

ITT Schedule 1 – The Contract

For the bespoke flexible procurement solution known as the

**FLEXIBLE PROCUREMENT AGREEMENT
(THE CONTRACT)**

FOR

**005600 – NEPO EDUCATION, HEALTH
AND SOCIAL CARE**

005600 – NEPO: EDUCATION, HEALTH AND SOCIAL CARE

This Flexible Procurement Agreement (the Contract) covers placements in the following: -

- INDEPENDENT SPECIAL SCHOOLS AND COLLEGES PRE-16 (LOTS 1 - 9) – Schedule A
- INDEPENDENT SPECIAL SCHOOLS AND COLLEGES POST-16 (LOTS 10 - 18) – Schedule B
- CHILDREN'S RESIDENTIAL HOMES (LOTS 19 - 21) – Schedule C
- OFSTED REGISTERED RESIDENTIAL SHORT BREAKS (LOT - 22) – Schedule D

PART A contains the terms and conditions for the overarching Flexible Procurement Agreement (the Contract). The Call-Off terms and conditions are contained in the four Schedules A, B, C and D attached at PART B. Each Schedule contains the terms and conditions relevant to each of the four service areas as detailed above.

For the purpose of clarity in relation to Children's Homes delivering Services under Lots 19-21, Where applicable, Homes must evidence that they are registered with the appropriate regulatory body; for example, Ofsted, CQC or Care Inspectorate Scotland in order to be eligible to apply to the Flexible Procurement Agreement (the Contract). Non-premises based Homes, such as mobile settings and Homes that operate on a letting arrangement, that prior to May 2017, were required to be registered with Ofsted and are now categorised by Ofsted as unregulated, are still eligible to apply to deliver Services under the Flexible Procurement Agreement (the Contract).

For the avoidance of doubt, this Flexible Procurement Agreement (the Contract) does not cover:-

- education arranged by local authorities for pupils who, because of exclusion, illness or other reasons, would not otherwise receive suitable education;
- education arranged by schools for pupils on a fixed period exclusion; pupils being directed by schools to off-site provision to improve their behaviour; Young People in independent supported living placements with education and work programmes; and/or Young People in work placements;
- residential holiday schemes for disabled children;
- Young People in independent supported living placements with education and work programmes;
- Young People in work placements;
- academies;
- Alternatively Resourced Provision (ARP);
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- (g) The Council of the Borough of North Tyneside, Quadrant, Cobalt Business Park, North Tyneside, NE27 0BY;
- (h) Redcar and Cleveland Borough Council, Redcar & Cleveland House, Kirkleatham Street, Redcar, Yorkshire, TS10 1RT;
- (i) The Council of the Borough of South Tyneside, Town Hall and Civic Offices, Westoe Road, South Shields, Tyne and Wear NE33 2RL;
- (j) Stockton-on-Tees Borough Council, Municipal Buildings, Church Road, Stockton-on-Tees, TS18 1LD; and
- (k) Together for Children Sunderland Limited, Civic Centre, Burdon Road, Sunderland, SR2 7DN;
- (l) Darlington Clinical Commissioning Group, Darlington Clinical Commissioning Group Chair's Office, Dr Piper House, King Street, Darlington DL3 6JL;
- (m) Durham Dales, Easington and Sedgefield Clinical Commissioning Group, Sedgefield Community Hospital, Salters Lane, Sedgefield, Stockton on Tees, Cleveland TS21 3EE;
- (n) Hartlepool and Stockton on Tees Clinical Commissioning Group, Billingham Health Centre, Queensway, Billingham, Cleveland TS23 2LA;
- (o) NHS Newcastle Gateshead Alliance Clinical Commissioning Group, Goldcrest Way, Newburn Riverside (Business Park), Newcastle upon Tyne NE15 8NY;
- (p) North Durham Clinical Commissioning Group, The Rivergreen Centre, Aykley Heads, Durham, County Durham DH1 5TS;
- (q) North Tyneside Clinical Commissioning Group, 12 Hedley Court, Orion Business Park, North Shields, Tyne and Wear NE29 7ST;
- (r) South Tees Clinical Commissioning Group, North Ormesby Care Village, 11 Trinity Mews, North Ormesby, Middlesbrough TS3 6AL;
- (s) South Tyneside Clinical Commissioning Group, Monkton Hall, Main Hall, Monkton Lane, Jarrow, Tyne and Wear NE32 5NN; and
- (t) Sunderland Clinical Commissioning Group, Pemberton House, Colima Avenue, Sunderland Enterprise Park, Sunderland, Tyne and Wear SR5 3XB.

A1. DEFINITIONS

In this Flexible Procurement Agreement (the Contract) and each Call-Off Contract, where relevant, except where the context otherwise requires, the following expressions shall have the meanings hereby ascribed to them:

- A1.1 **“Academic Year”** means a standard academic year either in whole or in part.
- A1.2 **“Additional Services”** means the list of Services that sit outside of the Minimum Core Service Offer and will be used to ensure that the specific needs of the Child/Young Person can be met.
- A1.3 **“Admission Date”** means the actual date on which the Child/Young Person is admitted to the Placement as shown in the IPA.
- A1.4 **“Advocate”** Means a person standing in for, or representing the Child’s best interest, including a carer or relative.
- A1.5 **“Alternative Education”** means education arranged by local authorities for pupils who, because of exclusion from a placement, illness or other reasons, would not otherwise receive suitable education; education arranged by Providers for pupils on a fixed period exclusion; and pupils being directed by Providers to off-site provision to improve their behaviour.
- A1.6 **“Arrangements”** means the standards of care, practices and operations required of the Placement to comply with the delivery of Services under this Flexible Procurement Agreement (the Contract).
- A1.7 **“Assessment Placement”** means a short term placements where admission and leaving dates have been agreed in advance
- A1.8 **“Authorised Officer”** means the Officer appointed by the Lead Authority with the authority to enter into or terminate the Flexible Procurement Agreement (the Contract) and to exercise its rights and powers under this Flexible Procurement Agreement (the Contract).
- A1.9 **“Band/Banding”** means type of Services provided for example, day, weekly boarder, termly boarder, Child / Young Person Short Break, Children’s Homes or 52–week residential.
- A1.10 **“Boarding School”** means mainstream boarding schools for all age groups of pupils up to 18, including any lodging arrangements organised by the school for residential pupils; any pupils over the age of 18 on the roll of the school who live alongside those who are under 18; and children accommodated at the school, other than pupils.
- A1.11 **“Call-Off Alert”** means the documentation uploaded by a Placing Authority on to the NEPO Portal to advise Providers of the further competition opportunity, ITT **Schedule 1(3)**, and including any additional documentation provided via the NEPO Portal or subsequently prior to the completion of the Call-Off Contract.

