

CABINET

4 APRIL 2017

GATEWAY 1 PROCUREMENT COMMENCEMENT: INDEPENDENT FOSTERING AGENCY PROVISION

Portfolio Holder: Councillor Andrew Mackness, Children's Services (Lead Member)

Report from: Ian Sutherland, Director of Children and Adults Services

Author(s): Caroline Friday, Acting Senior Commissioning Officer for Looked After Children, Partnership Commissioning.
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SUMMARY

This report seeks permission from Cabinet to initiate the procurement of an Independent Fostering Provision through a competitive tendering process.

The aim is to procure a joint Kent and Medway Framework of Providers offering best value and good quality independent Fostering provision and delivering positive outcomes for Medway's children.

The existing framework ends in June 2017 but has been extended by three months to cover the procurement period to 31 August 2017.

1. BACKGROUND INFORMATION

1.1 Budget & Policy Framework

- 1.1.1 The Medway Council Plan 2016/17 to 2020/21 includes the target that children and young people have the best start in life in Medway, including the commitment to work with partners to ensure the most vulnerable children and young people are safe.
- 1.1.2 The Joint Health and Wellbeing Strategy for Medway 2012-2017 sets out five strategic themes, including working together to give every child a good start (theme 1), improving physical and mental health and wellbeing (theme 4), and reducing health inequalities (theme 5).

1.1.3 Priorities in relation to the health and wellbeing of children and young people are set out in the Medway Improvement Plan, Early Help Strategy, the Looked After Children Strategy 2015-18 and the Looked After Children's Commissioning Strategy and 16+ Homeless and Care Leavers Commissioning Action Plan 2014 – 2017

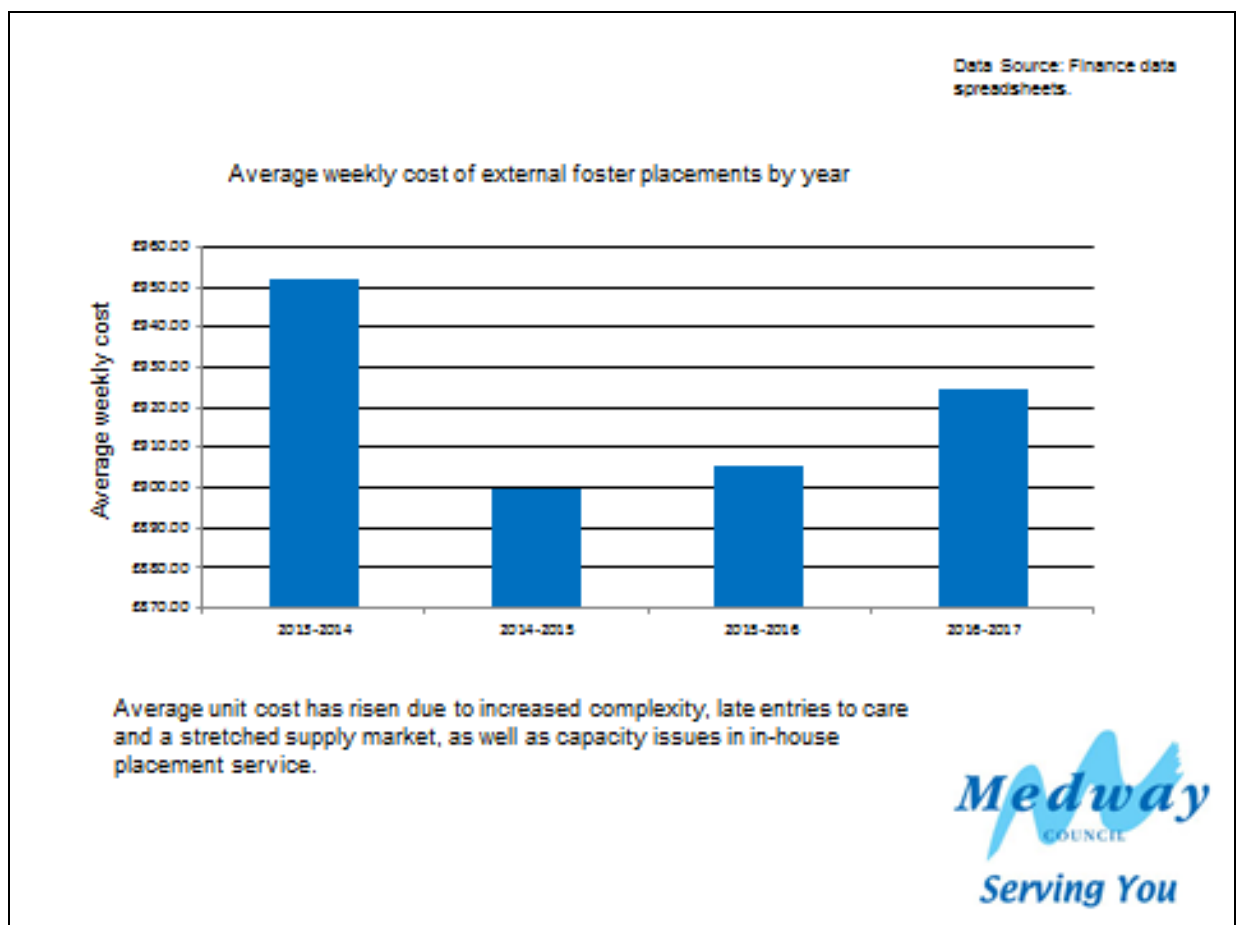
1.1.4 Currently the annual direct expenditure on Independent Fostering Agency (IFA) external fostering placements is in the region of £4.5 million per annum. This figure does not include mother and baby placements which is budgeted to be in the region of £365,000 per annum.

1.1.5 It is anticipated that with increased investment in the provision of in-house fostering and the focussed efforts of early help and intervention projects, the demand for external fostering provision will reduce although it can never be eliminated.

1.2 Service Background Information

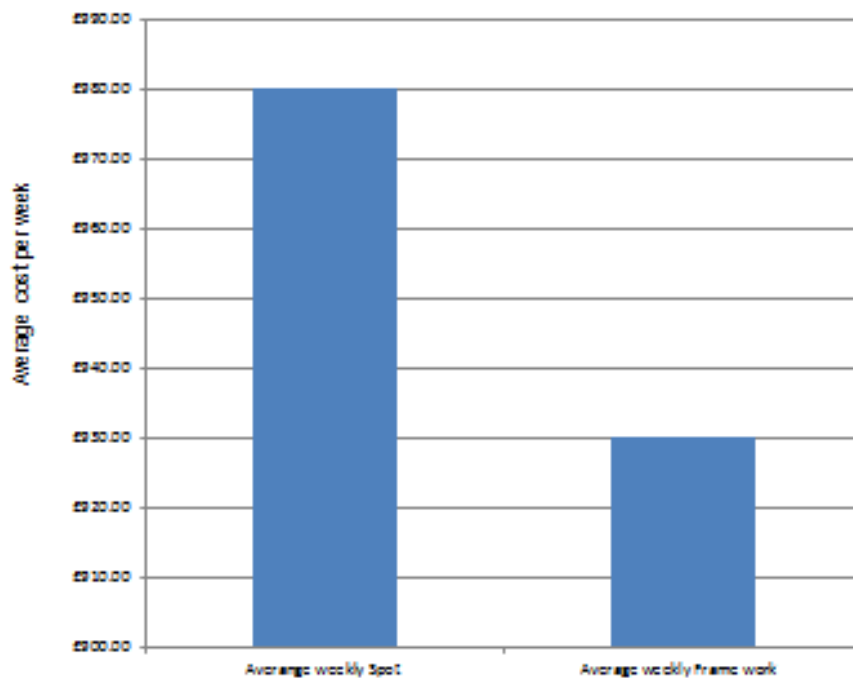
1.2.1 Existing IFA provision for Medway is commissioned and provided through a mixture of using the existing Joint Framework with Kent and individual spot purchases.

