**Thurrock Council Rolling Select List Agreement for:**

**Lot 3 – Independent Foster Care Agencies**

**THIS ROLLING SELECT LIST AGREEMENT is made on:**

**BETWEEN**

1. **THURROCK COUNCIL** ofCivic Offices, New Road, Grays, RM17 6SL (“the Council”); and
2. **NAME OF SERVICE PROVIDER c**ompany registered number (00000000) whose registered office is at ADDRESS OF PROVIDER (“the Service Provider”)

(each being referred to as a “Party” and together as the “Parties”)

**WHEREAS:**

1. The Council advertised a rolling select list, seeking expressions of interest from service providers for the provision of the Services under a Rolling Select List Agreement.
2. The Service Provider submitted its expression of interest in the form of a Tender Questionnaire Response.
3. On the basis of the Service Provider’s Tender Questionnaire Response the Council selected the Service Provider to enter into a Rolling Select List Agreement for the Services as specified in Schedule One.
4. The Service Provider has agreed to enter into this Rolling Select List Agreement with the Council for the provision of the Services.

**AGREEMENT Particulars**

|  |  |
| --- | --- |
| **Agreement Title** | **Placements for looked after children** |
| **Unique Agreement Reference Number** | **[use company number]** |
| **Commencement Date** | **1st February 2019** |
| **Agreement Period**  **(Specify the duration and initial Term of the Agreement)** | **Six (6) years**  **1st February 2019 to 31st January 2025.**  **The terms and conditions of this contract may continue beyond this date in the event of Services continuing in respect of an Individual Placement.** |
| **Addresses for Notice purposes:** | 1. **The Council: Civic Offices, New Road, Grays, Thurrock, RM17 6SL** |
| 1. **The Service Provider:** |
| **Price** | **See attached Pricing Schedule at Schedule Three** |

|  |  |
| --- | --- |
| **Insurance Summary Information (to be read in conjunction with any specific insurance conditions in Schedule One)** | |
| **Insurance type:** | **Required level** |
| **Employer’s Liability Insurance** | **See the insurance level set in Schedule One for the applicable Lot** |
| **Public Liability Insurance** | **See the insurance level set in Schedule One for the applicable Lot** |
| **Professional Indemnity Insurance** | **See the insurance level set in Schedule One for the applicable Lot** |
| **Other insurance** | **See the insurance level set in Schedule One for the applicable Lot** |

**Agreement Contents**

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**Schedules Content**

|  |  |
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**NOW IT IS HEREBY AGREED AS FOLLOWS:**

**1. Interpretations and Definitions**

* 1. In this Rolling Select List Agreement the following terms shall have the meanings given to them below:

"Affiliate" means any person, partnership, joint venture, corporation or other form of enterprise, domestic or foreign, including but not limited to subsidiaries, that directly or indirectly are controlled by, or are under common control with the Service Provider or a Parent Company.

"Agreement" means this Rolling Select List Agreement

“Charges” means the charges for the Services as initially set out in Schedule Three (Service Provider’s Pricing Submission), which shall be valid for a given Review Period, and which the Service Provider shall submit at each Review Point.

“Commencement Date” means the start date of this Rolling Select List Agreementas detailed in the Agreement Particulars.

“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, and all personal data and sensitive personal data within the meaning of the Data Protection Act 2018.

“Defect” means a defect, breakdown, malfunction or failure in any goods, equipment, consumables, products or other items which may be delivered as part of or as a result of the Services under any Final Individual Placement Agreement.

“Defects Liability Period” means twelve (12) months from completion of the delivery or provision of the warranted Products.

“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 and agents in connection with or in relation to the subject matter of this Rolling Select List Agreement, including any Final Individual Placement Agreements rising hereunder, and in respect of which such Party is liable to the other.

"EIR" means the Environmental Information Regulations 2004.

“Final Individual Placement Agreement” means a full and complete Individual Placement Agreement that has been signed by both the Service Provider and the Council following the successful completion of the Ordering Process for an Individual Placement.

"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 or practice issued by the Information Commissioner in relation to such legislation.

“Individual Placement” means the placement that shall be created where a Looked After Child, Young Person or Family is placed with the Service Provider following the completion of the Ordering Process in Schedule Two.

“Individual Placement Fee” means the fee that the Service Provider shall charge the Council for each Individual Placement and which must not exceed the Charges for the Services.

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

“Insolvent” means:

* + 1. in relation to an individual or a firm:
       1. a petition is presented for their bankruptcy;
       2. a criminal bankruptcy order is made against the individual or any partner in the firm;
       3. the individual or any partner in the firm makes any composition or arrangement with or for the benefit of creditors, or makes any conveyance or assignment for the benefit of creditors;
       4. an administrator is appointed to manage their affairs; or
       5. unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
    2. in relation to a company:
       1. if the company passes a resolution for winding up or dissolution (otherwise than for the purposes of and followed by an amalgamation or reconstruction);
       2. an application is made for, or any meeting of its directors or members resolves to make an application for an administration order in relation to it;
       3. a notice of intention to appoint an administrator is filed in relation to the company;
       4. an administrator or receiver is appointed;
       5. a Court makes a winding-up order;
       6. the company makes a composition or arrangement with its creditors, or an administrative receiver, receiver, manager or supervisor is appointed by a creditor or by the court, or possession is taken of any of its property under the terms of a fixed or floating charge; or
       7. unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986.

“Intellectual Property Rights” means all intellectual and industrial property rights including (but not limited to) patents, know-how, trade marks, registered designs, utility models, service marks, logos, design rights (whether registrable or otherwise), applications for any of the foregoing, copyright, database rights, rights to prevent passing off for unfair competition, rights in any invention, discovery or process, domain names, trade or business names, moral rights and other similar rights or obligations whether registrable or not in any country in each case in the United Kingdom and all countries in the world and together with all renewals and extensions.

"Law" means any applicable law, statute, bye-law, regulation, order, regulatory policy, guidance or industry code, rule of court or directives or requirements of any Regulatory Body, delegated or subordinate legislation or notice of any Regulatory Body.

“Liabilities” means all costs, actions, demands, expenses, losses, damages, claims, proceedings, awards, fines, orders and other liabilities (including reasonable legal and other professional fees and expenses) whenever arising or brought.

“Looked After Child, Young Person or Family” means those children and young people who become looked after by the Council when their birth parents are unable to provide ongoing care in either a temporary or permanent capacity, as well as any other relative or family member who, either separately, or together with the child or young person, under this Rolling Select List Agreement, may be placed on an Individual Placement with the Service Provider.

"Model Individual Placement Agreement" means the model agreement in Schedule Five which specifies the contract terms and conditions for an Individual Placement. Each Final Individual Placement Agreement shall be constructed by the Council, using the model in Schedule Five of this Rolling Select List Agreement as guidance.

“Order” means an order for Services served by the Council on the Service Provider in accordance with the Ordering Process.

“Ordered Service” means the Services ordered by the Council in accordance with the Ordering Process.

“Ordering Process” means the ordering procedures specified in Schedule Two.

"Parent Company" means any company which is the ultimate Holding Company of the Service Provider or any other company of which the ultimate Holding Company of the Service Provider is also the ultimate Holding Company and which is either responsible directly or indirectly for the business activities of the Service Provider or which is engaged in the same or similar business to the Service Provider. The term “Holding Company” shall have the meaning ascribed by Section 1159 of the Companies Act 2006 or any statutory re-enactment or amendment thereto.

"Regulatory Body" means those government departments and regulatory, statutory and other entities, committees and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this Rolling Select List Agreement or any other affairs of the Council and “Regulatory Body” shall be construed accordingly.

“Replacement Service Provider” means any company, organisation or person who replaces the Service Provider following termination or expiry of all or part of this Rolling Select List Agreement and any related Final Individual Placement Agreement that may have been created under this Rolling Select List Agreement.

"Request for Information" means a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the EIR.

“Review Information” means the information the Council shall request of the Service Provider at the Review Point and which will include a request for the Charges for the next Review Period as well as any other information the Service Provider reasonably believes the Council ought to know in accordance with the terms of this Rolling Select List Agreement.

“Review Point” means the point at which the Council will open the Rolling Select List and invite the submission of Charges from the Service Provider, and also allow new service providers to join the Rolling Select List, and which shall occur annually.

“Review Period” means the annual period between each Review Point.

“Rolling Select List” means the Rolling Select List which the Council created and placed the Service Provider on following receipt by the Council of the Service Provider’s Tender Questionnaire Response.

“Rolling Select List Agreement” means this agreement between the Council and the Service Provider consisting of these Clauses and the attached Schedules.

"Rolling Select List Agreement Manager" means a representative of either Party, as stated in Schedule Six, responsible for ensuring the parties are performing their obligations under this Rolling Select List Agreement.

"Rolling Select List Review Documentation" means the information for review contained in a report submitted by the Service Provider to the Council at each quarterly meeting, as set out in Clause 6.

“Services” means the services specified in Schedule One that the Service Provider shall make available to the Council. When a specific Service is the subject of an Order by the Council, it will be referred to in the ensuing Final Individual Placement Agreement as an Ordered Service.

"Service Provider’s Key Personnel" means the Service Provider’s Service director, as named in Schedule Six, and any replacement from time to time in accordance with Clauses 5.4 and 5.5.

“Services Specification” means the specification at Schedule One of this Rolling Select List Agreement which details the nature of the services that the Council may require under this Rolling Select List Agreement.

"Staff" means all persons employed by the Service Provider to perform the Rolling Select List Agreement together with the Service Provider’s volunteers, servants and agents used in the performance of the Rolling Select List Agreement.

“Tender Questionnaire” means the invitation issued by the Council to the Service Provider to submit an expression of interest to provide the Services, and that led to the creation of this Rolling Select List Agreement.

“Tender Questionnaire Response” means the response to the Tender Questionnaire that the Service Provider created and that it sent to the Council in its response to the Council’s Tender Questionnaire.

“Term” means the term of this Rolling Select List Agreement, as stated in the Agreement Particular, subject to an early termination in accordance with the terms of this Rolling Select List Agreement.

“TUPE” means the Transfer of Undertakings (Protection of Employment) Regulations 2006.

"Working Days" means Monday to Friday inclusive, excluding English public and bank holidays.

1.2 In this Rolling Select List Agreement:

1. The terms and expressions set out in Clause 1.1 shall have the meanings ascribed therein;
2. words importing the singular meaning include where the context so admits the plural meaning and vice versa;
3. words importing the masculine include the feminine and the neuter;
4. reference to a clause is a reference to the whole of that clause unless stated otherwise;
5. references to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;
6. references to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assignees or transferees;
7. the words “include”, “includes” and “including” are to be construed as if they were immediately followed by the words “without limitation”;
8. In the event and only to the extent only of any conflict between the Clauses of this Rolling Select List Agreement, and the Schedules of this Rolling Select List Agreement, the conflict shall be resolved with the following order of preference:
9. Model Individual Placement Agreement
10. Model Individual Placement Agreement – Appendix A (Miscellaneous Documents)
11. The Clauses of this Rolling Select List Agreement
12. Schedule One (The Council’s Specification), Schedule Two (The Ordering Process), Schedule Three (Price Schedule), Schedule Five (Model Individual Placement Agreement), and Schedule Six (Party Contact Details) of this Rolling Select List Agreement, in that order
13. The Tender Questionnaire
14. Schedule Three (The Service Provider’s Tender Questionnaire Response)

of this Rolling Select List Agreement

1. headings are included in this Rolling Select List Agreement for ease of reference only and shall not affect the interpretation or construction of the Rolling Select List Agreement.

