

DRAFT – SUBJECT TO CONTRACT

Dated

2017

(1) STOCKPORT METROPOLITAN BOROUGH COUNCIL

and

(2) SALFORD CITY COUNCIL

and

(3) TRAFFORD BOROUGH COUNCIL

and

(4) CHESHIRE EAST BOROUGH COUNCIL

and

(5) MANCHESTER CITY COUNCIL

**CONTRACT FOR THE SUPPLY OF SUPPORT SERVICES TO THE REGIONAL ADOPTION
AGENCY**

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THIS CONTRACT is dated

2017

BETWEEN

- (1) **STOCKPORT METROPOLITAN BOROUGH COUNCIL** of Town Hall, Edward Street, Stockport, SK1 3XE (the "**SMBC**");
- (2) **SALFORD CITY COUNCIL** of Salford Civic Centre, Chorley Road, Swinton, Salford, M27 5AW ("**Salford**");
- (3) **TRAFFORD BOROUGH COUNCIL** of Trafford Town Hall, Talbot Road, Stretford, M32 0TH ("**Trafford**");
- (4) **CHESHIRE EAST BOROUGH COUNCIL** of Westfields, Middlewich Road, Sandbach, Cheshire, CW11 1HZ ("**Cheshire East**"); and
- (5) **MANCHESTER CITY COUNCIL** of Town Hall, Albert Square, Manchester, M60 2LA ("**Manchester**"),

each a "**party**" and together the "**parties**".

BACKGROUND

- (A) In response to the Government's announcement to changes to the delivery of adoption services, under a separate contractual arrangement, the parties have created a single Regional Adoption Agency, which will deliver unified adoption services across the geographical boundaries of the five parties.
- (B) The terms related to the establishment and operation of the Regional Adoption Agency are contained in the Integrated Services Agreement between the parties, which details the common objectives of the parties. The Integrated Services Agreement was executed on or around the same date as this Contract.
- (C) Pursuant to the Integrated Services Agreement and Regulation 12(7) of the Public Contracts Regulations 2015, the parties have agreed that SMBC, as the host authority for the Regional Adoption Agency, shall provide support services which are linked to the implementation and successful operation of the Regional Adoption Agency, upon the terms of this Contract.

TERMS AGREED

1. Interpretation

1.1 Definitions:

"Business Day"	a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business;
"Charges"	the charges payable by the parties for the supply of the Services in accordance with clause 6;
"Commencement Date"	the date on which this Contract is executed by the parties;
"Contract"	this contract between SMBC and the parties for the supply of

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		Services;
“Fee Earner”		is the relevant legal contact at SMBC who is dealing with a particular Matter;
“Intellectual Rights”	Property	patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;
“Matter”		has the meaning set out in Legal, Schedule 1 (Services);
“Regional Agency”	Adoption	the unified agency which will provide adoption services across the geographical boundaries of the five parties;
“Regional Agency Default ”	Adoption	has the meaning set out in clause 5.2;
“Regional Service Manager”	Adoption	has the meaning set out in the Integrated Services Agreement (and is the individual for day-to-day responsibility for the duties of the Regional Adoption Agency);
“Services”		the provision of services supplied and/or arranged by SMBC to the Regional Adoption Agency as set out in Schedule 1 (Services); and
“Year”		means a period of 12 months commencing on 1 April and ending on 31 March in the following year.

1.2 Interpretation:

1.2.1 References to “clauses” and “schedules” are to the clauses, and schedules of this Contract and references to paragraphs are to paragraphs of the relevant schedule. Clause, schedule and paragraph headings shall not affect the interpretation of this Contract. The schedules forms part of this Contract and shall have effect as if set out in full in the body of this Contract. Any reference to “this Contract” includes the schedules.

1.2.2 A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes any

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subordinate legislation made under that statute or statutory provision, as amended or re-enacted.

1.2.3 Any phrase introduced by the terms **including, include, for example, in particular** or any similar expression, shall be construed as illustrative and shall not limit the sense of the words preceding or proceeding those terms.

1.2.4 A reference to **writing** or **written** includes email.

1.2.5 A reference to the Regional Adoption Agency is a reference to the parties to this Contract, as the Regional Adoption Agency is an amalgamation of services of each of the parties, and the parties shall be bound as if the reference to the Regional Adoption Agency were a direct reference to each party.

1.2.6 Unless the context otherwise requires, words in the singular shall include the plural and vice versa.

2. **Commencement and duration**

2.1 SMBC shall provide the Services to the Regional Adoption Agency on the terms and conditions of this Contract.

2.2 SMBC shall provide the Services to the Regional Adoption Agency for a term of three years from the Commencement Date (unless terminated earlier in accordance with clause 9).

3. **Exclusivity**

3.1 For the duration of the term of this Contract, SMBC shall have the right of first refusal to perform the Services for the Regional Adoption Agency.

4. **Supply of Services**

4.1 SMBC shall supply the Services to the Regional Adoption Agency in accordance with Schedule 1 (Services) in all material respects.

4.2 SMBC shall use all reasonable endeavours to meet any performance dates in relation to the Services but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.

4.3 SMBC shall have the right to make any changes to the Services which are necessary to comply with any applicable law, or which do not materially affect the nature or quality of the Services, and SMBC shall notify the Regional Adoption Agency in any such event.

4.4 SMBC warrants to the Regional Adoption Agency that the Services will be provided using reasonable care and skill.

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5. **The Regional Adoption Agency's obligations**

- 5.1 The Regional Adoption Agency shall:
- 5.1.1 co-operate with SMBC in all matters relating to the Services;
 - 5.1.2 provide SMBC with such information and instructions as SMBC may reasonably require in order to supply the Services, and ensure that such information and instructions are accurate in all material respects; and
 - 5.1.3 comply with any additional obligations set out in Schedule 1 (Services).
- 5.2 If SMBC's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Regional Adoption Agency or failure by the Regional Adoption Agency to perform any relevant obligation ("**Regional Adoption Agency Default**"):
- 5.2.1 SMBC shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Regional Adoption Agency remedies the Regional Adoption Agency Default, and to rely on the Regional Adoption Agency Default to relieve it from the performance of any of its obligations to the extent the Regional Adoption Agency Default prevents or delays SMBC's performance of any of its obligations;
 - 5.2.2 SMBC shall not be liable for any costs or losses sustained or incurred by the Regional Adoption Agency arising directly or indirectly from SMBC's failure or delay to perform any of its obligations as set out in this clause 5.2; and
 - 5.2.3 The Regional Adoption Agency shall reimburse SMBC on written demand for any costs or losses sustained or incurred by SMBC arising directly or indirectly from a Regional Adoption Agency Default.

6. **Charges and payment**

- 6.1 The fee for the Services for the period commencing the Commencement Date and ending 31 March 2018 shall be included in each Party's contribution to the Regional Adoption Agency pursuant to the Integrated Services Agreement on a pro rata basis. The fee for the Services for the Year commencing on the anniversary of the Commencement Date and each following Year shall be included in each Party's contribution to the Regional Adoption Agency for the corresponding year.
- 6.2 SMBC shall charge for any independent professional advice or services from third parties including solicitors, barristers, advocates or experts. The parties will be responsible for the fees of any such third parties and SMBC will involve the Regional Adoption Agency in agreeing such fees.
- 6.3 Pursuant to clause 6.2, SMBC will not engage third parties without first conferring with the Regional Adoption Agency and gaining consent to instruct third parties.

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- 6.4 SMBC shall be entitled to charge for any expenses reasonably incurred by the individuals which SMBC engages in connection with the Services including, but not limited to, travelling expenses, Court fees, hotel costs, subsistence and any associated expenses and for the cost of services provided by third parties and required by SMBC for the performance of the Services.
- 6.5 The fee for the Services payable by the parties for the Year commencing 1 April 2018 and each subsequent Year shall be agreed by the parties three months prior to the commencement of the relevant Year.
- 6.6 All amounts payable by the Regional Adoption Agency under the Contract are exclusive of amounts in respect of value added tax chargeable for the time being (VAT). Where any taxable supply for VAT purposes is made under the Contract by SMBC to the Regional Adoption Agency, the Regional Adoption Agency shall, on receipt of a valid VAT invoice from SMBC, pay to SMBC such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.
- 6.7 If the parties fail to make any payment due to SMBC under the Contract by the due date for payment, then the Regional Adoption Agency shall pay interest on the overdue amount at the rate of 4% per cent per annum above Barclays Bank PLC's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Regional Adoption Agency shall pay the interest together with the overdue amount.
- 6.8 The parties shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). SMBC may at any time, without limiting its other rights or remedies, set off any amount owing to it by the parties against any amount payable by SMBC to the Regional Adoption Agency.

7. Intellectual property rights

- 7.1 All Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by SMBC.
- 7.2 The Regional Adoption Agency acknowledges that, in respect of any third party Intellectual Property Rights, the Regional Adoption Agency's use of any such Intellectual Property Rights is conditional on SMBC obtaining a written licence from the relevant licensor on such terms as will entitle SMBC to license such rights to the Regional Adoption Agency.

8. Limitation of liability

- 8.1 Nothing in the Contract shall limit or exclude any party's liability for:

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- 8.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
 - 8.1.2 fraud or fraudulent misrepresentation; or
 - 8.1.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession) or any other liability which cannot be limited or excluded by applicable law.
- 8.2 Subject to clause 8.1, SMBC shall not be liable to the Regional Adoption Agency, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Contract for:
- 8.2.1 loss of profits;
 - 8.2.2 loss of sales or business;
 - 8.2.3 loss of agreements or contracts;
 - 8.2.4 loss of anticipated savings;
 - 8.2.5 loss of use or corruption of software, data or information;
 - 8.2.6 loss of damage to goodwill; and
 - 8.2.7 any indirect or consequential loss.
- 8.3 Subject to clause 8.1, SMBC's total liability to the Regional Adoption Agency, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Contract shall be limited to the fees paid in the 12 months preceding the claim.
- 8.4 The terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
- 8.5 This clause 8 shall survive termination of the Contract.
- 8.6 The parties shall be jointly and severally liable for their obligations, and breaches of their obligations, under this Contract; and SMBC may take action against, or release or compromise the liability of any party, without affecting the liability of any other party.

9. Termination

- 9.1 Without limiting its other rights or remedies:
 - 9.1.1 SMBC may terminate the Contract for convenience by giving the Regional Adoption Agency 12 months' written notice;
 - 9.1.2 the other parties may terminate the Contract for convenience on 12 months' written notice, subject to SMBC's written consent to the termination.

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- 9.2 Without limiting its other rights or remedies, either of the parties may terminate the Contract with immediate effect by giving written notice to the other party if:
- 9.2.1 the other party commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within thirty days of that party being notified in writing to do so;
 - 9.2.2 the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business;
 - 9.2.3 the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business;
 - 9.2.4 the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or
 - 9.2.5 the parties agree to terminate the Integrated Services Agreement.
- 9.3 Without limiting its other rights or remedies, SMBC may terminate the Contract with immediate effect by giving written notice to the other parties if the parties fail to pay any amount due under the Contract on the due date for payment and remains in default not less than thirty days after being notified in writing to make such payment.
- 9.4 Without limiting its other rights or remedies, SMBC may terminate the Contract with immediate effect by giving written notice to the other parties in the event that SMBC is no longer the host authority for the Regional Adoption Agency.

10. **Consequences of termination**

- 10.1 On termination of the Contract for any reason:
- 10.1.1 the parties shall immediately pay to SMBC all of SMBC's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, SMBC shall submit an invoice, which shall be payable by the other parties immediately on receipt;
 - 10.1.2 the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall be unaffected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry;
 - 10.1.3 clauses which expressly or by implication survive termination shall continue in full force and effect; and

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10.1.4 SMBC shall work with any replacement host authority to facilitate the handover of the Services to the replacement host authority or replacement supplier (for which the parties will agree charges as appropriate).

11. **Complaint resolution procedure**

- 11.1 In the event that there are any issues in relation to the performance of the Services by SMBC (or the validity or enforceability of the Contract), in the first instance, the Operation Groups of the Regional Adoption Agency (comprised of each party's operational manager nominated by each party's Director of Children's Services and the Regional Adoption Service Manager) shall meet and discuss the issue.
- 11.2 If the issue is unable to be resolved pursuant to clause 11.1, it shall be considered a complaint ("**Complaint**"), and the nature and full particulars of the Complaint (a "**Complaint Notice**") shall be prepared, together with relevant supporting documents, and submitted to the Management Board of the Regional Adoption Agency (comprised of each party's Director of Children's Services).
- 11.3 On service of the Complaint Notice, the Management Board shall attempt in good faith to resolve the Complaint.
- 11.4 If the Management Board is unable to resolve the Complaint within 30 days after service of the Complaint Notice, the Chief Executive of each of the parties shall attempt in good faith to settle the Complaint.
- 11.5 If the Chief Executives of the parties are unable to resolve the Complaint within 30 days after service of the Complaint Notice, the parties shall attempt in good faith to settle the Complaint by mediation in accordance with the Centre for Effective Dispute Resolution ("**CEDR**") Model Mediation Procedure. Unless otherwise agreed by all parties, the mediator shall be nominated by CEDR. To initiate the mediation, the Management Board must send a notification in writing, to CEDR. The mediation will start no later than 30 days after the date of the notification.
- 11.6 The parties shall participate and continue to participate in good faith in the mediation in an attempt to resolve the Complaint.
- 11.7 If the Complaint is not resolved within 60 days (or such longer period as may be agreed by the parties) after service of the ADR Notice, the Complaint shall be finally resolved in the Courts of England and Wales.

12. **General**

12.1 **Force majeure**

No party shall be in breach of this Contract nor liable for delay in performing, or failure to perform, any of its obligations under this Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control.

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12.2 Confidentiality

12.2.1 Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 12.2.2.

12.2.2 Each party may disclose the other party's confidential information:

12.2.2.1 to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 12.2; and

12.2.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

12.2.3 No party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

12.3 Entire agreement

12.3.1 This Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

12.3.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in this Contract.

12.4 Variation

No variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

12.5 Waiver

12.5.1 A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not:

12.5.1.1 waive that or any other right or remedy; or

12.5.1.2 prevent or restrict the further exercise of that or any other right or remedy.

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12.6 Severance

If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

12.7 Notices

12.7.1 Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, or sent by pre-paid first class post or other next Business Day delivery service, commercial courier or fax.

12.7.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 12.7.1; if sent by pre-paid first class post or other next Business Day delivery service, at 09.00 on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax, one Business Day after transmission.

12.7.3 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

12.8 Third parties

No one other than a party to the Contract shall have any right to enforce any of its terms.

12.9 Governing law

The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by, and construed in accordance with the law of England and Wales.

12.10 Jurisdiction

Subject always to clause 11 (Complaint resolution procedure), each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.

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SCHEDULE 1

SERVICES

[To be finalised]

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SIGNATURE PAGE

The common seal of
STOCKPORT METROPOLITAN BOROUGH COUNCIL

was affixed to this deed in the presence of:

.....

Name:

.....
Authorised Signatory

Name:

The common seal of
SALFORD COUNCIL

was affixed to this deed in the presence of:

.....

Name:

.....
Authorised Signatory

Name:

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The common seal of
TRAFFORD COUNCIL

was affixed to this deed in the presence of:

.....

Name:

.....

Authorised Signatory

Name:

The common seal of
CHESHIRE EAST COUNCIL

was affixed to this deed in the presence of:

.....

Name:

.....

Authorised Signatory

Name:

OFFICIAL

The common seal of
MANCHESTER CITY COUNCIL

was affixed to this deed in the presence of:

.....

Name:

.....

Authorised Signatory

Name:¹

¹ Each party to confirm how it executes deeds.

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