

This **AGREEMENT** is made on the date of the last signature contained in the [Particulars](#).

BETWEEN

- (1) **Staffordshire County Council** of No. 1 Staffordshire Place, Stafford, ST16 2LP (the “**Council**”); and
 - (2) **The Provider** whose information is as detailed in A2 of the [Particulars](#) (the “**Provider**”).
- together known as the “**Parties**”

BACKGROUND

- (A) The Council placed a Tender Notice on the central digital platform for UK procurements, (on behalf of the Commissioners, where stated in A3 of the [Particulars](#)), seeking a Tender (defined below) from providers for the provision of the Goods and/or Services as detailed in the Specification (defined below).
- (B) The Provider made its submission to the Form of Tender in response to the Tender Notice and on this basis the Council selected the Provider.
- (C) The Council (acting on behalf of all the Commissioners, where stated in A3 of the Particulars) and the Provider agree that the Provider will perform the Service and or provide Goods in accordance with these terms and conditions.

IT IS AGREED AS FOLLOWS:-

1. DEFINITIONS

The words and expressions in this Agreement shall have the meaning set out in the Interpretation Table below, or as set out in the relevant Schedules, unless the context otherwise requires.

INTERPRETATION TABLE	
Word/Phrase	Definition
Abuse	means the violation of an individual’s human or civil rights by another person or persons to a degree which results in a referral about the alleged mistreatment under agreed inter-agency procedures and protocols;
Affiliate	means any entity which directly or indirectly controls, or is controlled by, or is under common control with the Provider;
Agreement	means this entire agreement between the Council and the Provider for the provision of the Services comprising this Agreement (including any and all Schedules hereto) (and any formal Variation thereof at any time during the Agreement Period), the Form of Tender and the Tender;
Agreement Period	means the Initial Agreement Period and any Extension Period(s);
Applicable Law	means any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, regulation, order, regulatory policy, mandatory guidance or code of practice,

	judgement of a relevant court of law, or directives or requirements with which the Provider is bound to comply;
Authorised Officer	means the person designated as such by both Parties respectively in accordance with Clause 14 (Authorised Officers) who is specified at A5 of the Particulars (or such other person as is nominated by or on behalf of the Parties respectively from time to time during the Agreement Period) and such person shall be authorised by each Party respectively and whose actions will bind them under and in accordance with the terms of this Agreement;
Background Intellectual Property Rights	means any and all Intellectual Property Rights that are owned by either the Council or the Provider as at the Commencement Date and which were created, formed, established or arose prior the Commencement Date or after the End Date and which are outside the scope of this Agreement;
BACS	means Bankers' Automated Clearing Services which is an electronic system for making payments directly from a bank to another;
Best Value	means the Council's duty to secure continuous improvement, as defined in Section 3 of the Local Government Act 1999 Act;
Bribery Act	means the Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning that Act;
Business Continuity Plan	means the business plan which is required by Clause 43 (Business Continuity) and which sets out the Provider's proposed methodology to ensure continuance of the provision of the Services in the event of any emergency;
Catastrophic Failure	means any action or inaction by the Provider, whether in relation to the Services and/or this Agreement or otherwise which in the reasonable opinion of the Council's Authorised Officer has or may cause significant harm to the reputation of the Council or causes significant disruption to the Council's day to day services and/or functions or has or may cause significant harm to users of the Services ;
Change of Control	means a change of control within the meaning of Section 1124 of the Corporation Tax Act 2010;
Clarifications	means the documented exchange with all potential providers engaged in the procurement process arising from the Tender Notice where the potential suppliers and/or the Council submitted questions or queries to clarify certain aspects of the Tender including but not limited to the Specification and/or these Terms and which are appended as Schedule E to this Agreement

Commencement Date	means the date on which the Agreement Period begins and the date on which the Provider will begin to provide the Services as set out in the Particulars at A4;
Commissioners	Means, where relevant, the Commissioners of the Service where commissioned by the Council acting as lead commissioner via a collaboration between those Commissioners, if relevant, referred to in A3 of the Particulars (if any);
Confidential Information	means, subject only to the provisions of Clause 18.1 any and all information including but not limited to information relating to this Agreement, the terms of this Agreement, the performance of the Services and/or provision of the Goods, information which relates to the business, affairs, properties, assets, trading practices, formula, services, developments, service users, trade secrets, software, source code, Intellectual Property Rights, customers and suppliers of either Party, all Personal Data and/or other information and/or data, for the time being in the Parties' possession, control and/or owned by the Parties respectively and howsoever configured, arranged or presented and howsoever obtained in the course of the performance of this Agreement (whether or not prior to the Commencement Date or otherwise) that it is conveyed or recorded on whatever media, preserved or disclosed and whether disclosed by the Parties to one another respectively or via their personnel, employees, officers, representatives, advisers or consultants and/or whether discovered, learnt or gleaned by one Party;
Contract Review	means a review of the Provider's performance by the Council under this Agreement which is initiated under Clause 7 (Contract Management) and Contract Review Meeting shall be any meeting relating to such Contract Review;
Contract Standards	means all relevant provisions and standards set out in this Agreement and the Specification or which are required by an Applicable Law which apply to the Services ;
Council's Contract Award Notice	means the Council's written acceptance of tender which forms part of the Agreement and is set out in Schedule F (Council's Contract Award Letters) of this Agreement;
Council Data	means any data, text, drawings, images or sounds (together with any database made up of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are: <ul style="list-style-type: none"> (a) supplied to the Provider on behalf of the Council; (b) which the Provider is required to generate, process, store or transmit pursuant to this Agreement; or any Personal Data or Special Category Data for which the Council is Controller under the Data Protection Legislation;
Council Policies	means all of the Council's policies that relate to the performance of

	the Services and/or the provision of Goods which are available on request from the Council and/or which have been specifically and more particularly identified in the Form of Tender (Schedule E – Tender Documents) and/or the Specification which include but are not limited to Equalities and Diversity Policy, Health and Safety Policy; Data Protection and Information Security Policy and Whistleblowing Policy;
Data Protection Legislation	means (i) all Applicable Laws of the UK relating to the processing of personal data and privacy, including but not limited to the UK GDPR, and the Data Protection Act 2018 (DPA 2018) to the extent that it relates to processing of personal data and privacy; and (ii) (to the extent that it may be applicable) the EU GDPR). The UK GDPR and EU GDPR are defined in section 3 of the Data Protection Act 2018;
Default	means any breach by the Provider of its obligations under this Agreement including but not limited to an abandonment of this Agreement in breach of its terms or any other default including a material Default, any act or omission, negligence or statement of the Provider or the Personnel howsoever arising with or in relation to the subject matter of this Agreement and in respect of which the Provider is liable to the Council;
Default Notice	means a notice served by the Council on the Provider requiring the relevant Default specified in the Notice to be remedied as specified under Clause 23 (Default);
Dispute Notice	has the meaning prescribed in Clause 41 (Dispute Resolution Procedures);
Dispute Resolution Procedures	means the dispute resolution procedures which are set out in Clause 41 (Dispute Resolution Procedures);
EIR	means the Environmental Information Regulations 2004 as may be amended or adapted or augmented from time to time;
Electronic Invoice:	means as defined by Section 67(3) of the Procurement Act 2023;
End Date	means the date on which the Agreement Period comes to an end whether by expiry of the Initial Agreement Period (thereby on the Initial End Date) or by expiry of an Extension Period or whether by the earlier termination of this Agreement howsoever arising and for whatever reason in accordance with the terms of this Agreement;
Extension Period(s)	means the period(s) of extension set out in the Particulars at A4 and notified to the Provider in accordance with Clause 2.2 ;
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 in relation to such legislation;

Force Majeure	Means any circumstance not within a Party's reasonable control including, without limitation: <ul style="list-style-type: none"> a. acts of God, flood, drought, earthquake or other natural disaster; b. epidemic or pandemic; c. terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations; d. nuclear, chemical or biological contamination or sonic boom; e. any law or action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition; f. collapse of buildings, fire, explosion or accident but excluding any labour or trade dispute, strikes, industrial action or lockouts relating to the Provider or the Personnel or any other failure in the Provider's or a Subcontractor(s) supply chain;
Foreground Intellectual Property Rights	means any and all Intellectual Property Rights that arise or are obtained or developed by the Provider, and/or by the Provider on behalf of, the Council in respect of the course of or in connection with the performance of this Agreement and the Services and/or the provision of the Goods during the Agreement Period;
Form of Tender	means the invitation to tender documentation issued by the Council pursuant to the Tender Notice and which form part of this Agreement and are set out in Schedule E (Tender Documents) of this Agreement;
Good Industry Practice	means the exercise of that degree of skill, prudence, foresight, efficiency timeliness, care and diligence as would be reasonably and ordinarily expected at the relevant time from a leading and qualified contractor within the same industry or business sector as the Provider undertaking Services/providing Goods of similar size, scope, nature, value and complexity to the Service under this Agreement;
Implementation Date	Means the date(s) for the Implementation Services to be provided by the Provider;
Implementation Period	means the period of time starting on the Implementation Date and ending on the Commencement Date during which the Provider will perform the Implementation Services only some of the Provider's obligations under this Agreement and/or some provisions of this Agreement are active and binding;
Implementation Plan	means the plan incorporating a timetable for delivery by the Provider of the Implementation Services and which forms part of the Specification;
Implementation Services	means the work, obligations, undertakings, actions that the Provider is required to conduct prior to the Commencement Date in order to prepare for the performance of the Services;
Information	means information held by the Provider on behalf of the Council, including but not limited to information relating to the

	requirements under the Specification, performance of the Services and/or provision of the Goods and information being Processed under this Agreement and requested under any data publication requirements, including the FOIA, EIR, Local Government Transparency Code and other associated legislation, regulations and guidance requiring the Council to make available and/or publish information;
Information Governance Agreement	means the agreement attached at Annex 1 of Schedule G that relates to the requirements under Data Protection Legislation and any Security Management requirements of the Council in respect of Council Data;
Initial Agreement Period	means the initial period of the Agreement commencing from and including the Implementation Date or the Commencement Date (as applicable) and ending on and including the Initial End Date;
Initial End Date	means the date at the end of the Initial Agreement Period as detailed in A4 of the Particulars , which marks the end of the Agreement Period and upon which date the Agreement will automatically expire unless or until an Extension Period is agreed with the Provider under Clause 2.2;
Insolvency Event	<p>with respect to any person, means:</p> <p>(a) that person suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or:</p> <p style="padding-left: 40px;">(i) (being a company or an LLP) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or</p> <p style="padding-left: 40px;">(ii) (being a partnership) is deemed unable to pay its debts within the meaning of section 222 of the Insolvency Act 1986;</p> <p>(b) that person commences negotiations with one or more of its creditors (using a voluntary arrangement, scheme of arrangement or otherwise) with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with one or more of its creditors or takes any step to obtain a moratorium pursuant to Section 1A and Schedule A1 of the Insolvency Act 1986 other than (in the case of a company, an LLP or a partnership) for the sole purpose of a scheme for a solvent amalgamation of that person with one or more other companies or the solvent reconstruction of that person;</p> <p>(c) another person becomes entitled to appoint a receiver over the assets of that person or a receiver is appointed over the assets of that person;</p> <p>(d) a creditor or encumbrancer of that person attaches or takes possession of, or a distress, execution or other such process is levied or enforced on or sued against, the whole</p>

	<p>or any part of that person's assets and such attachment or process is not discharged within fourteen (14) days;</p> <p>(e) that person suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;</p> <p>(f) where that person is a company, an LLP or a partnership:</p> <p>(i) a petition is presented (which is not dismissed within fourteen (14) days of its service), a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that person other than for the sole purpose of a scheme for a solvent amalgamation of that person with one or more other companies or the solvent reconstruction of that person;</p> <p>(ii) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is filed at Court or given or if an administrator is appointed, over that person;</p> <p>(iii) (being a company or an LLP) the holder of a qualifying floating charge over the assets of that person has become entitled to appoint or has appointed an administrative receiver; or</p> <p>(iv) (being a partnership) the holder of an agricultural floating charge over the assets of that person has become entitled to appoint or has appointed an agricultural receiver; or</p> <p>(g) any event occurs, or proceeding is taken, with respect to that person in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned above;</p>
Instalments	means that part of the Price which is payable to the Provider for the Services which shall be set out in Schedule C (Financial Provisions) and paid to the Provider in accordance with the provisions of Clause 10 (Price) of this Agreement;
Intellectual Property Right(s)	means and includes, without limitation, any and all patents, copyright, data base rights, design rights (whether registered or unregistered), trade-marks (whether registered or unregistered) skill and/or know-how, domain names, moral rights, and other similar rights, whether existing now and/or in the future, wherever existing in the world (together with the right to apply for protection of the same);
Key Performance Indicator (KPI)	means a set of quantifiable measurements used to gauge the Provider's overall performance, as set out in the Specification or Schedule D (if applicable);

Modern Slavery	means a term which encapsulates slavery, servitude, forced or compulsory labour and human trafficking;
Modern Slavery Act	means the Modern Slavery Act 2015 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning that Act;
Notice	means any Notice in writing which is served by either of the Parties on the other by their respective Authorised Officer in accordance with the requirements of Clause 40 (Notices);
Particulars	means Schedule A of this Agreement which contains the contractual details of the Parties and other variables specific to the Agreement between the Provider and the Council and which once complete and signed incorporate these terms and the Schedules into the Agreement made between the Council and Provider;
Party/Parties	the Council and/or the Provider (where applicable in the context of the particular circumstances);
Permitted Purpose	means the nature and purpose of the Processing of Personal Data required and permitted under and in accordance with the terms of this Agreement and as more particularly specified in the Information Governance Agreement;
Persistent Breach	means a breach of any of the terms of this Agreement which is committed three (3) or more times during any rolling six (6) month period during the Agreement Period and in respect of any performance failure the period stated in D2.3 of Schedule D (Performance Monitoring, Quality Assurance and Contract Review);
Personal Data	has the same meaning as set out in the UK GDPR and references within this Agreement shall include Special Category Data (if applicable);
Personnel	means all employees, servants, volunteers, agents, consultants, contractors, Directors officers, non-executive Directors and/or suppliers of the Provider, its Affiliates consultants or other professional advisors and/or of any Subcontractor(s) and any other representatives engaged by the Provider in connection with the performance of the Services/provision of Goods under this Agreement;
Price	means the sum of money payable by the Council to the Provider in consideration of the proper and due performance of the Services and/or provision of Goods and all other obligations under and in accordance with the terms of this Agreement and the Price will be dealt with and paid under and in accordance with Clause 10 (Price) of this Agreement and Schedule C (Financial Provisions);