(k) a reference to any document other than as specified in Clause 1.2 (e) and any Individual Placement Agreement that is entered into under this Rolling Select Agreement, shall be construed as a reference to the document as at the date of execution of this Rolling Select List Agreement.

(l) Terms or expressions contained in this Rolling Select List Agreement which are capitalised but which do not have an interpretation in Clause 1.1 shall be interpreted in accordance with the common interpretation within the consultancy industry. Otherwise they shall be interpreted in accordance with the dictionary meaning.

1. **Scope of this Rolling Select List Agreement**
   1. This Rolling Select List Agreement will be used by the Council to establish a Rolling Select List which will be used to purchase the Services.
   2. This Rolling Select List Agreement governs the overall relationship of the Council with the Service Provider with respect to the provision of the Services to the Council. The Council is entitled, but not required, at any time during the Term to order Services in accordance with the Ordering Process. Unless the Service Provider in its acknowledgement of the Council’s Order states that it is unable to fulfil the Order, the Service Provider shall provide to the Council such services in accordance with all applicable provisions of the Final Individual Placement Agreement.
   3. The Service Provider shall at all times during the Term of the Rolling Select List Agreement and any Final Individual Placement Agreement maintain the organisational and technical ability and capacity to provide the Services in accordance with this Rolling Select List Agreement and meet the minimum standards of the select list as outlined in the Council’s Tender Questionnaire.
   4. The Service Provider shall provide the Services and meet its responsibilities and obligations hereunder in accordance with the standards as set out in any Final Individual Placement Agreement. The Service Specification set out in Schedule One will require the Service Provider to comply with all applicable child protection legislation currently in force and that shall be enacted during the term of this Rolling Select List Agreement and any Final Individual placement Agreement, and the Service Provider shall seek to meet any individual outcomes identified for each Looked After Child, Young Person or Family during each Individual Placement, as outlined in the Final Individual Placement Agreement.
   5. The Rolling Select List minimum standards are outlined within the Tender Questionnaire that was issued by the Council.
   6. The Service Provider should notify the Council within two (2) Working Days of any significant change to their ability to meet the Rolling Select List minimum standards, or where applicable, of any Ofsted registration status changes.
   7. New entrants that are able to adequately respond to the Council’s requirements as stated in any new Tender Questionnaire at the point of each Review Point will have the opportunity to join the Rolling Select List.
   8. If the Review Information, as requested at the Review Point, is not returned by the Service Provider for evaluation by the deadline as set by the Council, then the Service Provider will score zero (0) for that Review Period and no ordering of the Services from the Service Provider shall take place for that Review Period. If the Review Information is not returned at more than two consecutive Review Points then the Service Provider will be excluded from the Rolling Select List and will have to resubmit a full Tender Questionnaire Response at a future Review Point to be considered for re-entry to the Rolling Select List.
   9. If there is a merger or acquisition involving the Service Provider during a Review Period then the Service Provider shall immediately inform the Council in writing of this and where requested by the Council the Service Provider shall meet with the Council and provide all information that will help satisfy the Council that the Service Provider is able to fulfil any existing obligations under this Rolling Select List Agreement and any Final Individual Placement Agreement regardless of the merger or acquisition.
   10. Where following the meeting referred to in Clause 2.9 the Council is not satisfied that the Service Provider is able to continue to fulfil its obligations under this Rolling Select List Agreement or any Final Individual Placement Agreement, it shall notify the Service Provider in writing and may remove the Service Provider from the Rolling Select List until the next Review Point, at which point the Council shall invite the Service Provider to submit Review Information at the next Review Point.

1. **DURATION OF THE AGREEMENT**
   1. This Rolling Select List Agreement shall commence on the Commencement Date and shall expire upon the completion of the Term, unless it is:

extended, or

terminated earlier pursuant to Clause 11.

* 1. For the avoidance of doubt, the termination of this Rolling Select List Agreement shall not affect the validity of any existent Final Individual Placement Agreement that may have been created under it.

1. **PERFORMANCE**
   1. If the Service Provider at any time becomes aware of any act or omission, or proposed act or omission by the Council which prevents or hinders, or may prevent or hinder the Service Provider from performing the Services in accordance with this Rolling Select List Agreement, the Service Provider shall inform the Council immediately and shall remain guided by the Council as to how to address any such matter.
   2. For the avoidance of doubt any reference to performance of the Services or Ordered Services or any other obligations, refers to the obligations placed on the Service Provider under this Rolling Select List Agreement and on any obligations placed on the Service Provider under any linked Final Individual Placement Agreement that it may enter into with the Council under this Rolling Select List Agreement.
   3. The Service Provider shall perform its obligations and provide the Ordered Services in accordance with and to the standards in the Specification as set out at Schedule One, and as may be laid out by the Council in any specific specification that it may draw up for an Individual Placement.
2. **AGREEMENT PERSONNEL**
   1. Each Party shall appoint a competent and authorised Rolling Select List Agreement Manager empowered to act on behalf of each respective Party for all purposes connected with the Rolling Select List Agreement.
   2. The Service Provider shall also appoint at least one Key Personnel.
   3. The Service Provider shall forthwith give notice in writing to the Council of any change in the identity, address and telephone numbers of the person appointed as its Rolling Select List Agreement Manager. The Service Provider shall give maximum possible notice to the Council before changing its Rolling Select List Agreement Manager.
   4. Any replacements to the Service Provider's Key Personnel shall be subject to the agreement of the Council. Such replacements shall be of at least equal status or of equivalent experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person under this Rolling Select List Agreement.
   5. The Council shall not unreasonably withhold its agreement under Clause 5.4. Such agreement shall be conditional on appropriate arrangements being made by the Service Provider to minimise any adverse impact on the Rolling Select List Agreement, which could be caused by a change in Key Personnel.
3. **REVIEW MEETINGS**
   1. Where there is an existent Final Individual Placement Agreement in place between the Service Provider and the Council, the Service Provider’s Rolling Select List Agreement Manager shall meet with the Council’s Rolling Select List Agreement Manager no more frequently than quarterly each time, to discuss the overall relationship and the operation of the Rolling Select list Agreement and the Final Individual Placement Agreement. These meetings shall take place at a location specified by the Council. The Service Provider shall not charge the Council for any costs incurred by the Service Provider in the attendance of the meetings described in this Clause 6.1.
   2. The Service Provider shall submit the Rolling Select List Review Documentation at each review meeting and where required by the Council shall provide an explanation or answer any questions from the Council on the Rolling Select List Review Documentation.
   3. The Service Provider shall not charge the Council for any costs incurred by the Service Provider during the preparation of the Rolling Select List Review Documentation or any associated contract management information.
   4. The Council shall be able to convene a meeting with the Service Provider at any time during the Term including the term of any Final Individual Placement Agreement created under this Rolling Select List Agreement where it reasonably believes it is necessary to do so, and the Service Provider shall attend the meeting and comply with any request for information and or documentation.
   5. The Council will have the right to observe the Service Provider’s performance of the Services if the Services are not being performed on the Council’s premises.
4. **ORDERING PROCESS**
   1. The Service Provider shall be part of a Rolling Select List for the provision of the Services.
   2. The Council shall make referrals to each service provider on the Rolling Select List in accordance with the Ordering Process as detailed within Schedule Two of this Rolling Select List Agreement.

* 1. The Council reserves the right to refer to service providers outside of the Rolling Select List where:

there is a specific request for a geographic area that is not covered by the Service Provider and or;

there is a specific need that requires an extensive search.

1. **CHARGES, PAYMENT PROCESS AND PENALTY PAYMENTS**
   1. **Charges**

8.1.1 The Charges that the Service Provider shall charge for any Ordered Services for an Individual Placement for the first Review Period are set out in Schedule Three and the Service Provider shall re-submit the Charges at each Review Point.

8.1.2 The Individual Placement Fee is the amount payable to the Service Provider for the services detailed in a Final Individual Placement Agreement and shall be recorded in the Final Individual Placement Agreement. Any Individual Placement Fee as recorded in the Final Individual Placement Agreement shall be fixed and valid for the duration of the Final Individual Placement. No increases of the Individual Placement Fee will be allowed for the duration of any Final Individual Placement Agreement.

8.1.3 The Charges shall be exclusive of Value Added Tax.

8.1.4 The Council shall be responsible for paying the Service Provider the Individual Placement Agreement Fee and any applicable Additional Services Fees for each Individual Placement.

8.1.5 In return for the Council’s payment under Clause 8.1.4, the Service Provider shall provide the Ordered Services under an Individual Placement Agreement to the reasonable satisfaction of the Council’s Rolling Select List Manager.

8.1.6 No additional charge shall be made to the Council, or to any other third party, unless agreed by the Council for any part of the Ordered Services which might reasonably be expected to be provided by the Service Provider in accordance with the Final Individual Placement Agreement.

8.1.7 Any variations in the level of services provided and or fee paid for the Services shall be agreed in writing by the Council and the Service Provider.

**8.2 Payment Process**

8.2.1 All suppliers and providers paid through the Council’s Oracle system will be required to sign up and use iSupplier.

8.2.2 The Service Provider shall submit a single invoice quoting the relevant purchase order number to the Council no later than seven (7) days after the end of each calendar month detailing the Ordered Services provided during the calendar month and the amount payable.

8.2.3 The Council shall pay the Individual Placement Fee for the Ordered Services to the Service Provider no later than ten (10) Working Days after receipt of the invoice where it is submitted through the iSupplier portal, or no later than thirty (30) calendar days following the date of receipt of the invoice by the Council, in any other event, unless the invoice is disputed.

8.2.4 The Council reserves the right to withhold payment of the relevant part of the Individual Placement Fee without payment of interest where the Service Provider has either failed to provide the Ordered Services at all or has provided the Ordered Services inadequately and any invoice relating to such Ordered Services will not be paid unless or until the Ordered Services have been performed to the Council’s satisfaction.

8.2.5 Any overdue sums will bear interest from the due date until payment is made at 2% per annum over the Bank of England base rate from time to time. The Service Provider is not entitled to suspend provision of the Ordered Services as a result of any overdue sums.

