as the Purchaser may require.
- 23.3 Except where the Purchaser disputes details or value of the Services claimed to have been carried out, the Purchaser shall pay or cause to be paid, by BACS or such other method as may be used by the Purchaser, the due amount within twenty-eight (28) days after the Purchaser's receipt of the invoice. Such payment by the Purchaser shall not prejudice its rights in the future to dispute any part of any invoice,
- 23.4 As soon as may be convenient, following completion of the Services under the Contract or upon termination of the Contract, the Service Provider shall render a final invoice which summarises all charges and credits applicable under the Contract, and show the balance of payment due to the Purchaser or the Service Provider, including if any, such

amount withheld by the Purchaser. All disputes between the Parties, if any, as are then existing, shall be resolved in connection with such final invoice, and any balance due to the Service Provider or the Purchaser shall be paid within twenty-eight (28) days following the date of receipt of such an invoice, or in the event of dispute, forthwith upon resolution of such dispute by the procedures set out in clause 29 (Dispute Resolution Procedure) or otherwise.

- 23.5 Except as may otherwise be provided for herein below, the Service Provider assumes full and exclusive liability for payment (which shall not be passed on to the Purchaser) of all taxes and contributions for unemployment insurance, pension and national insurance or social security benefits, and like Statutory payments as are now or hereafter imposed by the Government of the United Kingdom or any political sub division hereof, whether or not they are measured by the wages, salaries and other remuneration paid to persons engaged or employed by the Service Provider, in the performance of Services under the Contract.
- 23.6 The Service Provider shall pay all taxes assessed against it in respect of the Services and agrees to indemnify the Purchaser and hold the Purchaser harmless from any and all claims of liability for income and other taxes assessed or levied against the Service Provider.
- 23.7 Any amounts otherwise payable hereunder may be withheld in whole or in part by the Purchaser on account of any actual or reasonably anticipated claims, damages or expenses arising out of the Service Provider's failure to perform or supply, any part of the Services, in accordance with the provisions of the Contract.
- 23.8 The Service Provider shall keep books and records in a manner to be approved by the Purchaser so as to enable the Purchaser to carry out effective financial control and audit with respect to all payments to be made to the Service Provider under this clause 19. The Purchaser reserves the right to audit the aforesaid books and records and to audit the application of the Service Provider's charges.
- 23.9 Interest shall be payable on any late payment under this Contract at a rate of 3% above the Bank of England base rate, which the parties agree is a substantial remedy for the purposes of the Late Payment of Commercial Debts (Interest) Act 1998.
- 23.10 Value Added Tax, where applicable, shall be shown separately on all invoices as a strictly net extra charge.

24. ASSIGNMENT AND SUBCONTRACTING

- 24.1 The Purchaser shall be entitled to assign the benefit of the Contract or any part thereof and shall give written notice of any assignment to the Service Provider.
- 24.2 The Service Provider may not assign the Contract.
- 24.3 The Service Provider may not subcontract the whole of the Services
- 24.4 The Service Provider may not sub contract any part of the Services without the Purchaser's prior written consent, which the Purchaser may in its absolute discretion refuse. If the Purchaser permits the Service Provider to subcontract part of the Services no such subcontract shall:
- 24.4.1 Relieve the Service Provider or its surety (where applicable) from any obligation or liability under the Contract, and the Service Provider shall be

responsible for the acts and omissions of any subcontractor and its employees and agents as though they were the acts and omissions of the Service Provider or the Service Provider's Staff, nor

24.4.2 obligate the Purchaser to pay any monies whatsoever other than the Price.

24.5 Copies of all proposed subcontracts including purchase orders or other documents evidencing such subcontracts shall be delivered by the Service Provider to the Purchaser if so requested, for review before they are finalised.

24.6 The Service Provider shall use all reasonable endeavours to ensure that any subcontracts entered into by the Service Provider for the purpose of this Contract impose analogous obligations on subcontractors (*mutatis mutandis*) to those imposed on the Service Provider for the proper performance of the obligations under this Contract.

24.7 The Service Provider shall ensure that any subcontractor appointed hereunder is competent to perform the relevant subcontracted tasks and shall perform the relevant services in accordance with this Contract. The Service Provider shall, on the request of the Purchaser, provide to the Purchaser evidence that the subcontractors appointed by the Service Provider are competent to perform the relevant tasks.

25. TERMINATION

25.1 Either Party may terminate this Contract even though the other Party is not in default by giving six (6) months written notice or such lesser period of notice as may be agreed between the Parties. During the period of notice, both Parties shall co-operate to ensure that the interests and needs of Service Users may be met under whatever new arrangements are proposed.

25.2 Termination of this Contract shall have no effect on the liability of either Party concerning the payment of any sums or the meeting of other liabilities arising under this Contract prior to the date upon which termination takes effect.

25.3 The Purchaser may terminate this Contract forthwith by notice in writing to that effect if the Service Provider:

25.3.1 is in material breach of its obligations under this Contract and fails to rectify the breach within 14 days of receipt of notification in writing to do so;

25.3.2 persistently fails, after a reasonable period of notice has been given, to provide the Service in accordance with the terms of this Contract;

25.3.3 becomes bankrupt, or makes a composition or arrangements with its creditors, or has a proposal in respect of its company for voluntary arrangements for a composition of debts or scheme, or arrangements approved in accordance with the Insolvency Act 1986;

25.3.4 has an application made under the Insolvency Act 1986 to the court for the appointment of an administrative receiver;

25.3.5 has a winding-up order made (except for the purposes of amalgamation or reconstruction) or a resolution of a voluntary winding-up passed;

25.3.6 has a provisional liquidator, receiver or manager of its business or undertaking duly appointed;

- 25.3.7 has an administrative receiver as defined in the Insolvency Act 1986 appointed;
 - 25.3.8 is in circumstances which entitle the court or a creditor to appoint or have appointed a receiver, a manager or administrative receiver, or which entitle the court to make a winding-up order;
 - 25.3.9 offers any improper inducements or exerts unreasonable pressure upon the Service User;
 - 25.3.10 takes unreasonable financial advantage of the relationship with any Service User;
 - 25.3.11 shall have committed any offence under the Bribery Act 2010 or any amending or replacing legislation or otherwise breaches clause 17 of the Contract;
 - 25.3.12 shall have given any fee or reward the receipt of which is an offence under Section 117(2) of the Local Government Act 1972;
 - 25.3.13 is in a position where clause 28 (Fraud) applies;
 - 25.3.14 has been convicted of an offence under the provisions of the Care Standards Act 2000 and regulations thereto and any subsequent amendments.
- 25.4 If the Contract is terminated in accordance with clause 25.3 or clause 25.5, the Purchaser shall:
- 25.4.1 be entitled to recover all losses arising from the termination of the Contract (including but not limited to the Purchasers' officers' time spent on such termination and in making alternative arrangements for the provision of the whole or part of the Services) and the Purchaser shall be entitled to deduct any such sums from any monies that would otherwise be due to the Service Provider and/or to recover any such monies as a debt;
 - 25.4.2 not be liable to make any payments to the Service Provider until any losses arising from the termination have been calculated and deducted from any sums that would otherwise be due to the Service Provider;
 - 25.4.3 be entitled to repossess any materials, clothing, equipment, vehicles or goods loaned or hired by it to the Service Provider and exercise a lien over any materials and other goods belonging to the Service Provider for any sum due to the Purchaser from the Service Provider;
- 25.5 Where the Purchaser is entitled to wholly terminate the Contract under clause 25.3, the Purchaser shall as an alternative to terminating the whole of the Contract be entitled to terminate or suspend part of the Contract only.
- 25.6 The rights of the Purchaser under clauses 25.3 to 25.5 are in addition to and without prejudice to any other rights and remedies the Purchaser may have arising from the termination.

26. WAIVER

- 26.1 Failure by either Party at any time to enforce any provision of this Contract or to require performance by the other Party of any of the provisions of the Contract shall not be construed as a waiver of or as creating an estoppel in connection with any such provision, and shall not affect the validity of this Contract or any part of it or of the right of the non-defaulting Party to enforce in the future any provision in accordance with its terms.

27. STATUTORY AND OTHER REGULATIONS

- 27.1 The Service Provider shall in all matters arising in the performance of the Contract conform with all acts of parliament and with all orders, regulations and bye-laws made with statutory authority by Government departments or by local or other authorities that shall be applicable to the Contract. The Service Provider shall not in the performance of the Contract, in any manner endanger the safety of or unlawfully interfere with the Service User. The cost to the Service Provider in meeting the requirements of this sub-clause shall be included in the Price.
- 27.2 In the event that the Purchaser incurs costs to which they would not otherwise be liable, due to the Service Provider's failure to comply with any law or any order, regulation or bye-law having the force of law, the amount of such costs shall be reimbursed to the Purchaser by the Service Provider.

28. FRAUD

- 28.1 The Service Provider shall take all reasonable steps, in accordance with good industry practice, to prevent any fraudulent activity by its Staff, (including its members and directors) and/or any of the Service Provider's suppliers, in connection with the receipt of monies from the Purchaser. The Service Provider shall notify the Purchaser immediately if it has reason to suspect that any fraud has occurred or is occurring or is likely to occur.

29. DISPUTE RESOLUTION PROCEDURE

- 29.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Agreement within 15 Working Days of either Party notifying the other of the dispute; such efforts shall involve the escalation of the dispute to the finance director (or equivalent) of each Party.
- 29.2 Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of the competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.
- 29.3 If the dispute cannot be resolved by the Parties pursuant to clause 29.1 the dispute shall be referred to mediation pursuant to the procedure set out in clause 29.5 unless: (a) the Purchaser considers that the dispute is not suitable for resolution by mediation; or (b) the Contractor does not agree to mediation.
- 29.4 The performance of the Agreement shall not be suspended, cease or be delayed by the reference of a dispute to mediation and the Contractor (or employee, agent, supplier or sub-contractor) shall comply fully with the requirements of the Agreement at all times.