A1.12 "**Call-Off Contract**" means the legally binding agreement (made pursuant to the provisions of this Flexible Procurement Agreement (the Contract)) for the provision of Services made between a Placing Authority and the Provider comprising: (i) the Individual Placement Agreement; (ii) the Call-Off Terms and Conditions (Schedule A, B, C or D) relevant to that Lot; and (iv) the Call-Off Alert.

A1.13 "**Call-Off Terms and Conditions**" means the terms and conditions detailed in one of the Schedules at Part B of the Flexible Procurement Agreement (the Contract), which Schedule relates specifically to the Lot that the Services to be purchased fall under as follows:-

SCHEDULE A: Call-Off Terms and Conditions - **INDEPENDENT SPECIAL SCHOOLS AND COLLEGES PRE-16 (LOTS 1 - 9) ONLY**

SCHEDULE B: Call-Off Terms and Conditions - **INDEPENDENT SPECIAL SCHOOLS AND COLLEGES POST-16 (LOTS 10 - 18) ONLY**

SCHEDULE C: Call-Off Terms and Conditions - **CHILDREN'S HOMES (LOTS 19 - 21) ONLY**

SCHEDULE D: Call-Off Terms and Conditions – **OFSTED REGISTERED RESIDENTIAL SHORT BREAKS (LOT 22) ONLY**

A1.14 "**Care Manager**" means the person appointed by the Placing Authority to develop a Care Plan to meet the assessed needs of the Child/Young Person. In practice this may be a social worker or other appropriate professional.

A1.15 "**Care Plan**" means a document detailing a Child/Young Person's specific health and/or social care needs and requirements for which the Placing Authority is responsible or a plan drawn up by the responsible Placing Authority for a "Looked After Child" which will contain a Personal Education Plan in addition to the health and social care elements.

A1.16 "**Carer**" means a person named by the Placing Authority to care for a Child/Young Person for whom the Authority has parental responsibility or a support worker appointed to support/care for a Child/Young Person for whom the Placing Authority does not have parental responsibility.

A1.17 "**Change in Law**" means the coming into effect or repeal (without re-enactment or consolidation) in England of any Law, or any amendment or variation to any Law, or any judgment of a relevant court of law which changes binding precedent in England in each case after the date of this Flexible Procurement Agreement (the Contract).

A1.18 "**Child/Young Person**" and/or "**Children/Young People**" means the child or young person named in the Individual Placement Agreement (IPA) entered into between the Provider and the Placing Authority as a result of this Flexible Procurement Agreement (the Contract).

A1.19 "**Children's Home**" or "**Home**" means a residential establishment, including a Nursing Home (see below) that provides 24 hour care and accommodation for a Child who is unable to live with their family. Where applicable, Homes must be registered with the appropriate regulatory body; for example, Ofsted, CQC or Care

Inspectorate Scotland in order to be eligible to apply to the Flexible Procurement Agreement (the Contract). Children's Home or Home also includes non-premises based Homes, such as mobile settings and Homes that operate on a letting arrangement, that prior to May 2017, were required to be registered with Ofsted and are now categorised by Ofsted as unregulated.

A1.20 "**Children's Homes Regulations 2015**" means The Children's Homes (England) Regulations 2015 (Statutory Instrument Number 541/2015) governing Children's Homes in England made by the Secretary of State under sections 1, 22, 34, 35 and 118 of the Care Standards Act 2000.

A1.21 "**Commencement Date**" means 1 February 2018.

A1.22 "**Commercially Sensitive Information**" is the information given to the Lead Authority by the Provider when it submitted its tender, and which comprises the information of a commercially sensitive nature relating to the Provider, its intellectual property or its business and which the Provider has indicated to the Lead Authority would cause the Provider significant commercial disadvantage or material financial loss if disclosed.

A1.23 "**Confidential Information**" means information obtained from or relating to either the Provider or the Participating Organisations, or their business or affairs, agents or employees and any information regarding the Child and/or Young Person.

A1.24 "**Contingency Arrangements**" means the Services defined within the Individual Placement Agreement (IPA) that the Provider can put in place immediately without further reference to the Placing Authority where this is required to support the Placement and meet the immediate needs of the Child/Young Person.

A1.25 "**Contract**" means the Flexible Procurement Agreement (the Contract), Schedules, Appendices and any Call-Off Contract to which reference may properly be made to ascertain the rights and obligations of the Lead Authority, the Placing Authority or the Provider.

A1.26 "**Contract Term**" means the period of the Flexible Procurement Agreement (the Contract) from 1 February 2018 to 31 January 2022 unless the Term is extended in accordance with the options to extend, in which case the Contract Term shall be the latest date advised by the Lead Authority.

A1.27 "**Contracts Manager - Provider**" means the person or persons appointed and authorised by the Provider to enter into the Flexible Procurement Agreement (the Contract) and/or oversee and monitor the Call-Off Contracts on its behalf.

A1.28 "**Contracts Officer – Placing Authority**" means the person or persons appointed by a Placing Authority to oversee and monitor the Call-Off Contracts on behalf of that Placing Authority.

A1.29 "**Contracts Officer – Provider**" (if different to the Contracts Manager) means the person or persons appointed by the Provider with authority to oversee and monitor the Call-Off Contracts on behalf of the Provider.

- A1.30 “**Contribution**” means a voluntary contribution payable directly to the Provider by a Parent or by a Child/Young Person and which is outside the terms of this Flexible Procurement Agreement (the Contract).
- A1.31 “**Control**” means control as defined by section 450, 451, 707 and 1124 of the Corporation Tax Act 2010.
- A1.32 “**Core Costs**” means the costs payable for Services delivered by the Provider in order to meet the Minimum Core Service Offer.
- A1.33 “**Data**” means
- (a) The data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are:
 - (i) Supplied to the Provider by or on behalf of any of the Participating Organisations; or
 - (ii) which the Provider is required to generate, process, store or transmit pursuant to this Flexible Procurement Agreement (the Contract); or
 - (b) Any personal Data for which any of the Participating Organisations is the Data Controller.
- A1.34 “**Crisis Plan**” means the document that outlines actions to be taken in respect of crisis in relation to an individual Child/Young Person.
- A1.35 “**DBS Check**” means a check carried out by an employer via the Disclosure and Barring Service for the purposes of establishing whether any person engaged by them has a criminal record and/or is entered on the Children and/or Adults’ barred lists which may exclude the person from carrying out Services under this Contract.
- A1.36 “**Delivery Instructions**” means the direction for the provision of Services given to the Provider by the Placing Authority in the IPA together with any agreed variation confirmed in writing.
- A1.37 “**Direct Payment – SCHEDULES A and B (LOTS 1-18)**” means a payment made to a Child/Young Person or their representative under section 49 Children and Families Act 2014 for the purposes of purchasing Services and which is outside of the terms of this Flexible Procurement Agreement (the Contract).
- A1.38 “**Direct Payment – SCHEDULE D (LOT 22)**” means a payment made to a Child/Young Person or their representative under either section 17A of the Children Act 1989 and/or section 57 and/or 58 of the Health and Social Care Act 2001 for the purposes of purchasing Services and which is outside of the terms of this Flexible Procurement Agreement (the Contract).
- A1.39 “**Disclosure**” means the information obtained from the Disclosure and Barring Service as part of Safer Recruitment Processes.