8.2.6 The Council will be entitled but not obliged at any time or times without notice to the Service Provider to set off any liability of the Council to the Service Provider against any liability of the Service Provider to the Council (in either case howsoever arising and whether any such liability is present or future, liquidated or unliquidated and irrespective of the currency) and may for such purpose convert or exchange any sums owing to the Service Provider into any other currency or currencies in which the obligations of the Council are payable under this Rolling Select List Agreement. The Council’s rights under this clause will be without prejudice to any other rights or remedies available to the Council under this Rolling Select List Agreement or otherwise.

8.2.7 The Service Provider shall include in any agreement which the Service Provider enters into with a third party relating to the performance of this Rolling Select List Agreement a term requiring the Service Provider to make payment to the third party no later than thirty (30) calendar days following the date of receipt of invoice by the Service Provider, unless the invoice is disputed.

8.2.8 In entering into any agreement as referred to in Clause 8.2.7 the Service Provider shall require the third party concerned to include, within any agreement which the third party enters into with another party relating to this Rolling Select List Agreement, a term requiring the third party to make payment to the other party within thirty (30) calendar days of receipt of undisputed invoice and the other party to include the same provision in any agreement which the other party enters into, thereafter, in relation to this Rolling Select List Agreement.

**8.3 Penalty Payments**

8.3.1 Where the Service Provider omits to or otherwise does not provide the required level of service as set out in the Specification or the specification for an Individual Placement, and the Specification identifies any penalties which the Council may impose on the Service Provider as a result of that omission or failure, then acting reasonably, the Council may impose the penalty and require the Service Provider to pay the relevant penalty amount.

8.3.2 Where Clause 8.3.1 applies, the Council shall issue the Service Provider with written notice in accordance with Clause 15.2 (Notices) of the imposition by the Council of the penalty, and the notice shall include the due date by which the penalty amount shall be paid by the Service Provider, which shall be no less than fourteen (14) calendar days after the deemed receipt of the notice.

1. **COUNCIL OBLIGATIONS**
   1. Save as otherwise expressly provided, the obligations of the Council under the Rolling Select List Agreement are obligations of the Council in its capacity as a contracting counterparty and nothing in this Rolling Select List Agreement or any linked Final Individual Placement Agreement shall operate as an obligation upon, or in any other way fetter or constrain the Council in any other capacity, nor shall the exercise by the Council of its duties and powers in any other capacity lead to any liability under this Rolling Select List Agreement (howsoever arising) on the part of the Council to the Service Provider.
   2. The Council agrees to give all reasonable assistance to the Service Provider including access to relevant staff and or records, to enable the Service Provider to meet its obligations under this Rolling Select List Agreement and to provide the Ordered Services to the Council.
   3. Subject to Clause 8.2.4 the Council shall pay the Individual Placement Fee to the Service Provider upon receipt of an invoice in accordance with Clause 8.2.3.

**10. SERVICE PROVIDER OBLIGATIONS**

**10.1 Warranties and Representations**

10.1.1 The Service Provider warrants and represents that it has full capacity and all necessary consents (including, where its procedures so require, the consent of its Parent Company) to enter into and to perform its obligations under this Rolling Select List Agreement and that this Rolling Select List Agreement is executed by a duly authorised representative of the Service Provider.

10.1.2 The Service Provider warrants and represents that as at the date hereof, all information contained in its Tender Questionnaire Response for the Services remains true, accurate, and not misleading save as may have been specifically disclosed in writing to the Council prior to the execution of this Rolling Select List Agreement.

10.1.3 The Service Provider warrants and represents that this Rolling Select List Agreement shall be performed in compliance with all applicable laws, enactments, orders, regulations and other similar instruments as amended from time to time.

10.1.4 The Service Provider warrants and represents that the Services shall be provided and carried out by appropriately experienced, qualified and trained personnel with all due skill, care and diligence.

10.1.5 The Service Provider warrants and represents that it shall discharge its obligations hereunder with all due skill, care and diligence including good industry practice and in accordance with its own established internal procedures.

10.1.6 The Service Provider warrants and represents that it owns, has obtained or shall obtain valid licences for all Intellectual Property Rights that are necessary for the performance of this Rolling Select List Agreement and the use of the Services by the Council.

10.1.7 The Service Provider warrants and represents that it has taken and shall continue to take all steps, in accordance with good industry practice, to prevent the introduction, creation or propagation of any disruptive element (including any virus, worm and/or trojan horse) into systems, data, software or Confidential Information (held in electronic form) owned by or under the control of, or used by, the Council.

10.1.8 The Service Provider warrants and represents that in its acceptance of an Order, it will enter into an Individual Placement Agreement with the Council on the terms and conditions of where applicable, this Rolling Select List Agreement, and the Model Individual Placement Agreement without amendment thereto save for the necessary information to complete the Model Individual Placement Agreement as specified in the Order.

10.1.9 The Service Provider warrants and represents that on behalf of itself and its Affiliates or Parent Company, in the three years prior to the date of this Rolling Select List Agreement and continuing throughout the Term:

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

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

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

10.1.10 The Service Provider warrants to the Council that to the extent that any goods, equipment or consumables or products are provided as part of the Services (all referred to as “Products”) these will:

a) be free from Defects in design, material and workmanship; and

b) be so formulated, designed, constructed, finished and packaged as to be safe and without risk to health.

10.1.11 In the event that any Defects appear in the Products in the Defects Liability Period, the Service Provider undertakes to rectify the same expeditiously and to the reasonable satisfaction of the Council following notification of the problem by the Council.

10.1.12 The Service Provider acknowledges that:

(a) any breach of the warranties in Clauses 10.1.1 to 10.1.10 shall be remedied as a matter of urgency at no cost to the Council. Failure to remedy (if capable of remedy) any such breach within five (5) Working Days of notification by the Council shall entitle the Council to terminate this Rolling Select List Agreement by notice in writing with immediate effect.

(b) a breach of its obligations in Clause 10.1.1 to 10.1.10 shall afford the Council the right to terminate this Rolling Select List Agreement by notice in writing with immediate effect without liability or payment of any charges or costs whatsoever.

10.1.13 Except as expressly stated in this Rolling Select List Agreement, all warranties and conditions, whether express or implied by statute, common law or otherwise (including fitness for purpose) are hereby excluded to the extent permitted by law.

10.1.14 The Service Provider and the Council each warrants to the other that it has undertaken all requisite corporate and other action to approve the entering into and performance of this Rolling Select List Agreement.

**10.2 Disclosure and Barring Service (DBS) checks for Service Provider’s Staff**

10.2.1 The Service Provider will ensure that results are obtained of the most extensive check made with the Disclosure and Barring Service in accordance with Part V of the Police Act 1997 in respect of each Named Employee in accordance with the registration requirements under the Care Standards Act 2000 and that appropriate Disclosure and Barring Service (DBS) checks are obtained.

10.2.2 If the worker is engaged in a Regulated Activity as determined in the Protection of Freedoms Act 2012, the check for each Named Employee must include:

(i) a search of the list of those Barred from working with Children; and/or

(ii) a search of the list of those Barred from working with vulnerable adults

(iii) a statement of the results of all such checks and searches is provided to the Council.

10.2.3 With regard to police checks of personnel and or each Named Employee, the Service Provider undertakes:

to ensure that all of the Service Provider’s Staff who may have unsupervised contact with children or adults at risk are police checked in accordance with all prevailing Legislation (including but not limited to the Care Standards Act 2000) and the Codes of Practice for Registered Persons and other Recipients of Disclosure Information under section 122 of the Police Act 1997, and as amended by the Protection of Freedoms Act 2012 where relevant;

that police checks carried out via the Service Provider will only be accepted upon written confirmation from the DBS, via a DBS certificate, that the Service Provider is registered with this service for the purposes of initiating police checks;

where the Service Provider asks the Council to process police checks, the Service Provider must do so via the Council’s Rolling Select List Agreement Manager or as otherwise notified to the Service Provider by the Council in writing in order to:

i) to obtain the highest level of disclosure available from the DBS (including the enhanced certificate) in respect of each prospective employee, volunteer or other persons who may work with, give support to, or otherwise have direct contact with a Looked After Child, Young Person or Family; and

to update all police and DBS checks every three years; and

to keep full records on the personal file of all persons who have undergone DBS (and formerly, CRB) checks.

10.2.4. Prior to the Commencement Date, the Service Provider shall submit to the Council a Child Protection Policy and written code of behaviour for Staff and volunteers. These documents will, where relevant, adopt the Southend Essex and Thurrock Safeguarding Children Guidelines and the Southend Essex and Thurrock Safeguarding Adults Guidelines.

10.2.5 The Service Provider’s Child Protection Policy must demonstrate how staff working across agencies and professions will work together to ensure children’s safety is paramount at all times. The Service Provider shall incorporate any instructions given by the Council’s Rolling Select List Agreement Manager to revise or amend such a policy.

10.2.6 The Service Provider shall at all times comply with the Child Protection and Adult Safeguarding Procedures relevant to the Council and will ensure that any of the Service Provider’s internal procedures or inter-agency protocols are consistent with these procedures.

10.2.7 To ensure compliance with its duties under Section 11 of the Children Act 2004, the Council shall require that the Service Provider demonstrates that its functions are discharged having regard to the need to safeguard and promote the welfare of children through the submission of a self-audit to the Council. This self-audit shall be submitted on an annual basis, and shall be in line with the Local Safeguarding Children Boards protocol.

10.2.8 The Service Provider’s Staff must:

a) have a clear commitment to abide by the Southend Essex and Thurrock Safeguarding Children Guidelines and the Southend Essex and Thurrock Safeguarding Adults Guidelines to safeguard children and adults from abuse, as amended from time to time;

b) be subject to the highest standard of recruitment practices, including any guidelines or codes of practice issued by the Local Safeguarding Children Board, Safeguarding Adult Board and/or the Council;

c) maintain accurate and up to date records of decision making and actions taken;

d) ensure they are at all times sensitive to needs arising from race, culture, religion, or linguistic background;

e) respect confidentiality of information about individuals;

f) share information with agencies to the extent that it is required to assess and meet the needs of the child or adult at risk;

g) receive regular mandatory child protection training; and

h) receive regular mandatory adult safeguarding training.

10.2.9 The Service Provider shall provide the Council, upon reasonable request, with records evidencing any of the requirements of this Clause 10.2. The Council reserves the right to additionally make spot checks to verify compliance with this Clause 10.2

10.2.10 The Service Provider must ensure (and must procure that any sub-contractor or agent also ensures) that no person:

(i) who discloses any convictions, or

(ii) who is found to have any convictions following the results of a Disclosure and Barring Service (DBS) check, or

(iii) who is found to have convictions or is identified as unsuitable following an application under section 30 of the Safeguarding Vulnerable Groups Act 2006 as amended by the Protection of Freedoms Act 2012 or

(iv) whose results (of checks and searches) indicate that there are grounds for concern regarding his or her suitability to be involved in the provision of the Services or who is identified by the Disclosure and Barring Service (DBS) check as unsuitable is used by the Service Provider or by a sub-contractor or agent (as applicable) in connection with the provision of the Services.