29.5 The procedure for mediation and consequential provisions relating to mediation are as follows:

- (a) a neutral adviser or mediator ("the Mediator") shall be chosen by agreement between the Parties or, if they are unable to agree upon a Mediator within 10 Working Days after a request by one Party to the other or if the Mediator agreed upon is unable or unwilling to act, either Party shall within 10 Working Days from the date of the proposal to appoint a Mediator or within 10 Working Days of notice to either Party that he is unable or unwilling to act, apply to the Centre for Effective Dispute Resolution ("CEDR") to appoint a Mediator.
- (b) The Parties shall within 10 Working Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from CEDR to provide guidance on a suitable procedure.
- (c) Unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings.
- (d) If the Parties reach agreement on the resolution of the dispute, the agreement shall be reduced to writing and shall be binding on the Parties once it is signed by their duly authorised representatives.
- (e) Failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative opinion in writing. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Agreement without the prior written consent of both Parties.
- (f) If the Parties fail to reach agreement in the structured negotiations within 60 Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the Courts.

30. CHANGE OF LAW

30.1 The Service Provider shall neither be relieved of its obligations to perform the Services in accordance with the terms of the Contract nor be entitled to an increase in the Price and/or any charges payable as the result of a change in the Law.

31. VARIATION OF THE SERVICES

31.1 The Purchaser reserves the right on giving reasonable written notice from time to time to require changes to the Services (whether by way of the removal of Services, the addition of new Services, or increasing or decreasing the Services or specifying the order in which the Services are to be performed or the locations where the Services are to be provided) for any reasons whatsoever. Such a change is hereinafter called "a Variation".

31.2 Any such Variation shall be communicated in writing by the Purchaser to the Service Provider in accordance with the notice provisions of clause 33. All Variations shall be in the form of an addendum to the Contract.

31.3 In the event of a Variation the Price may also be varied. Such Variation in the Price shall be calculated by the Purchaser and agreed in writing with the Service Provider and shall be such amount as properly and fairly reflects the nature and extent of the Variation in all the circumstances. Failing agreement the matter shall be determined by negotiation or mediation in accordance with the provisions of clause 29.

31.4 The Service Provider shall provide such information as may be reasonably required to enable such varied price to be calculated.

32. COMPLAINTS PROCEDURE

32.1 The Service Provider must keep a record of all written or otherwise recorded complaints by a Service User or their representative concerning the provision of the Services ("Complaints"), including Complaints made to OFSTED.

32.2 Subject to clause 11 (Data Protection), the Service Provider will inform the Purchaser forthwith of all Complaints and will use all reasonable endeavours to resolve all such Complaints to the satisfaction of the relevant Service User and shall inform the Purchaser when any Complaint by a Service User has been resolved. If any such Complaint has not been resolved preferably within ten (10) Working Days, but up to a maximum of twenty (20) Working Days of the date it has been notified to the Purchaser, the Authorised Officer may direct what reasonable action is to be taken by the Service Provider to resolve the Complaint and the timescale within which this action is to be taken.

32.3 The Service Provider shall maintain a register of all complaints and shall:

32.3.1 keep a copy of such register at its offices; and

32.3.2 provide access to the Purchaser to such register upon the Purchaser's request.

32.4 The Service Provider will ensure that all its Staff engaged in the provision of the Services are fully aware of the complaints procedure set out in clauses 32.2 and 32.3 above and the Service Provider will appoint an authorised officer to act as a complaints manager and the details of such role will be set out in the Service Provider's complaint procedure.

32.5 At the Purchaser's request, the Service Provider will supply the Purchaser with a copy of the Service Provider's records relating to Complaints and a copy of its complaints procedure.

33. NOTICES

33.1 Except as otherwise expressly provided within the Contract, no notice or other communication from one Party to the other shall have any validity under the Contract unless made in writing by or on behalf of the Party concerned.

33.2 Any notice or other communication which is to be given by either Party to the other shall be given by letter (sent by hand, post, registered post or by the recorded delivery service), by facsimile transmission or electronic mail (confirmed in either case by letter). Such letters shall be addressed to the other Party in the manner referred to in clause 33.3. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given 2 Working Days after the day on which the letter was posted, or four hours, in the case of electronic mail or

facsimile transmission or sooner where the other Party acknowledges receipt of such letters, facsimile transmission or item of electronic mail.

33.3 For the purposes of clause 33.2, the address of each Party shall be:

33.3.1 For the Purchaser:

Kent County Council
Address: Sessions House, County Hall, Maidstone, ME14 1XQ
For the attention of: Helen Jones, Head of Commissioning
Tel: 01622 696682
Fax: 01622 694971
Email: helen.jones@kent.gov.uk

33.3.2 For the Service Provider:

Coram
Address: 49 Mecklenburgh Square, London, WC1N 2QA
For the attention of: Carol Homden, Chief Executive
Tel: 020 7520 0300
Fax: 020 7520 0301
Email: carol@coram.org.uk

33.4 Either Party may change its address for service by serving a notice in accordance with this clause.

34. LAW AND JURISDICTION

34.1 This Contract shall be governed by and construed in accordance with English law and the Service Provider hereby irrevocably submits to the jurisdiction of the English courts.

34.2 If any provision of the Contract shall become or shall be declared by any court of competent jurisdiction to be invalid or unenforceable in any way such invalidity or unenforceability shall in no way impair or affect any other provision all of which shall remain in full force and effect.

35. NO RIGHTS OF THIRD PARTIES

35.1 The Parties hereby declare that no term of the Contract is intended by the Parties to confer a benefit on any third party (as defined by the Contracts (Rights of Third Parties) Act 1999) nor is intended to be enforceable by any third party. The provisions of the said Act are hereby excluded.

36. FORCE MAJEURE

36.1 Neither Party shall be entitled to bring a claim for a breach of obligations under the Contract by the other Party or incur any liability to the other Party for any losses or damages incurred by that other Party to the extent that such Party has been prevented from carrying out its obligations as a result of a Force Majeure Event.

36.2 On the occurrence of a Force Majeure Event the affected Party shall notify the other Party as soon as practicable. The notification shall include details of the Force Majeure Event including evidence of its effect on the obligations of the affected Party and any action proposed to mitigate its effect.

- 36.3 As soon as practical following such notification, the Parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effect of the Force Majeure Event and facilitate the continued performance of the Services.
- 36.4 If no such terms are agreed on or before the date falling three (3) months after the date of commencement of the Force Majeure Event and such Force Majeure Event is continuing or its consequence remains such that the affected Party is substantially unable to comply with its obligations under the Contract then either Party may terminate the Contract by giving thirty (30) days' written notice to the other Party.
- 36.5 Notwithstanding clause 36.4, the Service Provider shall use all reasonable endeavours to restore or maintain the provision of the Services. During the period in which the Force Majeure Event is continuing the Purchaser will continue to make payment for the Services in accordance with clause 21 (Tupe) to the extent that the Services can be provided to Service Users.
- 36.6 The affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the affected Party to be unable to comply with its obligations under the Contract. Following such notification the Contract shall continue to be performed on the terms subsisting immediately prior to the occurrence of the Force Majeure Event.

37. DECLARATION OF INTERESTS

- 37.1 The Service Provider shall inform the Purchaser in writing of any elected member or employee of the Purchaser who is involved in any way with the Service Provider at any time during the Term of the Contract.

38. CHANGE OF OWNERSHIP

- 38.1 The Service Provider will immediately inform the Purchaser of any change affecting the ownership of the Service Provider in addition to notifying the relevant registration authority.
- 38.2 In the event that the Service Provider wishes to transfer the Contract to any new owner the Service Provider shall request that the Purchaser shall novate the Contract. The Purchaser may refuse any request for novation in its absolute discretion.

39. GENERAL

- 39.1 The Service Provider shall from time to time upon the request of the Purchaser, execute any additional documents and do any other acts or things which may reasonably be required to implement the provisions of the Contract.
- 39.2 Any provision of the Contract, which is held, to be invalid or unenforceable in any jurisdiction shall be ineffective to the extent of such invalidity or unenforceability without invalidating or rendering unenforceable the remaining provisions hereof and any such invalidity or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provisions in any other jurisdiction. In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of this Contract, the Purchaser and the Service Provider shall immediately commence good faith negotiations to remedy such invalidity.

- 39.3 The Service Provider acknowledges and agrees that it has not relied on any representation, warranty or undertaking (whether written or oral) in relation to the subject matter of the Contract and therefore irrevocably and unconditionally waives any rights it may have to claim damages against the Purchaser for any misrepresentation (whether made carelessly or not) or for breach of any warranty unless the representation relied upon is set out in the Contract or unless such representation was made fraudulently.
- 39.4 Each Party shall bear its own expenses in relation to the preparation, execution and implementation of the Contract including all costs legal fees and other expenses so incurred.
- 39.5 The Service Provider warrants represents and undertakes to the Purchaser that there are no pending or threatened actions or proceedings before any court or administrative agency which would materially adversely affect the financial condition, business or operations of the Service Provider and that there are no material contracts existing to which the Service Provider is a Party which prevent it from entering into the Contract; and that the Service Provider has satisfied itself as to the nature and extent of the risks assumed by it under the Contract and gathered all information necessary to perform its obligations under the Contract and all other obligations assumed by it.
- 39.6 The rights and remedies provided in the Contract are cumulative and not exclusive of any rights or remedies provided by the general law, or by any other contract or document. In this provision "general law" includes the law of a country other than England, and "right" includes any power, privilege, remedy, or proprietary or security interest.
- 39.7 This Contract represents the entire agreement between the Purchaser and Service Provider except insofar as any other general principles of law might operate solely to the benefit of the Purchaser as to which the Purchaser is the sole judge.

40. HUMAN RIGHTS

- 40.1 The Service Provider acknowledges that:
- 40.1.1 in performing its obligations under the Contract it may be a public authority for the purposes of the Human Rights Act 1998; and
 - 40.1.2 that it is unlawful to exercise functions deemed to be of a public nature in a way that is incompatible with those rights contained in the European Convention of Human Rights and incorporated into English Law by the Human Rights Act 1998.
- 40.2 In providing the Services the Service Provider shall throughout the Term and at its own cost be subject to the same duty in respect of Human Rights in the same way as if it were the Purchaser.
- 40.3 The Service provider shall undertake or refrain from undertaking such actions as the Purchaser may request so as to enable the Purchaser to discharge its duty under the Human Rights Act 1998.