1.2.2 Figures one to three show costs associated with external fostering placements.

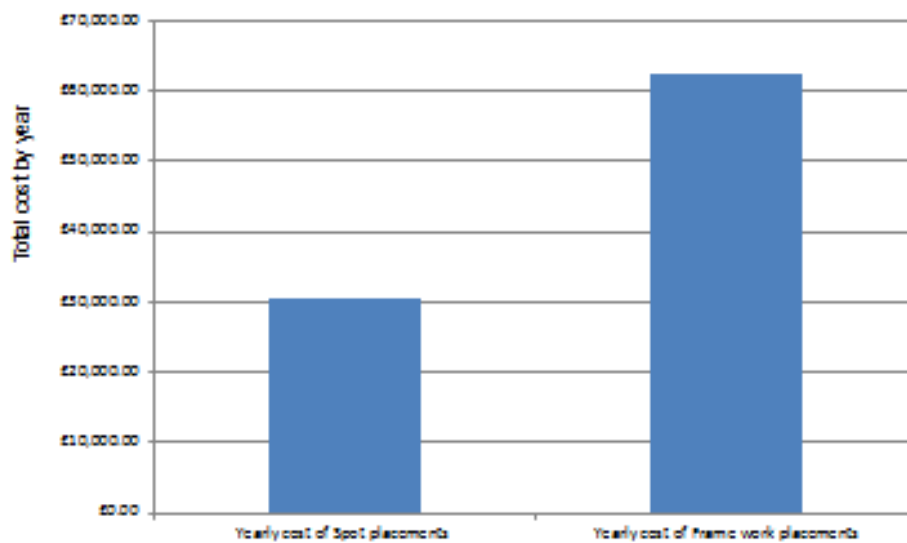


Data Source: Finance data spreadsheets.

Average weekly cost of external foster placements, Spot vs Framework.



Total cost of external foster placements by year, Spot Vs Framework.



Currently we are spending more on the Framework in total, even though we are using more spot provider placements.

1.2.3 Following an analysis of the placement needs for Medway's Looked After Children, the following groups were identified as areas of need for Medway:

- 10-15 year olds
- more boys than girls
- increasing need for solo placements
- an increased level of need around placements for siblings and for parent and child placements

1.2.4 The Medway Children's Social Care policy is to enhance the level of in-house fostering provision and to reduce the level of IFA requirements. This serves both the goal of keeping Medway's children closer to home where we are better able to fulfil our statutory duties in monitoring their development, as well as reducing the more expensive provision allowing us to better support the population as a whole.

1.2.5 This policy therefore is best served by developing a close relationship with a smaller number of providers and working with them to ensure adequacy and quality of placement provision.

1.3 Service development work

1.3.1 The existing Joint Framework agreement with Kent is due to end in June 2017. Commissioners have explored different options going forward. In November 2016, Children and Adults Departmental Management Team (CADMT) endorsed the option to pursue a new Joint Framework with KCC.

- 1.3.2 The joint procurement exercise is being led by the KCC Procurement Team with input from Medway.
- 1.3.3 Consultation has taken place with the IFA providers at a joint market testing event in addition to ongoing discussions with providers.
- 1.3.4 In depth discussions with commissioners and procurement/contract leads from other local authorities has contributed to a substantial benchmarking exercise.
- 1.3.5 Medway professionals have had the opportunity to input through a specific focus group session as well as be involved in ongoing consultation around developing the service specification.
- 1.3.6 The views and feedback from the Children in Care Council and from past consultations including Ofsted Children's Social Care Questionnaire (what children told us) has informed the service specification.
- 1.3.7 There will also be an expectation that Framework providers demonstrate how they seek the ongoing views and quality assurance of children, young people and foster carers in future service provision.
- 1.3.8 Commissioners are now confident in seeking to tender this procurement which is timetabled to see a new Joint Medway-Kent IFA Framework in place from 1 September 2017.

1.4 Governance

- 1.4.1 Due to the high monetary value of the service as well as the vulnerable nature of the service users, this procurement exercise is classed as high risk.
- 1.4.2 A very short mobilisation period is necessary to implement the new Framework and the timetable for procurement has therefore been scheduled for a contract start date of 1 September 2017.
- 1.4.3 The governance timeline is listed in paragraph 4.2.5 below.

2. PROCUREMENT DEPENDENCIES AND OBLIGATIONS

2.1 Project obligations

- 2.1.1 The following placement types have been identified as those that Medway need to procure through the Framework:

Category	Time period
CORE	Long term/case dependant
Short Term	Up to 9 months.
Bridging Placements	No more than four weeks /

	bed night rate.
Step Down (to fostering)	Reviewed every 12 weeks / need to obtain a breakdown of what's included in the fee.
Parent(s) and Child	Case dependant

Long term discount for placements over 12 months
Discount for life of placement calculated at 12 month review.

Sibling Discount:
Full price for first sibling / all other siblings at discount rate.

2.2 Project dependencies

2.2.1 The Medway IFA Framework will interface closely with:

- a. In-house fostering provision
- b. Residential accommodation
- c. Supported accommodation
- d. Services for children with disabilities

(a) In-house Fostering Provision: Investment has been agreed to develop the in-house fostering service with a key focus on:

- Foster Carer recruitment and retention
- The need of specific groups e.g. those requiring mother and baby placements and individuals who require therapeutic care
- Promoting the Staying Put service
- Promoting local family-based care
- Prioritising 0-5 year old children to the in-house service

(b) Residential Accommodation: There are a minority of children for who residential provision is the appropriate setting for their long-term accommodation and care. For most children however, they will require foster placements that can support their needs in a family-based environment with only short episodes spent in residential accommodation. Medway will therefore require fostering agencies to offer flexible provision around step-up and step-down care between foster placements and residential care as required.

(c) Supported Accommodation: all Foster Carers will be required to work towards building the skills and resilience of the child or young person and this includes helping them to access good quality supported accommodation that meets their needs as they move towards independence.

(d) Services for Children with Disabilities: Approximately 10% of Medway's Looked After Children have a disability; the majority will be in placements with foster carers. Foster carers will be able to access the short break service and Direct Payments in the same way as birth

parents. Furthermore, IFAs will be required to support their foster carers in managing the complex needs of all their children including the specific needs of children with disabilities.

3. Statutory and Legal Obligations

- 3.1 The Council has statutory duties and responsibilities to ensure sufficiency of provision of accommodation and care of children and young people and must ensure that they are placed in an environment likely to promote and safeguard their welfare and development.
- 3.2 The Local Authority has a statutory duty as a Corporate Parent. The role of the Corporate Parent is to act as the best possible parent for each child they look after and to advocate on his/her behalf to secure the best possible outcomes.
- 3.3 It is the responsibility of the provider to be aware and comply with all relevant legislation, regulations, standards and good practice guidelines and to ensure compliance. Relevant documents include but are not limited to:
 - [Children's and Families Act 2014](#) including specific duties in relation to children and young people with SEND.
 - [Equality Act 2010](#)
 - [Care Act 2014](#)
 - [Public Services \(Social Value\) Act 2012](#)
 - Safeguarding procedures (e.g. [Working Together to Safeguard Children](#) 2013)
 - The finding from serious case reviews in particular the requirements to share information in a timely manner. See [Working Together to Safeguard Children](#) for further guidance
 - Fostering Services (England) Regulations 2011
 - All Framework providers will be registered with Ofsted and will have a rating of good and above.
- 3.4 Commissioners are currently completing a Diversity Impact Assessment. The assessed impact on groups with protected characteristics and any recommendations from the DIA will be reflected in the service development going forward to procurement.

4. BUSINESS CASE

4.1 Procurement Project Outputs / Outcomes

4.1.1 As part of the successful delivery of this procurement requirement, the following procurement project outputs / outcomes within the table below have been identified as key and will be monitored as part of the procurement project delivery process.