**10.3 Service Provider’s Staff and Health and Safety**

10.3.1 The Council reserves the right under the Rolling Select List Agreement to refuse to admit to, or to withdraw permission to remain on, any premises occupied by or on behalf of the Council:

(a) any member of Staff; or

(b) any person employed or engaged by a sub-contractor, agent or servant of the Service Provider whose admission or continued presence would be, in the reasonable opinion of the Council, undesirable.

10.3.2 If and when directed by the Council, the Service Provider shall provide a list of the names and addresses of all persons who it is expected may require admission in connection with the Rolling Select List Agreement to any premises occupied by or on behalf of the Council, specifying the capacities in which they are concerned with the Rolling Select List Agreement and giving such other particulars as the Council may reasonably desire.

10.3.3 The Service Provider’s Staff, engaged within the boundaries of any of the Council’s Premises, shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time for the conduct of personnel when at that premises and when outside that establishment.

10.3.4 The decision of the Council as to whether any person is to be refused access to any premises occupied by or on behalf of the Council shall be final and conclusive.

10.3.5 The Service Provider shall bear the cost of any notice, instruction or decision of the Council under this clause.

10.3.6 The Service Provider shall take all measures necessary to comply with the requirement 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 in the performance of this Rolling Select List Agreement and Final Individual Placement Agreements.

10.3.7 The Service Provider shall comply with all relevant legislation relating to its Staff however employed including (but not limited to) the compliance in law of the ability of the Staff to work in the United Kingdom.

* + 1. If the Service Provider has a finding against it relating to its obligations under Clauses 10.3.6 and 10.3.7 it will provide the Council with:

1. details of the finding; and
2. the steps the Service Provider has taken to remedy the situation.

**10.4 TUPE AND RE-TENDERING**

10.4.1 In the event of expiry or termination of this Rolling Select List Agreement or any Final Individual Placement Agreement or whenever reasonably requested by the Council in preparation for tendering arrangements the Service Provider will provide the Council with such assistance as the Council may require and provide at no cost to the Council any information the Council (whether on its own account or on behalf of any potential or confirmed replacement Service Provider) may request in relation to the Staff including but not limited to, providing employee liability information as required under Regulation 11 of TUPE.

10.4.2 The Service Provider authorises the Council to pass any information supplied by the Service Provider, to any Replacement Service Provider or potential Replacement Service Provider and the Service Provider will secure all necessary consents from relevant Staff in order to do this.

10.4.3 The Service Provider will keep the Council and any Replacement Service Provider indemnified in full against all Liabilities arising directly or indirectly in connection with any breach of this clause or inaccuracies in or omissions from the information provided.

**11. SUSPENSION AND TERMINATION OF THE AGREEMENT**

**11.1 Suspension**

11.1.1 The Council may suspend any Final Individual Placement Agreement (or any part of) or may suspend the Service Provider from this Rolling Select List Agreement with immediate effect by serving a notice on the Service Provider if:

11.1.1.1 the Council is of the opinion the Service Provider is causing concern in its ability to maintain a satisfactory standard of Services to its existing Looked after Child, Young Person or Family receiving the Services;

11.1.1.2 the Service Provider fails to meet the quality and performance arrangements outlined in the Specification;

11.1.1.3 the Service Provider fails to maintain its ability and capacity in respect of the Services in accordance with Clause 2.3;

11.1.1.4 the Service Provider fails to comply with Clause 6;

11.1.1.5 there is an unsatisfactory report from a statutory agency (including but not limited to OFSTED, the Care Quality Commission, the Health and Safety Executive, an Environmental Health department within a local authority, a Fire Authority and or the Council’s Contract and Commissioning Unit);

11.1.1.6 the Council has sufficient evidence to suggest there has been a material breach of this Rolling Select List Agreement on behalf of the Service Provider

11.1.2 If the Council suspends the whole or any part of the Services pursuant to clause 11.1 above:

11.1.2.1 the Service Provider will be suspended from providing the Services to any new Looked After Child, Young Person or Family although any existent Final Individual Placement Agreement shall continue unless and until the Council

suspends that Final Individual Placement Agreement individually;

11.1.2.2 no new Final Individual Placement Agreement will be issued to or otherwise entered into with the Service Provider after the date of such notice of suspension;

11.1.2.3 the Council can employ and pay a replacement provider to provide and complete the provision of the Ordered Services or any part thereof during the period of the suspension;

11.1.2.4. the Council is entitled to recover from the Service Provider the costs incurred of making those other arrangements referred to in Clause 11.1.2.3 including any additional expenditure incurred by the Council;

11.1.2.5 the Council is entitled to deduct from any sum or sums which would have been due from the Council to the Service Provider under a Final Individual Placement Agreement or the recovery of any sum or sums as a debt;

11.1.2.6 the Council is only liable to pay to the Service Provider only such elements of the Individual Placement Fee if any, that have properly accrued in accordance with any Final Individual Placement Agreement up to the time of the suspension.

11.1.3 Any dispute regarding the suspension must be determined following the procedures in Clause 14. The suspension shall remain in force until the dispute is determined.

* + 1. The suspension imposed pursuant to clause 11.1.1.5 will be lifted if the Service Provider meets the standards required by the relevant statutory agency.
  1. **Termination** 
     1. Subject to the provisions of Clause 15.9 (Force Majeure) the Council may terminate the Rolling Select List Agreement or any Final Individual Placement Agreement with immediate effect by notice in writing to the Service Provider on or at any time if:

the Service Provider becomes Insolvent; or

the Service Provider is convicted of a criminal offence; or

the Service Provider ceases or threatens to cease to carry on its business; or

the Service Provider has a change in control without the prior written consent of the Council which the Council believes will have a substantial impact on the performance of the Services under any Final Individual Placement Agreement; or

there is a risk or a genuine belief that reputational damage to the Council will occur as a result of the Rolling Select List Agreement continuing; or

the Service Provider is in breach of any of its obligations under this Rolling Select List Agreement or any Final Individual Placement Agreement that is capable of remedy and which has not been remedied to the satisfaction of the Council within fourteen (14) calendar days, or such other reasonable period as may be specified by the Council after issue of a written notice specifying the breach and requesting it to be remedied; or

there is a material or substantial breach by the Service Provider of any of its obligations under this Rolling Select List Agreement or any Final Individual Placement Agreement created under it, which is incapable of remedy; or

the Service Provider commits persistent minor breaches of this Rolling Select List Agreement and or any Final Individual Placement Agreement created hereunder whether remedied or not; or

the Service Provider, being an individual, dies or has an administrator, guardian or receiver appointed under the Mental Health Act 1983; or

a relevant UK or other European Court declares that the Rolling Select List Agreement and or any Final Individual Placement Agreement created hereunder is ineffective (“Declaration of Ineffectiveness”); or

the Rolling Select List Agreement or any Final Individual Placement Agreement created hereunder has been subject to a substantial modification which would have required a new procurement procedure in accordance with regulation 72(9) of the Public Contracts Regulations 2015; or

the Service Provider has, at the time of the Review Point, been in one of the situations referred to in regulation 57(1) of the Public Contracts Regulations 2015 including as a result of the application of regulation 57(2), and should therefore have been excluded from the procurement procedure; or

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

11.2.2 The Service Provider shall promptly notify the Council in writing on each occasion of the occurrence of any of the events specified in Clause 11.2.1.

* + 1. Where the Council reasonably deems it necessary to remove a Looked After Child, Young Person or Family from an Individual Placement it shall provide the Service Provider with written notice in accordance with the provision contained in the paragraph entitled “Termination of Individual Placements” which sits within the section entitled “Performance, issues, suspension and termination of the contract” within the Specification.
    2. The Council shall have the right to terminate this Rolling Select List Agreement at any time by giving three months written notice to the Service Provider.

**11.3 Consequences of Termination and Expiry**

11.3.1 Notwithstanding the service of a notice to terminate this Rolling Select List Agreement or any Final Individual Placement Agreement, the Service Provider shall continue to fulfil its obligations until the date of expiry or termination of this Rolling Select List Agreement or the relevant Final Individual Placement Agreement or such other date as required by the Council.

11.3.2 The termination or expiry of this Rolling Select List Agreement shall not cause any existing Final Individual Placement Agreement to terminate automatically. For the avoidance of doubt, all Final Individual Placement Agreements shall remain in force unless and until they are terminated or expire individually

11.3.3 Termination or expiry of the Rolling Select List Agreement shall be without prejudice to any rights and remedies of the Service Provider and the Council accrued before such termination or expiration and nothing in the Rolling Select List Agreement shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry.

11.3.4 Within ten Working Days of the date of termination or expiry of this Rolling Select List Agreement or any Final Individual Placement Agreement created hereunder, the Service Provider shall return to the Council any data and Confidential Information belonging to the Council in the Service Provider’s possession, power or control, either in its then current format or in a format nominated by the Council, in which event the Council will reimburse the Service Provider’s reasonable data conversion expenses and the Service Provider will destroy any data and Confidential Information in the original formats, together with all training manuals and other related documentation, and any other information and all copies thereof owned by the Council.

11.3.5 The Council shall be entitled to require access to data or information arising from the provision of the Services from the Service Provider.

* + 1. If this Rolling Select List Agreement or any Final Individual Placement Agreement is terminated in whole or in part due to any of the reasons listed in Clause 11.2.1, the Council shall:
       1. be liable to pay to the Service Provider only such elements of the Individual Placement Fee as they apply in each and any Final Individual Placement Agreement, if any, that have properly accrued in accordance with the Final Individual Placement Agreement or the affected part of the Final Individual Placement Agreement up to the time of the termination; and/or
       2. be entitled to deduct from any sum or sums which would have been due from the Council to the Service Provider under this Rolling Select List Agreement or any other agreement and to recover the same from the Service Provider as a debt any sum in respect of any loss or damage to the Council resulting from or arising out of the termination of this Rolling Select List Agreement or any Final Individual Placement Agreement. Such loss or damage shall include the reasonable cost to the Council of the time spent by its officers in terminating the Rolling Select List Agreement and or any related Final Individual Placement Agreement and in making alternative arrangements for the supply of the Ordered Services or any parts of them; and/or

11.3.6.3 be entitled to employ and pay a replacement provider to provide and complete the provision of the Ordered Services or any part thereof and recover from the Service Provider the costs incurred in making those other arrangements including any additional expenditure incurred by the Council; and/or

11.3.6.4 in the event that any sum of money owed by the Service Provider to the Council (the Service Provider’s debt) exceeds any sum of money owed by the Council to the Service Provider (the Council’s debt) under this Rolling Select List Agreement then the Council shall, at its sole discretion, be entitled to deduct the Service Provider’s debt from any future Council’s debt or to recover the Service Provider’s debt as a civil debt.

* + 1. Upon the termination of the Rolling Select List Agreement or any Final Individual Placement Agreement created hereunder for any reason, subject as otherwise provided in this Rolling Select List Agreement and to any rights or obligations which have accrued prior to termination, neither party shall have any further obligation to the other under the Rolling Select List Agreement.