<p>Pricing Schedule</p>	<p>means the information contained in the Tender which will be specified and incorporated into Schedule C (Financial Provisions) of this Agreement;</p>
<p>Prohibited Act</p>	<p>the following constitute Prohibited Acts:</p> <ul style="list-style-type: none"> (a) offering, promising or agreeing to give to any servant of the Council any gift or consideration of any kind as an inducement or reward: <ul style="list-style-type: none"> (i) for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Agreement or any other agreement with the Council; or (ii) for showing favour or disfavour to any person in relation to this Agreement or any other agreement with the Council; (b) committing any offence: <ul style="list-style-type: none"> (i) under the Bribery Act and or the UK Data Protection Legislation; or (ii) under legislation creating offences in respect of fraudulent acts; or (iii) at common law in respect of fraudulent acts in relation to this Agreement or any other agreement with the Council; or (iv) defrauding or attempting to defraud or conspiring to defraud the Council; or (v) under the Counter-Terrorism and Security Act 2015; or (vi) under the Modern Slavery Act 2015; (c) any action that may reasonably be considered to be to the detriment of the Council and or its service user's welfare, either by positive action or by omission. Such action shall include but is not limited to; breach of the law, health and safety, behaviours regarded as inappropriate towards the service user, safeguarding concerns, any kind of abuse, sexual allegations and or misconduct; financial malpractice, business continuity failure or matters that could be construed as not good business practice.
<p>Records</p>	<p>means this entire Agreement and all documents, data or other information relating to, produced, or received, by either of the Parties as part of or in connection with the performance of the Services and/or provision of Goods and stored on whatever medium including but not limited to Personal Data, Data Bases and/or Confidential Information, Employee Liability Information, open book data (where appropriate), all expenditure reimbursed by the Council, all payments made by the Council, all payments received by the Provider all contracts and subcontracts relevant to the performance and/or delivery of the Services ;</p>

Regulations	means the Procurement Act 2023, the Procurement Regulations 2024 and where applicable the guidance and procurement policy notes (PPNs) issued by Central Government;
Regulatory Bodies	means those government departments and regulatory, statutory and other legal entities, committees and bodies which, whether under any 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 Provider and “Regulatory Body” shall be construed accordingly
Remedial Action Plan	means the plan set out by the Council for the Provider to remedy any poor performance by the Provider and is determined and set out in accordance with the provisions of Clause 23 (Default) and Schedule D (Performance Monitoring, Quality Assurance and Contract Review);
Replacement Provider	means the organisation as appointed by the Council from time to time in order to provide any services which are the same as or substantially similar to any of the Services , or performed in substitution for any or all of the Services following the End Date, whether those services are provided by the Council internally and/or by any third party;
Required Electronic Form:	as defined by Section 67(3) of the Procurement Act 2023;
Schedule(s)	means Schedules A to K (as are stated to apply in the Particulars) of this Agreement respectively;
Security Management	means the Council’s security management requirements as required by the Council’s ICT department and detailed in Schedule J and/or as detailed in the Information Governance Agreement (as applicable);
Security Policies	means those polices of the Council that relate to the security of information whether or not Confidential Information, Council Data and/or Personal Data and general security of information communication and technology systems as set out in Schedule J;
Services	means the Services detailed in the Tender Notice and the Specification to be delivered or performed by or on behalf of the Provider in accordance with its obligations under this Agreement and or as described in the Particulars and where there is only Services or only Goods reference to Services throughout this Agreement shall be read and interpreted accordingly;
Specification	means the detailed description of the Services and which is set out in Schedule B (The Service Specification);
Storage Media	means any device that receives and retains electronic data for applications and users, and makes the data available for retrieval,

	including computer hard drives, USB flash drive, optical discs and memory cards;
Subcontract	means a contract between two or more providers, at any stage of remoteness from the Council in a sub-contracting chain, made wholly or substantially for the purpose of performing all and/or any part of the Services and/or provision of Goods;
Subcontractor(s)	means any subcontractor(s) engaged by the Provider to perform all and/or any part of the Services and/or provision of Goods;
Tender	means the entire written tender submission and any and all information contained in the Provider's response to the Form of Tender which was submitted to the Council by the Provider and shall include any and all Clarifications which was then accepted by the Council in writing in order to form this Agreement and is more particularly set out in Schedule E (Tender Documents);
Tender Notice	means the advertisement placed by the Council on the UK's central digital procurement platform in compliance with the Procurement Act 2023 with the reference number specified in the Particulars ;
Third Party Rights	means those rights that arise in a contract under and in accordance with the Contracts (Rights of Third Parties) Act 1999;
TUPE	means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246);
UK GDPR	means the UK General Data Protection Regulation, being the retained version of the General Data Protection Regulation ((EU) 2016/679) (EU GDPR) as it forms part of the law of England and Wales, by virtue of section 3 of the European Union (Withdrawal) Act 2018 and as amended by Schedule 1 to the Data Protection Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (SI 2019/419);
UK's Prompt Payment Code (PPC)	means the prompt payment code created by the UK Government in 2008 in response to a call from businesses for a change in payment culture. The code established a set of principles for businesses when dealing with and paying their suppliers that commit them to paying on time and fairly;
Valid Invoice:	means as defined in Section 68(8) of the Procurement Act 2023 and as further detailed in Schedule C, C1.5 of this Agreement;
VAT	means Value Added Tax charged in accordance with the Value Added Tax Act 1994 or any similar tax replacing it or performing a similar fiscal function;
Variation	means any change to this Agreement, or to the Services , which is made by Notice to the Provider from the Council in accordance with either, Clause 9 (Variation) or Clause 40 (Notices);

Working Day	means any day except for Saturday or Sunday and any days on which the offices of the Council are closed for normal business;
1999 Act	means the Local Government Act 1999.

1.2 If there is any conflict at any time between the provisions of this Agreement or any other document which is incorporated by reference into or attached to this Agreement, then the conflict shall be resolved in accordance with the following order of priority:

1.2.1 [Schedule A](#) (Particulars)

1.2.2 Clauses 1 to 45 of this Agreement (inclusive)

1.2.3 [Schedule B](#) (The Service Specification) to this Agreement;

1.2.4 [Schedule C](#) to K (save for Schedule E) of this Agreement in the order in which they appear; and

1.2.5 Schedule E (Tender Documents);

1.3 This Agreement (with the exception of [Schedule E](#) –Tender Documents) has been notified and brought to the attention of the Provider at the time of the Tender Notice and the Council reserves the right to amend and/or vary this Agreement in accordance with [Clause 9](#) (Variation).

1.4 This Agreement shall form the basis of the legal relationship between the Council and the Provider for the Services to the exclusion of any and all other terms. No other terms shall bind the Parties in relation to the subject matter of this Agreement. Any other terms between the Parties in respect of the Services will be superseded by the terms of this Agreement. This clause applies to:

1.4.1 any standard short form terms provided to the Provider by the Council as part of their response to the Tender and/or their purchase order process; and

1.4.2 to any standard short form or other terms proffered by the Provider to the Council as part of their invoicing or order acknowledgement process; and

any such terms shall not apply to this Agreement and/or take precedence over these terms.

1.5 If any provision of this Agreement is held by any law or court of competent jurisdiction to be invalid or unenforceable in whole or in part, the validity of the other provisions of this Agreement and the remainder of the affected provision shall be unaffected and shall remain in full force and effect.

2 AGREEMENT PERIOD

2.1 This Agreement shall take effect from either:

2.1.1 the Implementation Date (if applicable) with the delivery of the Services commencing on the Commencement Date; or

2.1.2 the Commencement Date (if there are no Implementation Services required)

and shall continue until the Initial End Date as detailed in A4 of the [Particulars](#) unless

extended in accordance with [Clause 2.2](#).

- 2.2 Subject to satisfactory performance of the Agreement by the Provider, the Parties may agree in writing to extend the Agreement for the Extension Period(s).

3 WARRANTIES AND REPRESENTATIONS

- 3.1 Each Party warrants, represents and undertakes that it has full capacity and authority and all necessary consents (including, but not limited to, where its procedures so require, the consent of its parent company) to enter into and perform this Agreement and that this Agreement is executed by a duly authorised representative of that Party.

- 3.2 The Provider warrants, represents and undertakes that:

3.2.1 it shall discharge its obligations under this Agreement:

3.2.1.1 with all due skill, care and diligence in accordance with all Applicable Laws and the Council's policies including without limitation and where applicable Modern Slavery, equality, information security and governance, health and safety and UK's Prompt Payment Code;

3.2.1.2 in accordance with Good Industry Practice;

3.2.1.3 in accordance with the terms of this Agreement and the Specification and the Tender in all material respects; and

3.2.1.4 to the reasonable satisfaction of the Council throughout the Agreement Period by using appropriately experienced, qualified and trained Personnel and Subcontractor(s);

3.2.2 the Services comply in all material respects with their description as it appears in the Tender and the Specification;

3.2.3 the Services are of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended from time to time) and fit for any purpose held out by the Provider or made known to the Provider by the Council expressly or by implication through the procurement process, and in this respect the Council relies on the Provider's skill and judgement.

3.2.4 where Goods are manufactured products, they are free from defects in design, material and workmanship and will remain so for the twelve (12) months after delivery and comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, import, storage, handling and delivery of the Goods.

- 3.3 The Provider acknowledges that it does not rely on any representation and/or warranty that has not been made in writing and in strict accordance with the provisions of this Agreement.

- 3.4 The Council's employees, subcontractor(s) and/or agents are not authorised to make any representations or warranties concerning the Agreement or any amendments to these terms and conditions unless confirmed by the Council's Authorised Officer in writing and/or where varied to that effect in accordance with [Clause 9](#) (Variation).

4. THE COUNCIL'S OBLIGATIONS

- 4.1 The Council shall co-operate and work with the Provider on any matters and/or issues regarding the performance of this Agreement that arise during the Agreement Period and

the Council will at all times act reasonably and where appropriate try to reach an amicable agreement and/or resolution with the Provider.

- 4.2 The Council shall, subject at all times to the performance of the Goods/Services being provided to the Council's satisfaction, ensure that prompt payment of the Price is made to the Provider in accordance with the terms set out in [Clause 10](#) (Price).

5. THE PROVIDER'S OBLIGATIONS

- 5.1 Where applicable the Provider shall perform the Implementation Services in accordance with the Implementation Plan and ensure that the Implementation Services are completed before or on the Commencement Date.
- 5.2 The Provider shall ensure that any key milestones as set out in the Implementation Plan and any KPIs and outcomes detailed in the Specification are achieved by the dates specified.
- 5.3 The Provider shall engage with any existing provider during the Implementation Period in order to ensure a smooth transition of the Services to the Provider.
- 5.4 The Provider shall perform and/or deliver the Services and ensure that they are fully functional and/or operational (as appropriate) as at the Commencement Date (time being of the essence) and are strictly in accordance with this Agreement.
- 5.5 Subject always to [Clause 24](#) (Force Majeure) time for delivery of the Goods and/or performance of the Services shall be of the essence and failure to deliver and/or perform within the time agreed or otherwise specified by the Council shall enable the Council, in its absolute discretion, to release itself from any obligation to accept and/or pay for the Services and/or such failure shall entitle the Council to terminate all or part of this Agreement (in accordance with the provisions of [Clause 26](#) (Termination)), in either case without prejudice to any other rights and remedies that the Council may have or have acquired.
- 5.6 The Provider shall continue to perform all of its obligations under this Agreement and shall not suspend the supply of the Services notwithstanding:
- 5.6.1 any withholding of payment of the Price by the Council due to performance failures in accordance with [Schedule D](#);
- 5.6.2 any ongoing or unresolved dispute; and/or
- 5.6.3 any failure by the Council to pay the Price to the Provider due to any acts or omissions by the Provider.
- 5.7 The Council has consented to the Provider appointing the Subcontractor(s) to assist with all or part of the performance of the Services and/or delivery of the Goods as detailed in A6 of the [Particulars](#). Where the Provider replaces or substitutes the performance of the Subcontractor the Provider will obtain the Council's Consent in accordance with Clause 34 (Assignment and Subcontracting).

Where the Subcontractor is an excluded or excludable supplier under the Procurement Act 2023, or where the Council considers there are grounds for a Subcontractor to be an excluded or excludable supplier, as determined in accordance with the requirements of the

Procurement Act 2023, then:

- (a) where there are mandatory grounds for exclusion, the Provider shall replace or shall not appoint the Subcontractor(s);
 - (b) where there are discretionary grounds for exclusion, the Council may require the Provider to replace or not to appoint the Subcontractor(s) and the Provider shall comply with such a requirement.
- 5.8 Where permitted by Clause 5.7 the Provider will procure, check and certify to the Council that the contracts of all of its Subcontractors in the supply chain shall contain the same terms and conditions as set out in this Agreement including without limitation the terms relating to prompt payment and terms which preserve for the Council Third Party Rights in that contract between the Provider and the Subcontractor as may be replaced or substituted from time to time.
- 5.9 The Provider agrees that they will allow, facilitate and enable the Council, upon service of reasonable Notice in accordance with [Clause 15](#) (Open Book Accounting and Audit) to exercise its right under these terms and conditions to inspect and examine the Services at the Provider's premises or at any other premises where all or any part of this Agreement is being performed and this right of inspection shall include but not be limited to any of the Provider's records, accounts, information, data, documents and payments that relate directly or indirectly to the performance of the Services and/or provision of the Goods.
- 5.10 Neither the Provider nor its Personnel shall in any circumstances hold themselves out as being the agent or employee of the Council, or purport to enter into any contract on behalf of the Council, nor bind the Council to any undertaking, unless otherwise expressly agreed in writing by the Council (in its absolute discretion).
- 5.11 The Provider shall be registered, certified, authorised, licenced and/or permitted, by any relevant Regulatory Bodies, to undertake its business and provide the Services to the Council or on the Council's behalf to a third party or individual in receipt of the Services , and shall remain registered, certified, authorised, licenced and permitted throughout the Agreement Period with any relevant Regulatory Bodies.
- 5.12 The Provider shall comply with the standards and other requirements which are set out in all relevant current and future statutory provisions, codes of practice, statutory or regulatory guidelines and Good Industry Practice applicable to its business and/or the provision of the Services that apply whether directly or indirectly to this Agreement whether or not set out in the Specification or otherwise within this Agreement.
- 5.13 The Provider shall:
 - 5.13.1 comply at all times and in all material respects with all of the Council's Policies relevant to the performance of the Services (as determined by the Council in its absolute discretion);
 - 5.13.2 in performing its obligations under this Agreement comply with and shall ensure that each of its Subcontractors shall comply with all Applicable Laws, statutes, regulations and codes (as amended from time to time) in force in relation to the Service.
- 5.14 The Provider shall ensure that all information, data (whether personal or otherwise) is provided to the Council in strict compliance with the Council's statutory obligations and shall

retain this information for a minimum of seven (7) years upon expiry of the Agreement Period.

- 5.15 The Provider acknowledges and agrees that the Council is obliged to comply with the requirements of the Procurement Act 2023 and shall provide the Council with any and all reasonably requested assistance in respect of such compliance at its own cost.

6. NO VOLUME GUARANTEE

- 6.1 The Goods and/or Services that are to be provided are set out in the Service Specification in [Schedule B](#). The Council provides no guarantee of any volumes and/or levels of output or continuity of requirement for the Services during the Agreement Period.

- 6.2 This Agreement is a non-exclusive purchase arrangement between the Council and the Provider. The Council reserves the right at all times to purchase services which are the same as or similar to the Services (and/or any ancillary services) from any other third party at any time during or following the Agreement Period.