41. SEVERANCE

- 41.1 If any provision of this Contract shall become or shall be declared by any court of competent jurisdiction to be invalid or unenforceable in any way, such invalidity or

unenforceability shall in no way impair or affect any other provision all of which shall remain in force and effect.

42. WARRANTY

42.1 The Service Provider warrants, declares and represents that:

42.1.1 the Service Provider has the full capacity and authority and all necessary consents (including, but not limited to, where its procedures so require, the consent of its parent company) to enter into and perform the Contract and that the Contract is executed by a duly authorised representative of the Service Provider;

42.1.2 the Service Provider shall discharge its obligations hereunder with all due skill, care and diligence including but not limited to good industry practice;

42.1.3 all obligations of the Service Provider pursuant to the Contract shall be performed and rendered by appropriately experienced, qualified and trained Staff with all due skill, care and diligence;

42.1.4 the Service Provider is not in default in the payment of any due and payable taxes or in the filing, registration or recording of any document or under any legal or statutory obligation or requirement which default might have a material adverse effect on its business, assets or financial condition or its ability to observe or perform its obligations under the Contract.

43. NOVATION

43.1 The Purchaser shall be entitled to assign, novate or otherwise dispose of its rights and obligations under this Contract or any part thereof to any contracting purchaser, private sector body or any other body established under statute provided that any such assignment, novation or other disposal shall not increase the burden of the Service Provider's obligations under this Contract;

43.2 The Purchaser shall be entitled to disclose to any transferee any Confidential Information of the Service Provider, which relates to the performance of the Contract by the Service Provider. In such circumstances the Purchaser shall authorise the transferee to use such Confidential Information only for purposes relating to the performance of the Contract and for no other purposes and shall take all reasonable steps to ensure that the transferee accepts an obligation of confidence.

44. COMPLETE CONTRACT

44.1 This Contract will be the only valid Contract made between the Service Provider and Purchaser and will supersede all other arrangements.

SCHEDULE 1

Service Specification

Adoption – Leadership and Management Specification

Following an internal review, Kent County Council is seeking new ways to reduce delays for children and young people who need a permanent placement. As part of this process we intend to commission an external organisation to provide leadership and management support to the in-house adoption service in order to make improvements in performance and care planning for children and young people that need adoption, and other forms of permanent care arrangements, away from their birth parents.

THE COUNCIL'S ADOPTION SERVICE - OVERVIEW

The Adoption Service forms part of the Specialist Children's Services Corporate Parenting Group within the Families & Social Care Directorate and is, therefore, specifically affected by the planning requirements of the Adoption and Children Act 2002 and the relevant statutory Guidelines, Standards and Regulations (2005).

Key Responsibilities of the Service

The County Adoption Service is part of the Corporate Parenting Group. It delivers a service across the whole of the county of Kent. It is made up of three individual teams located in Ashford and Maidstone. They are as follows:-

- The County Adoption Team
- Adoption and Special Guardianship Support Team
- County Adoption Resources Team (providing a service to the adoption panels, non agency adoptions, Special Guardianship Orders and inter country adoption and the Resources/matching social worker)

Structure charts giving further details are attached to this specification.

The purpose of the County Adoption Service is to fulfil statutory and regulatory requirements of the Adoption and Children Act (2002). This places a statutory requirement upon the County to provide the following:-

- Assess and support potential prospective adoptive carers
- Work in partnership with the child's social worker in seeking a permanent placement for the child through adoption
- Assess, support and plan for children who are relinquished by their birth parents.
- Assess, support and plan for children who have a concurrent plan for adoption
- Assess and support step parents/family relatives who wish to adopt them or apply for a Special Guardianship Order.
- Assess and support those adults who are seeking to adopt from another country

- A service under the Adoption Support Regulations (2005) and the Special Guardianship Regulations (2005), to both children and their adoptive/special guardianship families as well as birth families who are considered in need of family support/financial support or require further support/assistance when the children become adults. The Council has outsourced the adoption support service to birth parents, adopted adults and other interested adults, for example close family relatives, and a contact service for those subject to an Adoption or Special Guardianship Order with a plan for ongoing contact .
- The management and support of the seven adoption panels that consist of up to 70 individual members, two thirds of whom are independent members and councillors. These panels approve both prospective adopters and the child's permanency decision that adoption is the best plan as well as the matching of individual children to adopters and they have a responsibility for reviewing approvals.

Service Statistics (2010/11)

- Initial Enquiries (Adopters) for the period 2010/11 = 482
- Adoptions completed for the period 2010/11 = 60
- SGOs completed for the period 2010/11 = 21
- Average duration from LAC start to Adoption/SGO for the period 2010/11 = 2.56 years
- 72.9% of LAC adopted during the year 2010/11 were placed for adoption within 12 months of the Agency deciding that the child should be placed for adoption
- There was one disruption for the period 2010/11

Number of approved adopters

Number of formal applications received	40
Number of completed assessments	41
Total approved up to the 31.03.11	44
Approved in the last 12 months	40
Approved and waiting for longer than 2 years	2
Approved and waiting for less than 2 years	
but for longer than one year	3
Total number of applicants not approved	0
Total number of applicants who were counselled out, discontinued	
or withdrawn	29
Adopters referred to the Independent Review Mechanism	0
Adoption management team specification v5	

Recruitment of Adopters

Adopters in different sex couples	38
Adopters who were single	1
Adopters in a single sex relationship	1

Breakdown of Approvals

New approvals	40
Approved but were second time approvals	3
Number who were previously foster carers	2

Adoption Services Budget 2010/11

The total spend for the Adoption Service for the year 2010/11 was

£2,772,000.00

OUTCOMES

The intended outcomes of the adoption service will correspond to the relevant Adoption National Minimum Standards and Ofsted standards. The maintenance of these standards is a minimum requirement, namely:-

- The agency matches children with adopters
- The agency assesses and prepares adopters
- Adopters are given information about matching
- The functions of the adoption panel are as specified
- The constitution and membership of adoption panels are as specified
- Adoption panels are timely
- Adoption agency decisions are made without delay
- The manager is suitable to carry on or manage an adoption agency
- Staff are suitable to work with children
- The adoption agency provides support for adoptive parents
- The agency has access to specialist advisers as appropriate
- Birth parents and birth families are involved in adoption plans
- Birth parents and birth families are involved in maintaining the child's heritage
- The adoption agency supports birth parents and families

- Leadership and management ensures that the agency promotes equality of opportunity and tackles discrimination
- Children, service users and staff are clear about the aims and objectives of the adoption agency, and what services and facilities it provides
- The adoption agency meets the aims and objectives of the service
- The adoption agency is financially sound
- Children and service users receive a service from staff, volunteers, panel members and decision makers who have the competence to meet their needs
- Staff and volunteers are supported and guided to fulfil their roles and provide a high quality service to children and service users
- The agency is managed ethically, effectively and efficiently and delivers a good quality service that meets the needs of children and other service users, taking into account whether there is a strategic approach to the recruitment of adopters to ensure that children's needs can be met through appropriate and prompt placements and whether working relationships are established with other organisations, including other adoption agencies, health services, the courts and CAFCASS to help reduce delay in adoption processes
- Records are clear, accurate, up to date and stored securely, and contribute to an understanding of the child's life
- The premises and administrative systems are suitable to enable the agency to meet its statement of purpose

SERVICE TO BE COMMISSIONED

The focus of this contract is the leadership and management of Kent County Council's in-house adoption services. The Supplier will be required to review the quality of the adoption service currently provided, and put in place management support and measures which will aim to ensure that the outcomes for children are improved, and that adoption or other permanent alternatives are considered as an option for all those children for whom it may be appropriate.

The Supplier will make available the following staff to act in the following roles:

- 1 fte Lead Manager who will act as the County Manager for Adoption
- 1 fte Team Leader for the Adoption Resource Team
- 1 fte Team Leader for the County Adoption Team
- 1 fte Team Leader for the Adoption and Special Guardianship Support Team

The Lead Manager of the interim management team will be expected to ensure that the service continues to effectively meet the National Minimum Standards, and in addition implement any recommendations identified by Ofsted in the forthcoming inspection of the Adoption Service (November 2011).

The Lead Manager will monitor, review and make recommendations in order to improve processes carried out within the adoption service. In addition to the core role described in the County Manager job description (attached) the Manager and interim management team will also be required to undertake the tasks identified below.

Additional KCC job descriptions for Team Leaders are attached. All minimum requirements regarding experience and qualifications will apply to all posts within the interim management team.

Strategy

- Review and make recommendations on the future role and direction of the Council's Adoption Service, including consideration as to whether the service should be maintained as an in-house provision or whether it should be outsourced. The review and recommendations for outsourcing should also consider the role of Payment by Results.
- Carry out a thorough review of the birth families support and adult support with a view to reducing expenditure.
- Advise The Council with regard to re-introducing a Concurrency Service.
- Support the Director of Specialist Children's Services in the establishment of regular meetings with Senior Judges with the aim of improving decision making during Court proceedings.
- Write an Annual Report on the Adoption Service for submission to the Kent Corporate Parenting Panel.
- Review the inter-country adoption service and produce options and recommendations for its future delivery.

Processes

- Take responsibility for administering the budgets and any allowances paid out as they apply to the adoption service. Ensure that these arrangements are reviewed on an annual basis.
- Take responsibility for holding monthly tracking meetings in order to monitor the progress of children with an adoption plan and ensure that the Director of Specialist Children's Services is informed if progress is not being made in a timely fashion.
- Review and make recommendations on the timeliness of the adoption process with a view to improving timescales.
- Advise and make recommendations regarding the recruitment of adoptive parents across the country.
- Review the eligibility criteria for prospective adoptive parents.
- Review the timescales relating to when the adoption service receives an Expression of Interest to when it is in receipt of an application and make recommendations on how the process can be improved.