- A1.40 “**DPA**” means the Data Protection Act 1998 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government Department in relation to such legislation.
- A1.41 “**Education Funding Agency**” (“**EFA**”) means the Executive Agency of the Department for Education which manages the funding for Children/Young People between the ages of 3-25 years with special educational needs and disabilities.
- A1.42 “**Education, Health and Care Plan**” (“**EHC Plan**”) means the plan outlining the details for education, health and social care support that is to be provided to a Child/Young Person with special educational needs or a disability, drawn up by the Placing Authority.
- A1.43 “**EFA Funding**” means the funding available to Providers from the EFA for educational placements.
- A1.44 “**EIR**” means the Environmental Information Regulations 2004 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government Department in relation to such legislation.
- A1.45 “**Element 1 Funding**” (core funding) is the funding provided to a School, College or Education Placement based on the applicable funding formula by the EFA.
- A1.46 “**Element 2 Funding**” (additional needs funding) is the funding provided to a School, College or Educational Placement, which allows it to meet the costs of providing additional support to Children/Young People with special educational needs up to a fixed amount, provided by the EFA.
- A1.47 “**Element 3 Funding**” (high needs funding) is the funding above the Element 1 and Element 2 funding that is needed to meet the Fees in respect of a Child/Young Person as assessed by the Placing Authority, as agreed by this Flexible Procurement Agreement (the Contract) and as detailed in each IPA.
- A1.48 “**Employees**” means a person who works in the service of the Provider under an express or implied contract of hire, under which the Provider has the right to control the details of work performance.
- A1.49 “**Emergency Placement**” means a Placement made in accordance with the provisions of the Emergency Placement clauses in Schedule 1 - Part B - Schedules A, B, C and D as relevant to the service area.
- A1.50 “**End Date**” means 31st January 2022 unless one or both options to extend the Flexible Procurement Agreement (the Contract) are taken up by the Lead Authority in accordance with Clause A3.1.
- A1.51 “**Fees**” shall mean the Core Costs detailed in an IPA in respect of a Child/Young Person which the Provider is to receive from the Placing Authority for the Services including any Additional Services and Contingency Arrangements.
- A1.52 “**First Tier Tribunal - SEN**” means the Tribunal responsible for dealing with applications in relation to Health, Education and Social Care or any appeal arising from an application to the First Tier Tribunal.

- A1.53 **“Flexible Procurement Agreement Contracts Manager”** means the individual appointed by the Lead Authority who will carry out the overarching contract management arrangements on this collaborative arrangement and will escalate to the NEPO Contact Officer where applicable.
- A1.54 **“Flexible Procurement Agreement (the Contract)”** means the terms and conditions at Part A and Part B of the Flexible Procurement Agreement (the Contract) and the Schedules attached thereto.
- A1.55 **“FOIA”** means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government Department in relation to such legislation.
- A1.56 **“Gradual Admission”** means the process of a Child/Young Person starting a placement by a staggered, incremental approach.
- A1.57 **“Health Services”** means the Services including but not limited to those listed under the heading Health in ITT Schedule 1(2).
- A1.58 **“Head Teacher” (“Head, Leader, Principal, and/or Proprietor”)** means the person designated in charge of the School, College or Education Placement and who acts in loco parentis.
- A1.59 **“Independent Children’s Home”** Means an independent person or body who provides an establishment defined as a children’s home by the Care Standards Act 2000, as providing care and accommodation wholly or mainly for children.
- A1.60 **“Independent Reviewing Officer”** means a person who ensures that Looked After Children have regular reviews to consider the Care Plan and Placement and that the Council is fulfilling its duties and responsibilities appointed under section 25A of the Children Act 1989.
- A1.61 **“Individual Behaviour Plan”** or **“IBP”** Means the Individual Behaviour Plan which is the written plan for managing the Child’s behaviour.
- A1.62 **“Individual Education Plan” (“IEP”)** is the plan for an individual Child/Young Person's educational programme for which the Provider is responsible.
- A1.63 **“Individual Placement Agreement” (IPA)** means an agreement entered into between a Placing Authority and a Provider in the form set out in Schedule 1(4) for the provision of Services in respect of an individual Child/Young Person who is the subject of a Placement and which incorporates the Part B Call-Off Terms and Conditions together with the information contained or detailed in Schedule 1(4) and which forms part of the Call-Off Contract.
- A1.64 **“Information”** has the same meaning given to it under section 84 of the FOIA.
- A1.65 **“Inspectorates/Regulatory Body(ies)”** means any or all of the Department of Education (DfE), Office for Standards in Education (Ofsted), Independent Schools Inspectorate (ISI), Her Majesty’s Inspectorate for Education and Training in Wales (Estyn), Education Scotland, the Education Funding Agency (EFA), Care Scotland,

the Care Quality Commission (CQC), their equivalent or successors.

A1.66 **“Intellectual Property Rights” or “IPR”** means Copyright, rights relating to or affording protection similar to copyright, rights in databases, patents, patents and rights in inventions, trademarks, rights in trade names, designs;

Applications for registration, and the rights to apply for registration, for any of the rights listed that are capable of being registered in any country or jurisdiction; and

All other rights having equivalent or similar effect in any country or jurisdiction.

A1.67 **“Invitation to Tender”** means the Lead Authority’s Invitation to Tender for the Flexible Procurement Agreement (the Contract) for the Services including all the Schedules thereto.

A1.68 **“Law”** means any applicable law, statute, bye-law, regulation, order, regulatory policy, guidance or industry code, rule of court or directives or requirements of a Regulatory Body, delegated or subordinated legislation or notice of any Regulatory Body.

A1.69 **“Lead Authority”** is The Council of the City of Newcastle upon Tyne as a Party to the Flexible Procurement Agreement (the Contract) on behalf of the Participating Organisations and shall include its representatives, successors and assigns.

A1.70 **“Lead Professional(s)”** means the relevant education, health or social care professional(s) involved in arranging the Placement.

A1.71 **“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.

A1.72 **“Link Authority”** means one of the Participating Organisations that is assigned by the Participating Organisations to the Provider and will undertake the main monitoring and provide a supportive role throughout the duration of the Flexible Procurement Agreement (the Contract).

A1.73 **“Link Officer”** means the individual within the Link Authority acting on behalf of the Participating Organisations.