1. **INDEMNITY AND INSURANCE**

**12.1 Indemnity and Limitation of Liability**

12.1.1 Neither party seeks to exclude or limit its liability for:

12.1.1.1 death or personal injury caused by its negligence (but will not be liable for death or personal injury caused by the other party’s negligence);

12.1.1.2 fraudulent misrepresentation; or

12.1.1.3 any other matter in respect of which, as a matter of Law, liability cannot be excluded or limited.

12.1.2 Except as specifically provided, neither party shall in any event be liable to the other for any indirect or consequential loss (including loss of profit, loss of business opportunity, loss of business, loss of goodwill, loss of production and pure economic loss) however caused.

12.1.3 Notwithstanding any other provision of this Rolling Select List Agreement, the Service Provider shall indemnify the Council in full without limit of liability for any direct loss of and/or damage to the real or personal property of the Council or any third party, including any IPR claims, or injury claimed by any third party and against all Liabilities awarded against or incurred by the Council (including legal expenses on an indemnity basis) arising from the Service Provider’s negligence, any Defect or fault in the Ordered Services or any act or omission of the Service Provider in delivering the Ordered Services.

**12.2 Insurance**

12.2.1 The Service Provider shall have and maintain insurance cover with a reputable insurance company or institution necessary to cover any liability arising under the Rolling Select List Agreement and any Final Individual Placement Agreement as set out in the Agreement Particulars.

12.2.2 The Service Provider shall, prior to the Commencement Date, and on each anniversary of the Commencement Date and/or upon request from the Council, provide evidence that all premiums relating to such insurances have been paid.

12.2.3 If the Service Provider does not maintain the necessary insurances under the Rolling Select List Agreement the Council may insure against any risk in respect of the default and may charge the Service Provider the cost of such insurance together with a reasonable administration charge.

**13. INFORMATION MANAGEMENT**

**13.1 Confidentiality**

13.1.1 Any documents provided by the Council and information which the Service Provider may acquire as a result of or during the provision of the Ordered Services shall to the extent that it is not information which is in the public domain or required to be disclosed by operation of Law, remain the confidential information of the Council and shall not be disclosed disposed of or used for any purpose (other than proper performance of the Rolling Select List Agreement or any related Final Individual Placement Agreement without prior written consent from the Council.

13.1.2 All Confidential Information provided by the Council to the Service Provider or generated from the Ordered Services, as mentioned in clause 13.1.1, shall be returned to the Council at the end of the Term or the end of any Final Individual Placement Agreement.

13.1.3 Without prejudice to the Council’s obligations under the FOIA or EIR, neither party shall make any press announcements or publicise the Rolling Select List Agreement or Final Individual Placement Agreement or any part thereof in any way, except with the written consent of the other party (such consent not to be unreasonably withheld or delayed).

13.1.4 Both parties shall take all reasonable steps to ensure the observance of the provisions of this clause by all of their servants, Staff, sub-contractors, agents, professional advisors and consultants.

13.1.5 The Council and the Service Provider acknowledge that, except for any information which is exempt from disclosure in accordance with provisions of the FOIA the text of this Rolling Select List Agreement and any schedules to this Rolling Select List Agreement is not Confidential Information. The Council shall be responsible for determining in its absolute discretion whether any part of the Rolling Select List Agreement or its schedules is exempt from disclosure in accordance with the provisions of the FOIA.

13.1.6 Notwithstanding any other term of this Rolling Select List Agreement the Service Provider hereby gives its consent for the Council to publish this Rolling Select List Agreement and its schedules in its entirety including from time to time agreed changes to the Rolling Select List Agreement, to the general public in whatever form the Council decides.

13.1.7 Where it is considered necessary in the opinion of the Council, the Service Provider shall ensure that Staff or such professional advisors or consultants sign a confidentiality undertaking before commencing work in connection with the Rolling Select List Agreement or any Final Individual Placement Agreement. The Service Provider shall ensure that Staff or its professional advisors or consultants are aware of the Service Provider’s confidentiality obligations under the Rolling Select List Agreement.

13.1.8 The Service Provider shall not use any Confidential Information it receives from the Council otherwise than for the purposes of the Rolling Select List Agreement and any subsequent related Final Individual Placement Agreement.

**13.2 Intellectual Property Rights**

13.2.1 All IPR in any specifications, instructions, plans, data, drawings, databases, patents, patterns, models, designs or other material:

13.2.1.1 provided to the Service Provider by the Council shall remain the property of the Council;

13.2.1.2 prepared by or for the Service Provider specifically for the use, or intended use, in relation to the performance of the Rolling Select List Agreement or any Final Individual Placement shall belong to the Council on creation.

13.2.2 The Service Provider shall obtain necessary approval before using any material, in relation to the performance of the Rolling Select List Agreement or any Final Individual Placement Agreement which is or may be subject to any third party IPR. The Service Provider shall procure that the owner of the IPR grant to the Council a non-exclusive perpetual and irrevocable licence for the purpose of the Council’s functions and duties as a local authority; or if the Service Provider is itself a licensee of those rights, the Service Provider shall grant to the Council a sub-licence for the purposes mentioned. Such licence and any sub-licence shall be non-exclusive, perpetual and irrevocable, shall include the right for the Council to sub-license, transfer and novate or assign to other Councils, any Replacement Service Provider or to any other third party providing services to the Council and shall be granted at no cost to the Council.

13.2.3 It is a condition of the Rolling Select List Agreement that the provision of the Ordered Services will not infringe the IPR of any third party and the Service Provider shall during and after the Term on written demand indemnify and keep indemnified without limitation the Council against all Liabilities which the Council may suffer or incur as a result of or in connection with any breach of this clause or any claim of IPR infringement arising from the Ordered Services or performance of the Service Provider or its sub-contractors.

13.2.4 At the termination of the Rolling Select List Agreement the Service Provider shall immediately return to the Council all materials, work or records held in relation to the Services, including any back-up media and information relating to any Looked After Child, Young Person or Family.

**13.3 Freedom of Information**

* + 1. The Council is subject to the FOIA and the EIR (“the Acts”). As part of the Council's duties under the Acts, it may be required to disclose information forming part of the Rolling Select List Agreement or any Final Individual Placement Agreement to anyone who makes a reasonable request. The Council has absolute discretion to apply or not to apply any exemptions under the Acts.
    2. The Service Provider shall assist and cooperate with the Council (at the Service Provider’s expense) to enable the Council to comply with the information disclosure requirements under the Acts and in so doing will comply with any timescale notified to it by the Council.

13.3.3 The Service Provider shall:

(a) transfer any Request for Information under the Acts to the Council as soon as practicable after receipt and in any event within two Working Days of receiving a Request for Information;

(b) provide the Council with a copy of all Information in its possession or power in the form that the Council requires within five Working Days (or such other period as the Council may specify) of the Council requesting that Information; and

(c) provide all necessary assistance as reasonably requested by the Council to enable the Council to respond to a Request for Information within the time for compliance set out in FOIA or the EIR.

**13.4 Publicity**

13.4.1 Without prejudice to the Council’s obligations under the FOIA, the Service Provider shall not make any press announcements or publicise this Rolling Select List Agreement or any part thereof in any way, except with the written consent of the Council.

13.4.2 Both Parties shall take all reasonable steps to ensure the observance of the provisions of this Clause 13.4 by all their servants, employees, agents, professional advisors and consultants.

13.4.3 The Service Provider shall not proactively market, promote or otherwise publicise this Rolling Select List Agreement or any Final Individual Placement Agreement created hereunder to potential clients, except with the written consent of the Council.

**13.5 Record Keeping and Monitoring**

13.5.1 In order to assist the Council in its record keeping and monitoring requirements including auditing and National Audit Office requirements, the Service Provider shall keep and maintain for six (6) years (or such longer time period required in accordance with any specific legislation) after the Rolling Select List Agreement or any Final Individual Placement Agreement has been completed, full and accurate records of the Rolling Select List Agreement or Final Individual Placement Agreement including the Services supplied under it, all expenditure reimbursed by the Council, and all payments made by the Council. The Service Provider shall on request allow the Council or the Council’s representatives such access to (and copies of) those records as may be required by the Council in connection with the Rolling Select List Agreement or any Final Individual Placement Agreement.

13.5.2 The Service Provider will at its own cost, provide any information that may be required by the Council to comply with the Council’s procedures for monitoring of the Rolling Select List Agreement.

**13.6 Data Protection Act**

13.6.1 The Service Provider shall (and shall procure that any of its Staff involved in the provision of the Services) comply with any requirements under the Data Protection Act 2018 and the General Data Protection Regulation.

13.6.2 The Service Provider shall execute a copy of the Data Processor Agreement, as attached at Schedule Seven, for each child, young person or family member that is placed with the Service Provider as part of an Individual Placement.

**14. DISPUTE RESOLUTION**

14.1.1 If a dispute arises between the Council and the Service Provider in connection with the Rolling Select List Agreement or any Final Individual Placement Agreement, the parties shall each use reasonable endeavours to resolve such dispute by means of prompt discussion at an appropriate managerial level.

14.1.2 In the first instance within seven Working Days of the issue or dispute arising, or sooner, where the matter is urgent or poses a risk to a Looked after Child, Young Person or Family, the affected party shall provide in writing to the other party a detailed summary of the grievance or the dispute, stating clearly on the correspondence that it relates to a grievance or an issue with the Rolling Select List Agreement or the relevant Final Individual Placement Agreement.

14.1.3 If the dispute is not resolved within fourteen (14) calendar days of referral under clause 14.1.2 or within the set timescales set out in the correspondence if the matter is urgent or poses a risk to a Looked After Child, Young Person or Family, then either party may refer it to the Chief Executive of the Council or appropriate nominated officer of each party for resolution who shall meet for discussion within fourteen (14 days) or longer period as the parties may agree.

14.1.4 At any time during the dispute resolution process where the necessary correspondence has been sent in accordance with Clause 14.1.1, where the Council deems there to be a risk to a Looked After Child, Young Person or Family either as a direct or indirect result of the dispute referred to in Clause 14.1.1 the Council may exercise its right to suspend the Service Provider from the Rolling Select List Agreement and or terminate the applicable Final Individual Placement Agreement.

14.1.5 Provided that both parties consent, a dispute not resolved in accordance with clauses 14.1.1, 14.1.2 or 14.1.13 shall next be referred at the request of either party to a mediator appointed by agreement between the parties within 14 Working Days of one party requesting mediation with the costs of mediation determined by the mediator.

* + 1. Nothing in this clause shall preclude either party from applying at any time to the English courts for such interim or conservatory measures as may be considered appropriate.