7. CONTRACT MANAGEMENT

- 7.1 The Council shall undertake a review of the Provider's performance and/or delivery of the Services (in whole or in part, at the Council's discretion) under this Agreement from time to time throughout the Agreement Period in accordance with the terms and conditions set out in [Schedule D](#).

- 7.2 The Provider shall (at its own expense) afford all reasonable cooperation, resources and facilities to enable the Council to manage the Provider's performance and/or delivery under this Agreement and shall provide to the Council all reasonable information (including but not limited to reports, data, correspondence, accounts, books, records, Employee Liability Information) that may be required by the Council for such purposes and upon request by the Council. The Provider will respond in a timely manner to all requests made by the Council under this Clause 7 (Contract Management) and in any event no later than fifteen (15) Working Days from the date of a written request from the Council to provide such information.

- 7.3 The Provider shall at all times co-operate with the Council's processes for monitoring and evaluating the quality of the performance and/or delivery of the Services and compliance with this Agreement in whatever way is reasonably requested by the Council.

- 7.4 The Provider acknowledges the Council's obligation to publish all required notices relating to contract management under the Procurement Act 2023, and publication of the Provider's performance under this Agreement on the central digital platform to comply with the required transparency obligations in accordance with the said Act, including a requirement to publish ratings in such notices in accordance with section 39 of the Procurement Regulations 2024. The Provider agrees to provide such assistance as reasonably requested by the Council to comply with these obligations, at its own cost.

8. THE COUNCIL'S BEST VALUE DUTY

- 8.1 The Parties agree and acknowledge that the 1999 Act applies to the performance and/or delivery of the Services under this Agreement and the Provider shall, at no cost to the Council, provide all reasonably necessary assistance and work proactively with the Council to allow and enable the Council to comply with its Best Value duty in respect of this Agreement and the performance and/or delivery of the Services throughout the Agreement

Period.

9. VARIATION

9.1 Any variation to this Agreement must:

- 9.1.1 be in writing and agreed between the Parties and signed by the Parties' respective authorised representatives;
- 9.1.2 be subject to the Regulations;
- 9.1.3 be consistent with the nature, class, scope and type of the Services already being provided under this Agreement as set out in the Specification and Tender;
- 9.1.4 not relieve the Provider of any risk or liability under this Agreement or significantly alter the risk benefit ratio which formed part of the Tender; and
- 9.1.5 not incur any significant increase to the overall profit margin of the Provider.

10. PRICE

- 10.1 Subject to Clause 10.5, in consideration of the performance and/or delivery of the Services by the Provider under this Agreement, the Council shall pay the Price to the Provider in accordance with the terms, calculations, frequencies and information in the Pricing Schedule which is as incorporated into [Schedule C](#) (Financial Provisions).
- 10.2 The Provider acknowledges that the payment of the Price to the Provider by the Council is to cover all overheads, expenses, travel, subsistence and/or disbursements incurred (or to be incurred) by the Provider (including any Sub-contracting arrangements) in performance and/or supply of the of the Services in compliance with the provisions of the Agreement and therefore no other sum shall be payable by the Council to the Provider for the Services over and above the Price unless either, expressly provided for under this Agreement, or otherwise agreed in writing by the Council (at the Council's absolute discretion) via its Authorised Officers.
- 10.3 The Council shall make payment of the relevant valid and undisputed part of the Price, that is due to the Provider as specified under and in accordance with [Schedule C](#) (Financial Provisions) within thirty (30) calendar days from the date on which the invoice is recorded as being received by the Council.
- 10.4 The Council may withhold or suspend any payment of the Price payable to the Provider in accordance with [Schedule C \(Financial Provisions\)](#).
- 10.5 The Provider will not change the Price during the Agreement Period unless otherwise expressly agreed in writing with the Council's Authorised Officer.
- 10.6 For the avoidance of doubt, the Provider shall not be eligible for any payments in respect of the Implementation Services provided during the Implementation Period.

11. VAT

- 11.1 The Price is exclusive of VAT and where the Provider is registered for VAT purposes then the Council shall pay the Price plus VAT on condition that:
 - 11.1.1 the Provider submits an appropriate VAT invoice to the Council which complies with all applicable requirements of Her Majesty's Revenue and Customs for VAT purposes and shows the VAT separately as a strictly net extra charge to the

Council; and

- 11.1.2 the Council's recovery of the VAT in question is not jeopardised or prejudiced in any way due to any act or omission by the Provider.
- 11.2 If, at any time during the Agreement Period, the Provider becomes registered for VAT, or ceases to be registered for VAT purposes, or if there is any other amendment to its VAT status, then the Provider shall serve Notice of this change to the Council's Authorised Officer within five (5) Working Days in advance of the relevant change taking effect and where prior notification is not possible the Provider will serve Notice no more than five (5) Working Days following the relevant change taking effect.
- 11.3 The Provider shall fully indemnify on demand and keep the Council fully indemnified on demand against any and all losses, claims, damages, interest, costs, charges, expenses (including all legal and other professional expenses on a full indemnity basis), actions, proceedings, judgements, orders, demands and any and all other liabilities incurred, levied, demanded or assessed on the Council at any time in respect of:
 - 11.3.1 the Provider's failure to account for or to pay or charge any VAT relating to payments made to the Provider by the Council under this Agreement; and/or
 - 11.3.2 any breach of [Clause 11.1.2](#) (VAT) above.

12. LATE PAYMENTS

- 12.1 The Parties agree that any undisputed payment which is due from one Party to the other Party under this Agreement shall be late if the Party required to make the payment fails to do so within twenty (20) Working Days following the latest date that that sum becomes properly due and payable under this Agreement. This Clause 12.1 shall not apply to sums due following resolution of a dispute under [Clause 12.3](#).
- 12.2 A Party requesting payment of a sum that has become overdue as provided for in [Clause 12.1](#) may charge interest to the paying Party at a rate of two per cent (2 %) per annum above the base lending rate of The Bank of England from time to time on the outstanding sum, from the date that the monies became overdue as provided for in [Clause 12.1](#) and thereafter until payment is received in full both before and after judgement.
- 12.3 No interest shall be payable in respect of any withheld monies whilst the sums are in dispute. Interest will only begin to be charged and become payable if it is found that the sum or part of the sum was properly payable and remains outstanding following a further thirty (30) Working Days past the date that the dispute was resolved. For the purposes of interest under this Clause only, [Clause 12.1](#) shall not apply. Interest will only be charged on the sum or part of the sum that was incorrectly withheld. No interest will be payable on a disputed sum where the Party withholding payment was correct in doing so. Interest will not be calculated retrospectively.
- 12.4 The Parties agree that [Clauses 12.1 to 12.3](#) (inclusive) provide a substantial remedy in respect of any late payment of sums due under this Agreement. Therefore, subject to [Clause 12.5](#) below the Late Payment of Commercial Debts (Interest) Act 1998 shall not apply to this Agreement.
- 12.5 Where the Council is required to make an advance payment under this Agreement, the provisions of Part III S11 (Treatment of Advance Payments of the Contract Price) of the Late Payment of Commercial Debts (Interest) Act 1998 and all the other supplementary and

facilitative provisions to that Section and Part shall apply to this Agreement.

13. RECOVERY OF SUMS DUE (SET OFF)

- 13.1 The Council may retain or set-off payment of any amount owed to it by the Provider under this Agreement or any other agreement between the Council and the Provider if notice and reasons are provided.
- 13.2 Any exercise by the Council of its rights under this [Clause 13](#) (Recovery of Sums Due (Set Off)) shall not limit or affect any other rights or remedies available to the Council under this Agreement or otherwise.

14. AUTHORISED OFFICERS

- 14.1 Each Party shall elect an Authorised Officer for the duration of the Agreement Period who shall have the authority to act on behalf of their respective organisations on the matters set out in, or in connection with this Agreement. The Parties' Authorised Officers are as at the Commencement Date those detailed at A5 of the [Particulars](#).
- 14.2 Each Party shall immediately give as much Notice as is practicably possible and, in any event, no less than twenty (20) Working Days' Notice to the other Party of any change in the identity, address and telephone numbers or email addresses of the Authorised Officer named in A5 of the [Particulars](#).

15. OPEN BOOK ACCOUNTING AND AUDIT

- 15.1 The Provider shall keep and maintain until seven (7) years after the End Date or as long as may be agreed between the Parties and inserted into A8 of the [Particulars](#) full and accurate Records relating to the performance and/or delivery of the Services under this Agreement.
- 15.2 The Provider shall on receipt of a Notice from the Council afford the Council (and/or its designated representatives, agents and/or professional advisors) access to the Records and all information and data which is referred to in [Clause 15.1](#) from time to time during the Agreement Period and thereafter for the period specified in [Clause 15.1](#) above.
- 15.3 If provided for at A9 of the [Particulars](#) the Council shall be entitled to apply the principles of open book contract management set out in Procurement Policy Note 05/16 (<https://www.gov.uk/government/publications/procurement-policy-note-0516-open-book-contact-management>), or any other replacement guidance or policy issued from time to time to this Contract. The Council shall apply the appropriate tier level which, in the Council's reasonable opinion, is commensurate with the delivery model of the performance of the Services and and/or delivery of the Goods and the Provider shall comply with those principles (as more particularly described in the OBCM guidance at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/525283/obcm_guidance_final.pdf).
- 15.4 The Provider shall:
- 15.4.1 keep the Records and accounts referred to in [Clause 15.1](#) (and 15.3 where applicable) in accordance with Good Industry Practice and Applicable Laws; and
- 15.4.2 afford the Council (and/or its designated representatives, agents, and/or professional advisers) access to the Records and accounts referred to in Clause 15.1 (and 15.3 were applicable) at the Provider's premises and/or provide

Records and accounts (including copies of the Provider's published accounts) or copies of the same, as may be required by the Council (and/or its designated representatives, agents, and/or professional advisers) from time to time during the Agreement Period and the period specified in Clause 15.1, in order that the Council (and/or its designated representatives, agents, and/or professional advisers) may carry out an inspection to assess compliance by the Provider and/or its Subcontractors of any of the Provider's obligations under this Agreement including in order to:

- 15.4.2.1 verify the accuracy of the Price and any other amounts payable by the Council under this Agreement (and proposed or actual variations to them in accordance with this Agreement);
- 15.4.2.2 verify the costs of the Provider (including the costs of all Subcontractors and any third-party suppliers) in connection with the performance of the Services and/or provisions of the Goods;
- 15.4.2.3 verify any Records and information provided to the Council by the Provider in accordance with the requirements of this Clause 15;
- 15.4.2.4 verify the Provider's and each Subcontractor's compliance with the Applicable Laws;
- 15.4.2.5 identify or investigate an actual or suspected Prohibited Act, impropriety or accounting mistakes or any breach or threatened breach of security and in these circumstances the Council shall have no obligation to inform the Provider of the purpose or objective of its investigations;
- 15.4.2.6 identify or investigate any circumstances which may impact upon the financial stability of the Provider and/or any Subcontractors or their ability to perform the Services;
- 15.4.2.7 provide such information as is necessary to fulfil the Council's obligations under any FOI and/or EIR request, Data Protection Legislation request, or other official Auditor;
- 15.4.2.8 review any books of account and the internal contract management accounts kept by the Provider in connection with this Agreement;
- 15.4.2.9 carry out the Council's internal and statutory audits and to prepare, examine and/or certify the Council's annual and interim reports and accounts;
- 15.4.2.10 enable the National Audit Office to carry out an examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Council has used its resources;
- 15.4.2.11 review any records relating to the Provider's performance of the Services and/or provision of the Goods and to verify that these reflect the Provider's own internal reports and records;

- 15.4.2.12 verify the accuracy and completeness of any information delivered or required by this Agreement;
 - 15.4.2.13 review the Provider's quality management systems (including any quality manuals and procedures);
 - 15.4.2.14 review the Provider's compliance with any standards referred to in this Agreement or applicable to the performance of the Services and/or provision of the Goods;
 - 15.4.2.15 inspect any of the Council's assets, including Council's Intellectual Property Rights, equipment and facilities, for the purposes of ensuring that any of the Council's assets are secure and that any register of assets is up to date; and/or
 - 15.4.2.16 review the integrity, confidentiality and security of the Council's Confidential Information and/or Personal Data.
- 15.5 The Council shall use reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Provider or delay the performance of the Services and/or provision of the Goods save insofar as the Provider accepts and acknowledges that control over the conduct of audits carried out by the Council's designated representatives, agents, and/or professional advisers, is outside of the control of the Council.
- 15.6 Subject to the Provider's rights in respect of Confidential Information, the Provider shall on demand provide the Council (and/or its designated representatives, agents, and/or professional advisers) with all reasonable co-operation and assistance in providing:
- 15.6.1 all reasonable information requested by the Council (and/or its designated representatives, agents, and/or professional advisers) within the scope of the audit;
 - 15.6.2 reasonable access to sites controlled by the Provider and to any of the Provider's equipment used in the performance of the Services and/or provision of the Goods; and
 - 15.6.3 access to the Personnel.
- 15.7 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause 15 (Open Book Accounting and Audit), unless the audit reveals a Default by the Provider in which case the Provider shall reimburse the Council for the Council's reasonable costs incurred in relation to the audit.

16. CHANGE IN LAW

- 16.1 The Provider shall take all steps which are reasonably necessary to ensure that the performance and/or delivery of the Services are performed in accordance with any and all Applicable Laws applicable to the Services . At no additional cost expense or charges (levied directly or indirectly) to the Council, the Provider will ensure that any variations amendments alternations or adjustments necessary to be made to the Services that are required due to any changes in the Applicable Laws during the Agreement Period will be

made in accordance with the changes in the Applicable Laws such that the Services remain compliant with all such Applicable Laws.

17. INTELLECTUAL PROPERTY RIGHTS

- 17.1 Unless otherwise indicated at A10 of the Particulars any and all Foreground Intellectual Property Rights arising, acquired and created in the course of performance and/or production of the Services and/or the performance of the Provider's obligations under this Agreement, shall automatically vest in and be solely owned by the Council. The Council may use, publish, assign, amend, alter or transfer the Foreground Intellectual Property Rights as it sees fit, without geographical or other limitation, except where the Foreground Intellectual Property Rights created are dependent on or restricted by Background Intellectual Property Rights that are owned by the Provider or another third party. Where the Background Intellectual Property Rights are owned by the Provider or another third party the Council may only use the Background Intellectual Property rights in accordance with the licence of the Background Intellectual Property Rights under [Clause 17.3](#) so far as to do so:
- 17.1.1 is within the scope of this Agreement and/or the continual use of the Services ;
and/or
- 17.1.2 does not breach the rights title and/or interest of the Provider or any other third party in such Background Intellectual Property Rights.
- 17.2 Where the Foreground Intellectual Property Rights vest in the Provider as indicated in A10 of the [Particulars](#), the Provider may use, publish, assign, amend, alter or transfer the Foreground Intellectual Property Rights as it sees fit, without geographical or other limitation, except where the Foreground Intellectual Property Rights created are dependent on or restricted by Background Intellectual Property Rights that are owned by another third party.
- 17.3 Unless otherwise expressly agreed in writing between the Parties' respective Authorised Officers, the Provider shall, at no additional cost or expense to the Council, grant to the Council an irrevocable, royalty free, perpetual, unconditional non-exclusive worldwide licence, to use, reproduce and maintain, any of the Background Intellectual Property Rights (and the Foreground Intellectual Property Rights if applicable under Clause 17.2) owned by the Provider in relation to the performance of the Services and/or the production of the Goods, as is strictly and exclusively necessary for the purposes of enabling the Council (or its nominated third party) continued use of the Services (and the Foreground Intellectual Property Rights where vested in the Council in accordance with [Clause 17.1](#)). The Provider shall also procure that such licence or sub-licence includes the right to sub-licence, transfer, novate or assign the same to other contracting authorities, any replacement provider, or to any other of the Council's nominated third party whether or not that third party is providing to the Council services , similar to the Services .
- 17.4 Unless otherwise indicated at A10 of the [Particulars](#), the Provider hereby unconditionally and irrevocably waives, in respect of any and all Foreground Intellectual Property Rights created and referenced under [Clause 17.1](#) all moral rights, all rights to be identified as the author and/or, all rights to object to derogatory treatment of those Foreground Intellectual Property Rights to which the Provider may now or at any future time be entitled under the Copyright, Designs and Patents Act 1988 as amended from time to time and/or any similar

or equivalent legislation or laws in force anywhere in the world. This waiver made in favour of the Council shall extend to the Council's licensees, sub-licensees, future providers, agents, representatives assignees and successors in title and/or nominated third parties (whether or not those third parties provide services similar to the Goods and/or Services).