A1.74 **“Looked After Child”** means a child in the care of any Placing Authority as defined by the Children Act 1989.

A1.75 **“Looked After Review”** means a regular meeting, required by law, that brings together those people who are closely concerned with the care of the Child, to ensure their needs are being met.

A1.76 **“Lot” or “Lots”** means the category descriptor(s) used to identify the primary needs of a Child/Young Person or the placement type.

- A1.77 “**Minimum Core Service Offer**” means the minimum services to be delivered by the Provider to every Child/Young person for the Core Placement Cost of the Placement before Additional Services or any Contingency Arrangements are provided for.
- A1.78 “**Medication Administration Record - MARs**” means a schedule for administering medications for a defined period of time, including dosing, timing of administration and details about the physician’s orders.
- A1.79 “**NEPO Contact Officer**” means the officer employed by NEPO who is the point of contact for the Flexible Procurement Agreement (the Contract) for any issues arising under the collaborative arrangements between the Participating Organisations or between the Participating Organisations and any Provider.
- A1.80 “**NEPO Portal**” means the electronic website via which individual opportunities will be advertised.
- A1.81 “**National Minimum Standards for Children’s Homes**” means a statement of national minimum standards published by the Secretary of State for Health under section 23 of the Care Standards Act 2000.
- A1.82 “**Notice Period**” means the period for which the Placing Authority will be liable for paying the Fee to the Provider as detailed in the Call-Off Contracts A, B, C and D.
- A1.83 “**Ofsted**” Means Office for Standards in Education, Children Services and Skills which brings together the duties previously undertaken by the Social Services Inspectorate, the SSI/Audit Commission joint review team and the social care functions of the Commission for Social Care Inspection.
- A1.84 “**Outcomes**” means the outcomes defined within the Service Specification (Schedule 1 (1)) Care Plan and/or EHC Plan/SEN Statement for the Child/Young Person.
- A1.85 “**Parent**” means the Child/Young Person’s mother and/or father and includes any person who is not a parent of the Child/Young Person but who has parental responsibility for them or who cares for them.
- A1.86 “**Parental/Young Person Preference - SEN**” means a preference expressed by a Parent or a Young Person (with relevant capacity) for a particular education Provider. Any preference expressed shall be considered by the Placing Authority in light of its duties under Section 39(3) and Section 39(4) of the Children and Families Act 2014.
- A1.87 “**Participating Organisation(s)**” means each of the Participating Organisations detailed at A (ii) either individually or collectively as the context allows. The Participating Organisations named in the Contract Particulars, and where the context so admits, includes any person which takes over or assumes the statutory functions or administrative responsibilities of the Participating Organisations (whether in part or totally) or which is controlled by or is under common control with the Participating Organisations (and the expression ‘control’ shall mean the power to direct or cause the direction of the general management and policies of the person in question but only for so long as such control exists)

- A1.88 **“Party” or “Parties”** means a Party/the Parties to the Flexible Procurement Agreement (the Contract) and/or Call-Off Contracts under it including all Participating Organisations detailed at A (ii) either individually or collectively as the context allows.
- A1.89 **“Pathway Plan”** means the plan which determines the needs of the child in order to prepare them for leaving care as required under the Children (Leaving Care) Act 2000.
- A1.90 **“Payment Dates”** means the last day of each month in each year. Payments to be made monthly in arrears.
- A1.91 **“Personal Education Plan” or “PEP”** means the plan for the education of a Looked After Child.
- A1.92 **“Personal Adviser”** means any adviser employed to provide information, advice and guidance to a Child/Young Person between the ages of 13 and 25 years.
- A1.94 **“Placement”** means a specific commitment made by the Placing Authority through the completion of an IPA in respect of a Child/Young Person and agreed by the Provider for the provision of education and/or health and/or care to address a Child/Young Person's individual needs in accordance with their Care Plan, EHC Plan, Statement of Special Educational Needs (SEN Statement), IEP and/or PEP.
- A1.94 **“Placement Offer”** means an offer made by a Placing Authority to a Provider in respect of an individual Child/Young Person following, if required, a further competition for a potential Placement.
- A1.95 **“Placement Plan”** means the written plan prepared by the Provider in accordance with Regulations 17 and/or 18 of the Children's Homes (England) Regulations 2015.
- A1.96 **“Placement Term”** means the period from the Admission Date to the termination date as indicated in the IPA unless terminated earlier or varied in accordance with the provisions of Schedules A, B, C and D within clause A8.
- A1.97 **“Placing Authority”** means the individual Participating Organisation that has the responsibility for the Child/Young Person (including any successor to its functions) and which is directly liable for all contractual obligations arising from the entering into any Call-Off Contract under the Flexible Procurement Agreement (the Contract).
- A1.98 **“Plan(s)”** refers to all necessary plans for the education, health and/or care of an individual Child/Young Person according to current legislation and statutory guidance.
- A1.99 **“Planning Meeting”** means the meeting held between the Placing Authority and the successful Provider following award of a Call-Off.
- A1.100 **“Preferred Provider”** means any education Provider for whom the Parent/Young Person has expressed a preference.
- A1.101 **“Provider”** means the organisation or body which maintains the School, College,

Education, Children's Home or Short Breaks setting and is a Party to this Flexible Procurement Agreement (the Contract) and shall include its representatives, Employees, subcontractors, successors and assigns.

- A.102 **"Retainer"** means a charge to be paid by the Placing Authority to the Provider for holding a Placement for an agreed period of time prior to the Child/Young Person physically commencing the Placement or due to a Child/Young Person being absent from Placement for an extended period of time; for example, in detention or hospital.
- A1.103 **"Quality Standards"** means the quality standards set out in the Children's Homes (England) Regulations 2015.
- A1.104 **"Records Regulations"** means the appropriate legislation and regulations relevant to the Services provided by the Provider governing the nature, extent and retention periods for records relating to Children/Young People receiving Services from the Provider.
- A1.105 **"Registered Manager"** means the individual registered with either Ofsted or the Care Quality Commission in relation to a particular Setting who is responsible for the Services delivered from that Setting.
- A1.106 **"Registered Provider"** means the person who is registered under Part 2 of the Care Standards Act 2000 as the person carrying on the home;
- A1.107 **"Regulated Activity"** means a regulated activity relating to Children and Young People within the meaning of Part 1 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006 and for which all employees, volunteers, trustees and others may be eligible for a DBS check, depending on the nature of the work they undertake. Eligibility for DBS certificates is determined in accordance with the Police Act 1997.
- A1.108 **"Residential Care"** means a residential establishment which is registered as a Children's Home and may include residential special schools that accommodate Children for more than 295 days per year.
- A1.109 **"Residential Special Schools"** means a school which accommodates or arranges accommodation for any child for more than 295 days a year, or intends to do so and is required to register as a children's home with Ofsted.
- A1.110 **"Residential Short Break"** means an opportunity for disabled Children/Young People to spend time away from their primary carers in a residential setting.
- A1.111 **"Review"** means the annual or other review of a Child/Young Person's Care Plan, Statement of Special Educational Needs, EHC Plan or other arrangement. For Looked After Children, Reviews are meetings held at intervals governed by the Children Act 1989 which are fully recorded and which include consultation with the Child, Parent, Social Worker, significant others (including the Provider).
- A1.112 **"Schedules"** means any of the Schedules annexed hereto.
- A1.113 **"SEND Code of Practice"** means the DfE/DoH Special Educational needs and disability code of practice: 0-25 years January 2015 or its successor.