Outputs / Outcomes	How will success be measured?	Who will measure success of outputs/ outcomes	When will success be measured?
Increased availability of affordable, appropriate and quality placements	Ability to place within the framework and infrequent need to spot purchase	<ul style="list-style-type: none"> - Number of bids received and evaluated and awarded through the procurement process - Placements team - Children's social care 	<ul style="list-style-type: none"> - Ongoing analysis of activity data - Performance meetings - Outcome of Framework procurement
Increased availability of placements meeting a wide spectrum of needs	Success in appropriate timely matches of foster carer and child/young person	<ul style="list-style-type: none"> - Placements team - IFA Providers - Children's social care 	<ul style="list-style-type: none"> - Ongoing analysis of activity data - Stability of placements - Care plan reviews
Reduced placement costs	<ul style="list-style-type: none"> - Reduced spend on individual placements - Number of discounts negotiated 	<ul style="list-style-type: none"> - Placement teams - Finance lead - Children's social care 	<ul style="list-style-type: none"> - Outcome of Framework procurement - Ongoing finance monitoring and reporting - Performance meetings
Long term provider sustainability	<ul style="list-style-type: none"> - Review meetings with commissioners and providers. - Commitment from providers to meet the demands and recruit appropriately skilled foster carers 	<ul style="list-style-type: none"> - Social Care - Placement teams - IFA Providers 	<ul style="list-style-type: none"> - Ongoing - Continuity and long term placements/permanency plans

4.2 Procurement Project Management

- 4.2.1 The commissioning teams of both Councils are working together to ensure best outcomes are achieved for both Councils.
- 4.2.2 The procurement exercise will be led by the KCC Procurement team. Medway's Category Management team is also responsible for providing strategic support and quality assurance to the project. In addition, support has been sought from the Council's Chief Legal Officer's representative in all procurement and contract related activities, matters and issues.
- 4.2.3 Where procurements are carried out jointly there is responsibility to ensure compliance with Public Contracts Regulations (PCR) 2015. Clarity of each contracting authority's responsibilities is therefore needed at the outset to ensure compliance for all elements of the tender both individually and jointly.
- 4.2.4 For this reason a Partnership Agreement has been drafted by Legal and is provided in Appendix A.
- 4.2.5 The procurement timeline below has been developed in order to allow for contract start date of 1 September 2017.

CSMT	9 February 2017
CADMT	28 February 2017
Procurement Board – Gateway 1	15 March 2017
Cabinet	4 April 2017
Publish PQQ	24 April 2017
Receipt of Submissions	31 May 2017
Evaluation completed	19 June 2017
Pre-award Meetings	4 July 2017
Seek approval to award from Cabinet	13 July 2017
Contract Start	1 September 2017
Minimal mobilisation period required	5 weeks

5. POST PROCUREMENT

5.1 Existing Framework contracts

- 5.1.1 The current Framework agreements with each provider will expire in June 2017 and when they do the ability to form new Individual Placement Agreements (IPAs) under them will also end. The existing IPAs made under each framework agreement with each provider will end on the expiry date stated in the IPA, not in the Framework agreement.

5.1.2 Most Medway IPAs have no end date specified on them and therefore the life of the contract is until the placement is terminated.

5.2 Contract Management

5.2.1 A Partnership Agreement has been drawn up and has had initial input from Medway Council's Legal Service. This Agreement will eventually include the details around the roles and responsibilities for contract management and performance monitoring. The work to develop this will be undertaken before or during the procurement exercise jointly between Medway Council and KCC.

6. MARKET CONDITIONS AND PROCUREMENT APPROACH

6.1 Market Conditions

6.1.1 A Joint Market Engagement event was held on 10 January 2017 and subsequent discussions at the IFA Providers Forum indicate a good level of interest within the market place. Commissioners are confident that Providers will tender for the Framework.

6.2 Geography

6.2.1 The areas listed below will be covered by the Framework and Providers will need to have established local provision in these areas.

- Tunbridge Wells
- Shepway / Folkestone
- Maidstone
- Canterbury
- Ashford
- Tonbridge and Malling
- Dover
- Sevenoaks
- Gillingham and Twydall
- Luton and Rainham
- Strood Peninsula and Rochester West
- Rochester East, Chatham and Walderslade

6.3 Proposed Procurement Process

6.3.1 This is a Category A, High Risk procurement above the EU threshold of £164,176. The proposed procurement route for this service is an OJEU "restricted" procedure.

6.4 Evaluation Criteria

6.4.1 It is proposed that the procurement be evaluated as 100/100 quality/cost. This means that all the quality evaluation would be done at the PQQ stage of the procurement leaving the ITT stage to look at cost.

- 6.4.2 This has been proposed as both Councils will only envisage placing their children with providers who meet a minimum, stringent quality standard of provision. Once that level has been met and Ofsted standards are applicable and maintained, that provider would be eligible for business.
- 6.4.3 Evaluating in this manner would allow a more robust evaluation of the quality provision as –at PQQ stage- providers will need to evidence the quality that they have already brought to existing contracts rather than describe (at ITT stage) how they plan to bring quality to this contract.
- 6.4.4 Opportunities for bringing savings and efficiencies into the IFA spend will occur at different stages of the procurement exercise.

6.5 Evaluation Stages

6.5.1 Introducing a “Tolerance pricing” system (Lot One)

- We propose learning from the over-complexity of the last Framework, and from examples of work done in other areas, and -removing the two-tier pricing system of standard and enhanced IPA contract and having only one 'tolerance' pricing system.
- The tolerance price for the various categories (see section 2.2.1(a)) would be set between the existing two prices (standard and enhanced) and given a 20% tolerance limit either way.
- Initial analysis of our existing placements indicated that this system can be made to work in both our and the providers' interests. At one end of the scale the local authorities stand to benefit from not paying as much for the most complex and costly placements, and at the other the providers stand to benefit from a higher value for the low-cost placements. Overall, the local authorities would make the net gain.
- Other benefits are that having only one price removes the ability of providers to claim that they cannot offer a placement due to the complexity of the child's needs and therefore forcing the local authority into a higher cost placement.

6.5.2 Contract call offs (Lot Two)

- Kent County Council are to issue a “block” contract proposal but this would not hold Medway into fulfilling the same objective but instead would allow Medway to benefit from the lower cost of placement that the provider is offering to Kent County Council.

6.5.3 Discounts

- Discounts will be requested for long-term placements (over 12 months) and for sibling placements (one discounted price applicable to all siblings after the first one).

6.5.4 Reduced spot purchase need

- As the Framework comes into action and the relationship is developed with our top providers, the focus of those providers can be directed towards the needs of the children and young people. This will reduce the need for placements to be sourced through expensive spot purchases.

7. RISK MANAGEMENT

Risk Categorisation

1. Risk Category: Procurement process	Likelihood: Medium	Impact: High
Outline Description: There is a risk that interface and joint working between Medway Council and Kent County Council including decisions, pricing models, processes and governance process and timelines may not be aligned.		
Plans to Mitigate: Regular dialogue and meetings with Kent Commissioners, including procurement, legal and finance leads from Kent and Medway to ensure procurement plans and pathways/protocols are fully aligned, and that all parties are fully informed of timely decisions which will impact the project plan including timelines. Discussions taking place with other local authorities exploring opportunities for Medway to join other frameworks in the event of partnership working with Kent not being viable.		
2. Risk Category: Procurement process	Likelihood: Low	Impact: High
Outline Description: There is a risk that there may be a lack of providers expressing an interest in the tender and submitting bids. This may result in a need to spot purchase and a decrease in negotiating power.		
Plans to Mitigate: Good engagement and communication with incumbent and prospective providers throughout the consultation process. The level of business within the joint procurement and revised framework arrangements will be an incentive for providers to be part of the framework.		
3. Risk Category: Procurement process/mobilisation	Likelihood: Low	Impact: Medium
Outline Description: There is a risk that providers may seek to secure an increase in unit cost as placements on existing framework have remained firm for the last 4 years.		
Plans to Mitigate: Substantial benchmarking has indicated that this is not the case in other local authorities and other opportunities for seeking economies will be incorporated. Legal has advised that IPA contracts cannot be amended unless agreed by both parties.		
4. Risk Category: Service delivery and Reputational/political	Likelihood: Low	Impact: Medium
Outline Description: There is risk that new service providers fail to deliver required improvements in scope of service and offer opportunities for delivering savings and efficiencies.		
Plans to Mitigate: Robust management of the new contract based on the outcomes described in the performance framework.		
4. Risk Category	Likelihood: Medium	Impact: High
Outline Description: There is risk that there are inadequate numbers of appropriate foster carers capable of meeting increased complexity of need.		
Plans to Mitigate: To include KPI's within the contract to ensure that framework providers actively recruit appropriate workforce, including specialist training and support to meet the needs of our LAC		

8. PROCUREMENT BOARD

8.1 The Procurement Board considered this report on 15 March 2017 and supported the recommendation as set out in paragraph 12.1 below.