- 17.5 The Provider acknowledges and agrees that it is responsible for any infringement of any third parties' Intellectual Property Rights and for any claims (actual or threatened) made against the Council or otherwise arising from the Background Intellectual Property Rights or the Foreground Intellectual Property Rights created in accordance with [Clause 17.1](#) above and/or as a result of the Council's use (and/or its nominated third parties' use) of the Foreground and/or Background Intellectual Property Rights under and in accordance with [Clause 17.3](#).
- 17.6 The Provider shall fully indemnify on demand and keep fully indemnified on demand the Council against any and all claims (actual or threatened), demands, actions, costs, expenses (including all legal and other professional expenses and disbursements on a full indemnity basis), losses, damages and any and all other liabilities which are suffered or incurred by the Council (or its nominated third parties) and arising from or incurred by reason of any infringement or alleged infringement of any third parties' Intellectual Property Rights (including the defence of such alleged infringement) arising directly or indirectly from the Council's (and/or any of the class of persons specified in the waiver under [Clause 17.3](#) above use of the relevant Intellectual Property Rights and/or performance of the Services/provision of Goods by the Provider.
- 17.7 The Provider will do all acts and/or things and execute all documents and/or deeds requested by the Council from time to time to give effect to and invest in the Council any and all of the rights envisaged to be invested in the Council in this Clause 17 (Intellectual Property Rights).
- 17.8 The licences granted to the Provider and/or the Council (and/or any of the class of persons specified in the waiver under [Clause 17.3](#)) (as appropriate) under [Clause 17.2](#) shall continue during and after the Agreement Period.

18. CONFIDENTIALITY

- 18.1 Subject to clause 18.2, each Party shall:
- 18.1.1 treat all Confidential Information as confidential and safeguard against its unauthorised disclosure or use accordingly and keep it secure; and
 - 18.1.2 only use and/or allow their personnel, representatives agents and/or Subcontractors to use the Confidential Information for the purpose of performing the Services and/or performing any other obligation expressly specified under this Agreement and/or such use that is necessary to complete the expressly specified obligations under this Agreement.
 - 18.1.3 ensure that no unauthorised person gains access to any Confidential Information obtained in the performance of this Agreement; and
 - 18.1.4 if applicable, undertake to follow and maintain throughout the Agreement Period and for a period of five (5) years following the End Date appropriate and effective security systems which have been approved by the Council to protect against unauthorised disclosure and/or use of the Confidential Information.
- 18.2 A Party may disclose Confidential Information which it receives from the Disclosing Party

if:

- 18.2.1 disclosure is required by Applicable Law, a regulatory body or a court with the relevant jurisdiction (including under FOIA and EIR) and the recipient party notifies the disclosing party of the full circumstances, the affected Confidential Information and extent of the disclosure;
 - 18.2.2 the recipient party already had the information without obligation of confidentiality before it was disclosed by the disclosing party;
 - 18.2.3 the information was given to it by a third party without obligation of confidentiality;
 - 18.2.4 the information was in the public domain at the time of the disclosure;
 - 18.2.5 the information was independently developed without access to the disclosing party's Confidential Information;
 - 18.2.6 provided to its auditors or for the purpose of regulatory requirements, subject to confidentiality provisions being in place;
 - 18.2.7 provided to its professional advisers on a need-to-know basis, subject to confidentiality provisions being in place; and
 - 18.2.8 to the Serious Fraud Office where the recipient party has reasonable grounds to believe that the disclosing party is involved in activity that may be a criminal offence under the Bribery Act 2010.
- 18.3 The Provider shall immediately notify the Council of any breach of the terms of this Agreement in relation to Confidential Information (including if it suspects unauthorised access, copying, use or disclosure of the Confidential Information) and shall keep a concise chronological record of any such breaches (or suspected breaches). The Provider shall use its best endeavours to recover any Confidential Information which has been disclosed in breach of the terms of this Agreement. The Provider shall also co-operate with the Council in any investigation that the Council considers necessary to undertake as a result of any breach (or suspected breach) of security in relation to Confidential Information relating to this Agreement.
- 18.4 Where disclosure is required (except where required by any Applicable Law), and it is agreed between the Parties that the disclosure shall take place, then the Party disclosing the information shall ensure that the person receiving the information is made aware that the information being disclosed is Confidential Information, and the restrictions placed upon that Confidential Information as a result of that status on the same or equivalent terms to those confidentiality terms contained in this Agreement and more particularly this [Clause 18 \(Confidentiality\)](#). Nothing in this [Clause 18.4](#) shall be interpreted as requiring consent or agreement to disclosure envisaged under [Clause 18.1.5](#).
- 18.5 The Provider agrees to indemnify in full and on demand and keep indemnified in full and on demand the Council in respect of any and all claims (actual or threatened), actions, proceedings, fines, damages, orders, expenses, charges, payments, costs (including legal and administration costs on a full indemnity basis) which may arise directly or indirectly as a consequence of any act or omission by the Provider or any of its Subcontractors in the

breach of any confidentiality under this [Clause 18](#) (Confidentiality) or otherwise.

- 18.6 Confidential Information will not fall within the exception in Clause 18.2 merely because a part, an element or an item of that Confidential Information falls within the exceptions within Clause 18.2 if the combination or sequence, arrangement or pattern of the Confidential information concerned combined with other Confidential Information (if appropriate) does not fall within Clause 18.2.

19. FREEDOM OF INFORMATION

- 19.1 The Provider shall provide any required Information, at its own cost, within five (5) Working Days of receipt of a request from the Council and will fully cooperate in order to assist the Council in responding to enquires and/or requests to comply with any legislative requirements relating to requests for Information.
- 19.2 The Provider agrees to indemnify in full and on demand and keep indemnified in full and on demand the Council in respect of all claims (actual or threatened), actions, proceedings, fines, damages, orders, expenses, charges, payments, costs (including legal costs on a full indemnity basis) which may arise directly as a consequence of any act or omission by the Provider or its Subcontractors under [Clause 19.1](#) which prohibits or delays the Council complying with its legal obligations under any and all relevant access to information legislation including (but not limited to) the FOIA and/or EIRs.
- 19.3 The Provider acknowledges that the Council may be required under the FOIA and EIRs to disclose Information without consulting or obtaining consent from the Provider. The Council shall take reasonable steps to notify the Recipient of a request for Information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practicable for it to do so but (notwithstanding any other provision in this Agreement) the Council shall be responsible for determining in its absolute discretion whether any Information is exempt from disclosure in accordance with the FOIA and/or the EIRs.

20. DATA PROTECTION & SECURITY OF COUNCIL DATA

- 20.1 The Provider must process Personal Data and ensure that Provider Personnel process Personal Data in accordance with the Data Protection Legislation and Schedule G (Data Protection Provisions and Information Governance Agreement) of this Agreement.
- 20.2 The Provider must make accessible back-ups of all Council Data, stored in an agreed off-site location and send the Council copies every six (6) Months.
- 20.3 The Provider must ensure that any Provider system holding any Council Data, including back-up data, is a secure system that complies with the Security Policies and any applicable Security Management requirements.
- 20.4 If at any time the Provider suspects or has reason to believe that the Council Data is corrupted, lost or sufficiently degraded, then the Provider must immediately notify the Council and suggest remedial action.
- 20.5 If the Council Data is corrupted, lost or sufficiently degraded so as to be unusable the Council may either or both:

- 20.5.1 tell the Provider to restore or get restored the Council Data as soon as practical but no later than 5 Working Days from the date that the Council receives notice, or the Provider finds out about the issue, whichever is earlier; and
- 20.5.2 restore the Council Data itself or using a third party.
- 20.6 The Provider must pay each Party's reasonable costs of complying with Clause 20.5 unless the Council is entirely at fault.
- 20.7 The Provider:
 - 20.7.1 must provide the Council with all Council Data in an agreed open format within ten (10) Working Days of a written request;
 - 20.7.2 must have documented processes to guarantee prompt availability of Council Data if the Provider stops trading;
 - 20.7.3 must securely destroy all Storage Media that has held Council Data at the end of life of that media using Good Industry Practice;
 - 20.7.4 securely erase all Council Data and any copies it holds when asked to do so by the Council unless required by Applicable Law to retain it; and
 - 20.7.5 indemnifies the Council in full and on demand and keeps indemnified in full and on demand against any and all losses arising in respect of the Provider breaching this Clause 20, Schedule G (Data Protection Provisions and Information Governance Agreement, and/or any Data Protection Legislation and/or Schedule J (Security Management).

21. INDEMNITY AND LIABILITY

- 21.1 Nothing in this Agreement purports or has as its effect the limiting or excluding of either Parties' liability for any act, omission or liability which may not be limited or excluded under any Applicable Law including but not limited to liability for:
 - 21.1.1 fraud or fraudulent misrepresentation;
 - 21.1.2 death or personal injury caused by its negligence;
 - 21.1.3 breach of any obligation as to title implied by statute (including but not limited to Sale of Goods Act 1979 and Supply of Goods and Services Act 1982 as amended or re-enacted from time to time);
 - 21.1.4 or under any indemnity provided under or in connection with this Agreement.
- 21.2 Subject to [Clause 21.1](#) (Liability), the Provider's liability to the Council in contract only, arising under or in connection with this Agreement under [Clause 19](#) (Freedom of Information), [Clause 17](#) (Intellectual Property Rights), and [Clause 20 \(Data Protection\)](#), shall be limited to the value of the Provider's relevant insurance (unless otherwise stated in A16 of the Particulars). That value liability cap shall apply to all heads of claim and in respect of each individual claim whenever that claim is made. This limitation applies whether or not those respective and relevant insurers, under and in respect of the relevant insurance policies, pay out in respect of any specific claim and/or liability for which the

Provider is responsible.

- 21.3 The Provider shall at all times take all reasonable steps to minimise and mitigate any loss or damage or liability whatsoever which pursuant to this Agreement that the Council may be liable to pay or make good and this Clause 21.3 applies notwithstanding any indemnity given by the Council under this Agreement or otherwise and notwithstanding Clause [21.1.4](#).
- 21.4 Subject always to the provisions of this [Clause 21](#) (Liability) neither Party shall have liability to the other Party for any:
- 21.4.1 loss of profits;
 - 21.4.2 loss of business opportunity;
 - 21.4.3 loss of revenue;
 - 21.4.4 loss of goodwill;
 - 21.4.5 loss of anticipated savings;
 - 21.4.6 any consequential losses,
- whether any such losses are direct or indirect.
- 21.5 Excluding the Council's obligation to pay the Price and subject always to [Clause 21.1](#) the Council's total liability to the Provider in any twelve (12) month rolling period, arising under or in connection with this Agreement shall not exceed 50% of the Price paid by the Council in respect of the twelve (12) month period immediately preceding the time of the event that gave rise to the claim by the Provider occurred. Where a complete twelve (12) months has not elapsed before the event that gave rise to the claim from the Provider arose, 50% of the Price to which the Council's liability shall be limited, shall be calculated by computing an average monthly Price paid by the Council based on those months that have elapsed and then multiplying that average monthly figure by twelve (12) to arrive at the twelve (12) month figure from which the 50% liability of the Council shall be determined.
- 21.6 [Clause 21.5](#) is for the Council's benefit and shall be deemed to be repeated and applied once and as a separate provision for each of:
- 21.6.1 liability for breach of contract;
 - 21.6.2 liability in tort (including negligence);
 - 21.6.3 liability for breach of statutory duty; and
 - 21.6.4 liability for breach of common law.
- 21.7 The Provider acknowledges and accepts that:
- 21.7.1 the Council's limitation and exclusions of liability in this Agreement are reasonable in the circumstances; and
 - 21.7.2 the Provider has had the opportunity to raise any clarifications in respect of them during the Tender process prior to entering into the Agreement.
- 21.8 The Provider shall indemnify and keep indemnified in full and on demand the Council against all liabilities, costs, expenses, damages and losses incurred by the Authority arising out of or in connection with:
- 21.8.1 the Provider's or the Personnel breach or negligent performance or non-performance of this Agreement;
 - 21.8.2 any claim made against the Council arising out of or in connection with the

provision of the Services , to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of this Agreement or any act or omission by the Provider or its Personnel;

21.8.3 the enforcement of this Agreement.

22. INSURANCE

- 22.1 Throughout the Agreement Period and for a period of twelve (12) years after expiry or termination, the Provider shall ensure that the Provider and any of its Personnel and/or Subcontractors (as appropriate) effects and maintains with an insurance company of good repute a policy or policies of insurance to provide the minimum levels of cover set out in [A14 of the Particulars](#) in respect of all risks which may be incurred by the Council and/or the Provider (as appropriate) arising out of the Provider's performance of this Agreement including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Provider.
- 22.2 Unless the policies of insurances contain an indemnity in relation to a principal clause for the benefit of the Council the Provider shall ensure the Council's interest is noted on all policies throughout the Agreement Period such that the Council will be indemnified by the Provider's insurers in accordance with the terms of this Agreement.
- 22.3 The Provider shall provide copies of the insurance policies referred to in [A14 of the Particulars](#) to the Council via its Authorised Officer or a certificate from its insurers or brokers demonstrating that appropriate cover is in place within twenty (20) Working Days of the Council's Contract Award Letter and thereafter each year on the anniversary of the Contract Award Letter during the Agreement Period.
- 22.4 The Provider will procure that:
- 22.4.1 all of its insurance policies will waive any and all rights of subrogation the insurers may have against the Council;
 - 22.4.2 their insurance policy is on the basis of claims arising during the Agreement Period; and;
 - 22.4.3 it shall not and shall ensure that it's Personnel and/or Subcontractors shall not do any act and/or thing, or omit to do any act and/or thing to invalidate, nullify or exclude any of the insurance cover required under this [Clause 22](#) (Insurance).
- 22.5 The terms of any insurance or the amount of any insurance cover arranged by the Provider pursuant to this [Clause 22](#) (Insurance) shall not relieve the Provider of any of its liabilities under this Agreement.