- Review the paperwork, timings and bureaucracy of the Adoption Panels and make recommendations.
- Review and make recommendations on the matching process and oversee the transfer of the adoption matching process to the Adoption Team.
- Ensure that adopters are consulted on whether they wish to attend Adoption Panels when “matching” is being considered.
- Working with the Head of Children’s Service with responsibility for Family Group Conferencing (FGC), review the effectiveness of the current input of FGC against national best practice.
- Recommend measures to enable The Council to be more robustly challenging within the Court setting in order improve the timeliness of the process and to challenge decisions if it is felt appropriate
- Production of a comprehensive narrative performance management quarterly report which includes all the identified targets and areas for monitoring.
- Production of weekly unallocated and workforce information to inform the Children’s Services Weekly Performance Monitoring Report.
- Production of information and data to inform the adoption specific targets contained in the Children’s Services Quarterly Monitoring Report.
- Ensure, where appropriate, all initial assessments, core assessments and allocation timescales are met.

Communication/Marketing

- Review recruitment materials and methods of communication used to promote the Adoption Service. Develop and update communication materials and ensure that they are widely available and in particular, via the website http://www.kent.gov.uk/childrens_social_services/adopting_a_child.aspx.
- Ensure that the calendar of information days is communicated widely, utilising a range of mechanisms.
- Produce a new strategy which focuses upon the recruitment of prospective adoptive families.
- Ensure the service develops and implements a comprehensive adoption recruitment strategy which is able to target the recruitment of adopters that are needed for children awaiting placements.
- Ensure effective co-working with the relevant social care services e.g. fieldwork teams, dedicated LAC services and IRO service.

MANAGEMENT ROLES

The Council requires the management roles to perform all the management requirements of the team including allocation of work, quality management of cases, professional supervision, provision of performance management information and all day to day management.

The managers provided will be required to attend Specialist Children's Services meetings commensurate with their role and responsibilities.

The Manager must inform the Head of Corporate Parenting who has a lead for the Adoption Service without delay of any absences or unsatisfactory performance of staff. Action to deal with unsatisfactory performance will be agreed by both parties.

The supplier will be responsible for providing documentary evidence that their representatives hold the relevant qualification and checks before the start of the contract.

Ensure all staff and managers are adequately focused on the related performance targets established for children's services and adoption services.

Each postholder must have the following minimum criteria:

- Qualified Social Worker, Dip SW or equivalent
- Post qualification experience of a minimum of 5 years within an Adoption Service
- Have recent experience (within the last 12 months) of Statutory Child Social Care
- Experienced in Child Protection and Looked After Children
- Full driving licence and vehicle access with business use insurer's cover
- Current GSCC registration
- Enhanced CRB Checks

HOURS OF WORK

Working times are to be flexible but predominately will be between 7am and 8pm, Monday to Friday (37 hours per week) and may depend upon building opening times.

The Council will not pay any overtime rates.

If the needs of the Service User require that work takes place during evenings and/or weekends then such work must take place on a planned basis with prior written agreement from the Head of Corporate Parenting.

LOCATION

Office space will be made available at the Stable Block, Oakwood House, Maidstone, Kent.

In the first week of the contract, The Council will provide the management team with an induction programme which will include ICS training, KCC policies and procedures and orientation.

The Council will provide laptops with remote access and access to any required IT systems.

MILEAGE AND PARKING

The Council will pay 45 pence per mile for travel in Kent in line with the Council's Casual User Policy, together with parking fees. Evidence will be required as part of the payment process.

RECRUITMENT AND SELECTION OF STAFF

The supplier must comply with all current legislation as it applies to them in delivering these services to children, young people and their families.

The Supplier must have a rigorous recruitment and selection procedure in place.

All staff will be required to undergo Criminal Record Bureau checks at the enhanced level, as it is recognised that staff employed by the Supplier will have access to sensitive information and vulnerable people, noting that all posts are exempt from the Rehabilitation of Offenders Act 1984.

The Supplier will be responsible for renewing Enhanced CRB Checks for all their directly employed staff.

The Supplier must comply with the requirements of the Safeguarding of Vulnerable Groups Act 2006, associated regulations and guidance provided by the Independent Safeguarding Authority (ISA).

The Kent Safeguarding Children Board "[Safe Recruitment and Employment Guidance 2007](#)" sets out good practice.

REPORTING ARRANGEMENTS

The County Manager will report directly to the Head of Corporate Parenting who has a lead for the Adoption Service. The frequency to be agreed between the Manager and Head of Corporate Parenting.

MONITORING & PERFORMANCE MANAGEMENT

The following monitoring and performance management criteria will apply to the first year of this contract; new performance criteria will be agreed in month 9 to cover the second year of the contract.

The aim is to optimise practice improvement, although the first six months shall constitute a formation phase together with jointly agreed diagnostic work, on the service and its processes.

The prioritisation of tasks listed below may vary but this will be agreed between the Service Provider and the Director of Specialist Children's Services.

<u>PERFORMANCE INDICATOR</u>	<u>FREQUENCY/REPORTING DATE</u>
95% of children who have a placement order, are placed for adoption within 12 months	Quarterly Performance Management Report
To complete the assessment and approval of 80-85 new adoptive families per financial year. Review this target on an annual basis to ensure that it meets the number of children requiring adoptive families	Quarterly Performance Management Report
Adoption assessments completed within 5 months of an application to adopt being received by the service.	Quarterly (Narrative) Adoption Performance Report
Maintain a low level of disruptions of adoptions.	Quarterly (Narrative) Adoption Performance Report
Families found for at least 85% of children who have been approved for adoption, including children considered to be difficult to place.	Quarterly Performance Management Report
Develop links with other in-house social care services and provide progress updates to the Head of Corporate Parenting.	Quarterly (Narrative) Adoption Performance Report
Tracking meetings held with updates on progress sent to Head of Corporate Parenting and other Heads of Children's Services.	Quarterly (Narrative) Adoption Performance Report

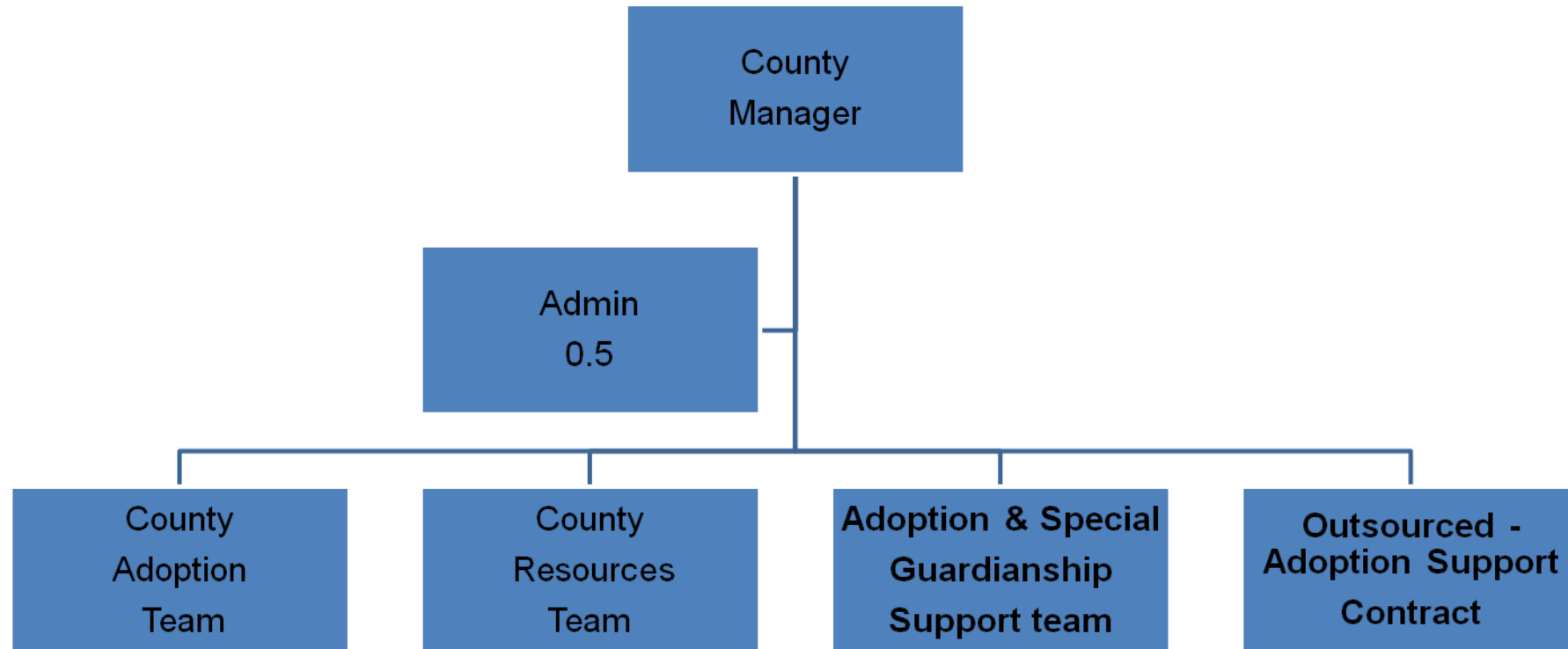
Monitor levels of staff sickness and report to Head of Corporate Parenting.	Quarterly (Narrative) Adoption Performance Report
Provision of information and data to inform the adoption specific targets.	Quarterly Performance Management Report
The number of children adopted to be restored to 122 per annum which will include SGO's.	Monthly Performance Management Report
11% of looked after children in Kent are adopted in the period 1 April 2011 to 31 March 2012 and to 13% in the period 1 April 2012 to March 2013 (per financial year, excluding SGO's	Monthly Performance Management Report
Provision of weekly unallocation and workforce information	Weekly Performance Management Report
Report on the timescales relating to all appropriate initial assessments, core assessments and allocation timescales	Weekly Performance Management Report
All expenditure kept within identified budget limits and reported to Head of Corporate Parenting.	Monthly
Carry out regular supervision of all Team Leaders	Monthly
Respond to Ofsted recommendations	January 2012
Options report and recommendations on future direction of the Adoption Service delivered to the Director of Specialist Children's Services.	April 2012
Report on options for a Concurrency Service.	October 2012
Recommendations made on how to improve the timeliness of the adoption process with clear target timescales for each stage.	April 2012
Make recommendations to enable The Council to work more effectively with the Court system.	June 2012
Complete a review and make recommendations on how to improve the recruitment process of adoptive parents. Review to include appropriateness of marketing materials and how they are promoted.	May 2012