- A1.114 **“Serious Breach”** means circumstances where either Party has been shown to have failed to fulfil its obligations in accordance with the requirements set out in this Flexible Procurement Agreement (the Contract) and/or Call-Off Contract, being a breach which goes to the root of this Flexible Procurement Agreement (the Contract) and/or Call-Off Contract such failure being considered so serious and fundamental to the continuance of the Flexible Procurement Agreement (the Contract) and/or Call-Off Contract as to justify immediate termination.
- A1.115 **“Services”** means all provision of assessed education, health, care, work, actions and responsibilities required of the Provider as described in the Flexible Procurement Agreement (the Contract) and the Call-Off Contract.
- A1.116 **“Service Specification”** means the document setting out the standards of service the Participating Organisations require the Provider to provide attached as Schedule 1(1) of this Flexible Procurement Agreement (the Contract) and any subsequent amendment(s) thereto.
- A1.117 **“Setting”** means the location of the Provider’s premises from where the Services are to be primarily delivered.
- A1.118 **“Short Stay Residential”** means a short term placements where admission and leaving dates have been agreed in advance.
- A1.119 **“Statement of Special Educational Needs”** (SEN Statement) means the document for the time being that sets out a Child/Young Person’s special educational needs and any additional help they should receive to meet those needs for which the Placing Authority is responsible and which has not been replaced by an EHC Plan.
- A1.120 **“Staff”** means the group of persons or person employed by the Provider, charged with carrying out the work of the Provider or executing some undertaking.
- A1.121 **“Solo Placement”** means Children’s Home providing care for a single Child/Young Person only.
- A1.122 **“Statement of Purpose”** means a guide as to the Services provided by that particular Home compiled in accordance with Regulation 16 of the Children’s Homes (England) Regulations 2015.
- A1.123 **“Suspension Notice”** means a notice the Lead Authority or any of the Placing Authorities may serve on the Provider which details the parts of the Services which are to be suspended and the time period for improvement.
- A1.124 **“Tender”** means the Provider’s tender for the Services in response to the Placing Authority’s Call-Off Alert.
- A1.125 **“Trial Period”** means the first 28 days of a Placement from the Admission Date specified in the IPA. For Placement made under ITT Schedule 1 - Part B - Schedule D (Short Breaks) the 28 day Trial Period will commence from the first day the Child/Young Person attends the Placement.
- A1.126 **“Undisputed Invoice”** means an invoice that has been sent (in the correct format to the Contracts Officer – Placing Authority as detailed in Schedule 1(7)

or such replacement notified to the Provider in writing by the Placing Authority) and the invoice is for payment as set out under the terms and conditions and subject to the provisions under the clauses entitled 'Payment of Fees' in Schedule 1 – Part B – Schedules A, B, C and D and the Placing Authority has not raised concerns in accordance with the provisions of Schedules A, B, C and D under Clause A8 about the invoice details or the performance of the relevant service to which the invoice relates within 30 days of the invoice being issued and payment becoming due.

A1.127 **“Variation”** means an amendment to an element of the level of service for a Child/Young Person.

A1.128 **“VAT”** means any value added tax as imposed under the Value Added Tax Act 1994 or any similar value added tax.

A2. INTERPRETATIONS

A2.1 The interpretation and construction of this Flexible Procurement Agreement (the Contract) shall be subject to the following provisions:-

2.1.1 words importing the singular meaning include where the context so admits the plural meaning and vice versa;

2.1.2 words importing the masculine include the feminine and the neuter;

2.1.3 the words “include”, “includes” and “including” are to be construed as if they were immediately followed by the words “without limitation”;

2.1.4 references to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;

2.1.5 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;

2.1.6 headings are included in this Flexible Procurement Agreement (the Contract) for ease of reference only and shall not affect the interpretation or construction of this Flexible Procurement Agreement (the Contract);

A3. TERM of the FLEXIBLE PROCUREMENT AGREEMENT (the CONTRACT)

A3.1 The Flexible Procurement Agreement (the Contract) shall commence on 1 February 2018 and shall be for an initial 3 (three) years terminating on 31 January 2021 unless terminated earlier in accordance with the provisions of Clause A9.1 or the Lead Authority notifies the Provider in writing not less than 3 months prior to 31 January 2021 of the intention to take up the first of the three twelve month options to extend or the Lead Authority notifies the Provider in writing not less than three months prior to the end of the first and second twelve month options of the

intention to take up the second and the third of the three twelve month options as detailed in Clause A3.2 below. At the end of this six year period, if the Lead Authority intends for this Flexible Procurement Agreement to continue, then the Lead Authority will notify Providers in writing not less than three months prior to the end of the last twelve month option to extend. The Lead Authority will indicate what length of time it has been extended for and when the Lead Authority will notify Providers of any further extensions.

A3.2 There are 3 (three) x 12 (twelve) month options to extend.

A3.3 The duration of each Call-Off Contract procured via the Flexible Procurement Agreement shall be defined within each individual IPA.

A3.4 Clauses A3.1 and A3.2 shall not apply to any Call-Off Contract made under this Flexible Procurement Agreement (the Contract) which is due to expire after the end of the Contract Term and which shall expire in accordance with its own terms.

A4. SCOPE of FLEXIBLE PROCUREMENT AGREEMENT (the CONTRACT)

A4.1 This Flexible Procurement Agreement (the Contract) governs the relationship between the Lead Authority and the Provider in respect of the provision of the Services by the Provider to the Participating Organisations.

A4.2 Any Participating Organisation may at its absolute discretion and from time to time order Services from the Provider in accordance Clause A8 (Awards under the Flexible Procurement Agreement (the Contract)) during the Contract Term.

A4.3 The Provider acknowledges that there is no obligation for the Lead Authority or any Participating Organisation to purchase any Services from the Provider during the Contract Term.

A4.4 No undertaking or any form of statement, promise, representation or obligation shall be deemed to have been made by the Participating Organisations in respect of the total quantities or values of the Services to be ordered by them pursuant to this Flexible Procurement Agreement (the Contract) and the Provider acknowledges and agrees that it has not entered into this Flexible Procurement Agreement (the Contract) on the basis of any such undertaking, statement, promise or representation.