9. CONSULTATION

9.1 A summary of consultation activity is provided in paragraphs 1.3.3 – 1.3.7 above.

10. SERVICE IMPLICATIONS

10.1 Financial Implications

10.1.1 The procurement exercise will be funded by Kent County Council. Medway's service delivery will be funded from existing children's social care budgets.

10.1.2 Medway Council will fund the internal legal oversight, support and advice.

10.2 Legal Implications

10.2.1 The procurement timetable includes provision for preparing a draft contract and legal services have been engaged for this. The contract will be based on the National Terms and Conditions for 2016-2017.

10.2.2 In addition, Legal Services will be finalising the Partnership Agreement for both Councils to sign.

10.2.3 The Public Services (Social Value) Act 2012 gives the Council a statutory duty to consider at the pre-procurement stage of any service contract:

- How what is proposed to be procured may improve the economic, social and environmental well-being of their areas;
- How the Council may act with a view to securing that improvement in conducting the process of procurement.

10.2.4 The Act applies to all services contracts and service framework agreements (including good and work contracts procured in combination with services where the value of the goods is less than the services and where the works are incidental to the services) to which the Public Contracts Regulations 2015 apply)

10.3 TUPE Implications

10.3.1 There are no TUPE implications that apply to this procurement.

10.4 Procurement Implications

10.4.1 The value of this procurement requirement is above the EU Procurement Threshold for Service of £173,934 and therefore must be undertaken in compliance with EU Procurement Regulations.

10.5 ICT Implications

10.5.1 There are no current IT dependencies for this procurement. Pilot projects are and will be undertaken during the life of the Framework that may enhance delivery of the placement function. ICT and the Digital Transformation team will both be kept sighted on these activities for any future application.

11. OTHER CONSIDERATIONS

11.1 Social, Economic & Environmental Considerations

11.1.1 Providers will be expected to deliver their services in ways which provide additional value to Medway, through careful and sustainable use of environmental resources, and by being good employers, thereby contributing to economic outcomes for local people.

11.1.2 IFA Providers will make links with local communities which support the integration of children/young people into the world beyond school and care, and allow providers to make use of local assets such as community groups, clubs and events, green spaces and cultural and sporting facilities to support the delivery of outcomes.

12. RECOMMENDATION

12.1 Cabinet is asked to approve the commencement of the joint procurement process with Kent County Council for the Independent Fostering Agency (IFA) Framework, as set out in paragraph 6.3.1 of the report.

13. SUGGESTED REASONS FOR DECISION

13.1 The current framework is no longer fit for purpose and ends in June 2017. A three month extension will be applied until 31 August 2017 allowing time to procure the revised model.

LEAD OFFICER CONTACT

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Appendices

- Appendix A – Partnership Agreement
- Exempt Appendix

Background Papers

None

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THIS AGREEMENT is made on the

day of

2017

BETWEEN

(1) **KENT COUNTY COUNCIL**, of Sessions House, County Hall, Maidstone, Kent, ME14 1XQ ("**Council**"),

(2) **Medway Council**, of Gun Wharf, Chatham, Kent, ME4 4TR ("**Medway Council**")

each being referred to as a "**Party**" and together the "**Parties**".

BACKGROUND

(A) In May 2013, The Council undertook a competitive procurement exercise to establish a contract ("**Contract**") for the purchase of Independent Fostering Provision, Preferred Provider Framework ("**Services**").

(B) The Contract provides priority access to appropriate foster care from a list of preferred Independent Fostering Providers for Children in Care who have a wide range of needs.

(C) The Contract is for an initial period of 24 months from 3 June 2013, with the option for the Council to extend the Contract for a further period of up to 24 months.

(D) The Contract was initially established on behalf of the Council, as well as the following public sector organisations:

- Medway Council

(E) Medway Council wishes to be granted access to the Contract as an additional public sector purchaser and the Council has agreed to grant Medway Council access to the Contract as an additional public sector purchaser.

(F) The Contract will be held by the Council. This Agreement allows Medway Council to purchase Services from the Providers, using the Contract to place Individual Placement Agreements (IPA) directly with the Providers. All such Individual Placement Agreements Orders will be between the relevant public sector purchaser and the Providers.

(G) This Agreement is intended to regulate the relationship between the Parties and aims to set out clearly the responsibilities of each of the Parties and the intended basis of their relationship in relation to the Contract. The Parties acknowledge that the acceptance of such responsibilities and the mutual obligations and benefits set out in this Agreement shall be sufficient consideration to constitute a legally binding agreement.

IT IS AGREED AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATION

In this Agreement:

1.1 The following expressions have the following meanings, unless inconsistent with the context:

"**Agreement**" means this partnership agreement between the Council and Medway Council;

“Purchase Order”	means an order placed to the Provider, by a public sector purchaser, for the required Services.
“Authorised Officer”	means the authorised representative of each Party as specified in clause 16 (or any other person as may be appointed by either Party at any time, and notified in writing to the other Party) who shall to undertake the roles set out in clause 15;
“Business Day”	means any day other than a Saturday or Sunday on which banks are open for domestic business in the City of London;
“CEDR”	has the meaning given in clause 14.1;
“Commencement Date”	means the date of this Agreement;
“Confidential Information”	means: <ul style="list-style-type: none"> a) any information relating to the business, products, affairs and finances of the relevant Party, which is for the time being confidential to the relevant Party; b) trade secrets including, without limitation, technical data and know-how relating to the business of the relevant Party or any of its suppliers, clients, customers, agents, distributors; and/or c) management or any other information in respect of which the Parties agree that disclosure would, or would be likely to, prejudice the commercial interests of any person;
“Creating Party”	has the meaning given in clause 19.3;
“Data Controller”	shall have same meaning as set out in the DPA;
“Data Processor”	shall have same meaning as set out in the DPA;
“DPA”	means the Data Protection Act 1998;
“Contract”	means the framework contract in place between the Council and the Provider;
“Providers”	means the person, firm or company with whom the Council enters into the Contract.
“Exempt Information”	means any information or class of information relating to this Agreement which may fall within an exemption to disclosure under the FOI Legislation;
“First Party”	has the meaning given in clause 11.1;

“FOI Legislation”	means the Freedom of Information Act 2000, the Environmental Information Regulations 2004, the DPA and any codes of practice and guidance made pursuant to the same as amended or replaced from time to time;
“Force Majeure”	means war, natural flood, exceptionally adverse weather conditions, strike or lockout, civil disorder, Act of God, power cuts or delays or other wholly exceptional events outside the control of the Parties which could not have reasonably been foreseen or avoided;
“Indemnifying Party”	has the meaning given in clause 10.1;
“Information Request”	means a request for information received under the FOI Legislation relating to this Agreement or the Contract;
“Intellectual Property Rights”	means rights in patents, trademarks, service marks, design rights (whether registrable or otherwise), applications for any of the foregoing, copyright (including rights in software), database rights, know-how, trade secrets, confidential business information, trade or business names and any similar or analogous rights to any of the above, whether arising or granted under the laws of England or of any other jurisdiction;
“Law(s)”	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 by which the Parties are bound to comply;
“Management Process”	has the meaning given in clause 7.2;
“Materials”	has the meaning given in clause 19.1;
“Mediation Notice”	has the meaning given in clause 14.1;
“Performance Monitoring”	has the meaning given in clause 8.2;
“Personal Data”	shall have same meaning as set out in the DPA;
“Prohibited Act”	means where a Party, its employees or anyone acting on its behalf do any of the following: <ul style="list-style-type: none"> a) offers, gives or agrees to give to anyone any inducement or reward in respect of this Agreement or any other contract with the other Party; b) commits an offence under the Bribery Act 2010 or any subordinate legislation made under that Act from

time to time together with any guidance or codes of practice issued by the relevant government department concerning the legislation;

c) commits an offence under Section 117(2) of the Local Government Act 1972; or

d) commits any fraud in connection with this Agreement or any other contract with the other Party whether alone or in conjunction with members or employees of the other Party;