23. DEFAULT

- 23.1 If either Party is aware of a performance or delivery failure by itself or the other Party then the failure shall be considered and discussed through Contract Review Meetings in accordance with [Schedule D](#) (Performance Monitoring, Quality Assurance and Contract Review). If the matter remains unresolved immediately following a Contract Review Meeting in the case of the Provider, then [Clause 23.2](#) shall apply.
- 23.2 In the event that the Provider commits a Default, the Council shall issue a Default Notice on the Provider as soon as reasonably practicable after the Council became aware of the Default and shall, under and in accordance with the provisions of [Schedule D](#) (Performance

Monitoring, Quality Assurance and Contract Review), propose a Remedial Action Plan for the Provider to follow to remedy the Default. The proposed Remedial Action Plan shall be discussed at a Contract Review Meeting (and adjusted if deemed necessary in the Council's absolute and sole discretion) under and in accordance with the provisions of [Schedule D](#) (Performance Monitoring, Quality Assurance and Contract Review) within five (5) Working Days of the Council becoming aware of the Default. The Council may in its absolute discretion amend or not the Remedial Action Plan following the discussion at the Contract Review Meeting.

- 23.3 Where, for whatever reasons, the Provider is unable or unwilling or otherwise fails to attend the Contract Review Meeting called under [Clause 23.2](#) the Council may exercise its absolute discretion to amend or not the Remedial Action Plan notwithstanding the absence of any discussion at a Contract Review Meeting or otherwise with the Provider.
- 23.4 The Provider shall comply with the Remedial Action Plan as soon as possible and in any event within ten (10) Working Days from the date of the Remedial Action Plan.
- 23.5 A Remedial Action Plan should contain as a minimum:
- 23.5.1 details of performance issues and areas for improvement, with corresponding evidence;
 - 23.5.2 the improvements required and associated timescales;
 - 23.5.3 actions the Provider must take, and required targets or outputs;
 - 23.5.4 clear deadlines for meeting these requirements;
 - 23.5.5 consequences for failing to do so (e.g. part termination of certain Services, and the publication of a contract performance notice under section 71(5) of the Procurement Act 2023); and
 - 23.5.6 the Parties agreement to the terms of the Remedial Action Plan.
- 23.6 If the Provider fails to satisfactorily undertake the actions set out in the Remedial Action Plan or and/or the action plan fails to remedy the Default specified in the Default Notice then the Council:
- 23.6.1 must publish a contract performance notice under section 71(5) of the Procurement Act 2023 or publish a termination notice where this results in termination of the Agreement under clause 26;
 - 23.6.2 shall be entitled to suspend payment under Schedule C (Financial Provisions) or terminate the Agreement in accordance with [Clause 26](#) (Termination).
- 23.7 The Provider acknowledges that publication of a contract performance notice under section 71(5) of the Procurement Act 2023 could result in the Provider being excluded from future procurements and added to the Government's debarment list.

24. FORCE MAJEURE

- 24.1 If either Party is faced with an event of Force Majeure, it shall issue a Notice to inform the other Party without delay stating the nature, likely duration and foreseeable effects of the Force Majeure event(s).
- 24.2 Neither Party shall be held in breach of its contractual obligations if it has been prevented from performing them by an event of Force Majeure. Where the Provider is unable to perform its contractual obligations owing to Force Majeure, it shall have the right to

remuneration only for Services actually performed on a quantum meruit basis.

- 24.3 The Parties shall take the necessary measures to keep any losses due to any Force Majeure event to a minimum and take all reasonable steps to mitigate losses and to continue to mitigate them.
- 24.4 Where the delay caused by the Force Majeure event continues (in whole or in part) for more than one (1) month, from the date that the Council became aware of the event of Force Majeure or the date of the Notice served by the Provider whichever is the earlier, the Council may terminate this Agreement (in whole or in part) as frustrated upon Notice in accordance with [Clause 26](#) (Termination) of this Agreement.

25. BREAK CLAUSE

- 25.1 The Council shall have the right to terminate this Agreement in whole or in part at any time by giving the Provider the length of Notice specified in [A18 of the Particulars](#).

26. TERMINATION

- 26.1 Without prejudice to any other rights under this Agreement, the Council may terminate this Agreement in whole or in part with immediate effect, without penalty by serving Notice on the Provider where either:
- 26.1.1 the Provider has committed a Default including but not limited to a breach of the provisions under [Clause 17](#) (Intellectual Property Rights), [Clause 18](#) (Confidentiality), [Clause 19](#) (Freedom of Information), [Clause 20](#) (Data Protection), and [Clause 22](#) (Insurance) (which in the reasonable opinion of the Council is incapable of remedy);
- 26.1.2 the Provider has committed a Prohibited Act; or
- 26.1.3 the Provider commits a Default which is capable of remedy (including under [Clause 23](#) (Default) but the Provider fails to remedy the Default within the timescales (requiring the Default to be remedied) set out in the relevant Default Notice;
- 26.1.4 the Provider commits a Persistent Breach or Catastrophic Failure notwithstanding the process of a Contract Review in accordance with [Schedule D](#) (Performance Monitoring, Quality Assurance and Contract Review);
- 26.1.5 any of the provisions of Section 78(2) of the Procurement Act 2023 apply. In the event that any of the provisions of Section 78(2) apply, the Council shall be required to comply with the requirements detailed in Section 78(7) of the Procurement Act 2023;
- 26.1.6 an Insolvency Event occurs or is about to occur in respect of the Provider or any financial difficulties or other events arising that prevents the Provider from performing the Services or paying its Personnel to deliver the Services;
- 26.1.7 the Council has evidence or reasonably suspects the Provider or any related entity or person of the Provider has been involved in fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the Council's financial interests or the Council's reputation. The Provider's attention is drawn to the criminal offences created by the Local Government Act 1972 and the Bribery Act 2010;
- 26.1.8 there is a Change of Control of the Provider within the meaning of section 1124

of The Corporation Tax Act 2010 which impacts adversely and materially on the Provider's performance of this Agreement;

- 26.1.9 the Provider is in breach of Clause 5.11 (Provider's Obligations) and/or the Provider ceases (or any of its premises ceases (where appropriate)) for any period to be properly authorised, certified and/or regulated by any relevant Regulatory Body; and/or
 - 26.1.10 the Council invokes its right under [Clause 5](#) (Provider's Obligations);
 - 26.1.11 the Provider becomes an excluded or excludable provider under section 57 of the Procurement Act 2023, and the Council considers that the exclusion ground is continuing or likely to apply in the future, subject to the Council notifying the Provider of its intention to terminate setting out the relevant ground(s) and reason for termination and providing the Provider with an opportunity to provide representations prior to terminating under this clause 26.
- 26.2 With the exception of termination under [Clause 26.1.5](#) (which shall be effective immediately), the effective date of termination under [Clause 26.1](#), and/or [26.4](#) will be either immediately on the date of the Notice of termination or with effect from the date specified in that Notice and the Notice of Termination will be clear as to this effective date.
- 26.3 If the Council exercises its rights under [Clause 26.1](#) then the Provider will indemnify and keep indemnified, in full and on demand, the Council against and from any costs, claims (actual or threatened), expenses, sums, fines, expenses including legal and administration costs arising as a result of the relevant event listed in Clause 26.1 and/or the Council's termination of the Agreement under that Clause 26.1. Such costs shall also include any administration costs which are incurred by the Council in respect of the investigation, preparation and service of the Council's termination Notice under Clause 26.1.
- 26.4 The Council may deduct any amount due from the Provider under [Clause 26.3](#) from the next or any subsequent Instalment or otherwise, to the extent that such amounts exceed the Instalment payment which would otherwise have been payable to the Provider under this Agreement, the Council may produce a written demand for such sums. Where that demand is not settled within the time frame specified in that demand, the sum shall automatically crystallise on the due date specified in the Council's written demand and thereafter shall become recoverable from the Provider by the Council as a debt.
- 26.5 In the case of Force Majeure, notified in accordance with [Clause 24.4](#) (Force Majeure), the Council may terminate the Agreement where performance of the Services has been delayed for a period exceeding twenty (20) Working Days without any liability to the Provider. Any termination by the Council due to a Force Majeure event shall not prejudice any other rights or remedies the Council may have prior to the effective date of termination.

27. CONSEQUENCES OF TERMINATION

- 27.1 In the event this Agreement expires or is terminated in whole or in part, the Parties shall be responsible for ensuring that all of the provisions of this Clause 27 (Consequences of Termination) shall be carried out and the Provider shall be required to comply with the provisions of the Exit Management requirements detailed in Schedule I.
- 27.2 Where the Termination arises due to the Provider's Default under [Clause 26.1](#) (excluding termination due to and under Clause 26.1.5) and the termination has caused the Council losses and damages costs and expenses, the Council may, without prejudice to its right to terminate this Agreement, reduce, recover and/or set-off against any payments due to the

Provider from the Council under Clause 26.4 to the extent necessary to reimburse the Council for such losses, costs and expenses.

- 27.3 The Provider and the Council will cooperate and ensure that they both (where appropriate) comply in all respects with the provisions of [Clause 20](#) (Data Protection) and the requirements of the Data Protection Legislation that are relevant on termination of this Agreement.
- 27.4 On receipt of Notice terminating this Agreement, the Provider shall take all appropriate measures to minimise costs, prevent damage, mitigate loss and cancel or reduce its commitments relating to its performance of this Agreement. The Provider shall provide documentary evidence showing clearly the Services performed delivered up to the End Date within a period not exceeding forty (40) Working Days from the End Date.
- 27.5 If this Agreement is terminated in whole or in part under [Clause 26.1](#) (excluding termination due to and under Clause 26.1.5) then no further Instalments shall be payable by the Council to the Provider until the Council has established the final cost of making alternative arrangements for the provision of the Services throughout what would otherwise have been the remainder of the then current Agreement Period (excluding any potential but not current Extension Periods).
- 27.6 All Intellectual Property Rights, Confidential Information (in any media), and any other property and/or materials belonging to the Council or leased or licenced to it and in the possession of the Provider as at the End Date will be handed over immediately to the Council and specifically if requested by the Council and in compliance with Data Protection Legislation all data bases will be returned or handed over to the Council in the exact and specially configured form which form the data base rights created during the Agreement Period by the Provider and the form and structure in which the Provider has used those data bases immediately preceding the termination of the Agreement or otherwise the Council will confirm whether any such databases should be amended, deleted or cleansed by the Provider in due consideration of their respective obligations under the Data Protection Legislation.
- 27.7 Where the Council has appointed a Replacement Provider to continue the performance of services and/or provision of goods substantially similar to the Services, the Provider shall (at its own cost and expense):
- 27.7.1 work diligently and proactively with the Replacement Provider to handover the Services to the Replacement Provider; and
 - 27.7.2 ensure no disruption to the Services and/or provision of the Goods and/or the Council and/or its Service Users and this shall include (without limitation) the obligations in Clause 27.6 and any and all obligations under [Clause 33](#) (TUPE) (where applicable);
 - 27.7.3 follow, promptly and diligently and comprehensively the directions and requests from either the Replacement Provider and/or the Council as appropriate.
- 27.8 The Provider will (at its own cost and expense and promptly on request from the Council) do all acts and/or things and execute all documents and/or deeds reasonably required to give effect to this Clause 27 (Consequences of Termination) and particularly Clause 27.7 and Schedule I (Exit Management).
- 27.9 Where the Provider is in possession of any materials, data, goods, products, machinery or instruments that belong to and are owned by the Council and where any of the circumstances provided for in [Clause 27.1](#) has or the Council reasonably believes they are

about to happen the Council or its authorised agents may enter, without prior Notice, onto the Provider's premises (or any premises of any third party with their consent) where those items may be located and repossess and deal with such items without consent from or consultation with the Provider.

- 27.10 The provisions set out in this [Clause 27](#) (Consequences of Termination) shall apply and the Council shall set out the arrangements for the handover of the Services to the Replacement Provider in writing.
- 27.11 On termination or expiry of the Agreement for whatever reason the following Clauses and provisions of this Agreement (without limitation) shall continue to have full force and effect and shall survive termination: [Clause 11](#) (VAT), [Clause 13](#) (Recovery of Sums Due (Set-Off)); [Clause 15](#) (Open Book Accounting and Audit); [Clause 17](#) (Intellectual Property Rights); [Clause 18](#) (Confidentiality); [Clause 19](#) (Freedom of Information); [Clause 20](#) (Data Protection); [Clause 21](#) (Indemnity and Liability); [Clause 22](#) (Insurance); [Clause 24](#) (Force Majeure); [Clause 26](#) (Termination); [Clause 27](#) (Consequences of Termination) [Clause 28](#) (Continuing Rights and Remedies); [Clause 29 \(Health and Safety\)](#), [Clause 30 \(Equality and Discrimination\)](#), [Clause 31 \(Modern Slavery\)](#), [Clause 32 \(Counter Terrorism\)](#), [Clause 33 \(TUPE\)](#); [Clause 36](#) (Prevention of Bribery and Fraud); [Clause 38](#) (The Contracts (Rights of Third Parties) Act 1999), [Clause 41](#) (Dispute Resolution Procedures) and [Clause 45](#)(Governing law).

28. CONTINUING RIGHTS AND REMEDIES ETC

- 28.1 Save as otherwise expressly provided in this Agreement, neither the termination nor the expiry of this Agreement shall prejudice any rights, remedies, or obligations which have already accrued or taken effect under this Agreement or otherwise at law in relation to either of the Parties prior to End Date (as applicable) and nothing in this Agreement shall prejudice the right of either of the Parties to recover any amount outstanding from the other Party as the End Date (as applicable).

29. HEALTH AND SAFETY

- 29.1 The Provider must perform its obligations meeting the requirements of:
- 29.1.1 all Applicable Laws regarding health and safety; and
 - 29.1.2 the Council's current health and safety policy while at the Council's premises, as provided to the Provider.
- 29.2 The Provider must as soon as possible notify the Council's Authorised Officer of any health and safety incidents or material hazards the Provider is aware of at the Council premises that relate to the performance of the Agreement.
- 29.3 The Provider shall take full responsibility for the adequacy and safety of all operations and methods adopted in the performance of the Services and the acts of its employees. The Provider shall notify the Council in writing if any method or practice shall be or shall become an unsafe method of work.

30. EQUALITY AND DISCRIMINATION

- 30.1 Throughout the Agreement Period, the Provider shall comply with the requirements of all Applicable Laws relating to equality, including the Equality Act 2010 and the Human Rights Act 1998 or other relevant legislation.

- 30.2 The Provider shall protect against discrimination on the grounds of race, sex, gender reassignment, religion or belief, disability, sexual orientation, pregnancy, maternity, age or otherwise, and shall promote race equality, equal opportunities and anti-discrimination in relation to its obligations under this Agreement and also in relation to the Provider's related employment and/or subcontracting practices.
- 30.3 In addition to its legal obligations, the Provider shall support the Council in fulfilling its Public Sector Equality duty under S149 of the Equality Act 2010 by ensuring that it fulfils its obligations under this Agreement in a way that seeks to:
- 30.3.1 eliminate discrimination, harassment or victimisation of any kind; and
 - 30.3.2 advance equality of opportunity and good relations between those with a protected characteristic (age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation, and marriage and civil partnership) and those who do not share it.