Carry out review of the Adoption Panels, their paperwork and processes and implement recommendations.	June 2012
Annual Report on The Council's Adoption Service	December 2012
Produce options and recommendations regarding the future delivery of the inter-country adoption service	April 2013
Carry out a review of effectiveness of utilising Family Group Conferencing.	July 2012
Annual report from Service Provider to Head of Corporate Parenting covering learning points, practice issues and review of the working arrangements.	Annual

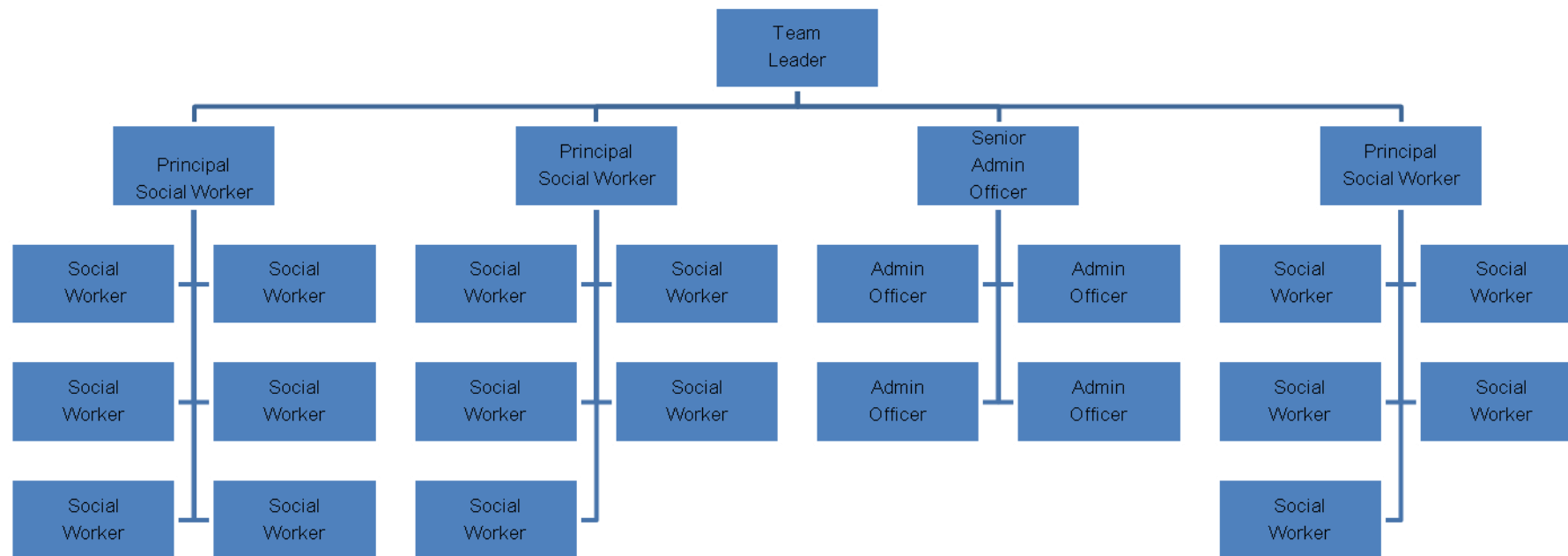
MONITORING AND PERFORMANCE MANAGEMENT REVIEWS

Formal contract and performance management reviews will be carried out monthly. The frequency of these contract reviews will be reviewed after six months.

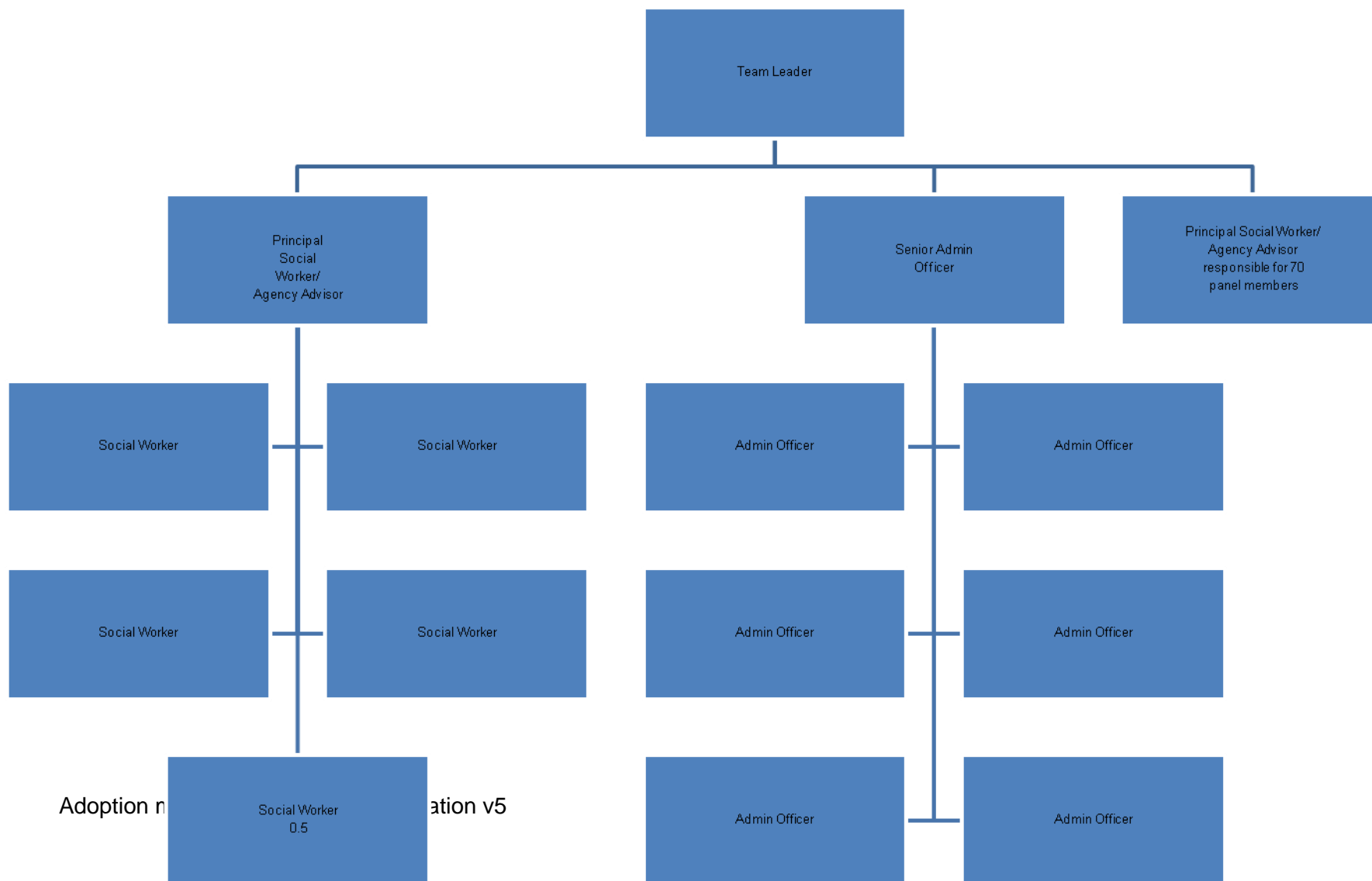
County Adoption Service



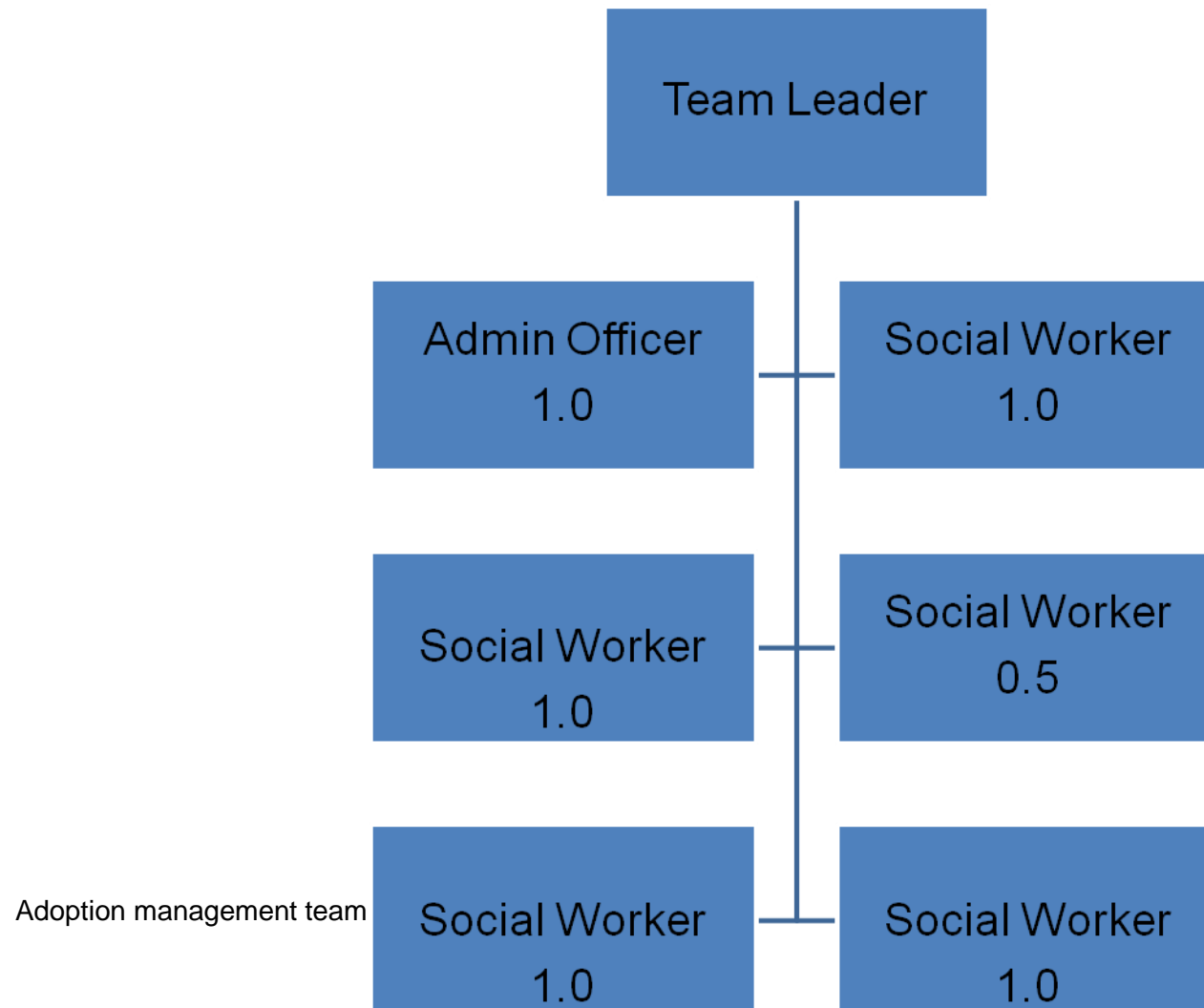
County Adoption Team



ADOPTION RESOURCES TEAM



Adoption and Special Guardianship Team



Kent County Council

Job Description: *Manager - Fostering or Adoption*

Directorate: Families & Social Care
Unit/Section: Fostering or Adoption
Grade: KS13
Responsible to: Head of Corporate Parenting

Purpose of the Job:

Take lead responsibility for the strategic development of Fostering and Adoption Services across the County of Kent.