“Purchasing Protocols” has the meaning given in clause 7.1;

“Second Party” has the meaning given in clause 11.1;

“Services” has the meaning given in Recital (A);

“Start Date” has the meaning given in clause 3.2;

“Term” has the meaning given in clause 3.1; and

“Termination Date” means the date of termination of this Agreement by an operation of law or in accordance with its terms;

- 1.2 References to any statute or statutory provision governmental policy or guidance (including any EU Instrument) shall, unless the context otherwise requires, be construed as including references to any earlier statute or the corresponding provisions of any earlier statute, whether repealed or not, directly or indirectly amended, consolidated, extended or replaced by such statute or provision, or re-enacted in any such statute or provision, and to any subsequent statute or the corresponding provisions of any subsequent statute directly or indirectly amending, consolidating, extending, replacing or re-enacting the same, and will include any orders, regulations, instruments or other subordinate legislation made under the relevant statute or statutory provision.
- 1.3 The headings and sub-headings in this Agreement are inserted for convenience only and shall not affect the construction of this Agreement.
- 1.4 Words importing one gender include all other genders and words importing the singular include the plural and vice versa.
- 1.5 A reference in this Agreement to any clause is, except where it is expressly stated to the contrary, a reference to a clause of this Agreement.
- 1.6 Any reference to this Agreement, or any part of it, or to any other document unless otherwise specified shall include any variation, amendment or supplements to such document expressly permitted by this Agreement or otherwise agreed in writing between the Parties.
- 1.7 Words preceding “include”, “includes”, “including” and “included” shall be construed without limitation by the words which follow those words unless inconsistent with the context.
- 1.8 No rule of construction shall apply to the disadvantage of a Party because that Party was responsible for the preparation of this Agreement or any part of it.

2. OVERRIDING PRINCIPLES

2.1 The Parties agree to work together and agree to adopt the following principles for working together in relation to the Contract and shall each:

- 2.1.1 collaborate and co-operate to ensure that activities are delivered and actions taken as required;
- 2.1.2 be accountable. Take on, manage and account to each other for performance of the respective roles and responsibilities set out in this Agreement;
- 2.1.3 be open. Communicate openly about major concerns, issues or opportunities relating to the Contract;
- 2.1.4 learn, develop and seek to achieve full potential. Share information, experience, materials and skills to learn from each other and develop effective working practices, work collaboratively to identify solutions, eliminate duplication of effort, mitigate risk and reduce cost;
- 2.1.5 adopt a positive outlook. Behave in a positive, proactive manner;
- 2.1.6 adhere to statutory requirements and best practice. Comply with applicable laws and standards (including EU procurement rules, data protection legislation and the FOI Legislation);
- 2.1.7 act in a timely manner and meet any timeframes outlined in the Purchasing Protocols and/or the Management Process;
- 2.1.8 provide coherent, timely and efficient decision-making;
- 2.1.9 manage stakeholders effectively;
- 2.1.10 deploy appropriate resources. Each Party shall ensure that sufficient and appropriately qualified resources are available and authorised to fulfil the objectives of this Agreement; and
- 2.1.11 act in good faith to support achievement of the aim and objectives of this Agreement and to comply with the above principles.

2.2 The Parties shall undertake their respective roles and responsibilities as set out in clauses 5 (the Council's Obligations) and 6 (Medway Council Obligations) below.

3. TERM OF AGREEMENT

3.1 This Agreement shall come into force on the Commencement Date and shall terminate upon the earlier of:

- 3.1.1 the expiration or the termination of the Contract. For the avoidance of doubt, if the Contract is further extended in accordance with its terms this Agreement shall automatically continue;
- 3.1.2 subject to clause 3.3, termination by either Party at any time on giving at least six (6) months' written notice to the other Party; or
- 3.1.3 termination of this Agreement in accordance with its terms,

the duration from the Commencement Date to the Termination Date being "**the Term**" of this Agreement.

3.2 Medway Council anticipates using the Contract to purchase Services from the Provider from 3 June 2013 (“**the Start Date**”).

3.3 Without prejudice to the provisions of clauses 3.1.1 and 3.1.3, neither Party shall give notice of termination of this Agreement pursuant to clause 3.1.2 until the Parties have held the first Annual Review Meeting in accordance with the provisions of clause 8.

4. CONTRACTUAL RELATIONSHIP BETWEEN THE COUNCIL, MEDWAY COUNCIL AND THE PROVIDERS

4.1 The Council will vary the Contract to include Medway Council as a named public sector purchaser.

4.2 As a named public sector purchaser, Medway Council may (in accordance with the terms and conditions of the Contract) use the Contract to purchase Services from the Providers.

4.3 The Contract allows the other public sector purchasers to purchase Services from the Providers under the Contract by placing Individual Placement Agreements directly with the Providers. Such IPA's shall incorporate (by reference or otherwise) the same or substantially the same terms and conditions contained in the Contract (including any variations and amendments thereto made after the Commencement Date). Any non-substantial amendments to the terms and conditions of the Individual Placement Agreement, agreed between the relevant public sector purchaser and the Providers, shall be clearly set out in such IPA's. For the avoidance of doubt, any such non-substantial amendments shall apply only to the relevant IPA's between the relevant public sector purchaser and the Provider and shall not purport to vary the terms of the Contract, the IPA between the Council and the Providers or any other arrangements set up under the Contract between the Council and the Providers.

4.4 Each Party will place their own IPA for Services direct with the Providers. Accordingly, there will be no direct contractual relationship between the Council and Medway Council for the provision of Services procured by each Party under the Contract.

4.5 This Agreement is not therefore a contract for the supply of goods and services, and the Council does not offer any warranty or guarantee to Medway Council in respect of the Providers with whom it may place an IPA under the Contract. Medway Council acknowledges and agrees that it cannot bring any claim against the Council in respect of the purchase of Services by Medway Council under the terms and conditions of the Contract.

4.6 Medway Council acknowledges that the Council has developed the Contract to meet its own individual needs in relation to the procurement of the Services and that the Council makes no representations, and gives no advice, on the suitability of the Contract for use by Medway Council for the procurement of Services.

4.7 Save where expressly stated in this Agreement, the Council does not give any warranty or assurance to Medway Council in respect of the Contract, the IPA's or any Services.

4.8 Medway Council must take its own advice in relation to the Contract and in particular, in respect of the relevant public procurement regulations (including the Public Contracts Regulations 2015) or the general EU procurement principles. Medway Council shall be responsible for satisfying itself that placing an IPA for Services with the Providers under the Contract does not breach any relevant public procurement regulations (including the Public Contracts Regulations 2015) or the general EU procurement principles and Medway Council assumes sole responsibility for its own use of the Contract. Medway Council acknowledges and agrees that it uses the Contract at its own risk and that it has satisfied itself of its own legal, regulatory and vires requirements.

4.9 The terms of the Contract require Medway Council to obtain the written consent of the Council (which consent the Council may in its absolute discretion refuse) to use the Contract for the purchase of Services. The Council hereby gives its consent for Medway Council to use the Contract for the purchase of Services from the Start Date and acknowledges that such consent may only be withdrawn if this Agreement is terminated at any time in accordance with its terms.