1. **GENERAL** 
   1. **Contract Variation**
      1. Subject to clause 15.1.2, no variation or modification to the Rolling Select List Agreement is valid unless it is in writing and signed by the Council and the Service Provider.
      2. The Council shall be entitled to issue to the Service Provider in writing or, in case of urgency, orally (provided the Council confirms oral instructions in writing as soon as it is practicable), variation orders requiring the addition, suspension, reduction or cessation of provision of any Ordered Services and/or the provision of emergency Services. The Service Provider shall charge or reduce the Charges for the impact of the variation order in accordance with the rates and prices used to calculate the Price in the Tender Questionnaire Response.

**15.2 Notices**

15.2.1 Any notice required by this Rolling Select List Agreement to be given by either party to the other shall be in writing and shall be served personally, or by sending it by registered post or recorded delivery to the appropriate address or email address notified to each other as set out in the Agreement Particulars.

15.2.2 Any notice served personally will be deemed to have been served on the day of delivery; any notice sent by post will be deemed to have been served 48 hours after it was posted; and any notice sent by email before 5 p.m. will be deemed to have been served on the day of despatch and otherwise on the following day save where the deemed date of service falls on a day other than a Working Day in which case the date of service will be the following Working Day.

**15.3 Discrimination**

15.3.1 The Service Provider shall not unlawfully discriminate either directly or indirectly on such grounds as race, colour, ethnic or national origin, disability, sex or sexual orientation, religion or belief, or age and without prejudice to the generality of the foregoing the Service Provider shall not unlawfully discriminate within the meaning and scope of the Equality Act 2010.

**15.4 Service Provider's Status**

15.4.1 Nothing contained in this Rolling Select List Agreement nor any Final Individual Placement Agreement created hereunder and no action taken by the Parties pursuant to those agreements, will be deemed to constitute a relationship between the Parties of partnership, joint venture, principal and agent or employer and employee. Neither party has, nor may represent that it has, any authority to act or make any commitments on the other party’s behalf.

**15.5 Prevention of Corruption**

15.5.1 The Service Provider shall not offer or give, or agree to give, to any employee, agent, servant or representative of the Council any gift or consideration of any kind as an inducement or reward for doing, any act in relation to the obtaining or execution of the Rolling Select List Agreement or any other contract with the Council, or for showing or refraining from showing favour or disfavour to any person in relation to the Rolling Select List Agreement or any such contract. The attention of the Service Provider is drawn to the criminal offences under the Bribery Act 2010.

15.5.2 The Service Provider warrants that it has not paid commission nor agreed to pay any commission to any Staff or representative of the Council by the Service Provider or on the Service Provider’s behalf.

15.5.3 Where the Service Provider engages in conduct prohibited by clauses 15.5.1 and 15.5.2 in relation to this or any other contract with the Council, the Council has the right to:

15.5.3.1 terminate the Rolling Select List Agreement and any Final Individual Placement Agreement created hereunder with immediate effect and recover from the Service Provider the amount of any loss suffered by the Council resulting from the termination, including the cost reasonably incurred by the Council of making other arrangements for the provision of the Ordered Services and any additional expenditure incurred by the Council throughout the remainder of the Term; or

15.5.3.2 recover in full from the Service Provider any other loss sustained by the Council in consequence of any breach of this clause whether or not the Rolling Select List Agreement or any linked Final Individual Placement Agreement has been terminated.

**15.6 Assignment, Sub-contracting and Responsibility**

15.6.1 Subject to any express provision of this Rolling Select List Agreement, the Service Provider shall not without the prior written consent of the Council, assign all or any benefit, right or interest under this Rolling Select List Agreement or sub-contract the provision of the Ordered Services.

15.6.2 The Council shall be entitled to:

15.6.2.1 assign, novate or dispose of its rights and obligations under this Rolling Select List Agreement or any Final Individual Placement Agreement either in whole or part to any contracting authority (as defined in The Public Contracts Regulations 2015); or

15.6.2.1.1 transfer, assign or novate its rights and obligations where required by Law.

15.6.2.2 The Service Provider shall remain responsible and liable for the acts and omissions of any other members of a consortium arrangement, sub-contractors, servants, agents and Staff as though they were its own.

**15.7 Third Party Rights**

15.7.1 This Rolling Select List Agreement and any Final Individual Placement Agreement created under it is enforceable by the original parties to it, by their successors in title and permitted assignees. Any rights of any third person to enforce the terms of this Rolling Select List Agreement or any Final Individual Placement Agreement created under it pursuant to The Contracts (Rights of Third Parties) Act 1999 are excluded.

**15.8. Severability**

15.8.1 If any provision of the Rolling Select List Agreement shall become or shall be declared by any court of competent jurisdiction to be invalid or unenforceable in any way, such invalidity shall not impair or affect any other provision all of which shall remain in full force and effect.

**15.9** **Force Majeure**

15.9.1 Neither party shall be liable for failure to perform its obligations under the Rolling Select List Agreement if such failure results from Force Majeure.

15.9.2 If the Council or the delivery location is affected by circumstance of Force Majeure, the Council shall be entitled to, totally or partially, suspend the date or dates for delivery of the Services until the circumstances of the Force Majeure have ceased. The suspension shall not give rise to any claim by the Service Provider against the Council nor entitle the Service Provider to terminate the Rolling Select List Agreement.

15.9.3 Industrial action by, or illness or shortage of the Service Provider’s Staff, agents or subcontractors, failure or delay by any of the Service Provider’s suppliers to supply goods, components, services or materials and breach of the Service Provider’s warranties shall not be regarded as an event of Force Majeure.

15.9.4 If the event of Force Majeure continues for more than two (2) months the Council may give written notice to the Service Provider to terminate the Rolling Select List Agreement immediately or on a set termination date.

15.9.5 If the Rolling Select List Agreement is terminated in accordance with Clause 15.9.4 neither party will have any liability to the other except that any rights and liabilities which accrued prior to termination will continue to exist.

**15.10 No Waiver**

15.10.1 Failure by either party at any time to enforce any one or more of the provisions of this Rolling Select List Agreement or any Final Individual Placement Agreement created under it, or to require performance by the other party of any of the provisions shall not constitute or be construed as a waiver of the provision or of the right at any time subsequently to enforce all terms and conditions of this Rolling Select List Agreement nor affect the validity of the Rolling Select List Agreement or any part of it or the right of the parties to enforce any provision in accordance with its terms.

15.10.2 No waiver of any of the provisions of this Rolling Select List Agreement or any Final Individual Placement Agreement created under it shall be effective unless it is expressed to be a waiver in writing and communicated in accordance with Clause 15.2 (Notices).

**15.11 Mistakes in Information**

15.11.1 The Service Provider shall be responsible for the accuracy of all documentation and information supplied to the Council by the Service Provider in connection with the Rolling Select List Agreement and shall pay the Council any extra costs reasonably occasioned by any discrepancies, errors or omissions therein.

**15.12 Conflicts of Interest**

15.12.1 The Service Provider shall take appropriate steps to ensure that neither the Service Provider nor any Staff employee, servant, agent, supplier or sub-contractor is placed in a position where in the reasonable opinion of the Council there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Service Provider or such persons and the duties owed to the Council under the provisions of the Rolling Select List Agreement. The Service Provider will disclose to the Council full particulars of any such conflict of interest, which may arise.

**15.13 Non-Exclusivity**

15.13.1 For the purposes of this Rolling Select List Agreement the Council retains the Service Provider for the performance of the Services on a non- exclusive basis.

**15.14 Entire Agreement**

15.14.1 The Rolling Select List Agreement constitutes the entire agreement between the Parties relating to the subject matter of the Rolling Select List Agreement. The Rolling Select List Agreement and any Final Individual Placement Agreement supersedes all prior negotiations, representations and undertakings, whether written or oral, except that this clause shall not exclude liability in respect of any fraudulent misrepresentation.

**15.15 Law and change in Law**

15.15.1The Service Provider shall comply at all times with the Law in its performance of the Rolling Select List Agreement.

15.15.2 On the occurrence of a change in Law which in the Council’s opinion has a direct effect upon the Charges or the Individual Placement Fee the parties shall meet within fourteen (14) days of the Service Provider notifying the Council of the change in Law to consult and seek to agree the effect of the change in Law and any change in the Charges as a result following the principle that this clause is not intended to create an artificial cushion from market forces for the Service Provider. If the parties, within fourteen (14) days of this meeting, have not agreed the occurrence or the impact of the change in Law, either party may refer the matter to dispute resolution in accordance with Clause 14.

15.15.3 Any agreed additional sums payable as a result of the operation of clause 15.15.2 shall be included in the Charges. For the avoidance of doubt nothing in this Rolling Select List Agreement is intended to allow the Service Provider double recovery of any increase in costs.

**15.16 Statutory Invalidity**

15.16.1 The Council and the Service Provider expressly agree that should any limitation or provision contained in this Rolling Select List Agreement or a Final Individual Placement Agreement be held to be invalid under any particular statute or law, or any rule, regulation or bye-law having the force of law, it shall to that extent be deemed to be omitted but, if the Council or the Service Provider thereby becomes liable for loss or damage which would have otherwise been excluded, such liability shall be subject to the other limitations and provisions set out herein.

**15.17 Non-solicitation and offers of employment**

15.17.1The Service Provider agrees that it will not, without the prior written consent of the Council, whether directly or indirectly, and whether alone or in conjunction with, or on behalf of, any other person and whether as a principal, shareholder, director, employee, agent, consultant, partner or otherwise during the Term or for a period of six months following termination of this Rolling Select List Agreement:

15.17.1.1 solicit or entice, or endeavour to solicit or entice, away from the Council, any person directly related to the Services employed in a senior capacity in a managerial, supervisory, technical, sales or administrative capacity by, or who is or was a consultant to, the Council at the date of the termination of this Rolling Select List Agreement or at any time during the period of one month immediately preceding the date of termination; or

* + - 1. attempt, or knowingly assist or procure any other person to do the above.
  1. **C****osts and expenses**

15.18.1 Each of the parties will pay their own costs and expenses incurred in connection with the negotiation, preparation, execution, completion and implementation of this Rolling Select List Agreement and any related Final Individual Placement Agreement.

* 1. **Survival**

15.19.1 The following clauses will survive termination or expiry of the Contract: Clause 11.3 (Consequences of Termination), Clause 13.2 (Intellectual Property), Clauses 13.1 and 13.4 (Confidentiality, Publicity and Transparency), Clause 13.6 (Data Protection), Clause 13.3 (Freedom of Information), Clause 13.55 (Record Keeping and Monitoring), Clause 10.4 (TUPE and Re-Tendering), Clause 15.8 (Severability), Clause 15.17 (Non Solicitation and Offers of Employment),and Clause 15.20 (Law and Jurisdiction).

**15.20** **Law and Jurisdiction**

15.20.1 This Rolling Select List Agreement is governed by and interpreted in accordance with English law and the Parties submit to the exclusive jurisdiction of the courts of England.