Oversee the delivery of a cost effective service to Adoption or Fostering clients to ensure that it is delivered effectively and to the required corporate and legislative standards. There is a strong emphasis on the monitoring of standards, through adherence to Regulations and National Minimum Standards and the Competency Assessment Children and Families Social Worker Career Grade, and the monitoring of Kent Child Protection procedures, PSA targets and PAF indicators.

Drive the services to the achievement of targets as identified through PAF, PSA and Best Value.

*NB 'Postholder' in this JDQ refers to both the Adoption Manager and the Fostering Manager.

Main duties and responsibilities:

- Direct the development and management of service delivery through mainstream and specialist teams (eg Gateway, Foster Treatment, Concurrency) to Adoption and Fostering service users, including children, adopters, foster carers and parents of looked after and relinquished children and high risk child protection cases, to ensure that it is delivered effectively and to the required corporate, Directorate and legislative standards and targets.
- Oversee the strategic direction of the Adoption and Fostering service through the development, monitoring and review of policies and initiatives, in order to ensure the raising of professional standards across the County in line with corporate and government requirements eg National Minimum Standards, PSA, PAF and Best Value.
- Ensure the establishment of District Commissioning processes which identify local need and deliver fostering and adoption services in line with these requirements.
- Oversee and develop the monitoring of Looked After Children, Children in Need and Child Protection procedures and practice across the Directorate, chairing/managing Fostering and Adoption Panels and taking lead responsibility for County initiatives to ensure quality and consistency across the County in the maintenance of standards.

- Assess the needs of the local community relating to service delivery through the development of specialist teams to target local need, taking a lead in partnerships with the Health Service, including Primary Care Trusts, the Education Authority, District Councils, the commercial and private sector, voluntary and private agencies, adopters and foster-carers and those with parental responsibility, in order to effectively commission services in line with budgetary and service requirements.
- Oversee the recruitment and development strategy for Fostering and Adoption Team Leaders, Practice Supervisors, Senior Practitioners, Social Workers and other staff, monitoring and reviewing the development of the 'Competency Assessment Children and Families Social Work Career Grade', in order to ensure the maintenance of high standards within given resources.
- Plan and monitor levels of budget allocation across the County, in liaison with Team Leaders, identifying and securing additional monies through grants, joint funding etc in order to optimise the use of all resources in providing value for money for services.
- Oversee delivery of Government initiatives, such as the Performance Assessment Framework Indicators, Public Service Agreement targets and targets resulting from the Directorate's Next 4 Years plan through negotiation, planning and commissioning of services, ensuring effective monitoring and evaluation of outcomes in line with the requirements of the Management Action Plan.
- Develop the use of specialist teams within the Adoption and Fostering service, with a focus on service users, ensuring they are represented in all appropriate aspects of the service. Develop the monitoring and evaluation of feedback questionnaires, to ensure that service user involvement is an integral part of the Adoption and Fostering service.

Footnote: This job description is provided to assist the job holder to know what his/her main duties are. **It** may be amended from time to time without change to the level of responsibility appropriate to the grade of post.

Kent County Council

Person Specification: *Manager – Fostering or Adoption*

The following outlines the Minimum and Desirable criteria for this post. Applicants who have a disability and who meet the minimum criteria will be shortlisted.

Applicants should describe in their application how they meet these criteria.

	MINIMUM	DESIRABLE
QUALIFICATIONS	Degree or equivalent in a related discipline, eg Social Work Registration as a social worker with the General Social Care Council if you are qualified social worker	Management qualification - NVQ5 or DMS
EXPERIENCE	Extensive experience of working in a management role within Children's Services Previous experience of partnership working and working within a multi-disciplinary environment Previous responsibility for managing major budgets Experience of directly contributing to policy formulation, implementation and review Recruitment and training experience	An understanding of family court procedures
SKILLS AND ABILITIES	Ability to communicate effectively with clients and colleagues at all levels and to build effective partnerships internally and with external agencies Change management skills Client evaluation and risk assessment skills Ability to work to tight deadlines Ability to oversee, monitor and review a range of projects and prioritise accordingly High level budget management and audit skills Awareness of Quality Assurance issues	

	<p>Good negotiating, planning and commissioning skills</p> <p>Recruitment, training and staff development skills</p> <p>Computer literacy</p>	
KNOWLEDGE	<p>A high level of working knowledge of The Children Act 1989, Adoption Act 1976, Adoption Regulations, Placement of Children Regulations, Foster Placement Regulations, Child Care Regulations, the National Standards and Code of Practice for fostering and the DOH Looked After Children 20 Circular.</p> <p>Up-to-date knowledge of research is essential</p> <p>Detailed knowledge of corporate procedures and practice, especially those relating to Looked After Children, Children in Need and Children in the Child Protection System</p> <p>Familiarity with recent government and corporate initiatives, eg Quality Protects - Transforming Children's Services, Working Together</p> <p>High level knowledge of corporate financial regulations</p>	
BEHAVIOURS (related to Behaviours for Success)	<p>Discretion</p> <p>Commitment to Equal Opportunities</p> <p>Professional credibility</p> <p>Initiative</p> <p>Leadership ability</p> <p>Energy/enthusiasm</p> <p>Flexibility</p>	

Directorate:	Families & Social Care
Unit/Section:	Specialist Children's Services
Grade:	KS12 (pay points 45-51)
Responsible to:	County adoption manager

Purpose of the Job:

Provide effective liaison with the Local Children's Service Partnership to ensure that Every Child Matters outcomes are delivered and improved for Children in Need, with a clear focus on those in need of protection and the wider safeguarding agenda.

Provide day to day management of a team of professional Social Workers together with support staff to provide services to young people and their families requiring support and/or intervention from Children's Social Services. Services to be delivered in accordance with legislation, Corporate and Directorate policies and with allocated cash limits.

Main duties and responsibilities:

- Develop and maintain effective liaison with the LCSP.
- Influence LCSP commissioning strategies to ensure services are developed and accessible to Children in Need.
- Manage a team of professional social work staff and support staff to provide a service to clients of Children's Social Services in accordance with legislation, policies and practices.
- Recruit, develop and motivate staff in order to ensure they effectively fulfil the complex changing demands of the service. Provide day to day support and professional supervision of deputy team leaders and other staff when required, managing their performance.
- Allocate resources and workload across the team to ensure effective delivery of service within allocated cash limit.
- Ensure support and professional supervision is available to all staff within the team. Ensure the professional development of the team in order to deliver a high quality and consistent service.
- Develop as appropriate, joint planning, development and delivery mechanisms with key partners in statutory agencies and the private and voluntary sector in order to maximize resources and promote joint working.
- Contribute to the preparation of the team budget. Control, monitor and forecast expenditure, taking remedial action as required to enable cost effective services to be provided within the allocated cash limit.
- Contribute to the formulation of professional practice procedures through working closely with colleagues in other Divisions and/or via County Working Groups, to maintain high standards of social work practice which meets the changing needs of the service.
- Chair Child protection Case Conferences and other complex child care meetings where serious issues of risk need to be considered or the demands of the service require.

- Monitor professional standards within the team to ensure compliance with all policies and procedures and that Performance Assessment Framework indicators and other agreed targets are met.
- Respond to situations of crisis and emergency by co-coordinating service provision with other Directorate colleagues.
- Undertake case audits to quality assure file management and standards of practice.

Footnote: This job description is provided to assist the job holder to know what his/her main duties are. It may be amended from time to time without change to the level of responsibility appropriate to the grade of post.

Person Specification: *Team Leader*

The following outlines the Minimum and Desirable criteria for this post. Applicants who have a disability and who meet the minimum criteria will be shortlisted.

Applicants should describe in their application how they meet these criteria.

	MINIMUM
QUALIFICATIONS	Degree in Social Work, CQSW, DipSW or equivalent. A management qualification. Relevant professional development. Registration as a Social Worker with the General Social Care Council.
EXPERIENCE	Experience of professional supervision, line management or project management. Experience of managing an adoption team. Experience of budget management issues. Experience of contributing to policy and practitioner formulation, implementation and review. Experience of working jointly with key partners in the statutory, private and voluntary sectors. Experience of staff recruitment and development.
KNOWLEDGE	Excellent knowledge and understanding of relevant legislative and police frameworks and impact on service. Excellent knowledge and understanding of social work theories relating to child care services. Excellent knowledge and understanding of the Adoption and children Act 2002 and all other relevant adoption legislation. Excellent knowledge and understanding of Safeguarding policies and procedures.