A5. PROVIDER'S APPOINTMENT

A5.1 The Lead Authority appoints the Provider as a potential supplier of the Services referred to in the Invitation to Tender and the Provider shall be eligible to be considered for the award of Call-Off Contracts for such Services by a Participating Organisation during the Contract Term.

A6. NON-EXCLUSIVITY

A6.1 The Provider acknowledges that, in entering this Flexible Procurement Agreement (the Contract), no form of exclusivity or volume guarantee has been granted by the

Participating Organisations for Services from the Provider and that the Participating Organisations are at all times entitled to enter into other contracts and agreements with other Providers for the provision of any of the Services.

A7. STATUS and OPERATION of the FLEXIBLE PROCUREMENT AGREEMENT (the CONTRACT)

- A7.1 This Flexible Procurement Agreement (the Contract) sets out the terms under which a Placing Authority and the Provider will enter into Call-Off Contracts for the provision of Services by the Provider of Placements for Children and/or Young People to meet their assessed education, health and social care needs.
- A7.2 The required Services to be delivered for the benefit of a Child/Young Person will be detailed in the respective IPA. This shall be completed between the Provider and the Placing Authority.
- A7.3 In signing this Flexible Procurement Agreement (the Contract) the Participating Organisations and Providers are agreeing to abide by its terms and conditions generally in respect of prospective Call-Off Contract arrangements and specifically under the provisions of each IPA.
- A7.4 Any pre-existing contracts, IPAs, schedules etc. between the Provider and the Participating Organisations will transfer onto this Flexible Procurement Agreement (the Contract) and be converted to the appropriate Lot and Banding as per the Service Specification (Schedule 1(1)) and Minimum Core Service offer (Schedule 1(2)) on a date to be agreed between the Parties otherwise no later than 1 September 2018.
- A7.5 Placements transferring under A7.4 shall not increase the Fees payable by the Placing Authority by more than 10% of the pre-existing fees nor reduce the fees payable to the Provider by more than 10% of the pre-existing fees for the remainder of the Placement Term.
- A7.6 This Flexible Procurement Agreement (the Contract) shall supersede all previous contracts between the Participating Organisations and the Provider in relation to these Services unless the Parties to those other contracts agree otherwise in writing.
- A7.7 For the avoidance of doubt, the capped rates for Core Costs and Additional Services submitted by the Provider and forming part of their Tender response will be fixed for the duration of the Flexible Procurement Agreement (the Contract) subject to the provisions under the clause entitled 'Price Criteria' in Schedule 1 – Part B – Schedules A, B, C and D.

A8. AWARDS UNDER the FLEXIBLE PROCUREMENT AGREEMENT (the CONTRACT)

The process for making awards under the Flexible Procurement Agreement (the Contract) are set out in Schedule 1 – Part B – Schedules A, B, C and D – Call-Off Terms and Conditions attached as follows:

SCHEDULE A - Call-Off Terms and Conditions for INDEPENDENT SPECIAL SCHOOLS AND COLLEGES PRE-16 (LOTS 1 - 18) ONLY.

SCHEDULE B - Call-Off Terms and Conditions for INDEPENDENT SPECIAL SCHOOLS AND COLLEGES POST-16 (LOTS 10 - 18) ONLY.

SCHEDULE C - Call-Off Terms and Conditions for RESIDENTIAL CHILDREN'S HOMES (LOTS 19 - 21)

SCHEDULE D - Call-Off Terms and Conditions for OFSTED REGISTERED RESIDENTIAL SHORT BREAKS (LOT 22)

A9 TERMINATION by the LEAD AUTHORITY

A9.1 The Lead Authority shall have the right to terminate this Flexible Procurement Agreement (the Contract), or to terminate the provision of any part of the Flexible Procurement Agreement (the Contract) at any time by giving three month's written notice to the Provider and to any other Providers appointed under the Flexible Procurement Agreement (the Contract).

A9.2 The Lead Authority reserves the right to terminate the Flexible Procurement Agreement (the Contract) with any Provider where:

A9.2.1 the Flexible Procurement Agreement (the Contract) has been subject to a substantial modification which would have required a new procurement procedure in accordance with regulation 72(9) of the PCR; or

A9.2.2 the Provider has, at the time of award, been in one of the situations referred to in regulation 57(1) PCR, including as a result of the application of regulation 57(2), and should therefore have been excluded from the procurement procedure; or

A9.2.3 the Flexible Procurement Agreement (the Contract) should not have been awarded to the 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.

A10 CONSEQUENCES of TERMINATION AND EXPIRY

A10.1 Notwithstanding the service of a notice to terminate the Flexible Procurement Agreement (the Contract) under Clause A9, the Provider shall continue to fulfil its obligations under the Flexible Procurement Agreement (the Contract) until the date of expiry or termination of the Flexible Procurement Agreement (the Contract) or such other date as required under this Clause A10.

A10.2 Termination or expiry of the Flexible Procurement Agreement (the Contract) shall not cause any Call-Off Contract to terminate automatically. For the avoidance of doubt, all Call-Off Contracts shall remain in force unless and until they are terminated or expire in accordance with their own terms.

A10.3 Termination or expiry of this Flexible Procurement Agreement (the Contract) shall be without prejudice to any rights, remedies or obligations of any Provider or Participating Organisation accrued under this Flexible Procurement Agreement (the Contract) prior to termination or expiry.

A11 TRANSFER and SUB-CONTRACTING

A11.1 The Flexible Procurement Agreement (the Contract) is personal to the Provider and the Provider shall not assign, novate or otherwise dispose of the Flexible Procurement Agreement (the Contract) without the prior consent in writing of the Lead Authority. For the avoidance of doubt this does not prevent the Provider from sub-contracting any of its rights or obligations in relation to Services delivered under the Call-Off Contract provided the sub-contracting is agreed in accordance with the provisions under the clause entitled 'Standard of Service and Sub-contracting' in Schedule 1 – Part B – Schedules A, B, C and D.

A11.2 The Lead Authority shall be entitled to assign, novate, or otherwise dispose of its rights and obligations under the Flexible Procurement Agreement (the Contract) or any part thereof to any other body (including any private sector body) that substantially performs any of the functions that previously had been performed by the Lead Authority provided that such assignment, novation or disposal shall not increase the burden of the Provider's obligations under the Flexible Procurement Agreement (the Contract).

A11.3 Where a Child/Young Person is to receive Services from two separate Placements, the Placing Authority will request that one Provider acts as the lead and enter into a Call-off Contract with that Provider. The Services received from the other Provider will be sub-contracted as agreed with the Placing Authority. The division of Fees shall be negotiated between the Provider and sub-contractor.