**THE COMMON SEAL OF THURROCK COUNCIL**

**Was hereunto affixed in the presence of:**

**…………………………….**

**Duly Authorised Officer**

**EXECUTED AND DELIVERED AS A DEED by NAME OF PROVIDER and signed by**

**.......................................................................................................................................**

**Signatory**

**.......................................................................................................................................**

**Name**

**.......................................................................................................................................**

**Signatory**

**.......................................................................................................................................**

**Name**

**SCHEDULE ONE**

**The Council’s Specification for the Services under the Rolling Select List Agreement**

**SCHEDULE TWO**

**THE ORDERING PROCESS**

The COUNCIL will rank providers following receipt of their tender response taking into account the following considerations:

* Quality % achieved
* Weekly fee offered
* % discounts offered for term placements and multi-placements
* The location of placements (will not apply to ranking but will be used when making placements to ensure that location satisfies the test that the placement is the most appropriate one for the child

**Making placements**

The Council will identify when a placement for a child, young person or family member is required.

Upon identification the Council will email all Service Providers that have been accepted onto the Rolling Select List Agreement, excluding any ineligible Service Providers, who may have been accepted onto the Rolling Select List, but have been suspended or otherwise excluded from the process in accordance with the terms and conditions within the Rolling Select List Agreement.

The Council will state the urgency of the placement (emergency, standard or planned), based upon the guidelines set out in the service specification relevant to the type of placement that is being made. The Service Provider will be given the timescale for response, which will usually be within the timescales set out in the service specification, unless there are exceptional circumstances, in which case all eligible Service Providers will be notified of the altered timescales.

Upon the expiry of the timeframe within which service providers on the Rolling Select List need to have responded to the notice by, the Council will proceed to select a provider, starting with consideration of the service provider who is ranked highest, based on a weighting of quality, weekly price, % discounts offered for term placements, and multi placements combined, in respect of the proposed placement location as detailed in the ‘procurement route and term’ section of the service specification.

As part of the process to select a service provider for a placement, the Council will take into account the weighting of ranked service providers, as mentioned above, as well as all appropriate and necessary factors and circumstances, including any practical or any applicable legal considerations that the Council reasonably deems it necessary to consider as part of the process to evaluate the suitability of a service provider for a proposed placement, and ultimately, make the most appropriate and suitable match. This may mean that whilst a provider may be ranked as the highest due to their pricing and quality and their overall tender response, the various factors that the Council must take into consideration before making a placement, may result in a placement being made with another ranked service provider, who, whilst not being the most highly ranked service provider, is reasonably deemed by the Council as the most appropriate for a particular placement.

Should a Service Provider not respond within the set timescales they will be excluded from the individual placement selection process for that placement. In circumstances where a Service Provider does not have any available placements a nil return response will be required to requests for placements.

In all circumstances the Council reserves the right, having taken into account any practical and other applicable factors, to find suitable placements that are the most appropriate for the child, whether these placements be made from Service Providers within the Rolling Select List (regardless of ranking to ensure the most appropriate placement is made for the child) or from the open market with providers who are not on the Rolling Select List. Placements made from the open market will be by exception only.

Until such time as a placement has been made and an Individual Placement Agreement (IPA) issued to the Service Provider, then the SERVICE PROVIDER will simply be part of the Rolling Select List without having entered into a contractual arrangement for a particular child as detailed in the Individual Placement Agreement.

**Fee payable**

* The fee payable for each new placement will be the price quoted for the type of placement as stated in the SERVICE PROVIDERS tender response or its submission of its charges at the Review Point for the period when the placement commences. This fee will remain payable at that level, with no increase, until the relevant individual placement agreement expires or is terminated by the Council.

**Annual opening of the Rolling Select List**

The Rolling Select List will be opened up annually at a time defined by the COUNCIL. This will allow new SERVICE PROVIDERS to join the list providing they are successful in passing the published criteria. At such point the COUNCIL will allow existing SERVICE PROVIDERS to change their pricing. Changed pricing will apply to future placements only and will not affect existing individual placement agreements. Changes in pricing will influence the SERVICE PROVIDER’S score and therefore may change the ranking of SERVICE PROVIDERS on the Rolling Select List.

Existing SERVICE PROVIDERS already accepted onto the Rolling Select List will not have to pass quality criteria upon the annual opening of the Rolling Select List, unless there are changes to legislation or local protocols that require the COUNCIL to amend its quality criteria for existing and new/future SERVICE PROVIDERS.

**Discounts to fees**

The Council expects that Service Providers will offer discounts on the fees charged by SERVICE PROVIDERS to the Council for multiple placements and long term placements. These discounts to the fees will reflect the commitment of SERVICE PROVIDERS to offer value for money to the COUNCIL. Service Providers can set the discount rate that they can offer the Council for Services under this Rolling Select List Agreement (in the Pricing Schedule at Schedule 4), where prompted. Together with the weekly fees that Service Providers set out as their weekly charge to the Council for the services, the level of discount, stated as a percentage by the Service Provider in the Pricing Schedule, will be considered as a part of the overall pricing submitted by the Service Provider, and will therefore affect the Service Provider’s overall ranking.

The fees quoted in Service Providers’ tender responses will be the basic weekly fee payable.

|  |  |
| --- | --- |
| **LOT Number** | **Discounts applied** |
| LOT 1 | 1. Multi Placement discount with same SERVICE PROVIDER |
| LOT 2 | 1. Multi Placement discounts with same SERVICE PROVIDER 2. Period discount |
| LOT 3 | 1. Multi Placement discounts with same SERVICE PROVIDER 2. Period discount |
| LOT 4 | None will be applied to this LOT |
| LOT 5 | A. Multi Placement discounts with same SERVICE PROVIDER  B. Period discount |

**Multi Placement discounts** - will be applied once a total of five current placements are active with the same SERVICE PROVIDER. These will be applied to all current placements (under this Rolling Select List) with the SERVICE PROVIDER once the total of five current placements are in place.

**Period discounts** will be applied once a placement has been in place for three months. These will be applied to the current placement that has exceeded three months in duration.

The weekly fee payable will be adjusted automatically by the COUNCIL from the 1st day of the next month after which the criteria are met. The rate of discount applied will be governed by the % discount offered by the SERVICE PROVIDER for term placements, and multi-placements discounts, within their tender response.

Should the SERVICE PROVIDER serve notice to the COUNCIL on a placement that results in the total current placements falling below 5 (and therefore the cut-off for the application of the multi-placement discount) the COUNCIL will reserve the right to continue to apply the multi-placement discount to all current placements. This action will not be taken if it is the COUNCIL that serves notice on the placement.

**SCHEDULE THREE**

**PRICING SCHEDULE FOR THE SERVICE PROVIDER**

**SCHEDULE FOUR**

**MODEL INDIVIDUAL PLACEMENT AGREEMENT**

The Individual Placement Agreement comprising:

Agreement Particulars for the Individual Placement Agreement and

Appendix A: Relevant Documentation for the Individual Placement

|  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **INDIVIDUAL PLACEMENT AGREEMENT PARTICULARS**  **For each Looked After Child, Young Person or Family**  This Individual Placement Agreement and Appendices details the service to be provided to an individual child/young person or family member and must be completed prior to admission, once approval for a placement has been agreed. It must be agreed and signed by both parties and appended to the child/young person or family member’s Care Plan and or other authorised documents. | | | | | | | | | | |
| **Note that two copies of this Individual Placement Agreement need to be signed by both parties; one copy is to be retained for by each party.** | | | | | | | | | | |
| |  |  |  |  |  | | --- | --- | --- | --- | --- | | **COUNCIL DETAILS** | | | | | | **Name of Council’s allocated team**: |  | **Name of Council Officer Individual Placement Agreement Manager:** |  | | | **Telephone number of Council Officer Individual Placement Agreement Manager:** |  | **Email address of Council Officer Individual Placement Agreement Manager:** |  | | | **Council emergency/out of hours email address:** |  | **Council emergency/out of hours telephone number:** | |  |  |  |  |  |  |  |  | | --- | --- | --- | --- | --- | --- | | **SERVICE PROVIDER DETAILS** | | | | | | | **Service Provider’s Name:** |  | | **Telephone:** | |  | | **Service Provider’s Address:** |  | | **Mobile phone:** | |  | | **Email address:** | |  | | **Name of contact at Service Provider:** |  | | **Address for invoicing purposes:** | |  | | **CARER DETAILS** | | | | | | | **Carer’s name:** | |  | | **Telephone:** |  | | **Carer’s Address:** | |  | | **Mobile phone** |  | | **Email address:** | |  | |  |  | | | | | | | | | | | |
| **CHILD/YOUNG PERSON/FAMILY MEMBER DETAILS** | | | | | | | | | | |
| **Child/ Young Person/Family member’s Name**: | |  | | | | | | | | |
| **Date of Birth:** | |  | | | | **Gender:** | | | |  |
| **Ethnicity of child/young person/family member:** | |  | | | | **Religion of child / young person/family member:** | | | |  |
| **Language of child / young person/family member:** | |  | | | | **Legal status of child in care:** | | | |  |
| **Disability / SEN details** | |  | | | | **Educational requirements – including number of weeks provision per annum:** | | | |  |
|  | |  | | | |  | | | |  |
| **Individual Child / Young person/family member’s Outcomes** | | **Specification Reference** | | | | **Start date** | | | | **Review date** |
| 1. | |  | | | |  | | | |  |
| 2. | |  | | | |  | | | |  |
| 3. | |  | | | |  | | | |  |
|  | |  | | | |  | | | |  |
| **PLACEMENT DETAILS** | | | | | | | | | | |
| **Placement start date:** |  | | | | **Projected/Actual Individual Placement end date** (*if known*): | | | |  | |
| **Cost breakdown – including funding from health / education:** |  | | | | **Savings requirements:** | | | |  | |
| **Contact details for advocacy service:** |  | | | | **Contact details for health provision:** | | | |  | |
| **THE INDIVIDUAL PLACEMENT FEE:** | | | | | | | | | | |
| **Individual Placement Fee-**  **Weekly Cost of Services provision in accordance with the Thurrock Council Rolling Select List Agreement, exclusive of VAT:** | | | | | | | | **£**      per week | | |
|  | | | | | | | |  | | |
| **Signatures**: The Service Provider and the Council agree to the placement for the named child/young person or family member in accordance with the details and stated outcomes set out above. For the purposes of this Individual Placement Agreement, the commencement date is the date of actual admission of the Looked After Child, Young Person or Family to the Service Provider. This condition and the Individual Placement Agreement in its entirety are not affected or altered in any way by the actual date of signature of this Individual Placement Agreement. | | | | | | | | | | | |
| **COUNCIL**  **Authorised Officer Name:** | | |  | | | | **SSERVICE PROVIDER**  **AAuthorised Officer Name:** | | | | |
|  | | |  | | | |  | | | | |
| **Signature:** | | |  | | | | **SSignature:** | | | | |
| **Date:** | | |  | | | | **DDate:** | | | | |
| **PLEASE RETURN COMPLETED, SIGNED AGREEMENT TO:** | | | | | | | | | | | |
| **Council Commissioning Team/ Placement/Resource Officer:** | | | | **AAddress:**  Thurrock Council, Children’s Commissioning Team, Civic Office, New Road, Grays, RM17 6SL | | | | | | | |