	<p>Knowledge of recent research and National initiatives impacting on Children's Social Services.</p> <p>Knowledge and performance management indicators.</p> <p>Knowledge of financial regulations.</p>
SKILLS AND ABILITIES	<p>Ability to lead, manage and motivate a team.</p> <p>Excellent oral and written communication skills.</p> <p>Excellent organizational skills, ability to prioritise work and delegate tasks.</p> <p>Develop and maintain effective working relationships.</p> <p>High level professional supervisory skills.</p> <p>Budget management skills.</p>
BEHAVIOURS	<p><u>Team leadership</u>: Motivates staff to achieve a shared team/service vision.</p> <p><u>Creative Thinking</u>: Identifies trends in successful service delivery and able to share ideas about how to improve performance.</p> <p><u>Partnership Working</u>: Works collaboratively across teams and partners to secure the most effective outcomes for the service and its customers.</p> <p><u>Managing Performance</u>: Ensures staff knows what is expected of them through goal setting and activity monitoring performance. Takes steps to address poor performance and provides positive recognition and feedback to staff.</p>

SCHEDULE 2
The Pricing and Financial Schedule

Page Intentionally Blank
Data Commercially Sensitive

Page Intentionally Blank
Data Commercially Sensitive

SCHEDULE 3
Details of Parties' Representatives

The Purchaser's Authorised Officer	Service Provider's Representative (Contact Manager)
Name: Helen Jones Address: Sessions House, County Hall, Maidstone, Kent, ME14 1XQ Telephone: 01622 696682 Fax: 01622 694971 Email: helen.jones@kent.gov.uk	Name: Carol Homden Address: Coram, 49 Mecklenburgh Square, London, WC1N 2QA Telephone: 020 7520 0300 Fax: 020 7520 0301 Email: carol@coram.org.uk

SCHEDULE 4
Confidential and Commercially Sensitive Information

1. GENERAL

- 1.1 All the information that the Purchaser supplies as part of this Contract may be regarded as Confidential Information as defined in Clause 1 (Definitions and Interpretations) of Section II Contract Terms and Conditions.
- 1.2 The Service Provider considers that the type of information listed in paragraph 2 is Confidential Information.
- 1.3 The Service Provider considers that the type of information listed in paragraph 3 is Commercially Sensitive Information.

2. Types of Information that the Service Provider considers to be Confidential

Types of Information that the Service Provider considers to be Confidential, the reason for the Exemption and the Section number in the FOIA that applies.

Period that the Service Provider considers applies to this information

3. Types of Information that the Service Provider considers to be Commercially Sensitive Information

Types of Information that the Service Provider considers to be Commercially Sensitive Information, the reason for the Exemption and the Section number in the FOIA that applies.

Period that the Service Provider considers applies to this information

SCHEDULE 5

TUPE

TRANSFER OF UNDERTAKINGS (PROTECTION OF EMPLOYMENT REGULATIONS 2006 (“TUPE”) AND PENSION MATTERS

TUPE

TUPE ACKNOWLEDGEMENT

For the purposes of this Schedule:-

“Agency Worker” has the same meaning as given in Regulation 3 of the Agency Worker Regulations 2010

“Contract Period” has the meaning given in Section II, clause 1 of this Contract.

“Contractor” means any legal entity which is not party to this Contract with whom the Service Provider contracts to carry out any of the Services which are its contractual responsibility under this Contract.

“Costs and Losses” means all costs, losses, charges, expenses, damages, compensation, fines, claims, demands, liabilities, actions and proceedings (including the costs and expenses (including legal costs and expenses) of such actions and proceedings and the staff costs expended in requiring the discharge of an indemnity or payment of damages) arising from or relating to the breach of the contractual clause in question.

“Future Transfer” means any subsequent transfer of or re-provision of any service substantially similar to any of the Services or any part thereof by the Purchaser on or following the assignment, expiry or termination of this Contract.

“Future Transfer Date” means the date on which any Future Transfer takes effect.

“Party” means a party to the Contract.

“Relevant Employees” means Staff who would be liable to transfer under TUPE irrespective of whether they actually transfer (and for the avoidance of doubt shall include Transferring Employees);

“Relevant Transfer” means a relevant transfer for the purposes of TUPE;

“Replacement Contractor” means any third party service provider appointed by the Purchaser to supply any services which are substantially similar to any of the Services and which the Purchaser receives in substitution for any of the Services following the expiry, termination or partial termination of the Contract.

“Staff” means all persons employed by the Provider to perform its obligations under this Contract. including as the case may be the Provider’s servants, agents, Agency Workers, suppliers and sub-contractors used in the performance of its obligations under the Contract.

“The Services” means the services to be supplied as required by the terms and conditions of this Contract.

“Transferring Employees” means any Staff who are the subject of a Relevant Transfer;

“TUPE” means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended from time to time) which implement the Acquired Rights Directive;

TUPE ACKNOWLEDGEMENT, AGREEMENT ON TRANSFER AND CONDUCT PRIOR TO TERMINATION OF THE CONTRACT

1. TUPE ACKNOWLEDGEMENT - AGREEMENT ON TRANSFER

- 1.1 The Purchaser and the Service Provider acknowledge that in connection with the execution of this Contract, and in connection with the provision of the Specification under this Contract, no Relevant Transfer of Transferring Employees from the Purchaser or from any third party will have occurred.
- 1.2 The Purchaser and the Service Provider acknowledge that this Contract makes no further provision in connection with the circumstances as described in Clause 1.1 of this Schedule and that Clause 2, 3 and 4 of this Schedule are included in order to deal with any Future Transfers occurring in connection with this Contract.

2. APPLICATION OF TUPE UPON EXPIRY OR TERMINATION OF THIS CONTRACT

- 2.1 The Purchaser and the Service Provider acknowledge and confirm that in the event of assignment, expiry or termination of this Contract and in the event of any Future Transfer by the Purchaser, TUPE may apply but that the position shall be determined in accordance with the law at the relevant date as the case may be and this Clause 2 of this Schedule is without prejudice to such determination. The Parties hereby confirm that they will comply with their TUPE obligations arising pursuant to a Future Transfer.
- 2.2 The Parties shall (or, if applicable, the Purchaser shall use its reasonable endeavours to procure that the Replacement Contractor shall) comply with their respective obligations under TUPE and any other applicable legislation or agreement with regard to the information to be given to and consultation with the Relevant Employees or any trade union or other representatives on their behalf. The Service Provider will provide and shall procure that any Contractor appointed by the Service Provider shall:
 - 2.2.1 provide to the Purchaser, or the Replacement Contractor (as applicable) the employee liability information required pursuant to Regulation 11 of TUPE in accordance with the timescale specified therein, and shall warrant at the time of providing such employee liability information that such information will be updated to take account of any changes to such information as is required by TUPE; and
 - 2.2.2 indemnify and keep indemnified in full the Purchaser and at the Purchaser's request any Replacement Contractor against all Costs and Losses arising from any claim by any party as a result of the Service Provider or any Contractor appointed by the Service Provider failing to provide or promptly to provide the Purchaser or any Replacement Contractor where requested by the Purchaser with any employee liability information or as a result of any material inaccuracy in or omission from the employee liability information.
 - 2.2.3 comply and shall procure that any Contractor appointed by the Service Provider shall comply with its obligations (including without limitation under regulation 13(4) of TUPE) in respect of each Future Transfer occurring pursuant to this Contract whether upon assignment, expiry or termination.

2.3 Immediately on the expiry, termination or assignment of this Contract, the Service Provider shall fully indemnify the Purchaser and where applicable any Replacement Contractor (and if requested by the Purchaser enter into a deed of indemnity with the Purchaser or any Replacement Contractor whereby the Service Provider agrees to pay and to indemnify the Purchaser or the Replacement Contractor (as applicable)) against all Costs and Losses arising out of-

2.3.1 any claim or demand by any Relevant Employee arising from and relating to his employment with the Service Provider or any Contractor appointed by the Service Provider prior to the Future Transfer Date and due to, arising from or relating to an act, fault or omission of the Service Provider and/or the Contractor in relation to any Relevant Employee prior to the Future Transfer Date;

2.3.2 any claim or demand arising out of or in connection with employment with the Service Provider or any Contractor appointed by the Service Provider, or the termination thereof, by any past, present or future employee of the Service Provider or one of the Service Provider's Contractors, who is not a Relevant Employee;

2.3.3 any claim by or on behalf of any Relevant Employee pursuant to Regulation 4(9) of TUPE on the grounds that the identity of the Purchaser or the Replacement Contractor (as applicable) as his employer is both a substantial change and to his material detriment;

2.3.4 subject to Clause 2.4.2 of this Schedule below, any claim arising out of any failure by the Service Provider or any Contractor appointed by the Service Provider to comply with TUPE regulations 11 or 13 prior to the Future Transfer Date;

2.3.5 any claim or demand by any trade union or staff association or employee representative (whether or not recognised by the Service Provider and/or or any Contractor appointed by the Service Provider in respect of any Relevant Employees) arising from or connected with any failure by the Service Provider to comply with any legal obligation to such trade union, staff association or employee representative;

2.3.6 the matters referred to in Clause 2.5 of this Schedule below;

PROVIDED that this indemnity shall not apply to any claim arising as a result of any act, fault or omission of the Service Provider which arises or is occasioned directly or indirectly from any act, fault or omission of the Purchaser or the Replacement Contractor.

2.4 On termination or assignment of this Contract, the Purchaser shall fully indemnify the Service Provider (and if requested by the Service Provider enter into a deed of indemnity with the Purchaser (or, if applicable the Purchaser shall use its reasonable endeavours to procure that the Replacement Contractor shall enter into such a deed with the Service Provider) whereby the Purchaser or the Replacement Contractor (as the case may be) agree to pay and to indemnify the Service Provider (as applicable)) against all Costs and Losses arising out of-

2.4.1 any claim by any Relevant Employee arising from and relating to his employment or the termination of his employment with the Purchaser or the Replacement Contractor (as applicable) on or after the Future Transfer Date and arising from an act, fault or omission of the Purchaser or the Replacement Contractor (as applicable) in relation to any Relevant Employee whether before, on or after the Future Transfer Date; and

2.4.2 any claim arising from a failure by the Purchaser or the Replacement Contractor (as applicable) to supply the Service Provider with information in respect of “measures” under TUPE regulation 13(4);

2.4.3 any claim arising from a failure by the Purchaser or the Replacement Contractor (as applicable) to comply with its obligations to consult the Relevant Employees or their representatives pursuant to regulation 13 of TUPE prior to the termination or assignment of this Contract;

PROVIDED that this indemnity shall not apply to any claim arising as a result of any act, fault or omission of the Purchaser or the Replacement Contractor which arises or is occasioned directly or indirectly from any act, fault or omission of the Service Provider or its Contractors.