5. THE COUNCIL OBLIGATIONS

5.1 The Council shall:

5.1.1 vary the Contract and all related contractual documentation to ensure that such documentation makes adequate and appropriate provision to enable Medway Council to access the Services under the Contract, and shall communicate all such changes and variations to the Providers;

5.1.2 where reasonably practicable, discuss any contract variations that affect the service specifications under the IPA's, or any other material amendments that the Council proposes to make to the Contract, with Medway Council and provide Medway Council's Authorised Officer with a reasonable opportunity to provide comments on such variations and amendments and, in good faith, consider any comments raised by Medway Council's Authorised Officer on the same;

5.1.3 communicate all changes and variations relating to the Contract to the Providers; and

5.1.4 in partnership with Medway Council monitor the performance of the Provider and manage the Contract on behalf of Medway Council in accordance with clause 8.

6. MEDWAY OBLIGATIONS

6.1 Medway Council shall:

6.1.1 from the Start Date, use the Providers to procure Services in accordance with the agreed processes set out in the Contract documentation, provided that Medway Council shall be entitled to use other appropriate methods for the procurement of Services when deemed appropriate;

6.1.2 ensure that all direct IPA's placed with the Providers meet the requirements of clause 4.3;

6.1.3 purchase Services in accordance with the Purchasing Protocols in accordance with clause 7;

6.1.4 if it requires any changes to its IPA with the Provider, which do not fall within the scope of clause 4.3 (i.e. if Medway Council requires any substantial amendments), liaise with the Council to identify any required amendments required and to discuss the same with the Council in good faith; and

6.1.5 manage the Services in accordance with the terms of this Agreement, including compliance with all applicable Laws, bye-laws and the requirements of any governmental or regulatory authority.

7. PURCHASING PROTOCOLS

7.1 The Council has developed the purchasing protocols for the Contract, which is pursuant to the principles of clauses 7.2. These protocols set out how Services will be purchased

under the Contract, including any specific forms that must be used and any relevant timescales that must be adhered to, to ensure that both Parties comply with the terms of the Contract in purchasing Services and to ensure that there is consistency between the Parties in relation to the purchasing of Services (“**the Purchasing Protocols**”).

- 7.2 The Purchasing Protocols shall be based on the following principles:
- 7.2.1 The public sector purchaser shall assign each request for a fostering placement with the appropriate category level in accordance with the Contract.
 - 7.2.2 The public sector purchaser shall pay the Providers in accordance with the IPA and Contract.
 - 7.2.3 The public sector purchaser shall receive all invoices via the agreed process described in the IPA.
 - 7.2.4 The public sector purchaser shall pay all invoices within 30 days of receiving the monthly invoice from the Provider in accordance with the Contract.
- 7.3 Schedule 1 describes the agreed protocols for purchasing fostering placements via a mini-competitive procedure from the Preferred Provider Framework for Independent Fostering Provision.

7.4 Both Parties hereby confirm that they will comply with the Purchasing Protocols.

8. PERFORMANCE MONITORING

- 8.1 The Council shall monitor the performance of the Providers.
- 8.2 The Council shall provide Medway Council's Authorised Officer with the six monthly performance data within 2 weeks of receiving the raw data from the Providers.
- 8.3 Schedule 2 describes the contract management requirements including how the six monthly performance data and other key areas of information will be used to benchmark the performance of the Providers.
- 8.4 The Parties agree, and will instruct their respective representatives that, the objectives of Performance Monitoring with the Providers is to:
- 8.4.1 facilitate a collaborative working relationship between the Parties and the Provider and an open and transparent exchange of information and views and encourage the identification of issues or potential issues and their resolution;
 - 8.4.2 review the performance of the Provider in accordance with the service standards and to make recommendations as to potential updates, modifications and/or improvements in order to improve the Service;
 - 8.4.3 review the performance of the Parties in accordance with the Purchasing Protocols.
 - 8.4.4 review and consider such other matters as may be relevant to the Contract as agreed between the Parties and the Providers from time to time.
- 8.5 The Parties agree, and will instruct their respective representatives that, the objectives of working collaboratively on performance monitoring is to:
- 8.5.1 facilitate a collaborative working relationship between the Parties and an open and transparent exchange of information and views and encourage the identification of issues or potential issues and their resolution;

- 8.5.2 review the performance of the Contract and to make recommendations as to potential updates, modifications and/or improvements;
- 8.5.3 review and discuss the monitoring and performance information;
- 8.5.4 measure the performance of the Providers in accordance with the key performance indicators and benchmarking data described in Schedule 2; and
- 8.5.5 review and consider such other matters as may be relevant to this Agreement and/or the Contract as agreed between the Parties from time to time.

8.6 Notwithstanding the Performance Management Process, Medway Council shall:

- 8.6.1 at any time on reasonable request from the Council supply the Council with such information and reports as the Council reasonably requires from time to time in relation to the provision of the Services under the Medway Council's IPA's; and
- 8.6.2 notify the Council of any disputes or claims arising between Medway Council and the Providers as soon as reasonably practicable.

8.7 Both Parties hereby confirm that they will comply with the Management Process.

9. **INSURANCE**

The Parties shall procure that they each have sufficient insurance cover or equivalent, including public liability insurance, employer's liability insurance and professional indemnity insurance to meet their legal obligations and liabilities under this Agreement and the Contract, not only for themselves but also for their respective employees and contractors.

10. **INDEMNITIES AND LIABILITIES**

10.1 Each Party ("**the Indemnifying Party**") shall indemnify the other Party and keep the other Party indemnified against any damages, costs, liabilities, losses, claims or proceedings whatsoever arising in respect of:

- 10.1.1 any damage to property real or personal;
- 10.1.2 any personal injury including injury resulting in death;
- 10.1.3 any fraudulent or dishonest act of any of the Indemnifying Party's officers, employees, sub-Providers or agents;
- 10.1.4 any breach of statutory or common law duty, arising out of or in connection with this Agreement,

to the extent such damages, costs, liabilities, losses, claims or proceedings are due directly to the negligence, wilful default or fraud of the Indemnifying Party or of the Indemnifying Party's officers, employees, sub-Providers or agents (excluding the other Party).

10.2 Medway Council shall indemnify the Council and keep the Council indemnified against any and all direct damages, costs, losses, claims, actions, proceedings and other liabilities whatsoever incurred by the Council as a result of:

- 10.2.1 a breach by Medway Council of this Agreement; or
- 10.2.2 Medway Council's negligent use of the Contract,

save where such damages, costs, losses, claims, actions, proceedings or other liabilities are brought against or suffered by the Council due to the negligence of the Council or of its officers, employees, sub-Providers, or agents (excluding Medway Council).

- 10.3 Except as otherwise provided in this Agreement, the Parties shall each bear their own costs and expenses incurred in complying with their respective obligations under this Agreement.
- 10.4 Both Parties shall be responsible for any and all liabilities, charges and costs incurred by them under their own IPA's with the Providers.
- 10.5 Each Party shall, at all times, take all reasonable steps to minimise and mitigate any loss or damage for which the relevant Party is entitled to bring a claim against the other Party under this Agreement.

11. TERMINATION

- 11.1 Either Party (for the purposes of this clause 11.1, "**the First Party**") may terminate this Agreement with immediate effect by the service of written notice on the other Party (for the purposes of this clause 11.1, "**the Second Party**") in the following circumstances:
 - 11.1.1 if the Second Party commits a fundamental breach of this Agreement which in the opinion of the First Party is not capable of remedy;
 - 11.1.2 if the Second Party is in breach of any material obligation under this Agreement, provided that, if the breach is capable of remedy, the First Party may only terminate this Agreement, under this clause 11.1.2, if the Second Party has failed to remedy the breach within twenty eight (28) days (or such other period as may be specified by the First Party) of receipt by the Second Party of a notice from the First Party to do so; or
 - 11.1.3 the Second Party, or anyone acting on the Second Party's behalf, commits a Prohibited Act.
- 11.2 The clauses in this Agreement which expressly or impliedly have effect after termination will continue to be enforceable notwithstanding termination.
- 11.3 Termination of this Agreement for any reason shall not affect any rights or liabilities which have accrued prior to the Termination Date, including under any IPA's which have been placed under the Contract.