A12 DATA PROTECTION

A12.1 The Provider shall (and shall procure that any of its Employees involved in the provision of the Services) comply with any requirements under the DPA.

A13 FREEDOM of INFORMATION

A13.1 The Participating Organisations are subject to the FOIA and the EIR ("the Acts"). As part of the Participating Organisations' duties under the Acts, they may be required to disclose Information forming part of the Flexible Procurement Agreement (the Contract) to anyone who makes a request. The Participating Organisations have absolute discretion to apply or not to apply any exemptions/exceptions under the Acts.

A13.2 The Provider shall assist and cooperate with the Participating Organisations (at the Provider's expense) to enable the Participating Organisation(s) to comply with the information disclosure requirements under the Acts and in so doing will comply with any timescale notified to it by the relevant Participating Organisation.

A14 VARIATIONS to the FLEXIBLE PROCUREMENT AGREEMENT (THE CONTRACT)

A14.1 Any variations to the Flexible Procurement Agreement (the Contract) must be made in writing by the Framework Contracts Manager and agreed by the Lead Authority and the Provider.

A14.2 Any variation to the Flexible Procurement Agreement (the Contract) must not amount to a material change in the Flexible Procurement Agreement (the Contract) or the Services.

A15 LAW and JURISDICTION

A15.1 The Parties accept the exclusive jurisdiction of the English courts and agree that the Flexible Procurement Agreement (the Contract) is to be governed by and construed according to English law.

A15.2 Should any Change in Law affect or have the potential to affect all Providers then the Participating Organisations may agree and appoint one Participating Organisation to engage with the Providers on behalf of all Participating Organisations.

A16 ENTIRE AGREEMENT

A16.1 This Flexible Procurement Agreement (the Contract) including all Schedules constitutes the entire agreement and understanding between the Parties in respect of the matters dealt with in it and supersedes, cancels or nullifies any previous agreement between the Parties in relation to such matters.

A16.2 Each of the Parties acknowledges and agrees that in entering into this Flexible Procurement Agreement (the Contract) it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) other than as expressly set out in this Flexible Procurement Agreement (the Contract). The only remedy available to either Party of such statements, representation, warranty or understanding shall be for breach of contract under the terms of this Flexible Procurement Agreement (the Contract).

A16.3 Nothing in this Clause A16 shall operate to exclude fraud or fraudulent misrepresentation.

A17 CONTRACT OFFICERS

Framework Contracts Manager

A17.1 The individual appointed by the Lead Authority who will carry out the overarching contract management arrangements under the collaborative arrangements and will escalate to the NEPO Contact Officer where applicable.

NEPO Contact Officer

A17.2 The Officer employed by NEPO who is the point of contact for the Framework Contracts Manager for any issues arising under the collaborative arrangements between the Participating Organisations or between the Participating Organisations and any Provider.

Authorised Officer

A17.3 The Officer appointed by the Lead Authority with the authority to enter into or terminate the Flexible Procurement Agreement (the Contract) and to exercise its rights and powers under this Flexible Procurement Agreement (the Contract).

A17.4 The Lead Authority shall give the Provider written notice of such appointment and provide updated contact details set out in Schedule 1(7).

Contracts Officer – Placing Authority

A17.5 Prior to commencement of the Flexible Procurement Agreement (the Contract) each of the Participating Organisations shall appoint a Contracts Officer to act as the initial point of contact for queries arising under any Call-Off Contract and the Flexible Procurement Agreement (the Contract). Issues that cannot be resolved by the Placing Authority will be escalated to the Contracts Officer for the Lead Authority. Where appropriate the Contracts Officer for the Lead Authority will escalate to the Framework Contracts Manager.

Contracts Manager/ Contracts Officer - Provider

A17.6 Prior to commencement of the Flexible Procurement Agreement (the Contract) the Provider shall appoint a Contracts Manager and/or Contracts Officer to exercise its rights and powers under this Flexible Procurement Agreement (the Contract) and in relation to any Call-Off Contract.

Link Authority

A17.7 Each Provider will be assigned a Link Authority that will take the lead in acting on behalf of all of the Participating Organisations and appoint a Link Officer to the Provider.

Link Officer

A17.8 Each Provider will be assigned a Link Officer who will, on behalf of all of the Participating Organisations, be their main contact for monitoring, compliance and queries. An additional Link Officer may be allocated where Health funds the whole of the Placement costs.

A18. SUSPENSION and CONSEQUENCES of SUSPENSION

A18.1 A suspension event shall have occurred if the Lead Authority reasonably considers that there has been a breach by the Provider of any obligation under a Call-Off Contract that:-

- A18.1.1 may create an immediate and serious threat to the health or safety of any Child/Young Person; or
- A18.1.2 may result in a material interruption in the provision of any one or more of the Services; or
- A18.1.3 Clause 18.1.1 does not apply, but the Lead Authority, acting reasonably, considers that the circumstances constitute an emergency, (which may include an event of Force Majeure) affecting provision of a Service or Services; or
- A18.1.4 the Provider is prevented, or will be prevented, from providing a Service due to the termination, suspension, restriction or variation of any registration; for example, registration with CQC.

(each a Suspension Event).

A18.2 Where a Suspension Event occurs the Lead Authority:

- A18.2.1 may by written notice to the Provider and with immediate effect suspend any affected Services, or the provision of any affected Services, until the Provider demonstrates to the reasonable satisfaction of the Lead Authority that it is able to and will perform the suspended Services, to the required standard; and
- A18.2.2 must, where applicable, promptly notify CQC and/or any relevant Inspectorate/Regulatory Body of the suspension.

A18.3 During the suspension of any Services under this Clause A18, the Provider must comply with any steps the Lead Authority reasonably specifies in order to remedy the Suspension Event.

A18.4 During the suspension of any Services under this Clause A18, the Provider will not be entitled to claim or receive any payment for the suspended Service except in respect of:

- A18.4.1 all or part of the suspended Services the delivery of which took place before the date on which the relevant suspension took effect in accordance with Clause A18.2.1; and/or
- A18.4.2 all or part of the suspended Services which the Provider continues to deliver during the period of suspension in accordance with Clause 18.2.1.

A18.5 The Parties must use all reasonable endeavours to minimise any inconvenience caused or likely to be caused to Children/Young People as a result of the suspension of the Services.

A18.6 Except where suspension occurs by reason of an event of Force Majeure, the Provider must indemnify the Participating Organisations in respect of any losses directly and reasonably incurred by the Participating Organisations in respect of that suspension (including for the avoidance of doubt Losses incurred in commissioning for a replacement service for the suspended Services).