31. MODERN SLAVERY ACT

31.1 The Provider:

- 31.1.1 shall not use, or allow its Personnel or Subcontractor(s) to use, forced, bonded, child, slave or involuntary prison labour;
- 31.1.2 shall not use, nor allow its Personnel or Subcontractor(s) to use physical abuse or discipline, the threat of physical abuse, sexual or other harassment and verbal abuse or other forms of intimidation of its Personnel or Subcontractor(s);
- 31.1.3 shall not require any of its Personnel or Subcontractor(s) to lodge deposits or identity papers with their employer and shall be free to leave their employer after reasonable notice;
- 31.1.4 warrants and represents that it, or its Personnel or Subcontractor(s) has not been convicted of any slavery or human trafficking offences anywhere around the world;
- 31.1.5 warrants that to the best of its knowledge it, or its Personnel or Subcontractor(s), is not currently under investigation, inquiry or enforcement proceedings in relation to any allegation of slavery or human trafficking offences anywhere around the world;
- 31.1.6 shall make reasonable enquires to ensure that its Personnel or Subcontractors have not been convicted of slavery or human trafficking offences anywhere around the world;
- 31.1.7 shall have and maintain throughout the Agreement Period, its own policies and procedures, together with that of its supply chain, to ensure its compliance with the Modern Slavery Act 2015;
- 31.1.8 shall implement due diligence procedures within its business and Subcontractor(s), to ensure that there is no slavery or human trafficking in performing its obligations under this Agreement;
- 31.1.9 where reasonably requested, shall prepare and deliver to the Council, an annual slavery and human trafficking report setting out, as a minimum, the steps it has taken (and are taking) to ensure that slavery and human trafficking is not taking place in any part of its business and its supply chain;

- 31.1.10 shall report the discovery or suspicion of any slavery or trafficking (including its supply chain) to the Council and the UK's Modern Slavery and Exploitation Helpline;
- 31.1.11 respond promptly to all slavery and trafficking due diligence requests/questionnaires (including the UK's Office Modern Day Slavery Assessment Tool) issued to it by the Council from time to time and shall ensure that its responses are complete, accurate and submitted within sixty (60) days of such a request; and
- 31.1.12 if requested, to provide a Supply Chain Map in accordance with guidance from the Chartered Institute of Procurement & Supply within fourteen (14) days of such request.
- 31.2 If the Provider is in breach under Clause 31.1 the Council may, by notice:
- 31.2.1 require the Provider to comply with any request of the Council to submit a rectification plan, which follows the form set out in Annex D of the UK's Government Commercial Functions publication Tackling Modern Slavery in Government Supply Chains, and which must be agreed by the Council; or
- 31.2.2 require the Provider to remove from performance of the Agreement any Personnel or Subcontractor (s) or other persons associated with it whose acts or omissions have caused the breach; or
- 31.2.3 immediately terminate this Agreement.
- 31.3 The Provider to co-operate with any investigation, and allow the Council to audit any books, records and/or any other relevant documentation in accordance with the Agreement.
- 31.4 The Council reserves the right to carry out an unannounced or semi-announced inspection of any premises or site regarding the delivery of this Agreement and speak directly to any Personnel or Subcontractor(s) in a confidential manner and in the native language of such Personnel or Subcontractor(s) in respect of workforce conditions, working or employment practices and recruitment practices.
- 31.5 For the purposes of an inspection carried out pursuant to Clause 31.4 the Council may instruct the Provider to carry out such an inspection of any Subcontractor(s) by an independent third party and, if so instructed, the Provider shall deliver a report to the Council within ninety (90) days of such instruction.

32. COUNTER-TERRORISM

- 32.1 The Provider acknowledges and confirms it shall have due regard for the Council's duties under terrorism legislation and any other relevant Applicable Law in performing its obligations under this Agreement, including (where appropriate) providing training to the Personnel and/or Subcontractors to ensure that they are aware of the Council's duties.
- 32.2 Where the Provider identifies or suspects that someone may be engaged in illegal terrorist related activity, the Provider must refer such person or activity to the police.
- 32.3 The Provider shall (where permitted by any Applicable Law) notify the Council in circumstances where the Provider has made such reporting to the police and details of the outcome.

33. TUPE

- 33.1 The Parties acknowledge and confirm that some or all of the Personnel may be subject to TUPE upon the entry and/or expiry or termination of this Agreement and that whether or not TUPE applies is a matter of law and that the provisions of [Schedule H](#) (TUPE and Pensions) shall apply at all times.
- 33.2 If either at the Commencement Date or the End Date there is a Relevant Transfer, the Council and the Provider shall each comply with their respective obligations set out in [Schedule H](#) (TUPE and Pensions).
- 33.3 Without prejudice to the provisions of [Schedule H](#) (TUPE and Pensions), if either at the Commencement Date or End Date a transfer of undertaking arises which is not a Relevant Transfer for the purposes of TUPE, the Provider shall use all reasonable endeavours to work with any previous provider and/or any Replacement Provider(s) (as appropriate) promptly and in a co-operative and helpful manner to comply with the spirit of TUPE and the conditions in Schedule H wherever possible. This cooperation is (among other things) to ensure that any Personnel and/or employees of the previous provider are not unfairly treated or their rights prejudiced unnecessarily as a result of the change in provider.
- 33.4 The Provider will ensure that it complies with all requests for staffing information made by the Council and/or any previous provider or Replacement Provider (subject to UK GDPR), in a timely manner, and time will be of the essence in respect of such requests. The Provider will not use the timescales specified under TUPE to delay, or otherwise use as a reason to delay, any responses to any requests to share, communicate or disclose any information regarding the Personnel. The Provider accepts that the Council may seek specific performance of any requests made under this Clause 33.4 as an appropriate remedy and where the Council has to seek such remedy the Provider will meet all costs and expenses incurred by the Council in seeking and obtaining that remedy on a full indemnity basis.
- 33.5 The Provider will at the Commencement Date and periodically and frequently throughout the Agreement Period upon the written request of the Council, including but not limited to during the performance and contract management process specified in [Schedule D](#) (Performance Monitoring, Quality Assurance and Contract Review) and/or the Open Book Accounting and Audit Process under [Clause 15](#) (Open Book Accounting and Audit) of this Agreement, report to the Council regarding the Personnel who are engaged in which aspects of the performance on the Services. These reports shall include any information that the Council may request from time to time but will as a prerequisite include the anonymous employment profiles and other useful and important information about the cost, demographic, pension provision, grievance and/or disciplinary records of those relevant Personnel as well as the percentage of working time they are engaged in the Services. The Provider will also upon request from any duly authorised third party who may be a potential Replacement Provider provide such information to that authorised third party within ten (10) Working Days from receipt of a written request.
- 33.6 The Provider shall remain responsible for all costs, losses, expenses and liabilities otherwise incurred as a result of the expiry of this Agreement including, but not limited to, any costs associated with the application of TUPE to this Agreement.

34. ASSIGNMENT AND SUB-CONTRACTING

- 34.1 The Provider shall not assign, novate, subcontract under this Agreement without the prior written consent of the Council.
- 34.2 Consent to subcontract all or part of the performance of the Services and/or provision of the Goods can, as at the Commencement Date, be provided by the Council completing A6 of the Particulars accordingly.
- 34.3 The Provider shall obtain consent from the Council to subcontract or assign after the

completion and execution of the Particulars and after the Commencement Date (as appropriate).

- 34.4 Any subcontracting by the Provider under this Agreement shall not in any way relieve the Provider from its liabilities and the Provider shall be and shall remain fully responsible in respect of the Service notwithstanding such subcontracting.

35. WAIVER

- 35.1 No failure or delay by either Party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy in the future. No Failure to exercise or delay the exercise of any right or remedy or the provisions on any Clauses of this Agreement shall prevent or restrict the exercise of that or any other right or remedy and/or provision of this Agreement in the future.

36. PREVENTION OF BRIBERY AND FRAUD

Prevention of Bribery

- 36.1 The Provider must not during the Agreement Period:
- 36.1.1 commit a Prohibited Act or any other criminal offence in the Bribery Act 2010.
 - 36.1.2 do or allow anything which would cause the Council, including any of its employees, consultants, contractors, subcontractors or agents to breach any of the relevant requirements under the Bribery Act or incur any liability under them.
- 36.2 The Provider must during the Agreement Period:
- 36.2.1 create, maintain and enforce adequate policies and procedures to ensure it complies with the relevant requirements of the Bribery Act to prevent a Prohibited Act and require its Subcontractor(s) to do the same;
 - 36.2.2 keep full records to show it has complied with its obligations under this Clause 36 and give copies to the Council on request; and
 - 36.2.3 if required by the Council, within twenty (20) Working Days of the Commencement Date of the Agreement, and then annually, certify in writing to the Council, that they have complied with this Clause 36, including compliance of Personnel, and provide reasonable supporting evidence of this on request, including its policies and procedures.
- 36.3 The Provider must immediately notify the Council if it becomes aware of any breach of Clause 36.1. The Provider must notify the Council immediately if it has or has any reason to think that it, or any of the Personnel, have either:
- 36.3.1 been investigated or prosecuted for an alleged Prohibited Act;
 - 36.3.2 been debarred, suspended, proposed for suspension or debarment, or are otherwise ineligible to take part in procurement programmes or contracts because of a Prohibited Act by any government department or agency;
 - 36.3.3 received a request or demand for any undue financial or other advantage of any kind related to the Agreement; and
 - 36.3.4 suspected that any person or Party directly or indirectly related to the Agreement

has committed or attempted to commit a Prohibited Act.

- 36.4 If the Provider notifies the Council as required by Clause 36.3, the Provider must respond promptly to the Council's further enquiries, co-operate with any investigation and allow the audit of any books, records and relevant documentation by the Council or its authorised representatives.
- 36.5 If the Provider is in Default under Clause 36.1 the Council may:
- 36.5.1 require the Provider to remove any Personnel from providing the Services if their acts or omissions have caused the Default;
 - 36.5.2 immediately terminate this Agreement; and/or
 - 36.5.3 recover in full from the Provider any other loss sustained by the Council in consequence of any breach of this Clause 36, whether or not this Agreement has been terminated.
- 36.6 In any notice the Provider gives to the Council under Clause 36.4 it must specify the:
- 36.6.1 Prohibited Act;
 - 36.6.2 identity of the Party who it thinks has committed the Prohibited Act; and
 - 36.6.3 action it has decided to take.
- 36.7 The Provider warrants, represents and undertakes that it has not paid commission (or any other sums or benefits in kind) and has not agreed to pay any commission (or any other sums or benefits in kind) to any employee or representative of the Council, or on the Council's behalf, in relation to this Agreement.

Fraud

- 36.8 The Council shall not accept any fraudulent activity by the Provider, its Personnel and the Provider's shareholders, members and/or directors.
- 36.9 The Provider must notify the Council immediately where it becomes aware of any instance of suspected fraud or financial irregularity in the delivery of the Agreement including, but not limited to, cases of:
- 36.9.1 collusion with members of the staff of the Council, or any other Regulatory Body or Government department;
 - 36.9.2 computer fraud;
 - 36.9.3 the submission to the Council of inaccurate, incomplete, misleading or falsified information;
- 36.7 Where the Council has reasonable cause to suspect that fraud or irregularity has occurred in relation to the delivery of the Agreement and payments made under it, the Council will have:
- 36.7.1 the right of access to the Provider's premises at any reasonable time with or without notice to examine and remove or copy all relevant documents and records including electronic records;
 - 36.7.2 the right to require the Provider to provide written authority to enable the Council

to obtain such documents, records and/or information directly from third parties;
and

36.7.3 the right to interview the Provider's Personnel engaged in the delivery of the Agreement.

Failure to comply with this Clause 36.7 will constitute a material Default of this Agreement.

36.8 Where the Council has reasonable cause to suspect that fraud or irregularity has occurred in relation to the delivery of the Agreement and payments made thereunder, the Council may require the Provider to procure the services of an independent accountant (or other equivalent/appropriate professional) to investigate at the Provider's cost (or the Council will procure and recharge to the Provider at its sole discretion).

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- 36.9 The Provider must notify the Council immediately where it becomes aware of any instance of suspected fraud or financial irregularity in the delivery of the Agreement including, but not limited to, cases of:
- 36.9.1 collusion with members of the staff of the Council, or any other Regulatory Body or Government department;
 - 36.9.2 computer fraud;
 - 36.9.3 the submission to the Council of inaccurate, incomplete, misleading or falsified information;
- 36.10 Where the Council has reasonable cause to suspect that fraud or irregularity has occurred in relation to the delivery of the Agreement and payments made under it, the Council will have:
- 36.10.1 the right of access to the Provider's premises at any reasonable time with or without notice to examine and remove or copy all relevant documents and records including electronic records;
 - 36.10.2 the right to require the Provider to provide written authority to enable the Council to obtain such documents, records and/or information directly from third parties; and
 - 36.10.3 the right to interview the Provider's Personnel engaged in the delivery of the Agreement.
- Failure to comply with this Clause 36.10 will constitute a material Default of this Agreement.
- 36.11 Where the Council has reasonable cause to suspect that fraud or irregularity has occurred in relation to the delivery of the Agreement and payments made thereunder, the Council may require the Provider to procure the services of an independent accountant (or other equivalent/appropriate professional) to investigate at the Provider's cost (or the Council will procure and recharge to the Provider at its sole discretion).
- 36.12 Where the Council has reasonable cause to suspect that fraud or irregularity has occurred in relation to the delivery of the Agreement and payments made under it, the Council will have the right to suspend payments under Schedule C (Financial Provisions) of this Agreement and under any other contract between the Parties.

37. THE ENTIRETY OF THE AGREEMENT

- 37.1 This Agreement and any documents referred herein represent the entire understanding between the Parties and, in the absence of any express contrary statement in this Agreement, this Agreement supersedes all representations, understandings and agreements, whether oral or written, which have been made by either of the Parties to the other (whether directly or indirectly).
- 37.2 The Council's obligations under this Agreement are obligations of the Council in its capacity as a contracting party only.

38. THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

- 38.1 Save as provided in clause 38.2, no person who is not a party to this Agreement (including without limitation any employee, officer, agent, representative, or Subcontractor(s) of either the Council or the Provider) shall have any right to enforce any term of this Agreement,

which expressly or by implication, confers a benefit on him without the prior agreement in writing of both Parties.

- 38.2 Where applicable, and with the prior written agreement of the Council, the Commissioners may each in its own right enforce any right or benefit afforded to the Council under the provisions of this Agreement subject to, and in accordance with, the Contracts (Rights of Third Parties) Act 1999. This clause does not affect any right or remedy of a third party that exists or is available apart from the Contracts (Rights of Third Parties) Act 1999.
- 38.3 The rights of the Parties to terminate, rescind or agree any variation, waiver or settlement under this Agreement are not subject to the consent of any other person.
- 38.4 Where the Provider has engaged a Subcontractor(s) to perform or deliver the whole or part of the Services the Provider will procure that the contract between the Subcontractor(s) and the Provider preserves for the Council (and Commissioners if applicable) any and all Third Party Rights such that if the Council decides (in its absolute discretion) it may enforce that contract with the Subcontractor(s) and reap the benefit of that Subcontract(s) in place of the Provider.