12. VARIATION

This Agreement may be varied by the Parties at any time by the prior agreement of both Parties in writing; the final variation instruction must be authorised by a Procurement Officer representing the Council.

13. INTERNAL DISPUTE RESOLUTION

- 13.1 The Parties undertake and agree to pursue a positive approach towards dispute resolution which seeks (in the context of this arrangement) to identify a solution at the lowest operational level that is appropriate to the subject of the dispute, and which avoids legal proceedings and maintains a strong working relationship between the Parties.
- 13.2 In the event of any dispute or difference between the Parties relating to this Agreement which it has not been possible to resolve in accordance with clause 13.1 within a reasonable period of time, or either Party otherwise elects to refer a matter to dispute resolution, the matter shall be dealt with in accordance with clause 14.

14. EXTERNAL DISPUTE RESOLUTION

- 14.1 In the event of a dispute between the Parties which has not been resolved pursuant to clause 13.1 the Parties will attempt to settle it by mediation in accordance with the model mediation procedures published by the Centre for Effective Dispute Resolution, CEDR Solve (“**CEDR**”) at the time that the dispute is referred to mediation. To initiate mediation, the initiating Party must give notice in writing (“**the Mediation Notice**”) to the other Party.
- 14.2 The Parties will seek to agree the appointment of a mediator but, failing agreement within twenty eight (28) days of the service of the Mediation Notice, either Party may ask CEDR to appoint a mediator.
- 14.3 Any dispute which is not resolved within thirty (30) days after the commencement of the mediation procedure in clause 14.1 shall be considered unresolved and either Party may commence formal proceedings against the other thereafter.
- 14.4 Nothing in this clause 14 or clause 13 shall prevent either Party from seeking injunctive relief at any time.

15. MANAGEMENT OF THIS AGREEMENT

- 15.1 Medway Council shall nominate an Authorised Officer, who shall be the main point of contact for the Council and shall be responsible for representing Medway Council and liaising with the Council Authorised Officer in connection with this Agreement.
- 15.2 The Council shall also nominate an Authorised Officer, who shall be the main point of contact for Medway Council and shall be responsible for representing the Council and liaising with Medway Council’s Authorised Officer in connection with this Agreement.
- 15.3 The Authorised Officers shall be responsible for taking any decisions required under or pursuant to this Agreement, but it should be noted that any changes to the requirements of this Agreement will be subject to a written variation to this Agreement pursuant to clause 12.

16. NOTICES

- 16.1 All notices given under this Agreement shall be in writing and all notices or written instructions to be given under the terms of this Agreement shall be served by sending the same by first class post, by hand or by e-mail to the Authorised Officer below:

To Medway Council: Wendy Edward
Dock Road, Chatham. ME4 4TR
wendy.edward@medway.gov.uk

To the Council: [INSERT NAME]
[INSERT ADDRESS]
E-mail: [INSERT]

- 16.2 Either Party may change its nominated individual, address or email by prior notice to the other Party.
- 16.3 Notices given by post shall be effective three (3) Business Days after mailing.

- 16.4 Notices delivered by hand shall be effective upon delivery if delivered on a Business Day between the hours of 9am and 5pm, or on the next following Business Day if delivered after 5pm and before 9am on that next following Business Day.
- 16.5 Notices given by e-mail shall be deemed to have been received, where there has been no communication by the recipient to the sender (to be confirmed in writing) that the email has not been received in legible form, within two (2) hours after sending, if sent on a Business Day between the hours of 9am and 5pm, or by 11am on the next following Business Day, if sent after 5pm, on a Business Day but before 9am on that next following Business Day.

17. INFORMATION AND CONFIDENTIALITY

- 17.1 Subject to clause 17.1, the Parties shall keep confidential any Confidential Information relating to this Agreement and shall use all reasonable endeavours to prevent their officers, employees, sub-Providers and agents from making any disclosure to any person of any Confidential Information relating to this Agreement.
- 17.2 Clause 17.1 shall not apply to:
- 17.2.1 any disclosure of information that is reasonably required by persons engaged in the performance of their obligations under this Agreement;
 - 17.2.2 any matter which a Party can demonstrate is already generally available and in the public domain other than as a result of a breach of this clause 17;
 - 17.2.3 any disclosure required to enable a determination to be made under clause 14 (External Dispute Resolution);
 - 17.2.4 any disclosure which is required by any Law (including any order of a court of competent jurisdiction), any Parliamentary obligation or the rules of any stock exchange or governmental or regulatory authority having the force of law, however where a disclosure is requested pursuant to the FOI Legislation the Parties agree that the provisions of clause 17.4 shall apply to any such disclosure;
 - 17.2.5 any disclosure of information which is already lawfully in the possession of the receiving Party prior to its disclosure by the disclosing Party; or
 - 17.2.6 any disclosure by a Party to a department, office or agency of the Government.
- 17.3 Where disclosure is permitted under clause 17.2, the Parties shall endeavour to ensure that the recipients of the information shall be placed under the same obligation of confidentiality as that contained in this Agreement by the disclosing Party, although the Parties acknowledge that this may not always be possible.

17.4 FREEDOM OF INFORMATION

- 17.4.1 The Parties recognise that each of them are public authorities as defined by the FOI Legislation and that information relating to this Agreement may be the subject of an Information Request. Both Parties acknowledge their respective duties under the FOI Legislation and hereby confirm that they will comply with their respective obligations and duties under the FOI Legislation.
- 17.4.2 The Parties shall assist each other in complying with their obligations under the FOI Legislation, including but not limited to reasonable assistance without charge, in gathering information to enable the receiving Party to respond to an Information Request.

- 17.4.3 Either Party shall be entitled to disclose any information relating to this Agreement in response to an Information Request, save that in respect of any Information Request which is in whole or part a request for Confidential Information or Exempt Information, where reasonably practicable but subject always to clause 17.4.5, the following procedure shall apply:
- (a) the Party which receives the Information Request shall circulate the Information Request and shall discuss it with the other Party;
 - (b) the Party which receives the Information Request shall in good faith consider any representations raised by the other Party when deciding whether to disclose the Confidential Information or the Exempt Information; and
 - (c) the Party which receives the Information Request shall not disclose any Confidential Information or Exempt Information beyond the disclosure required by the FOI Legislation without the consent of the Party to which it relates.
- 17.4.4 Where a Party receives an Information Request which should have been directed to the other Party, the receiving Party shall promptly (and in any event within two (2) Business Days) refer that Information Request to the other Party.
- 17.4.5 The Parties acknowledge and agree that any decision made by a Party which receives an Information Request as to whether to disclose information relating to this Agreement pursuant to FOI Legislation is solely the decision of that Party. A Party will not be liable to the other Party for any loss, damage, harm or detrimental effect arising from or in connection with the disclosure of information in response to an Information Request.

18. DATA PROTECTION

- 18.1 The Parties shall at all times comply with the DPA (including where appropriate maintaining a valid and up to date registration or notification under the DPA) and the Caldicott Principles in so far as they apply to this Agreement, the Contract and/or any IPA and shall provide sufficient guarantees in respect of the security measures taken with regard to all information concerning any service users.
- 18.2 The Parties shall not disclose Personal Data to any third parties other than:
- 18.2.1 to employees and sub-Providers to whom such disclosure is reasonably necessary in order to carry out this Agreement; or
 - 18.2.2 to the extent required under a court order.

19. INTELLECTUAL PROPERTY

- 19.1 Unless otherwise agreed, the Parties will not acquire any right, title or interest in or to the Intellectual Property Rights of the other Party existing at the date of this Agreement. For the avoidance of doubt, to the extent that they are owned by the Council, the Council shall retain all Intellectual Property Rights in any and all documents, information, drawings, designs, databases, reports, data or other materials in any format (“**the Materials**”) relating to the Contract existing at the date of this Agreement.
- 19.2 The Council hereby grants to Medway Council a royalty-free, non-exclusive licence to use the Materials relating to the Contract existing at the date of this Agreement solely for the purposes of this Agreement for the Term.