A18.7 Following suspension of any Services the Provider must at the reasonable request of the Lead Authority and for a reasonable period:

A18.7.1 co-operate fully with the Participating Organisations and any Successor Provider of the suspended Services in order to ensure continuity and a smooth transfer of the suspended Services and to avoid any inconvenience to or risk to the health and safety of Child/Young Person, employees of the Participating Organisations or members of the public; and

at the cost of the Provider:

A18.7.2 promptly provide all reasonable assistance and all information necessary to effect an orderly assumption of the suspended Services by an alternative Successor Provider; and

A18.7.3 deliver to the Participating Organisations all materials, papers, documents and operating manuals owned by the Participating Organisations and used by the Provider in the provision of the suspended Services.

A18.8 As part of its compliance with Clause B18.7 the Provider may be required by the Participating Organisations to agree a transition plan with the Participating Organisations and/or any alternative Successor Provider.

A18.9 If it is determined that the Lead Authority acted unreasonably in suspending any Services, the Lead Authority must indemnify the Provider in respect of any loss directly and reasonably incurred by the Provider in respect of that suspension.

A18.10 During any suspension of any Services the Provider, where applicable, will implement the relevant parts of clauses entitled 'Business Continuity Planning' in Schedule 1 – Part B – Schedules A, B, C and D to ensure there is no interruption in the availability to the relevant Services.

A19 CONFLICT of INTEREST

A19.1 The Provider shall inform their Link Officer if any elected Member or employee of any of the Participating Organisations is a member of the governing body or is a trustee of the Provider or has a financial interest in the Provider.

A20 INDEMNITY and INSURANCE

A20.1 The Provider shall indemnify the Participating Organisations against damages, costs, actions and all losses, liabilities, claims and proceedings suffered or incurred by the Participating Organisations arising from this Framework Agreement

(the Contract) including but not limited to any act default or omission of the Provider (including its Employees, sub-contractors or agents) save where the same is due to an act of negligence or an omission of the Participating Organisation(s) (or its Employees or agents).

A20.2 The Provider shall maintain in place, with a reputable insurance provider, the following minimum insurance requirements and shall on request provide to the Lead Authority or the Provider's Link Officer all reasonable documentary evidence to confirm the requisite insurance levels are in place: -

20.2.1 Employer's Liability Insurance a minimum sum of **£10,000,000.00 (TEN MILLION)** in respect of any one claim, covering all Employees.

20.2.2 Public Liability Insurance a minimum of **£10,000,000.00 (TEN MILLION)** in respect of any one claim written on a 'claims occurring' basis. This insurance must include cover for claims of sexual abuse/molestation. The policy must be written on a "claims occurring" basis.

20.2.3 Professional Indemnity Insurance a minimum of **£5,000,000.00 (FIVE MILLION)** in respect of any one claim, to remain in place for a six year period following the termination of the Call-Off Contract.

20.2.4 Medical Malpractice Cover of **£1,000,000.00 (ONE MILLION)** in respect of any one claim for the Provider and its Staff in the administration of prescribed medicines by the Provider's Employees; or confirmation that their Public Liability Policy includes cover for the 'Treatment Risk'.

20.2.5 Personal Effects (Residents) Cover (where a Placement has a residential element) a minimum of **£2,500.00 (TWO THOUSAND FIVE HUNDRED)** in respect of any one claim and for each Child/Young Person. the Provider will ensure all Children and Young People who are placed with them are insured to a minimum of £2500 in respect of any one claim for each Child or Young Person. This insurance will cover both accidental and non-accidental damage. Personal Effects of children £2500 per child.

20.2.6 Buildings and Contents Cover a minimum sum insured to relate directly to the value of property real or personal, where a Child/Young Person is resident so as to allow in respect of any one claim for each Child/Young Person adequate indemnity and the avoidance of loss and to allow for the re-instatement of an establishment belonging to the Provider and the avoidance of loss of provision to the Participating Organisations. Commercial Buildings and Contents Insurance – the Provider will ensure all their Settings are adequately insured and maintain adequate insurance. This insurance will cover both accidental and non-accidental damage. Full Reinstatement Value and Contents.

20.2.7 The Provider and its Staff shall have in place **Comprehensive Motor Vehicle Insurance**, to include business use, commensurate with the potential liabilities of the Provider relating to the operation of vehicles used for the transport of Children/Young People and their visitors.

20.2.8 Sub-Contractors' Liability – the Provider shall ensure that the same levels

of insurance are maintained for any sub-contracted services.

Signatures of Parties to the Flexible Procurement Agreement (the Contract)

This Flexible Procurement Agreement (the Contract) is dated the _____ day of _____ 20____ is signed and agreed:

1. Duly Authorised Signatory on behalf of the Provider

Signed by: (PLEASE PRINT NAME)

Designation: (PLEASE PRINT)

Signature*:

Dated:

*Witnessed by: (PLEASE PRINT NAME)

Designation: (PLEASE PRINT)

Signature:

Dated:

2. Duly Authorised Signatory on behalf of the Lead Authority

Signed by: (PLEASE PRINT NAME)

Designation: (PLEASE PRINT)

Signature:

Dated:

Signed by: (PLEASE PRINT NAME)

Designation: (PLEASE PRINT)

Signature:

Dated:

PART B: Call-Off Terms and Conditions

SCHEDULE A: Call-Off Terms and Conditions for **INDEPENDENT SPECIAL SCHOOLS AND COLLEGES PRE-16 (LOTS 1 - 9) ONLY**

SCHEDULE B: Call-Off Terms and Conditions for **INDEPENDENT SPECIAL SCHOOLS AND COLLEGES POST-16 (LOTS 10 - 18) ONLY**

SCHEDULE C: Call-Off Terms and Conditions for **CHILDREN'S HOMES (LOTS 19 - 21) ONLY**

SCHEDULE D: Call-Off Terms and Conditions for **OFSTED REGISTERED RESIDENTIAL SHORT BREAKS (LOT 22) ONLY**

SCHEDULE 1(1) – SERVICE SPECIFICATION
[to be inserted]

SCHEDULE 1(2) – MINIMUM CORE SERVICE OFFER
[to be inserted]

SCHEDULE 1(3) – CALL OFF ALERT
[to be inserted]

SCHEDULE 1(4) – INDIVIDUAL PLACEMENT AGREEMENT
[to be inserted]

SCHEDULE 1(5) – QUALITY MONITORING FORM
[to be inserted]

SCHEDULE 1(6) – QM SELF-ASSESSMENT
[to be inserted]

SCHEDULE 1(7) – LOCAL AUTHORITY CONTACT DETAILS
[to be inserted]

SCHEDULE 1(8) – EMERGENCY, OUT OF HOURS PLACEMENTS AND KEY CONTACTS
[to be inserted]

SCHEDULE 1(9) – TEMPORARY AND AGENCY STAFF USAGE REPORTING FORM
[to be inserted]

SCHEDULE 1(10) – INDIVIDUAL PLACEMENT AGREEMENT VARIATION FORM
[to be inserted]