39. CONFLICTS OF INTEREST AND REPUTATIONAL DAMAGE

- 39.1 The Provider shall take appropriate steps to ensure that neither the Provider nor any member of Personnel is placed in a position where there is (or may be) an actual conflict of interest or a potential conflict of interest, between the interests of the Provider and its Personnel, and the duties that the Provider owes to the Council under the provision of this Agreement. For the purposes of this clause 39 “interest” includes a personal, professional, or financial interest and may be direct or indirect.
- 39.2 The Provider shall promptly disclose to the Council by Notice full particulars of any such conflict of interest, or potential conflict of interest, that arises. The Provider shall provide all reasonable assistance that the Council may require in order to review and update any conflicts assessment that may have been completed in accordance with Part 5 (Conflicts of Interest) of the Procurement Act 2023.
- 39.3 The Council reserves the right to terminate this Agreement immediately by giving notice in writing to the Provider and/or to take such other steps it deems necessary where, in the reasonable opinion of the Council, there is or may be an actual conflict, or a potential conflict, between the interests of the Provider and the duties owed to the Council under the provisions of the Agreement. The actions of the Council under this clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Council.
- 39.4 Without prejudice to whistleblowing, compliance with the law, any relevant Council Policies or Regulatory Body requirements and any legitimate basis for such actions, the Provider, its Personnel will not at any time, directly or indirectly, make, publish or communicate to any person or entity or in any public forum any disparaging remarks, comments, or statements concerning the Council or any of its elected members or officers.

- 39.5 If in the reasonable opinion of the Council, the Provider or its Personnel has breached Clause 39.2 above, the Council will contact the Provider requesting that the Provider makes efforts to rectify such a breach. If the Provider fails to do this within five (5) days, or the breach is not capable of remedy, the Council will consider whether the Default is material and may exercise its rights pursuant to [Clause 26](#) (Termination).

40. NOTICES

- 40.1 No Notice or other communication from one Party to the other shall have any validity under this Agreement unless it is made in writing and addressed to the relevant Party's Authorised Officer.
- 40.2 Any Notice which is served under this Agreement by either Party on the other shall be sent by the Authorised Officer by prepaid first class post, or by email to the respective Party's Authorised Officer or delivered in person to the applicable address and contact details set out in [A5 of the Particulars](#), and shall be deemed to have been duly given or made as follows:
- 40.2.1 if personally delivered, upon delivery at the address of the relevant Party;
- 40.2.2 if sent by first class post, two (2) Working Days after the date of posting;
- 40.2.3 if sent by email when actually received by the intended recipient in readable form as (maybe) evidenced by a legitimate and authenticated read receipt generated by the sender;
- 40.3 If, in accordance with [Clauses 40.2.1 and 40.2.2](#) (Notices), the notice would otherwise be deemed to be given or made after 17:00hrs, it shall be deemed to be given or made at 09:00hrs on the next Working Day.
- 40.4 If any Notice is considered time critical then the Notice will specify expressly the time within which action is required.

41. DISPUTE RESOLUTION

- 41.1 If a dispute arises out of or in connection with this Agreement or the performance, validity or enforceability of it (a "**Dispute**") then:
- 41.1.1 the Parties shall endeavour at all times to reach an amicable settlement and both parties shall take part in such negotiations as are necessary to help achieve such settlement; and/or
- 41.1.2 except as expressly provided in this Agreement, the Parties shall comply with the following dispute resolution procedures:
- 41.1.2.1 either Party shall give to the other Notice of the Dispute promptly (but in any event within three (3) Working Days) upon becoming aware of such a Dispute. The notice shall set out its nature and full particulars (a "**Dispute Notice**"), together with relevant supporting documentation. On service of the Dispute Notice both Parties shall attempt in good faith to resolve the Dispute within five (5) Working

Days from the date of Service of the Dispute Notice;

- 41.1.2.2 if the Parties are for any reason unable to resolve the Dispute within five (5) Working Days of the date of the service of the Dispute Notice (or it becomes apparent in a shorter time period that the Dispute is unlikely to be resolved), the Dispute shall be referred to the Authorised Officer who shall attempt in good faith to resolve it within ten (10) Working Days from the date of the service of the Dispute Notice; and
 - 41.1.2.3 if the Authorised Officers are for any reason unable to resolve the Dispute within ten (10) Working Days of the date of the service of Dispute Notice, then the Parties shall escalate the matter to their respective Chief Executive Officers in an attempt to resolve the Dispute within fifteen (15) Working Days of the date of service of the Dispute Notice.
- 41.2 If the Parties are unable to settle the Dispute under Clause [41.1.2](#) (Dispute Resolution) either Party may request that the Dispute is referred to an expert for determination.
- 41.3 The Parties agree that any independent expert agreed upon by them or nominated by the President of the Law Society will be agreed upon by reference to and in line with the principles set out in Clause [41.4](#) onwards (Dispute Resolution).
- 41.4 When agreeing the identity of the independent expert (in accordance with Clause [41.3](#) (Dispute Resolution) the Parties will have due regard to the substantive subject matter of the Dispute so that where:
- 41.4.1 the Dispute is in the main related to property or real estate, under this Agreement, the Parties will choose from a pool of independent experts who are registered with the Royal Institute of Chartered Surveyors; or
 - 41.4.2 the Dispute is in the main related to finances between the Parties and/or under this Agreement the Parties will choose from a pool of independent experts who are registered with the Chartered Institute of Public Finance and Accountancy; or
 - 41.4.3 the Dispute is in the main related an interpretation of the law relating to the Services, this Agreement and/or the interpretation of the terms of this Agreement, the Parties will choose from a pool of independent experts who are registered with the Law Society; or
 - 41.4.4 the Dispute is in the main related to social care practice and professional obligations under this Agreement and in the provision of the Services, the Parties will choose from a pool of independent experts who are registered with the Health and Care Professions Council; or
 - 41.4.5 where, the Parties consider that, for whatever reason the subject matter of the Dispute falls across several of the above subject matter disciplines or the subject matter of the Dispute does not in the Parties respective opinions fall (neatly or otherwise) within any one or more of the above subject matter disciplines, the Parties will utilise the assistance of an independent expert organisation (e.g. the Academy of Experts or a similar organisation) to nominate an independent expert on the Parties' behalf, having provided that organisation with the relevant details of the subject matter of the dispute. Notwithstanding this nomination the independent expert rules for resolution of disputes of any such organisation of independent experts will not apply to the resolution of disputes under this

Agreement.

- 41.5 Once the independent expert's identity has been agreed between the Parties in accordance with this Clause [41](#) (Dispute Resolution) the Parties will appoint the independent expert (in accordance with this Clause [41.3](#) and Clause [41.4](#) (Dispute Resolution) who will then resolve and reach a determination regarding the dispute by reference to and application of the processes and procedures that follow in this Clause 41 (Dispute Resolution) below.
- 41.6 The Parties shall:
- 41.6.1 within five (5) Working Days of the Parties' Agreement as to the identity of, and agreement to act from, the independent expert, appoint the independent expert on usual industry standard provisions, having reference to [Clause 41](#) (Dispute Resolution) below;
 - 41.6.2 within ten (10) Working Days of appointment of the independent expert submit written representations to the independent expert for review;
 - 41.6.3 the independent expert shall, in their absolute discretion determine whether it is appropriate to reach a determination with or without considering oral submissions and/or a formal meeting/hearing. Notwithstanding the independent experts' discretion in this regard, the independent expert will have regard to the Parties' intention. It is the Parties intention that oral presentations and/or formal meetings and/or hearings will only be considered as appropriate where the subject matter of the Dispute is very complex and/or the value of the Dispute is very high. The complexity and value of the subject matter of the Dispute to be determined by the independent expert, in their absolute discretion;
 - 41.6.4 unless otherwise expressly agreed in writing between the Parties and the independent expert, all discussions and proceedings connected with and regarding the Dispute and any settlement agreement relating to it, shall be conducted in private and in the strictest of confidence. All information emanating originating or relating to the Dispute will be deemed to be Confidential Information, as defined and protected under this Agreement.
 - 41.6.5 the Parties will ensure that the independent expert's terms of engagement contain provisions which are analogous to the terms of this Agreement and more particularly:
 - 41.6.5.1 the confidentiality provisions under this Agreement ([Clause 18](#) Confidentiality) that protect and restrict the use of Confidential Information; and
 - 41.6.5.2 the Freedom of Information provisions within [Clause 19](#) (Freedom of Information); and
 - 41.6.5.3 the Data Protection provisions within [Clause 20](#) (Data Protection
 - 41.6.6 The final determination of the independent expert will be made in writing and sent to the Parties respectively and simultaneously by the independent expert addressed to the Authorised Officers at their respective addresses set out at [A5 of the Particulars](#) as soon as possible following the date of their appointment and in any event:
 - 41.6.6.1 where the matter has been classified by the independent expert as requiring oral submissions and/or a formal meeting and/or hearing

(under and in accordance with the terms of [Clause 41.6.3](#) (Dispute Resolution) above, to allow time for such proceedings to be arranged and conducted, be delivered within forty (40) Working Days from the date of their appointment;

41.6.6.2 where the matter has NOT been classified by the independent expert as complex and requiring oral, submissions and/or a formal meeting and/or hearing (under and in accordance with the terms of [Clause 41.6.3](#) (Dispute Resolution) above, be delivered within twenty (20) Working Days from the date of their appointment.

41.7 The Partners will, subject always to [Clause 41.8](#) (Dispute Resolution) pay their own costs incurred in compliance with this Clause 41 (Dispute Resolution) and one half of the costs arising directly from the appointment of the independent expert.

41.8 Notwithstanding the provisions of [Clause 41.7](#) (Dispute Resolution) above, the independent expert may, order that one Party pays entire and total costs arising directly from the appointment of the independent expert where the independent expert (including the other Party's own costs incurred in managing the Dispute through the Dispute Resolution process), in their absolute discretion, considers that that Party:

41.8.1 acted unreasonably, maliciously, irresponsibly and/or frivolously; or

41.8.2 acted without merit or on obviously erroneous facts, assumptions or rationale

41.8.3 in bringing or causing the matter to be brought to be resolved as a Dispute through and under this Clause 41 (Dispute Resolution).

41.9 The determination of the independent expert will be final and binding on the Parties and their nominated third parties with the exception only of where there has been an error in fact or law.

41.10 For the purposes of [Clause 41.8](#) (Dispute Resolution) above, each Parties 'own costs' in managing the Dispute through the Dispute resolution process will include without limitation, legal professional and increased administration costs (on a full indemnity basis), indirect and consequential losses, including loss of opportunity, loss of management time, savings that would have materialised but have not due to delayed or incomplete transformation caused by resources having been utilised managing the Dispute through the Dispute Resolution process.

41.11 Each Party will:

41.11.1 act reasonably at all times during the process of dispute resolution under this Clause 41 (Dispute Resolution) and co-operate with one another and the independent expert or any other third party involved in assisting the Parties to determine the identity of any independent expert or resolution of the Dispute; and

41.11.2 do all acts and or things and execute all documents and/or deeds necessary or desirable to promptly (and in any event with the specified timescales set out in this Clause [41](#) (Dispute resolution)) to give effect to the provisions of this Clause [41](#) (Dispute Resolution); and

not, by act and/or omission, do or allow anything to be done that will directly or indirectly hinder or prevent the independent expert from reaching his determination in a timely fashion and in accordance with the timescales under this Clause 41 (Dispute Resolution).

41.12 This Clause 41 (Dispute Resolution) shall not prevent either Party from seeking injunctive relief, where the courts consider that remedy to be an appropriate one, at any time during

the Agreement Period (regardless of whether the Dispute Resolution Procedure set out in this Clause 41 has been exhausted or not) in the case of any breach or threatened breach by the other Party of any obligation under this Agreement.

42. SCOPE OF THE CONTRACT

42.1 Nothing in this Agreement shall be construed as creating a partnership or a contract of employment between the Council and the Provider, or as constituting either Party as the agent of the other for any purpose whatsoever except as specified by the terms of this Agreement.

42.2 Unless otherwise expressly provided for in this Agreement, each of the Parties shall bear its own costs respectively in connection with the formation and operation of this Agreement.

43. BUSINESS CONTINUITY

43.1 The Civil Contingencies Act 2004 requires the Council to maintain plans to ensure that it can continue to perform all of its ordinary functions in the event of an emergency. Organisations which provide Services which underpin the Council's service provision must therefore be able to continue to provide the Services in the event of an emergency. The Provider shall therefore prepare and implement a robust and viable business continuity plan that ensures the continuation of the provision of the Services throughout the Agreement Period in accordance with the requirements of the Civil Contingencies Act 2004.

43.2 The Provider shall ensure that its Business Continuity Plan includes:

43.2.1 an introduction identifying the purpose of the Business Continuity Plan, its limitations and exclusions, and the individual members of the Personnel responsible for implementing the Business Continuity Plan;

43.2.2 the clear aims and objectives that the Business Continuity Plan will achieve;

43.2.3 the tasks and activities of the Provider's business and the risks associated with each of these tasks and activities;

43.2.4 a full description of the policies, processes and procedures which are in place to support the Business Continuity Plan;

43.2.5 the roles and responsibilities of the Provider, its Personnel and its partners in implementing the Business Continuity Plan;

43.2.6 the command and control arrangements which will operate to support the effectiveness of the Business Continuity Plan;

43.2.7 the communications arrangements that will ensure that the Business Continuity Plan is widely understood by Personnel and so that a business continuity management culture is embedded within the Provider's business in relation to the Services ; and

43.2.8 a schedule detailing when the Business Continuity Plan was last reviewed, how and when the actions within the Business Continuity Plan will be tested, reviewed and updated by the Provider each year.

43.3 The Provider shall:

43.3.1 upon request by Notice from the Council, disclose to the Council the contents of its Business Continuity Plan (include any revisions made to it from time to time during the Agreement Period);

43.3.2 allow the Council (at its discretion) from time to time during the Agreement Period to monitor the Provider's business continuity arrangements;

43.3.3 serve Notice on the Council immediately if an incident occurs which activates the

Business Continuity Plan (such notification to be served prior to the issue by the Provider of any notification to the press or other media); and

43.3.4 provide the Council with details of how the Provider managed any incident which resulted in the activation of its Business Continuity Plan and any consequential amendments made by the Provider to the processes and/or procedures which are contained in or referred to in the Business Continuity Plan.

43.4 In the event that the Provider fails to notify the Council of any incident then the Council may reserve the right to pursue the issue under the provisions contained in Clause 26.

44. COUNTERPART

44.1 The Particulars to this Agreement may be executed in counterpart each of which when executed and delivered shall constitute an original, but all counterparts together shall constitute one and the same instrument. No counterpart shall be effective until each Party has executed at least one counterpart.