19.3 The Parties agree that any Intellectual Property Rights in any Materials created by any Party (“**the Creating Party**”) during the Term for use in relation to this Agreement shall vest in the Creating Party.

19.4 The Creating Party hereby grants to each of the other Party a royalty-free, non-exclusive licence to use the Materials referred to in clause 19.3, and any arising Intellectual Property Rights, solely for the purposes of this Agreement and associated projects for the Term.

20. FORCE MAJEURE

20.1 Neither Party shall be relieved from their obligations under this Agreement to the extent that by reason of an event of Force Majeure it is not able to perform its obligations under this Agreement. However, during the continuance of an event of Force Majeure neither Party shall be entitled to any compensation or other payment by reason of the occurrence or the continuance of an event of Force Majeure.

20.2 Should an event of Force Majeure continue for more than thirty (30) Business Days this Agreement may be terminated by either Party on the giving of five (5) Business Days’ notice and the relevant provisions of clause 11 (Termination) shall apply (and a reasonable time for exit shall be agreed between the Parties).

21. SEVERABILITY

21.1 If, at any time, any clause (or any part of a clause) to this Agreement is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid or unenforceable in any respect (which does not affect or impair the legality, validity or enforceability of any other provision of this Agreement), the Parties shall in good faith amend this Agreement to reflect as far as possible the spirit and intention behind that illegal, invalid or unenforceable provision to the extent that such spirit and intention is consistent with the laws of that jurisdiction and so that the amended Agreement complies with the laws of that jurisdiction.

22. SUCCESSORS AND ASSIGNMENT

22.1 This Agreement shall be binding upon and shall endure to the benefit of each Party’s successors and its permitted assigns if any as detailed in this Agreement.

22.2 Save as set out in clause 22.1 neither Party shall assign, sub-contract, and novate or in any way dispose of this Agreement or any part of it without the prior written approval of the other Party.

23. WAIVER

No forbearance or delay by either Party in enforcing its respective rights will prejudice or restrict the rights of that Party and no waiver of any such rights or of any breach of any contractual terms will be deemed to be a waiver of any other right or of any later breach.

24. STATUTORY DUTY

The Parties acknowledge that nothing in this Agreement will prevent them from carrying out their respective statutory duties and responsibilities or unduly restrict the decisions to be made with regard to their respective functions.

25. RELATIONSHIP OF PARTIES

25.1 Each Party is an independent public sector organisation and nothing contained in this Agreement shall be construed to imply that there is any relationship between them of partnership or principal/agent or of employer/employee.

25.2 Neither Party shall have any right or authority to act on behalf of the other Party nor to bind the other Party by contract or otherwise, except to the extent expressly permitted by the terms of this Agreement.

26. THIRD PARTY RIGHTS

The Parties agree that they do not intend that any third party which may benefit from this Agreement shall have any rights of enforcement under the terms of the Contracts (Rights of Third Parties) Act 1999.

27. BRANDING AND PUBLICITY

27.1 Each Party shall use all reasonable endeavours to ensure that any formal public statements made by a Party as to each other's activities in relation to the Contract shall only be made after consultation with the other Party.

28. ENTIRE AGREEMENT

28.1 This Agreement and all documents referred to in this Agreement, set forth the entire agreement between the Parties with respect to the subject matter covered by them and supersede and replace all prior communications, representations (other than fraudulent representations), warranties, stipulations, undertakings and agreements whether oral or written between the Parties.

28.2 Each Party acknowledges that it does not enter into this Agreement in reliance on any warranty, representation or undertaking other than those contained in this Agreement and that its only remedies are for breach of this Agreement, provided that this shall not exclude any liability which either Party would otherwise have to the other in respect of any statements made fraudulently by or on behalf of it prior to the date of this Agreement.

29. GOVERNING LAW AND JURISDICTION

This Agreement shall be governed by and construed in accordance with the laws of England and Wales the Parties submit to the exclusive jurisdiction of the courts of England and Wales.

This Agreement has been signed by the Parties or their duly authorised representatives on the date first set out above.

Signed for and on behalf of
KENT COUNTY COUNCIL

Signature:

Name:

Position:

Signed for and on behalf of
MEDWAY COUNCIL

Signature:

Name: Wendy Edward

Position: Head of Service, Children's Partnership
Commissioning Medway Council.

Schedule 1

Protocols for purchasing fostering placements via a mini-competitive procedure from the Preferred Provider Framework for Independent Fostering Provision

Specific types of placements:

The Access to Resources Teams may receive requests for specific types of placements which could be as follows:

Rehabilitation Placements: - Foster Carers who are able to work with the child and the birth family, as part of rehabilitation back to their family, in particular for young people 12+. The placements may be time limited for up to 3 to 6 months.

Bridging Placements: - a Bridging placement may be required, whilst the Social Worker is seeking a more permanent placement to be confirmed or for the adoption process to be finalised. Foster Carers, as part of a Bridging placement, will care for the child a short term basis and support the child to make the transition to their more permanent placement.

Short Break Placements and Respite: - **Short Break Placements** are for disabled young people who may require a placement over weekends and / or over the holiday period for a week or fortnight. Children in residential schools sometimes need care with a foster family at weekends and school holidays. **Respite placements** may also be required for children who do not have a disability.

Remand Placements: - for young people who are either awaiting a trial, having pleaded not guilty or a sentence. A successful placement during the remand period will help to demonstrate to the Court that the young person can change their behaviour and so reduce the likelihood of entry into the secure estate for either remand or sentencing purposes.

Parent and Child Placement: placements should last no more than 6 to 12 weeks and observation records are to be maintained and discussed with the parent every day. Detailed assessment and observation reports are to be emailed to the social worker every two weeks.

Residential Migration placements: - The Independent Fostering Agency will work with the child/ young person, who may be placed in a Residential Home, to assist their move into a Foster Carer home. Additional support may be needed for the child and the foster carers, especially if the child has very complex and specialist needs. The child's education will also need to be planned for. The aim is to ensure a smooth transition from Residential into Fostering provision.

Protocol for calling off under the revised process for mini-competitions

Step 1: Receive referral request for either emergency or planned placement from Professional via telephone or e mail.

Step 2: Send the referring professional the updated referral form, which comprises:

- **Referral Information**
- **Risk Assessment**
- **Permission to Place**

and give timescales for submission. **A placement cannot be made without authorisation.**

Step 3: On receipt of documentation, save the forms to '**referral folder**'.

Step 4: The ART Officer will approach IFA's on the Framework who can meet the relevant category of need and placement type required e.g. Placement Type: Unaccompanied Asylum Seeking – Complex needs.

- The ART Officer must approach all IFA's in **the category of need and age range** in the first instance, in the relevant category and placement type. A response timescale should be given.
- If no suitable foster families are identified in the relevant category all IFAs on the framework will be invited to respond. In this case the lowest priced and most suitable foster placement/s should be put forward.
- **Costing Information** will be requested at this time via the template email that has been drafted. This will include a breakdown of payment to foster carers and overheads, as well as requesting discount information on siblings, 6 month placements, 12 month placements or permanent placements.

Step 5: As responses from providers come back record the NO's and YES 's

When a Provider/s identifies possible matches and sends through relevant Foster Carer details, the ART Officer will select the most suitable foster placements, offering the lowest price and forward these to the Professional with the costs of placement for review to agree the final match.

The relevant Specialist Children's Services Area Director will need to be notified and their permission sought for any placement exceeding £900 per week and any additional costs to be incurred as part of the placement.

Step 6: The Professional, will be required to confirm the placement choice and placement start date to the Provider and the ART Officer.

ART officer is to carry out the following:

- Notify other unsuccessful providers who made offers that a placement has been identified and the reasons as to why they were unsuccessful e.g. not a suitable match, distance, and cost. This will be through the updated template the ART officers will utilise.
- Complete sections 1, 2 and 3 of Individual Placement Agreement (IPA) as well as the Pricing Schedule and send to the Provider and the Professional to complete.
- Record all carers' details
- Update the spreadsheet with the placement information.