**APPENDIX A**

**(MISCELLANEOUS DOCUMENTS RELEVANT TO THE INDIVIDUAL PLACEMENT**

List of documentation to be provided by the council to the provider and which are to be inserted at this Appendix A – including but not limited to: placement request form, Looked After Child documentation, Single Assessment, Individual Care Plan, Individual Behaviour Plan, Individual Health Plan, Individual Education Plan, Personal Education Plan, Chronology, Placement Plan, Essential information, medical information, Pathway Plan, Statement of Special Educational Needs (or Educational Health and Care Plan), Learning Difficulty Assessment, CAMHS/other assessments, risk assessments

**SCHEDULE FIVE**

**Party Contact details**

|  |  |  |  |
| --- | --- | --- | --- |
|  | Name | Email address and phone number | Address |
| Key Personnel |  |  |  |
|  |  |  |  |
| Council’s Rolling Select List Agreement Manager | Sue Green – Strategic Lead for Children’s Commissioning | [cypcommissioning@thurrock.gov.uk](mailto:cypcommissioning@thurrock.gov.uk) | Thurrock Council, Civic Offices, New Road, Grays, Essex, RM17 6SL |
| Service Provider’s Rolling Select List Agreement Manager |  |  |  |

**SCHEDULE SIX**

**DATA PROCESSOR AGREEMENT**

**DEFINITIONS AND INTERPRETATION**

1.1 The following words and phrases used in this Agreement and the Schedules shall have the following meanings except where the context otherwise requires:

**“Party”**  a Party to this Agreement

**“Agreement”**  this contract;

**“Law”** means any law, subordinated legislation within the meaning of Section 21 (1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Contractor is bound to comply;

**“Contractor Personnel”** means all directors, officers, employees, agents, consultants, contractors and all affiliates of the Contractor and/or of any Sub-Contractor engaged in the performance of its obligations under this Agreement.

**“Data Protection Legislation”** (i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time;

(ii) the DPA 2018 [subject to Royal Assent] to the extent that it relates to processing Personal Data and privacy;

(iii) all applicable Law about the processing of Personal Data and privacy;

**“Data Protection Impact Assessment”** an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.

**“Data Loss Event”** any event that results in unauthorized access to Personal Data held by the Contractor under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach.

**“Data Subject Access Request (SAR)”** a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.

**“DPA 2018”** Data Protection Act 2018

**“GDPR”** the General Data Protection Regulation (Regulation (EU) 2016/679)

**“LED”** Law Enforcement Directive (Directive (EU) 2016/680)

**“Protective Measures”** appropriate technical and organizational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of such measures adopted by it.

**“Sub Processor”** any third Party appointed to process Personal Data on behalf of the Contractor related to this Agreement.

**“Controller, Processor, Data Subject, Personal Data, Personal Data Breach, Data Protection Officer”** shall take the meaning given in the GDPR.

* 1. This Agreement shall continue in full force and effect for the same period as the Master Contract, unless terminated for breach by either party.
  2. The Parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Data Controller and the Contractor is the Data Processor. The only processing that the Contractor is authorized to do is listed in Schedule 1 by the Customer and may not be determined by the Contractor.

1. **OBLIGATIONS OF THE CUSTOMER**
   1. The Customer shall provide the Personal Data to the Contractor together with such other information as the Contractor may reasonably require in order for the Contractor to provide the Services.
   2. The instructions given by the Customer to the Contractor in respect of the Personal Data shall at all times be in accordance with the laws of the United Kingdom.

**3. OBLIGATIONS OF THE CONTRACTOR**

* 1. The Contractor shall notify the Customer immediately if it considers that any of the Customer’s instructions listed in Schedule 1 infringe the Data Protection Legislation.
  2. The· Contractor will treat the Personal Data, and any other information provided by the Customer as confidential, and will ensure that access to the Personal Data is limited to only those Contractor Personnel who require access to it for the purpose of the Contractor carrying out the permitted processing and complying with its obligations under this Agreement.
  3. The Contractor shall provide all reasonable assistance to the Customer in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Customer, include:
     1. A systematic description of the envisaged processing operations and the purpose of the processing;
     2. An assessment of the necessity and proportionality of the processing operations in relation to the Services;
     3. An assessment of the risks to the rights and freedoms of Data Subjects; and
     4. The measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
  4. The Contractor shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:

1. Process that Personal Data only in accordance with Schedule 1, unless the Contractor is required to do otherwise by Law. If it is so required the Contractor shall promptly notify the Customer before processing the Personal Data unless prohibited by Law;
2. Ensure that it has in place Protective Measures, which have been reviewed and approved by the Customer as appropriate to protect against a Data Loss Event having taken account of the:
3. Nature of the data to be protected;
4. Harm that might result from a Data Loss Event;
5. State of technological development; and
6. Cost of implementing any measures;
7. Ensure that:
8. The Contractor Personnel do not process Personal Data except in accordance with this Agreement (and in particular Schedule 1);
9. It takes all reasonable steps to ensure the reliability and integrity of any Contractor Personnel who have access to the Personal Data and ensure that they:

* are aware of and comply with the Contractor’s duties under this clause;
* are subject to appropriate confidentiality undertakings with the Contractor or any Sub-processor;
* do not keep the Personal Data on any laptop or other removable drive or device unless that device is protected by being fully encrypted, and the use of the device or laptop is necessary for the provision of the services under this agreement. Where this is necessary, the Contractor will keep an audit trail of which laptops/drives/devices the Personal Data are held on.
* are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Customer or as otherwise permitted by this Agreement; and
* Have undergone adequate training in the use, care, protection and handling of Personal Data.

1. Not transfer Personal Data outside of the EU unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:
2. The Customer or the Contractor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Customer;
3. The Data Subject has enforceable rights and effective legal remedies;
4. The Contractor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavors to assist the Customer in meeting its obligations); and
5. The Contractor complies with any reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;
6. On satisfactory completion of the service or on termination of this agreement, the Contractor will ensure that the Personal Data is securely returned and/or removed from their systems and any printed copies securely destroyed unless the Contractor is required by Law to retain the Personal Data.
7. In complying with the clause (e), electronic copies of the Personal Data shall be securely destroyed by either physical destruction of the storage media or secure deletion using appropriate electronic shredding software that meets HM Government standards. Any hard copy will be destroyed by cross-cut shredding and secure re-cycling of the resulting paper waste.
   1. Subject to clause 3.6, the Contractor shall notify the Customer immediately if it;
      1. receives a SAR (or purported SAR);
      2. receives a request to rectify, block or erase any Personal Data;
      3. receives any other request, complaint or communication relating to either Party’s obligations under the Data Protection Legislation;
      4. receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement.
      5. receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
      6. becomes aware of a Data Loss Event.
   2. The Contractor’s obligation to notify under clause 3.5 shall include the provision of further information to the Customer in phases, as details become available.
   3. Taking into account the nature of the processing, the Contractor shall provide the Customer with full assistance in relation to either Party’s obligations under Data Protection Legislation and any complaint, communication or request made under clause 3.5 (and insofar as possible within the timescales reasonably required by the Customer and/or set by the relevant Law) including by promptly providing:
      1. the Customer with full details and copies of the complaint, communication or request;
      2. such assistance as is reasonably requested by the Customer to enable the Customer to comply with SARs within the relevant timescales set out in the Data Protection Legislation;
      3. the Customer, at its request, with any Personal Data it holds in relation to a Data Subject;
      4. assistance as requested by the Customer following any Data Loss Event;
      5. assistance as requested by the Customer with respect to any request from the Information Commissioner’s Office, or any consultation by the Customer with the Information Commissioner’s Office.
   4. The Contractor shall maintain complete and accurate records and information to demonstrate its compliance with this Agreement. This requirement does not apply where the Contractor employs fewer than 250 staff, unless:
      1. The Customer determines that the processing is not occasional;
      2. The Customer determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
      3. The Customer determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
   5. The Contractor shall allow for audits of its Data Processing activity by the Customer or the Customer’s designated auditor.
   6. The Contractor shall designate a Data Protection Officer if required by the Data Protection Legislation.
   7. Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Contractor must;
      1. Notify the Customer in writing of the intention to subcontract to a Sub-processor and the nature of the intended processing;
      2. Obtain the written consent of the Customer;
      3. Enter into a written agreement with the Sub-processor which give effect to the terms set out in this agreement such that they apply to the Sub-processor; and
      4. Provide the Customer with such information regarding the Sub-processor as the Customer may reasonably require.
   8. The Contractor shall remain fully liable for all acts or omissions of any Sub-processor.
   9. If the Contactor or Sub-processor does not follow the written instructions of the Customer in processing its Personal Data and determines the processing purpose or means of processing themselves, the Contractor or Sub-processor will be considered to be a Controller in respect of that processing and be liable for any subsequent breaches accordingly.
   10. The Customer may, at any time on not less than 30 Working Days’ notice, revise this Agreement by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).
   11. The Parties agree to take account of any guidance issued by the Information Commissioner’s Office. The Customer may on not less than 30 Working Days’ notice to the Contractor, amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner’s Office.
8. **INDEMNITIES**

Each party shall indemnify the other against all costs, expenses, including legal expenses, damages, loss, including loss of business or loss of profits, liabilities, demands, claims, actions or proceedings which a party may incur arising out of any breach of this Agreement howsoever arising for which the other party may be liable.

1. **GOVERNING LAW**

This Agreement shall be governed by and construed in accordance with English law and each party hereby submits to the non-exclusive jurisdiction of the English courts.

1. The Contractor shall comply with any further written instructions with respect to processing by the Customer.
2. Any such further instructions shall be incorporated into this Schedule.

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| **Description** | **Details** |
| Subject matter of the processing | The delivery of placement provision for looked after children aged 0-25:   * Supported Accommodation for young people aged 16-18 * Independent Foster Care (Agencies) * Residential Care * Family Assessment Centres |
| Duration of the processing | 1st February 2019 to 31st January 2025.  The terms and conditions of this contract may continue beyond this date in the event of Services continuing in respect of an Individual Placement. |
| Nature and purposes of the processing | The processing is required so the provider can safely care and safeguard looked after children placed with the provider |
| Type of Personal Data | Name, Address, Gender, Ethnicity, Sexuality, Age, primary reason for referral, disability, medical conditions, mental health records, offending behaviour, criminal record details, next of kin, emergency contact details, school/college/employer, Children’s Social Care case notes, Family Court case notes, Allocated solicitor case notes |
| Categories of Data Subject | Children and young people, and the Provider’s staff and volunteers. |
| Plan for return and destruction of the data  once the processing is complete UNLESS  requirement under union or member state law to  preserve that type of data i.e. data relating to Children required to be retained due to relevant legislation | Destroy – 75 years from the birth date of the child |