

Adoption West Regional Adoption Agency

Heads of Terms

v.5 08.03.2017

1 BACKGROUND

- 1.1 The parties to the proposed **Adoption West Regional Adoption Agency ("RAA")** are proposing a corporate joint venture between the local authorities which will operate as the RAA.
- 1.2 These heads of terms represent the key commercial terms for the RAA structure. The intention is that once agreed the Heads of Terms provide an agreed common basis for the detailed documentation to be prepared. These heads of terms are not exhaustive or intended to be legally binding and the parties only intend to be legally bound to one another when they enter into formal contracts for that purpose.

2 DOCUMENTATION

- 2.1 The RAA will be based around the following principal documentation:

- 2.1.1 members' agreement;
- 2.1.2 articles of association;
- 2.1.3 commissioning agreement;
- 2.1.4 support services agreements;
- 2.1.5 facility agreement for working capital;
- 2.1.6 licences for access to premises.

3 MEMBERS' AGREEMENT

- 3.1 The members' agreement will set the rights of the authorities as members of the company and the obligations of the company to the authorities in their member capacity.
- 3.2 Each local authority member and the RAA will be required to sign up to the Members Agreement¹.
- 3.3 Any new member will be required to enter a deed of adherence agreeing to be subject to the Member's Agreement)
- 3.4 The main terms will include:
 - 3.4.1 **Board Composition** – the board will have a minimum number of [6] and a maximum of [12], including.
 - (a) Each authority will have a right to appoint [1] director with the potential for multiple authorities to be represented by a single individual where agreed by all parties. Appointees from the authorities will be officers;
 - (b) [1] VAA representative(s) appointed to the board;
 - (c) [2] executive directors on the board;
 - (d) [1] front line staff representatives;

¹ It is not proposed that any VAA has a role as a member, i.e. owner of the company.

- 3.4.2 **Quorum** - The quorum for meetings will be **[4]** including all of the authority representatives.
- 3.4.3 **Remit of the Board** – the board will have the remit of implementing the business plan as approved by the owner authorities on an [annual basis] and will be required to refer any "reserved matter" back to the owner authorities for approval. Reserved matters will be articulated in the members' agreement.
- 3.4.4 **Funding** – the financial requirements of the company will be met by the payments to the company under the commissioning agreement. The owning authorities will not be required to invest any equity into the company.
- 3.4.5 **Surplus** – any surplus generated will be retained within the company and invested into future services [or to reduce subsequent charges paid by the authorities to commission the services]. There is no scope for profit distribution from the company.
- 3.4.6 **Term and termination** – the members' agreement will be co-terminus with the commissioning agreement for each authority.
- 3.4.7 **Dispute Resolution** – in the event of a dispute on the terms of the members' agreement the dispute will be referred to the following escalation tiers:
- (a) Board of directors
 - (b) Directors of Children Services of all authorities as representatives of the members
 - (c) [chief executives]

In the event the dispute is still not resolved it could be referred to mediation with agreement.

4 ARTICLES OF ASSOCIATION

- 4.1 The company will be a company limited by guarantee.
- 4.2 The articles will dovetail with the members' agreement and be a document of public record. The presence of the members' agreement means there will be less emphasis / importance associated with the articles.

5 COMMISSIONING AGREEMENT

- 5.1 Each of the six member local authorities will enter into a Commissioning Agreement with the RAA detailing the services commissioned to be delivered.
- 5.2 The main terms will include:
- 5.2.1 **Services** – the RAA will provide the services [as set out in a specification in the agreement] [and updated on an annual basis through the business plan]. [There will be no payment mechanism based on certain Key Performance Indicators].

Payment – each commissioning authority will pay for the provision of the services during the Term in advance in the following percentages set out in the Table below. These financial contributions will be in proportion to current spending on the services [as set out in a specification in the agreement]. Proportional contributions toward future costs based on current spend will be as follows:

Bath & North East Somerset	Bristol	Gloucestershire	North Somerset	South Gloucestershire	Wiltshire
6.81%	33.96%	18.96%	11.52%	5.56%	23.20%

- 5.2.2 **Performance Monitoring** – the RAA will report [quarterly] against agreed information. [Key Performance Indicators will be monitored and reported against]. In the event of agreed level of non-performance the commissioning authority will be entitled to require a remediation plan by the RAA to address the non-performance.
- 5.2.3 **Term and Termination** – the agreement will be for an initial period of [3] years. There will be no option of voluntary termination within that period. There will be the right to terminate in the event of a material breach including failure to rectify non-performance within agreed parameters.
- 5.2.4 **Employment and Pensions** – staff will TUPE transfer as a result of the commissioning contract with LGPS pensions continuing. The RAA will agree to be an [admitted body] to the [3] pension fund[s] - Avon, Gloucestershire and Wiltshire pension fund – for the purpose of allowing on-going membership of the LGPS. The legacy authorities will retain liability for all pension risk associated with individuals they employed up to the point of transfer.
- 5.2.5 **Assets and Contracts** – contracts related to the service [will be required to novate to the RAA].
- 5.2.6 **Dispute Resolution** – the same dispute resolution applicable to the members' agreement will apply (see 3.4.7 above).

6 SUPPORT SERVICES

- 6.1 The following services will be provided to the RAA by the following authorities on a [cost recovery basis]:
- 6.1.1 ICT by []
- 6.1.2 HR [and payroll] by []
- 6.1.3 Finance by []
- 6.1.4 Legal by []

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Signed for and on behalf of **Bath and
North East Somerset Council**

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Date

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Signed for and on behalf of **Bristol
City Council**

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Date

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Signed for and on behalf of **Gloucestershire
County Council**

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Date

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Signed for and on behalf of **North
Somerset Council**

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Date

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Signed for and on behalf of **South
Gloucestershire Council**

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Date

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Signed for and on behalf of **Wiltshire
Council**

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Date