2.5 If, by operation of law, the contract of employment of any individual who is not a Transferring Employee takes effect or is alleged to take effect as if originally made with the Purchaser or the Replacement Contractor (as applicable) as a consequence of the termination or assignment of this Contract, the Service Provider agrees that:

2.5.1 in consultation with the Purchaser or the Replacement Contractor (as applicable), it will, within 7 days of being so requested by the Purchaser or the Replacement Contractor (as applicable) (as long as the request is made no later than 14 days after the Purchaser or the Replacement Contractor (as applicable) becomes aware of such transfer of employment), make to that individual an offer in writing to employ him under a new contract of employment or to continue employing him under the terms of his existing employment contract to take effect upon the termination referred to below; and

2.5.2 the offer to be made will be such that none of the terms and conditions of the new contract save insofar that they relate to any occupational pension scheme will differ from the corresponding provision of that person’s contract of employment immediately prior to the Future Transfer Date; and

2.5.3 the Purchaser or the Replacement Contractor (as applicable) shall be entitled to terminate the employment of the individual and the Service Provider shall indemnify and keep indemnified the Purchaser or the Replacement Contractor (as applicable) against all Costs and Losses arising from or in connection with the employment of such an individual until such termination and the termination of the employment itself.

2.6 All salaries and other emoluments and the cost of all benefits, including (but not limited to) accrued holiday pay, tax and national insurance payments, bonus and commission arrangements relating to the Transferring Employees shall be borne by the Service Provider or any Contractor appointed by the Service Provider (as applicable) up to the Future Transfer Date and by the Purchaser or the Replacement Contractor (as applicable) on and after the Future Transfer Date and all necessary apportionments shall be made to give effect to this Clause 2.6 of this Schedule.

2.7 The Service Provider shall fully indemnify the Purchaser and the Replacement Contractor against all Costs and Losses arising from its or its Contractors failure to comply with Clause 2.6 of this Schedule and the Purchaser shall fully indemnify the Service Provider and any Contractor appointed by the Service Provider against all Costs and Losses arising from its or the Replacement Contractor’s failure to comply with Clause 2.6 of this Schedule.

- 2.8 During the 12 months preceding the expiry of this Contract or after the Purchaser has given notice to terminate this Contract or at any other time as directed by the Purchaser and within 15 working days of being so requested by the Purchaser, the Service Provider shall and shall ensure that any Contractor appointed by the Service Provider shall fully and accurately disclose to the Purchaser or the Replacement Contractor (as applicable) any and all information in relation to all employees and workers whether employed by the Service Provider or by any Contractor appointed by the Service Provider engaged in providing the Services as set out in Clause 3 of this Schedule and a list of all Relevant Employees who are liable to transfer as a consequence of a Future Transfer as in the form set out in Clause 4 of this Schedule as the Purchaser may request.
- 2.9 The Service Provider shall warrant the accuracy of all the information provided to the Purchaser or the Replacement Contractor pursuant to Clause 2.8 of this Schedule and authorises the Purchaser or the Replacement Contractor (as applicable) to use any and all the information as it may consider necessary for the purposes of its business or for informing any tenderer for any services which are substantially the same as the specification (or any part thereof) for this Contract.
- 2.10 The Service Provider shall notify the Purchaser as soon as reasonably practicable in writing of any material changes to the information supplied in accordance with Clause 2.9 of this Schedule as soon as reasonably practicable as and when such changes arise;
- 2.11 The Service Provider agrees that it shall not and shall ensure that any Contractor appointed by the Service Provider shall not with reference to any Relevant Employees in the period six months prior to the expiry of the Contract, other than with the Purchaser's prior consent and in accordance with prevailing market conditions:
- 2.11.1 other than in circumstances where an individual resigns voluntarily or where an individual's employment is terminated pursuant to policies and procedures of the Service Provider or the Contractor appointed by the Service Provider (in which cases the said individual may be replaced) make any material increase or decrease in the numbers of Relevant Employees;
 - 2.11.2 make any material increase in the remuneration or other material change in the terms and conditions of the Relevant Employees other than in the ordinary course of business and with the Purchaser's prior written consent; and
 - 2.11.3 transfer any of the Relevant Employees to another part of its business or move other employees from elsewhere in its or their business who have not previously been employed or engaged in providing the Services to provide the Services save with the Purchaser's prior written consent.
- 2.12 The Service Provider shall indemnify and shall keep indemnified in full the Purchaser and at the Purchaser's request any Replacement Contractor against all Costs and Losses arising from any claim by any party as a result of the Service Provider's or any Contractor appointed by the Service Provider's failure to comply with the Service Provider's obligations under Clauses 2.8, 2.9, 2.10 and 2.11 of this Schedule save that this indemnity shall not apply in respect of any failure to the extent that such information was originally provided to the Service Provider by the Purchaser and was materially inaccurate or incomplete when originally provided.

3. EMPLOYEE INFORMATION

Individual terms and conditions

- 3.1 Copies of all current employment contracts, and all other terms and conditions of employment.
- 3.2 A schedule comprising in respect of each Relevant Employee, the following particulars:-
- (a) full name of the employee and his/her current employer;
 - (b) post/job title;
 - (c) hours of work (indicating whether the employment is considered to be full or part time);
 - (d) sex;
 - (e) date of birth;
 - (f) date of commencement of employment (and if different, date of commencement of period of continuous employment);
 - (g) place of work;
 - (h) holiday entitlement;
 - (i) notice period (or, if relevant, duration of fixed-term);
 - (j) normal retirement age;
 - (k) remuneration (including rate and intervals at which paid);
 - (l) pension details;
 - (m) sick pay entitlements
- 3.3 Details of any changes of terms and conditions in relation to any employee within the last 12 months.
- 3.4 Copies of any employee handbooks, rules and other policies, procedures, arrangements or agreements in relation to:-
- (a) redundancy procedures and payments;
 - (b) redeployment procedures;
 - (c) sickness absence and sick pay entitlements;
 - (d) equal opportunities;
 - (e) disciplinary matters;
 - (f) maternity and other parental rights;
- and details of whether or not each of the above are discretionary or contractual.
- 3.5 Copies of any job descriptions.

- 3.6 Details of any practices or customs which although not written down form part of employees' terms and conditions of employment.

Collective bargaining

- 3.7 Details of the names of all trade union and other employee representatives, with the name of the trade union, the position held and how long the position was held.
- 3.8 Details of any trade union recognised by the Service Provider and/or any other employer of a Relevant Employee giving the date and details of the recognition agreement (and a copy if available), with brief details of current and historic labour relations and any pending negotiations.
- 3.9 Details of any other agreement, whether local or national, with any trade union or other body of employee representatives (and copies if available) including any informal recognition and procedure arrangements and other arrangements honoured by "custom and practice".

Disputes

- 3.10 Details of any dispute or potential dispute with any employee or former employee within the last 2 years whether brought under the disciplinary, dismissal or grievance procedure of the Service Provider or any other employer of a Relevant Employee or otherwise and any matters which might give rise to such.
- 3.11 Details of any litigation threatened or pending within the last 2 years against the Service Provider or any other employer of a Relevant Employee, including any court, employment tribunal or arbitration claims or any matters which might give rise to such.
- 3.12 Details of any enquiry, correspondence or contact within the last 2 years between the Service Provider or any other employer of a Relevant Employee and the Equality and Human Rights Commission, the Commission for Racial Equality, the Equal Opportunities Commission, the Health and Safety Inspector, the Inland Revenue or any similar body concerning employees.
- 3.13 Details of any court judgment or employment tribunal award within the last 2 years in respect of any employee dispute (including confirmation of whether satisfied).
- 3.14 Details, and, if available, copies, of any warnings given to employees under the disciplinary or capability procedure or similar procedures of the Service Provider or any other employer of a Relevant Employee within the last 2 years.

Dismissals

- 3.15 Details of all dismissals/resignations within the last 12 months including reasons for the dismissal/resignation.
- 3.16 Details of all employees recruited within the last 12 months.

Working Time Regulations 1998

- 3.17 Copies of any individual, collective and workforce agreements entered into pursuant to the Working Time Regulations.

Health and Safety

- 3.18 Details of any health and safety committees/representatives.
- 3.19 Details of any health and safety complaints or recommendations or claims within the last 5 years.

Trainees/Consultants

- 3.20 Details of all individuals involved in the provision of the Contract working on training, work experience or similar schemes.
- 3.21 Details of all consultancy agreements or self-employed personnel who are or may actually be employees.

Absent employees

- 3.22 Details of all employees who have notified the Service Provider or any other employer of a Relevant Employee that they are pregnant or who are currently absent on maternity leave together with confirmation of their expected week of confinement and any confirmed dates for the start or end of maternity leave.
- 3.23 Details of all employees on long term sick leave together with confirmation of the nature of their illness and the duration and dates of their absence(s).
- 3.24 Details of all employees absent on other leave together with confirmation of the nature of such leave and dates of their absence(s).

Job Evaluation Scheme

- 3.25 A copy of any job evaluation scheme.

Contractor Employees

- 3.26 All details under Clause 3 of this Schedule of any individuals employed by Contractors.

Pension

- 3.27 A list of all pension schemes (both occupational and personal) applicable to the employees.
- 3.28 Details of any current or pending applications for early retirement.

Agency Workers

- 3.29 Details of all Agency Workers employed by the Service Provider or any Contractor in connection with the Services within the 12 calendar months prior to the proposed Future Transfer Date ; including
 - 1. The total number of agency workers engaged;
 - 2. The areas of business in which they are engaged; and
 - 3. The types of work that they are contracted to undertake.
- 3.30 Details of the current employment status of those Agency Workers

- 3.31 Details of those Agency Workers to whom Regulation 5 of the Agency Worker Regulations 2010 will be applicable on the Future Transfer Date.

4. TRANSFERRING EMPLOYEES

- 4.1 The Service Provider represents that in its opinion that by virtue of TUPE the following employees will transfer to the Employment of the Purchaser or the Replacement Contractor in the event of a Future Transfer: