

**Dated**

**2017**

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**Section 101 Agreement**

**Re Regional Adoption Agency**

between

**THE COUNCIL OF THE BOROUGH OF DARLINGTON**

**THE COUNCIL OF THE BOROUGH OF HARTLEPOOL**

**THE COUNCIL OF THE BOROUGH OF MIDDLESBROUGH**

**THE COUNCIL OF THE BOROUGH OF REDCAR AND CLEVELAND**

**THE COUNCIL OF THE BOROUGH OF STOCKTON-ON-TEES**

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**THIS DEED** is dated

2017

**PARTIES**

- (1) **THE COUNCIL OF THE BOROUGH OF DARLINGTON** of Town Hall, Feethams, Darlington, County Durham, DL1 5QT (**'Darlington'**).
- (2) **THE COUNCIL OF THE BOROUGH OF HARTLEPOOL** of Civic Centre, Victoria Road, Hartlepool, TS24 8AY (**'Hartlepool'**)
- (3) **THE COUNCIL OF THE BOROUGH OF MIDDLESBROUGH** of PO Box 503, Town Hall, Middlesbrough, TS1 9FX (**Middlesbrough**)
- (4) **THE COUNCIL OF THE BOROUGH OF REDCAR AND CLEVELAND** of Redcar and Cleveland House, Kirkleatham Street, Redcar, TS10 1RT (**'Redcar & Cleveland'**)
- (5) **THE COUNCIL OF THE BOROUGH OF STOCKTON-ON-TEES** of Municipal Buildings, Church Road, Stockton-On-Tees, TS18 1LD (**'Stockton'**).

Background

- (A) Section 101 of The Local Government Act 1972 enables an authority to make arrangements for the discharge of any of its statutory functions by a committee, sub-committee or officer of the authority or by another authority.
- (B) Regulation 12 of the Public Contracts Regulations 2015 excludes from the scope of the Regulations arrangements between public sector bodies where the service is delivered on a Regional Adoption Service model and where control over the delivery (in the sense of strategic objectives and key decisions) is still retained in a similar way to an in house model.
- (C) The Authorities are entering into this Agreement in exercise of those powers.
- (D) Pursuant to each of the Authorities' respective statutory function to maintain an Adoption Service under Section 3 of the Adoption and Children Act 2002, and further to the insertion of section 3ZA in the Adoption and Children Act 2002, which provided the Secretary of State with a new power to direct that one or more local authorities in England make arrangements for all or any of their specified adoption functions to be carried out on their behalf, the Authorities are committed to ensuring the establishment of 'Adoption Tees Valley', a Regional Adoption Agency (RAA) which will seek to address the inefficiencies of the current system, and therefore wish to enter into the arrangements under this Agreement.
- (E) This Agreement provides the framework within which the Authorities will work together to achieve the Objectives.

## AGREED TERMS

### 1. DEFINITION AND INTERPRETATION

1.1 The definitions and rules of interpretation in this clause apply in this Agreement.

**Additional Board Members: [TBC]**

**Agreement:** this Agreement between Darlington, Stockton, Hartlepool, Middlesbrough and Redcar & Cleveland comprising these terms and conditions together with all schedules attached to it.

**Adoption Functions:** the requirements set out in Sections 3 and 3ZA of the Adoption and Children Act 2002 and any subsequent modification or re-enactment thereafter, which provide for a service designed to meet the needs, in relation to adoption, of, and provide facilities for:- children who may be adopted; their parents and guardians; persons wishing to adopt a child; and adopted persons, their parents, natural parents and former guardians.

**Authority:** Darlington, Stockton, Hartlepool, Middlesbrough and Redcar & Cleveland and "**Authorities**" shall be construed accordingly.

**Authorities Assets:** collectively Darlington's Assets, Stockton's Assets, Hartlepool's Assets, Middlesbrough's assets and Redcar & Cleveland's Assets.

**Authorities Financial Contributions:** the aggregate of Darlington's Financial Contribution, Stockton's Financial Contribution, Hartlepool's Financial Contribution, Middlesbrough's Financial Contribution and Redcar & Cleveland's Financial Contribution.

**Authorities Premises:** collectively Darlington's Premises, Stockton's Premises, Hartlepool's Premises, Middlesbrough's Premises and Redcar & Cleveland's Premises.

**Balanced Scorecard: [TBC]**

**Change in Law:** a change in Law that impacts on the RAA, which comes into force after the Commencement Date.

**Commencement Date: ###**

**Darlington Assets:** the assets used prior to the Commencement Date by Darlington employees in the discharge of Darlington's Adoption Functions.

**Darlington's Authorised Officer: ###**

**Darlington's Financial Contribution:** Darlington's financial contribution for the relevant Financial Year. Darlington's Financial Contribution for the First Financial Year is set out in Schedule 2.

**Darlington Premises:** any premises provided by Darlington for the purposes of the agreement.

**Data Protection Legislation:** this includes:

- (a) the Data Protection Act 1998 (**DPA 1998**);
- (b) Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data;
- (c) the Regulation of Investigatory Powers Act 2000;
- (d) the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (*SI 2000/2699*);
- (e) Directive 2002/58/EC concerning the processing of Personal Data and the protection of privacy in the electronic communications sector;
- (f) the Privacy and Electronic Communications (EC Directive) Regulations 2003 (*SI 2003/2426*); and
- (g) all applicable laws and regulations relating to processing personal data and privacy, including the guidance and codes of practice issued by the Information Commissioner, where applicable.

**Dispute Resolution Procedure:** the procedure set out in clause 33.

**Financial Contributions:** the financial contributions of the Authorities as set out in Schedule 2.

**Financial Year:** 1 April to 31 March.

**First Financial Year:** [TBC]

**FOIA:** the Freedom of Information Act 2000 and any subordinate legislation made under it from time to time, together with any guidance or codes of practice issued by the Information Commissioner or relevant government department concerning this legislation.

**Hartlepool Assets:** the assets used prior to the Commencement Date by Hartlepool employees in the discharge of Hartlepool's Adoption Functions.

**Hartlepool's Authorised Officer:** ###

**Hartlepool's Financial Contribution:** Hartlepool's financial contribution for the relevant Financial Year. Hartlepool's Financial Contribution for the First Financial Year is set out in Schedule 2.

**Hartlepool Premises:** any premises provided by Hartlepool for the purposes of the agreement.

**Host:** the host authority for the Adoption Functions under this Agreement, namely Stockton.

**Information:** has the meaning given under section 84 of FOIA.

**IPRs:** any and all intellectual property rights of any nature anywhere in the world whether registered, registrable or otherwise, including patents, utility

models, trademarks, registered designs and domain names, applications for any of the foregoing, trade or business names, goodwill, copyright and rights in the nature of copyright, design rights, rights in databases, moral rights, know-how and any other intellectual property rights which subsist in computer software, computer programs, websites, documents, information, techniques, business methods, drawings, logos, instruction manuals, lists and procedures, marketing methods and procedures and advertising literature, including the "look and feel" of any websites.

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

**Middlesbrough Assets:** the assets used prior to the Commencement Date by Middlesbrough employees in the discharge of Middlesbrough's Adoption Functions.

**Middlesbrough's Authorised Officer:** ###

**Middlesbrough's Financial Contribution:** Middlesbrough's financial contribution for the relevant Financial Year. Middlesbrough's Financial Contribution for the First Financial Year is set out in Schedule 2.

**Middlesbrough Premises:** any premises provided by Middlesbrough for the purposes of the agreement.

**Objectives:** the objectives of the Authorities, setting out how the RAA are likely to lead to an improvement in the way the Adoption Functions are exercised, as described in Schedule 1.

**Personal Data:** shall have the same meaning as set out in the DPA 1998.

**Pre-Existing Contracts:** any contracts entered into before the Commencement date for the purpose of their respective Adoption services by either Stockton or Darlington.

**Quarter:** one of the following periods in each Financial Year:

- (a) 1 April to 30 June;
- (b) 1 July to 30 September;
- (c) 1 October to 31 December; and
- (d) 1 January to 31 March.

**RAA:** shall mean the Regional Adoption Agency established by the Authorities to discharge Adoption Functions in accordance with the arrangements set out in this Agreement, which shall be known as 'Adoption Tees Valley'

**RAA Board:** shall have the meaning set out in Clause 16 of this Agreement

**RAA IPRs:** IPRs in items created by Stockton (or by a third party on behalf of Stockton) specifically for the purposes of this agreement or arising as a consequence of this agreement.

**RAA Service Plan:** shall have the meaning set out in Clause 6 of this Agreement

**Redcar And Cleveland Assets:** the assets used prior to the Commencement Date by Redcar And Cleveland employees in the discharge of Redcar And Cleveland's Adoption Functions.

**Redcar And Cleveland's Authorised Officer:** ###

**Redcar And Cleveland's Financial Contribution:** Redcar And Cleveland's financial contribution for the relevant Financial Year. Redcar And Cleveland's Financial Contribution for the First Financial Year is set out in Schedule 2.

**Redcar And Cleveland Premises:** any premises provided by Redcar And Cleveland for the purposes of the agreement.

**Regulatory Body:** those government departments and regulatory, statutory and other entities, committees and bodies that, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate or influence the matters dealt with in this Agreement, or any other affairs of the Authorities.

**Relevant Transfer:** a relevant transfer under TUPE.

**Representative:** an Authority's employee, agent or subcontractor and any employee of the other Authority who is seconded to the Authority and is acting in accordance with the Authority's instructions.

**Request for Information:** a request for Information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the Environmental Information Regulations 2004 (*SI 2004/3391*) (**EIR**).

**Service Provider:** a third-party provider of any of Adoption Functions now to be discharged by the RAA, as commissioned by any of the Authorities before the Commencement Date or Stockton from the Commencement Date.

**Regional Adoption Agency (RAA):** the joint arrangements made between the Authorities under this Agreement.

**Stockton Assets:** the assets used prior to the Commencement Date by Stockton employees in the discharge of Stockton's Adoption Functions.

**Stockton Premises:** any premises provided by Stockton for the purposes of the agreement.

**Stockton's Authorised Officer:**

**Stockton's Financial Contribution:** Stockton's financial contribution for the relevant Financial Year. Stockton's Financial Contribution for the First Financial Year is set out in Schedule 2.

**Third party organisations:** organisations who receive an Adoption service, through a contract or service level agreement with Stockton.

**Term:** the period commencing on the Commencement Date and ending on the termination of this Agreement in accordance with its terms.

**TUPE:** the Transfer of Undertakings (Protection of Employment) Regulations 2006 (*SI 2006/246*).

**Working Day:** any day other than Saturday, Sunday, a public or bank holiday in England.

- 1.2 Clause, Schedule and paragraph headings shall not affect the interpretation of this Agreement.
- 1.3 The Schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the Schedules.
- 1.4 Words in the singular include the plural and vice versa.
- 1.5 A reference to one gender includes a reference to the other genders.
- 1.6 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.7 A reference to **writing** or **written** includes faxes and e-mail.
- 1.8 Any obligation in this Agreement on a person not to do something includes an obligation not to agree or allow that thing to be done.
- 1.9 A reference to a document is a reference to that document as varied or novated (in each case, other than in breach of the provisions of this Agreement) at any time.
- 1.10 References to clauses and Schedules are to the clauses and Schedules of this Agreement. References to paragraphs are to paragraphs of the relevant Schedule.

## **2. COMMENCEMENT AND DURATION**

This Agreement shall take effect on the Commencement Date and shall until terminated in accordance with clause 34.

## **3. DELEGATION OF ADOPTION FUNCTIONS**

- 3.1 The Authorities enter into joint arrangements under section 101 of the Local Government Act 1972 to provide a RAA to more efficiently meet the needs of each local authority than if the Authorities were operating independently.
- 3.2 The RAA shall comprise the delegation by Darlington, Hartlepool, Middlesbrough and Redcar & Cleveland to Stockton of their Adoption Functions, so that Stockton may exercise the Adoption Functions alongside Stockton's own Adoption Functions and accordingly Darlington, Hartlepool, Middlesbrough and Redcar & Cleveland hereby delegates the exercise of the Adoption Functions to Stockton to exercise alongside Stockton's Adoption Functions.

## **4. REGIONAL ADOPTION AGENCY (RAA)**

- 4.1 Stockton is the Host for the RAA, and agrees to act as provider of the RAA Services listed in clause 4.2.
- 4.2 Stockton shall provide the RAA Services or procure that they are provided and shall be accountable to the Authorities for the Adoption Functions for the benefit of all the Authorities:
- (a) to ensure the proper discharge of the Authorities' Adoption Functions;
  - (b) with reasonable skill and care, and in accordance with best practice guidance;
  - (c) in all respects in accordance with the Objectives, the [RAA Service Plan], the provisions of this Agreement, and each Authority's applicable policies.
  - (d) in accordance with its standing orders or other rules on contracting; and
  - (e) in accordance with all applicable Law.
- 4.3 The specific Objectives of the RAA are described in Schedule 1

## **5. HEAD OF RAA**

- 5.1 Stockton shall appoint a senior manager (the **Head of RAA**), who shall be responsible for:
- (a) managing the Regional Adoption Agency on behalf of the Authorities;
  - (b) managing expenditure from within the budgets set by the Authorities and in accordance with the [RAA Service Plan]; and
  - (c) submitting quarterly reports and an annual report to the Authorities, to enable them to monitor the success of the RAA.
- 5.2 The Head of RAA (or their delegated representative) will attend meetings as required with:
- (a) the Authorised Officers, (who may also be one of the officers listed below).
  - (b) the Director of Children’s Services of each Authority;
  - (c) the Chief Executive of each Authority;
  - (d) the Chief Finance Officer (section 151 officer) from each Authority;
  - (e) the Monitoring Officer of each authority;
- 5.3 The Head of RAA (or their delegated representative) shall be responsible for providing appropriate briefings for the Authorised Officers.
- 5.4 The Head of RAA (or their delegated representative) shall attend at such other senior management meetings or other relevant meetings with senior managers, including but not limited to directors, assistant directors and heads of service that are necessary for the proper discharge of the Adoption Functions (for example to address management issues, assist in service planning and strategy and to progress confidential matters).
- 5.5 Nothing in this Agreement shall prejudice or affect the rights and powers, duties and obligations of the Authorities in the exercise of their Adoption Functions as local authorities or in any other capacity;

## **6. [RAA SERVICE PLAN]**

- 6.1 The Authorities (acting through the RAA Board) shall agree a [RAA Service Plan] for the RAA at least four weeks before the start of the Financial Year. The [RAA Service Plan] shall:
- (a) set out the agreed Objectives for the RAA;
  - (b) describe any changes or development required for the RAA;

- (c) provide information on how changes in funding or resources may impact the RAA; and
  - (d) include details of the estimated contributions due from each Authority for the RAA.
- 6.2 The [RAA Service Plan] shall commence on 1 April at the beginning of the Financial Year and shall continue for 12 months.
- 6.3 The [RAA Service Plan] may be varied by written agreement between the Authorities. Any variation that increases or reduces the costs of the RAA in the scope of the Agreement shall require the Authorities to make corresponding adjustments to the Authorities Financial Contributions.
- 6.4 If the Authorities cannot agree the contents of the [RAA Service Plan], the matter shall be dealt with in accordance with clause 33. Pending the outcome of the dispute resolution process or termination of the Agreement under clause 34, the Authorities shall make available amounts equivalent to the Financial Contributions for the previous Financial Year.

## **7. PERFORMANCE MANAGEMENT**

- 7.1. The Authorities shall adhere to the [RAA Service Plan] prepared in accordance with clause 6.

## **8. FINANCIAL CONTRIBUTIONS**

- 8.1 The Authorities shall pay the Authorities Financial Contributions to Stockton to allocate to the Service Budget and to manage in accordance with this Agreement and the [RAA Service Plan].
- 8.2 Stockton shall contribute Stockton's Financial Contribution to the Service Budget and shall manage the Service Budget in accordance with this Agreement and the [RAA Service Plan].
- 8.3 The Authorities Financial Contributions for the First Financial Year are set out in Schedule 2.
- 8.4 The Authorities shall pay the Financial Contributions into the Service Budget quarterly in advance.
- 8.5 The Authorities shall agree the Authorities Financial Contributions for the following Financial Year by 31 March.

8.6 The Authorities shall contribute all income or other allocations that are intended to support the provision of the RAA to the Service Budget.

## **9. OVERSPENDS AND UNDERSPENDS**

9.1 Stockton shall use all reasonable endeavours to arrange for the discharge of Stockton's own Adoption Functions and the Adoption Functions within the Financial Contributions available in each Financial Year.

9.2 Stockton shall endeavour to manage any in-year overspends within its arrangements for the RAA.

9.3 Stockton shall make the other Authorities aware of any potential overspend as soon as it becomes aware of this possibility. Stockton will highlight reasons for the overspend, both current and projected, and make recommendations for action to bring the relevant Financial Contributions back to balance.

9.4 If, at the end of the Financial Year or on termination or expiry of this Agreement, it becomes apparent that there has been an overspend of the Authorities Financial Contribution, the Authorities shall meet the overspend proportionately to their respective Financial Contributions;

9.5 Stockton shall make the Authorities aware of any potential underspend in relation to Financial Contributions, prior to the end of the Financial Year. Stockton shall highlight reasons for the underspend and identify any part of that underspend which is already contractually committed.

9.6 The benefit of any underspend at the end of the Financial Year or on termination or expiry of this Agreement (whichever is appropriate) shall:

- a) if the Authorities agree, be applied to the RAA;
- b) if the Authorities agree, be deducted proportionately from the Authorities' Financial Contributions for the following Financial Year;  
or
- c) if the Authorities cannot agree, be returned to the Authorities in proportion to their Financial Contribution for the Financial Year;

## **10. CAPITAL EXPENDITURE**

The Financial Contributions shall be directed exclusively to revenue expenditure. Any arrangements for the sharing of capital expenditure shall

be made separately and in accordance with such arrangement as Stockton and the other Authorities (or anyone of them) may from time to time agree.

## **11. SET UP COSTS**

Each Authority shall bear its own costs of the establishment of the RAA under this Agreement.

## **12. PREMISES**

12.1 The Authorities shall provide Stockton with such accommodation and facilities in the Authorities Premises for the Term as are necessary for the reasonable performance of the Services and which are agreed by the parties from time to time.

12.2 Stockton shall make available Stockton's Premises to the RAA for the Term as are necessary for the performance of the Services.

## **13. ASSETS**

13.1 The Authorities shall each make available to Stockton for the purposes of the RAA the Authorities Assets.

13.2 Stockton may use the Financial Contributions to maintain or replace Authorities Assets as and when required and shall hold any new assets for itself and the other Authorities.

13.3 The provisions of clause 35 shall apply on termination of this Agreement.

## **14. IPRs**

14.1 Subject to clause 14.3 and clause 14.5 no Authority shall not acquire any right, title or interest in or to the IPRs of any other Authority or its licensors existing prior to the execution of this Agreement.

14.2 Where any Authority acquires, by operation of law, title to IPRs of any other Authority referred to in clause 14.1, and this acquisition is inconsistent with the allocation of title set out in that clause 14.1, such IPRs shall be assigned by it to the other Authority on the request of the other, whenever that request is made.

- 14.3 Stockton grants a non-exclusive, assignable, irrevocable and perpetual licence (including the right to sub-license) to the other Authorities to use the RAA IPRs.
- 14.4 The Authorities may only assign their rights under clause 14.3 to a successor body or duration the continuation of this agreement to Stockton.
- 14.5 The other Authorities each hereby grant to Stockton a royalty-free, non-exclusive, non-transferable licence during the Term to use:
- (a) any software.;
  - (b) any documentation, processes and procedures;
  - (c) any data and any databases, including the right to grant sub-licences to its contractors,
- related to their Adoption Functions.
- 14.6 The licence granted in clause 14.5 is granted solely to the extent necessary for the RAA in accordance with this agreement. Stockton shall not use the licensed materials for any other purpose.
- 14.7 Stockton shall not have any right to use any of the other Authorities names, logos or trademarks without the other Authority's prior written consent.
- 14.8 In the event of the termination or expiry of this agreement, the licences referred to in clause 14.3 and clause 14.5 shall terminate automatically and Stockton shall deliver to the other Authorities all material licensed to Stockton pursuant to this Agreement that is in its possession or control. However, the licences granted pursuant to clause 14.3 shall continue in full force and effect.

## **15. STAFFING**

- 15.1 The Authorities agree that notwithstanding Regulation 3(5) TUPE pursuant to which TUPE does not apply to administrative transfers of staff in the public sector, the Authorities agree
- (a) that the Principles of Good Employment Practice issued by the Cabinet Office in December 2010 apply to the treatment of employees
  - (b) to nevertheless apply the principles of TUPE to any:
    - a) Relevant Transfer of staff under this Agreement; and

- b) secondments of the other Authorities' staff to Stockton.

## **16. CONTRACTS (PRE-EXISTING AND FUTURE)**

- 16.1 The Authorities shall novate all Pre-Existing Contracts to Stockton. Where a Pre-Existing Contract is incapable of novation the Authorities each appoint Stockton to act as agent for these contracts until their expiry or early termination, or until the termination of this Agreement, whichever is the earlier.
- 16.2 Stockton shall enter into such contracts with third parties as it sees fit for the purpose of facilitating the discharge of the Adoption Functions. Stockton shall take reasonable steps to ensure that all contracts entered into concerning the Adoption Functions are capable of assignment or novation to the respective Authorities and any successor body.

## **17. GOVERNANCE**

- 16.1. Each Authority shall nominate an Authorised Officer, who shall be the main point of contact for Stockton and each of the other Authorities and shall be responsible for representing the respective Authority and liaising with Stockton's Authorised Officer in connection with the RAA.
- 16.2. Stockton shall nominate Stockton's Authorised Officer, who shall be the main point of contact for the Authorities and shall be responsible for representing Stockton and liaising with the other Authorities Authorised Officers in connection with the RAA.
- 16.3. The RAA shall have a RAA Board comprised of the Authorised Officers and no more than [NUMBER] Additional Board Members who are appointed by the Authorised Officers in accordance with the agreement.
- 16.4. Subject to the terms of this agreement and any applicable legislation, and subject to any matter which the Authorities may reserve, the RAA Board shall be responsible for the strategic oversight of the RAA and shall have the authority to guide Stockton to carry out the purpose of the RAA.

## **18. MONITORING AND REPORTING**

- 18.1 The Head of RAA shall submit a quarterly report to the Authorised Officers setting out:
  - (a) the performance of the RAA against the [RAA Service Plan] in the preceding Quarter; and

- (b) any forecast overspend or underspend of the Financial Contributions.

## **19. ANNUAL REVIEW**

- 19.1 The Authorities may, at their option, carry out a review of the RAA within three months of the end of each Financial Year (**Annual Review**), including:
- (a) the performance of the RAA against the Objectives;
  - (b) plans to address any underperformance in the RAA;
  - (c) actual expenditure compared with agreed budgets, and reasons for and plans to address any actual or potential underspends or overspends;
  - (d) review of plans and performance levels for the following year; and
  - (e) plans to respond to any changes in policy or legislation applicable to the RAA or the RAA.
- 19.2 The Head of RAA shall prepare an annual report
- (a) if an Annual Review has been requested, following the Annual Review
  - (b) if no Annual Review has been requested, within three months of the end of the Financial Year

for submission to the Authorities' respective Authorised Officers.

## **20. VARIATIONS**

- 3.1. This Agreement may be varied by the Authorities at any time by agreement in writing in accordance with the Authorities' internal decision-making processes.

## **21. STANDARDS**

- 21.1 The Authorities shall collaborate to ensure that the RAA are discharged in accordance with:
- (a) the prevailing [national standards] for local authority Adoption ;
  - (b) the requirements specified by the Authorities respective standing orders; and
  - (c) the requirements specified by any relevant external regulator.
- 21.2 The Head of RAA shall develop operational guidance and procedures to reflect compliance with clause 21.

- 21.3 The Head of RAA shall ensure that each employee is appropriately managed and supervised in accordance with all relevant prevailing standards of professional accountability.
- 21.4 Stockton shall ensure that the Head of RAA is appropriately managed and supervised in accordance with all relevant prevailing standards of professional accountability and may secure additional independent supervision from a third party to assist it in this requirement.

## **22. HEALTH AND SAFETY**

- 22.1 Stockton shall (and shall use reasonable endeavours to ensure its Representatives) comply with the requirements of the Health and Safety at Work etc Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to the RAA and persons working on the RAA.
- 22.2 Stockton shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc Act 1974), together with related policies and procedures, are made available to the other Authorities on request.
- 22.3 Stockton shall notify the other Authorities if any incident occurs in the performance of the RAA, where that incident causes any personal injury or damage to property that could give rise to personal injury.

## **23. EQUALITY DUTIES**

- 23.1 The Authorities acknowledge their respective duties under equality legislation to eliminate unlawful discrimination, harassment and victimisation, and to advance equality of opportunity and foster good relations between different groups.
- 23.2 Stockton agrees to adopt and apply policies in its carrying out of the Adoption Functions, to ensure compliance with their equality duties.
- 23.3 Stockton shall take all reasonable steps to secure the observance of clause 23 by all servants, employees or agents of Stockton and all Service Providers employed in delivering the RAA described in this Agreement.

## **24. FREEDOM OF INFORMATION**

The Authorities acknowledge that each is subject to the requirements of FOIA and the EIR, and shall assist and co-operate with one another to enable each Authority to comply with these information disclosure requirements, where necessary.

## **25. DATA PROTECTION**

- 25.1 Each Authority shall (and shall procure that any of its Representatives involved in the provision of the RAA shall) comply with any notification requirements under Data Protection Legislation. Both Authorities shall duly observe all their obligations under Data Protection Legislation, which arise in connection with this Agreement.

## **26. ADOPTION RECORDS**

- 26.1 The Authorities shall make available to Stockton from the Commencement such adoption records that are necessary for the proper and effective discharge the Adoption Functions and Stockton shall hold, and be responsible for maintaining and the safekeeping of the adoption records for the Term, in accordance with Data Protection Legislation.

## **27. CONFIDENTIALITY**

- 27.1 The Authorities agree to keep confidential all documents relating to or received from the other Authority under this Agreement that are labelled as confidential.
- 27.2 Where an Authority receives a request to disclose Information that the other Authority has designated as confidential, the receiving Authority shall consult with the other Authority before deciding whether the Information is subject to disclosure.

## **28. AUDIT**

- 28.1 Stockton shall arrange for the audit of the accounts of the Service Budget in accordance with its statutory audit requirements.
- 28.2 Stockton shall provide to any other Authority any reports required concerning the Adoption Functions on reasonable notice.

- 28.3 The Authorities shall co-operate in the provision of Information, and access to premises and staff, to ensure compliance with the requirement of any statutory inspection, or other monitoring or scrutiny of the Adoption Functions. The Authorities shall implement recommendations arising from these inspections, where appropriate.

## **29. INSURANCE**

- 29.1 The Authorities shall effect and maintain a policy or policies of insurance, providing an adequate level of cover for liabilities arising under any indemnity in this Agreement.
- 29.2 Each Authority shall be responsible for insuring the premises and assets it contributes to the RAA, as set out in Schedule 2.

## **30. INDEMNITIES**

Each Authority (**Indemnifying Authority**) shall indemnify and keep indemnified the other Authorities (**Indemnified Authorities**) against all actions, proceedings, costs, claims, demands, liabilities, losses and expenses whatsoever, whether arising in tort (including negligence), default or breach of this Agreement, to the extent that any loss or claim is due to the breach of contract, negligence, wilful default or fraud of itself, the Indemnifying Authority's employees, or any of its Representatives or sub-contractors, except to the extent that the loss or claim is directly caused by or directly arises from the negligence, breach of this Agreement, or applicable Law by the Indemnified Authorities or their Representatives.

## **31. LIABILITIES**

- 31.1 No Authority shall be liable to any other Authority for claims by third parties arising from any acts or omissions of the other Authority in connection with their respective Adoption Functions prior to the Commencement Date.
- 31.2 Each Authority shall, at all times, take all reasonable steps to minimise and mitigate any loss or damage for which the relevant Authority is entitled to bring a claim against any other Authority under this Agreement.

## **32. COMPLAINTS AND INVESTIGATIONS**

- 32.1 The Authorities shall deal with all complaints received concerning the RAA in the first instance through Stockton's complaints procedures.

32.2 The Authorities shall each fully comply with any investigation by the Ombudsman, [agency relevant to adoption] or the Authorities external auditors or the Audit Committee of any Authority, including providing access to Information and making staff available for interview.

### **33. DISPUTE RESOLUTION**

33.1 The Authorised Officers shall use their best endeavours to resolve disputes arising out of this Agreement.

33.2 If any dispute referred to the Authorised Officers is not resolved within 30 days, any Authority, by notice in writing to any others, may refer the dispute to the chief executives (or equivalent) of the Authorities, who shall cooperate in good faith to resolve the dispute as amicably as possible within 30 days of service of the notice.

33.3 Subject to clause 32.4, if the chief executives (or equivalent) fail to resolve the dispute in the allotted time, the Dispute Resolution Procedure shall be deemed exhausted and the aggrieved Authority may commence legal proceedings.

33.4 This clause 32 shall not prevent any Authority from seeking injunctive relief at any time during the Term (regardless of whether the Dispute Resolution Procedure set out in this clause 32 has been exhausted or not) in the case of any breach or threatened breach by any other Authority of any obligation under this Agreement.

### **34. TERMINATION**

34.1 Without prejudice to other rights and remedies at law, and unless terminated under clause 33.2 or 33.3, any Authority may terminate this Agreement at any time by giving 12 months' written notice to the other Authority.

34.2 Subject to clause 33.3, any Authority may terminate this Agreement at any time by giving 12 months' written notice to the other Authorities, if for budgetary reasons:

- (a) it is no longer able to make its Financial Contributions or otherwise contribute sufficient resources to the RAA (or any part of them); or
- (b) it is of the reasonable opinion that in light of the other's proposed Financial Contribution the RAA (or any part of them) are no longer viable.

34.3 Any Authority (for the purposes of this clause 33.3, the **First Authority**) may terminate this Agreement in whole or part with immediate effect by the service of written notice on the other Authorities

- (a) if there is in breach of any material obligation under this Agreement, provided that, if the breach is capable of remedy, the First Authority may only terminate this Agreement under clause 34.3, if the breaching Authority has failed to remedy the breach within 28 days of receipt of notice from the First Authority (**Remediation Notice**) to do so;
- (b) there is a Change in Law that prevents an Authority from complying with its obligations under this Agreement; or
- (c) following a failure to resolve a dispute under clauses 32.1 and 32.2.

34.4 The provisions of clause 35 shall apply on termination of this Agreement.

### **35. CONSEQUENCES OF TERMINATION**

35.1 On the expiry of the Term, or if this Agreement is terminated in whole or in part for any reason:

- (a) premises and assets shall be returned to the contributing Authority in accordance with the terms of their leases, licences or agreed Schedule of condition;
- (b) assets purchased jointly shall be disposed of by Stockton and the proceeds of sale allocated according to the Authorities' Financial Contributions or, if otherwise agreed and subject to the conditions of such agreement, shall be retained by Stockton;
- (c) contracts entered into by Stockton concerning each of the other Authorities' Adoption Functions shall be novated to the Authority to which the contracts relate, and the relevant Authority shall accept the novation; and
- (d) Stockton shall transfer to the relevant Authority all records in its possession which relate to their respective Authority's Adoption Functions.

35.2 Overspends on termination of the Agreement shall be dealt with in accordance with clause 9.4.

35.3 Subject to clause 35.4, underspends on termination of the Agreement shall be dealt with in accordance with clause 9.6.

35.4 Subject to clause 9.4, Stockton shall be entitled to direct any underspends to the following purposes:

- (a) to meet obligations under existing contracts;
- (b) to meet the costs of any redundancies arising from the termination of the RAA.

35.5 The provisions of the following clauses shall survive termination or expiry of this Agreement:

- (a) Clause 24 (Freedom of Information);
- (b) Clause 25 (Data Protection);
- (c) Clause 26 (Adoption Records);
- (d) Clause 28 (Audit);
- (e) Clause 30 (Indemnities);
- (f) Clause 31 (Liabilities); and
- (g) Clause 35 (Consequences of Termination).

## **36. PUBLICITY**

19.1. The Authorities shall use reasonable endeavours to consult one another before making any press announcements concerning the RAA or the discharge of any Authority's Adoption Functions under this Agreement.

## **37. NO PARTNERSHIP**

20.1. Nothing in this Agreement shall be construed as constituting a legal partnership between the Authorities or as constituting any Authority as the agent of any other for any purpose whatsoever, except as specified by the terms of this Agreement.

## **38. THIRD PARTY RIGHTS**

21.1. No one other than a party to this agreement, their successors and permitted assignees, shall have any right to enforce any of its terms.

## **39. NOTICES**

39.1 Notices shall be in writing and shall be sent to the other Authorities marked for the attention of the monitoring officer (or equivalent) or another person duly notified by the Authority for the purposes of serving notices on that Authority, at the address set out for the Authority in this Agreement.

39.2 Notices may be sent by first class mail. Correctly addressed notices sent by first class mail shall be deemed to have been delivered 72 hours after posting.

#### **40. ASSIGNMENT AND SUBCONTRACTING**

23.1. No party shall assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights and obligations under this agreement without the prior written consent of the other party.

#### **41. SEVERABILITY**

24.1. If any provision or part-provision of this Agreement 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 this agreement.

#### **42. WAIVER**

42.1 The failure of any Authority to enforce any of the provisions of this Agreement at any time or for any period of time shall not be construed to be a waiver of any such provision and shall in no matter affect the right of that Authority thereafter to enforce such provision.

42.2 No waiver in any one or more instances of a breach of any provision of this Agreement shall be deemed to be a further or continuing waiver of such provision in other instances.

#### **43. ENTIRE AGREEMENT**

26.1. This Agreement, the Schedules and the documents annexed to it or otherwise referred to in it contain the whole agreement between the parties relating to the subject matter of it and supersede all prior agreements, arrangements and understandings between the parties relating to that subject matter.

#### **44. GOVERNING LAW AND JURISDICTION**

27.1. Subject to clause 34, this Agreement and any dispute or claim arising out of or in connection with it or its subject matter shall be governed by and

construed in accordance with the law of England and Wales, and the Authorities irrevocably agree that the courts of England shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement.

**45. FAIR DEALINGS**

- 28.1. The Authorities recognise that it is impracticable to make provision for every contingency which may arise during the life of this Agreement and they declare it to be their intention that this Agreement shall operate between them with fairness and without detriment to the interests of either of them and that if in the course of the performance of this Agreement, unfairness to either of them does or may result then the other shall use its reasonable endeavours to agree upon such action as may be necessary to remove the cause or causes of such unfairness.

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

## Schedule 1 Objectives

The Authorities agree that the RAA will enable the delivery of the following Objectives across the Authorities:

(a) [DETAIL FROM THE BUSINESS CASE ONCE APPROVED]

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**Schedule 3      Governance Overview**

**[INSERT GOVERNANCE DIAGRAM]**

## Schedule 4 RAA Board

### 1. Functions of the RAA Board

1.1. The RAA Board shall

- (a) agree the Balanced Scorecard
- (b) agree the RAA budget and recommend to the Authorities the Authorities Contributions
- (c) monitor performance and volumetric data
- (d) develop strategy and set out strategic direction for the organization
- (e) evaluate the impact of legislation and ensure implementation as appropriate

1.2. The RAA Board may at any time resolve, to remove any Additional Board Member from the RAA Board or appoint any person as a Additional Board Member and such removal or appointment shall be effective as the RAA Board may determine.

1.3. The RAA Board shall be responsible for appointing the chair of the RAA Board who shall be an Authorised Officer, but may not be Stockton's Authorised Officer.

1.4. Meetings of the RAA Board shall be held regularly as determined by the chair and in any event at least [NUMBER] times per financial year.

1.5. Every meeting of the RAA Board shall be governed by the following provisions:

1.5.1. a meeting of the RAA Board may be called by the chair of the RAA Board or any [two] Board Members giving notice of the meeting of at least [one] Business Day to all Board Members, specifying the place, day and time of the meeting and a statement of the matters to be discussed at the meeting, provided that valid shorter notice is deemed to have been given if all Board Members attend the meeting or if it is ratified by the Board Members at a subsequent duly convened meeting;

1.5.2. the quorum for a meeting of the RAA Board is [NUMBER] Authorised Officers (including the chair) present in person or by video or telephone conference call or by alternate (which shall mean another substitute Authorised Officer authorised to attend and vote on behalf of the appointing Authorised Officer);

1.5.3. where the appropriate quorum is not present within [NUMBER] minutes of the start time stated in the notice of the meeting, any

resolution passed at the inquorate meeting is deemed to have been passed if it is ratified later by the required majority in attendance at a duly convened quorate meeting;

1.5.4. [VOTING TBC]

1.5.5. meetings of the RAA Board may be conducted by electronic means, such as via telephone or video conference. Board Members participating in a RAA Board meeting via electronic means shall be deemed to be present in person at the meetings and shall be entitled to be counted in the quorum and to vote; and

1.5.6. minutes shall be prepared of all RAA Board meetings and shall be approved and signed by the chair of the RAA Board as evidence of the proceedings.

EXECUTED as a DEED

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.....

[INSERT AGREED METHOD OF EXECUTION]