45. GOVERNING LAW

45.1 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and interpreted in accordance with the laws of England and the Parties shall therefore submit to the exclusive jurisdiction of the courts of England.

46. LOCAL GOVERNMENT RE-ORGANISATION

46.1 In December 2024 the Government issued a White Paper on Local Government Re-Organisation entitled the "English Devolution White Paper".

46.2 In March 2025 the Authority submitted their suggested re-organisation plan to the Government and are awaiting a response.

46.3 Final proposals will be submitted in November 2025 and implementation of the changes is expected by Government to be by 2028 at the earliest.

46.4 Whilst the expected impact of most changes to Local Government will be settled at Government Level (Change in Law) please be aware that it may be government policy or expedient that any affected party will be recommended to agree bi-lateral or multi-lateral changes to their existing contractual arrangements.

46.5 Updates on proposals and changes can be found on the Authority Website and at other media outlets.

46.6 The parties agree that in the event of a Local Government Re-organisation:-

46.6.1. that reorganisation of local authorities may result in the transfer assignment or novation of this Agreement in whole or in part to a successor authority or successor authorities. Such transfer assignment or novation shall not constitute a breach or require consent and the [contracting party] consents to the transfer assignment or novation of this Agreement in whole or in parts to any successor authority(ies) established under the local government reorganisation legislation and that as a consequence the obligations and rights under this Agreement shall continue to apply and be enforceable by or against any successor authority(ies) following a local government reorganisation; and

46.6.2 the parties acknowledge that if applicable the Transfer of Undertakings (Protection of Employment) Regulations 2006 may apply and agree to comply with all consequential and reasonable obligations arising thereunder.

46.6.3 the parties acknowledge that any new organisation(s) may utilise or create and manage all and any existing or required framework agreements relating to the provision of the services provided under this current Agreement.

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SCHEDULE A – THE PARTICULARS

These Particulars, once completed and signed/executed by both parties, will form a legally binding Agreement between the Provider and the Council incorporating the Council's terms and conditions as per the version number below.

Version of Conditions incorporated			
SCC Standard Terms & Conditions (above threshold) 2024			
Schedules to apply:		As detailed in A20 below	
Title of the contract / outline description of the Services		Statutory Advocacy Service The Authority is commissioning a Statutory Advocacy Service for the provision of a range of statutory advocacy services. In the provision of the Service, the Supplier will: <ul style="list-style-type: none"> • provide a single point of access • establish a local office base within the Contract Area • develop and maintain both local knowledge and relationships with other local providers of services 	
<u>A Ref.</u>	<u>Clause Number:</u>	<u>Information Required</u>	<u>To Be Completed to form the Agreement</u>
A1		Contract Reference:	IA3595
		Procurement Reference:	<i>[Drafting Note: Please insert digital platform reference]</i>
A2	Parties	Full Name of the Provider:	[To be completed at contract award]
		(i) Company Number of Provider: (ii) Charity Registration Number of Provider (as applicable):	[To be completed at contract award]

		Registered Address of the Provider:	[To be completed at contract award]
A3	Recitals	Commissioners:	Lead Commissioner Richard Deacon Commissioning Officer - Learning Disability, Autism, Mental Health & Carers
A4	Clause 1	Implementation Date(s):	2 January 2026
		Commencement Date:	1 April 2026
		Initial End Date:	31 March 2028
		Extension Period(s)	12 months up to 31 March 2029
A5	Clause 14	Details of Authorised Officer for the Council:	Council's Authorised Officer Name: Andy Marriott Title: Lead Commissioner (Learning Disability, Autism, Mental Health & Carers) Tel no. (DDN): 01785 277754 Mobile: 07976191100 Email: andy.marriott@staffordshire.gov. uk Postal Address: 1 Staffordshire Place Tipping Street Stafford ST16 2DH
		Details of Authorised Officer for the Provider:	Provider's Authorised Officer [Drafting Note: Please insert all relevant information] Name: [To be completed at contract award] Title: [To be completed at contract award] Tel no. (DDN): [To be completed

			<p>at contract award]</p> <p>Mobile: [To be completed at contract award]</p> <p>Email: [To be completed at contract award]</p> <p>Postal Address: [To be completed at contract award]</p>
A6	Clause 5.7 & Clause 34	<p>Subcontractor permitted:</p>	<p><input checked="" type="checkbox"/> check box if permitted to subcontract</p> <p>[Drafting Note: Insert list of permitted subcontractors]</p>
A7	Clause 10 & Schedule C	Provider's Bank Details where payments are to be submitted by the Council:	
		Provider's Name of Bank Account:	[To be completed at contract award]
		Provider's Bank Account Number:	[To be completed at contract award]
		Provider's Sort Code:	[To be completed at contract award]
		Full Postal Address of Provider's Bank:	[To be completed at contract award]
A8	Clause 15.1	Period to maintain Records if different to that in Clause 15.1 (7 years)	Not applicable
A9	Clause 15.3	Check box if Open Book Accounting is engaged in the Contract Management of this Agreement	Not applicable <input type="checkbox"/>
A10	Clause 17	<p>INTELLECTUAL PROPERTY RIGHTS</p> <p>Check this box if the Intellectual Property rights arising in accordance with Clause 17.1 are to be owned by the Provider:</p> <p>Where this box is checked the Provider does not waive its rights under Clause 17.3 and that clause shall not apply.</p>	Not applicable <input type="checkbox"/>
A11		Where A10 has been checked, specify here in detail any restrictions on the Council's	Not applicable

	use of the Intellectual Property Rights of the Provider that are to apply. In absence of any detail inserted here Clause 17.1 will apply notwithstanding the Provider's ownership.	
A12	Background Intellectual Property Rights exist check the box and specify the details, nature and type of IPR that exists	Not applicable <input type="checkbox"/>

INSURANCE

A13	Clause 22	Insurance type:	Minimum level
		Employers Liability Insurance	£5,000,000
		Public Liability Insurance	£5,000,000
		Professional Indemnity Insurance	£2,000,000
		Products Liability	Not applicable
		Medical Malpractice	Not applicable
		Motor Vehicle	Fully Comprehensive including business use
A14		Is the Limit of the Provider's Liability different from the insurance levels above:	Yes / No [To be completed at contract award]
A15		If yes to A15 please specify the limited liability amount (in words and figures)	[To be completed at contract award]
A16	Clause 25	Period of no fault Notice to terminate to be served by the Council on the Provider (if applicable) under Clause 25 (Break Clause):	Six (6) months

A17	NOT USED.			
A18	SCHEDULES - All the Schedules within this Agreement will apply unless the relevant boxes are checked below and the content of those schedules are therefore <u>excluded</u> from the terms and conditions that form the Agreement.			
	A (The Particulars)	<input type="checkbox"/>		
	B (The Specification)	<input type="checkbox"/>		
	C (Financial Provisions)	<input type="checkbox"/>		
	D (Performance Monitoring and Quality Assurance)	<input type="checkbox"/>		
	E (Tender Documents) Clarifications Included	<input type="checkbox"/> <input type="checkbox"/>		
	F (Contract Award Letter)	<input type="checkbox"/>		
	G (Data Protection Provisions and Information Governance Agreement)	<input type="checkbox"/>		
	H (TUPE)	<input type="checkbox"/>		
	I (Exit Management)	<input type="checkbox"/>		
	J (Security Management)	<input type="checkbox"/>		
	K (Optional Clauses)			
	K1 (Whistleblowing)	<input type="checkbox"/>		
	K2 (Safeguarding & DBS)	<input type="checkbox"/>		

	K3 (Suspension of Service)	<input type="checkbox"/>		
	K4 (Step-in Rights)	<input type="checkbox"/>		
	K5 (Termination of Central Government Funding or Other Public Bodies)	<input type="checkbox"/>		
	K6 (Goods)	<input checked="" type="checkbox"/>		
	K7 (Environmental Obligations)	<input type="checkbox"/>		

BY SIGNING AND RETURNING THESE PARTICULARS THE PROVIDER AGREES to enter a legally binding contract with the Council to provide the Services specified in these Particulars incorporating the rights and obligations in the SCC Standard Terms & Conditions 2022 and all applicable Schedules referred to therein.

IN WITNESS of which this document has been executed and, on the date set out at the beginning of the Particulars has been delivered as a **DEED**

The **COMMON SEAL** of
STAFFORDSHIRE COUNTY COUNCIL
 was affixed to this DEED which was
 delivered on the date inserted below
 in the presence of:

Authorised Signatory:

Name:

Date:.....

**TWO DIRECTORS (OR) ONE
 DIRECTOR & COMPANY
 SECRETARY**

Director (Signature):

Print name:

<p>EXECUTED and DELIVERED as a DEED by the Provider named in the Particulars acting by:</p>	<p>Date:.....</p> <p>Director/Company Secretary (signature):</p> <p>Print name:</p> <p>Date:.....</p>
<p><u>OR</u> <u>SOLE DIRECTOR & NO COMPANY SECRETARY</u></p> <p><u>EXECUTED and DELIVERED as a DEED</u> <u>by the Provider named in the Particulars</u> <u>acting by:</u></p>	<p>Director (Signature):</p> <p>Print Name:</p> <p>In front of a Witness</p> <p>Witness (signature):</p> <p>Print Name:</p> <p>Witness Address & Occupation:</p> <p>.....</p> <p>Date:.....</p>
<p><u>OR for Execution by Signature</u></p>	<p>This Agreement has been entered into on the date stated at the beginning of the Particulars.</p>
<p><u>SIGNED on behalf of STAFFORDSHIRE COUNTY COUNCIL</u></p>	<p>.....</p> <p>Authorised Signatory</p> <p>.....</p> <p>Name</p> <p>.....</p> <p>Position</p>
<p><u>SIGNED on behalf of the Provider named in the Particulars</u></p>	<p>.....</p> <p>Authorised Signatory</p> <p>.....</p> <p>Name</p> <p>.....</p> <p>Position</p>

SCHEDULE B – THE SERVICE SPECIFICATION

SCHEDULE B – THE SERVICE SPECIFICATION

The provision of a Statutory Advocacy Service

Glossary

Definitions within this Service Specification are defined below:

Term	Definition
Advocacy	The provision of help and representation by an advocate in supporting and enabling a person who is otherwise unable to speak up for themselves to self-advocate or to speak up on the person's behalf. It means supporting people to take more control about decisions over their lives and care and to make informed choices.
Advocate	A professional or non-qualified or volunteer advocate who is deployed by the Provider to provide Advocacy Support to Individual(s).
Asset Based Approach	Means an approach that focusses on what Individuals and Communities have and how they can work together, rather than what they don't have or can't do.
Community Treatment Order	A legal order made under S17(A) of the Mental Health Act 1983 which sets out the terms for treatment within a community setting.
Council	Staffordshire County Council.
Customer	Shall mean Individual, family, carer and professional.
Deprivation of Liberty Safeguards (DoLS)	Means the framework of safeguards under the Mental Capacity Act 2005 for people who need to be deprived of their liberty in a hospital or care home in their best interests for care or treatment and who lack the capacity to consent to the arrangements made for their care or treatment.
Electro-Compulsive Therapy	A medical procedure that involves the use of electric currents to trigger an epileptic seizure. Used mainly in the treatment of severe depression.
Eligibility Criteria	Means the criteria that Individuals will need to meet in order to access and be eligible to receive the Services as detailed in paragraphs 7.2.1 c), 7.2.2 c), 7.2.3 c), 7.2.4 c), 7.2.5 c) of Section 7.2 (Specific Statutory Advocacy Requirements) of the Service Specification.
Emergency Case	Means a Referral that, due to the identified need and timescales, must be prioritised by the Provider and responded to in accordance with paragraph 7.1.5 b) of Section 7 (Service Delivery) of this Service Specification

Healthwatch Staffordshire	An independent consumer champion for health and social care services whose primary aim is to represent the voice of patients, service users and the public on health and care issues.
Individual	As defined in Section 7.2 of the Service Specification (Specific Statutory Advocacy Requirements) persons that meet the Eligibility Criteria under each of the relevant statutory advocacy service.
Independent Advocate	As defined in the Care Act 2014.
Independent Mental Capacity Advocate	As defined in the Mental Capacity Act 2005.
Independent Mental Health Advocate	As defined in the Mental Health Act 1983 and as updated in 2007.
Indicative Volume Ranges	The key performance indicators used to measure performance for the Services as set out in paragraphs section 15.1 (a) and 15.2 of the Service Specification (Individual and Stakeholder Feedback).
Statutory Advocacy Service (the Service)	All services commissioned under the Agreement and listed in Section 1 and Section 7 of this Service Specification (Introduction and Summary Purpose of the Service and Service Delivery) and provided through a single point of access.
Lasting Power of Attorney	Means a legal document that appoints a person to act on a someone's behalf to help make decisions or make decisions on their behalf.
Learning Disability and Autism Partnership Board	A system wide forum, across Staffordshire and Stoke on Trent, to strengthen the approach to and with autistic people and people with a learning disability.
National Advocacy Qualification	Means the City & Guilds National Level 4 in Independent Advocacy Practice (including optional additional specialist units).
NHS Continuing Healthcare	Free health and social care arranged and funded solely by the NHS for some people with long-term complex health needs.
NHS Complaints Regulations	Means The Local Authority Social Services and National Health Service Complaints (England) Regulations 2009.
Out of County	Means an eligible Individual who resides outside of the Contract Area.
Out of County Representative	Means the Representative appointed to support an Individual who resides outside of the Contract Area.
Parliamentary and Health Service Ombudsman	Means an independent body that investigates complaints about government departments and the NHS in England.
Prisoners	As defined in the Independent Advocacy for Prisoners under the Care Act 2014 and resident

	within the Contract Area as listed in paragraph 7.2.2 (e) of the Service Specification (Specific Statutory Advocacy Requirements).
Referral(s)	Means the nomination of an Individual to the Provider to enable them to access the Services.
Referrer(s)	Those persons making the referral of Individuals to the Provider to enable them to access the Services.
Relevant Person	Means a person who is, or may become, deprived of their liberty in a hospital or care home.
Relevant Person's Representative	Means the person who is appointed by a Supervisory Body to act as the Relevant Person's representative and who, once appointed, maintains contact with the Relevant Person, and represents and supports the Relevant Person in all matters relating to the DoLS.
Responsible Body	Means either the relevant local authority, or the relevant NHS body (as applicable) within the Contract Area, which has a statutory duty under the 2005 Act to instruct and consult an Advocate.
Rule 1.2 Representative	<p>A 1.2 Representative is the name given by the court to a person who is able to consider whether from the perspective of individuals best interests you agree or do not agree that the Court should authorise the individuals package of care and support resulting in a deprivation of their liberty, in either a community or domestic setting.</p> <p>This is usually a family member, however in cases where the person has no family an Independent Advocate may be appointed as Rule 1.2 representative.</p>
Social Care	The services that the Council is responsible for in meeting the needs of eligible Individuals.
Service Manager	Personnel that has overall responsibility and accountability for the management and delivery of the Services.
Service Partners	Partners to the Council, for the Service – Midlands Partnership University NHS Foundation Trust (MPFT); North Staffordshire Combined Healthcare NHS Trust (NSCHT); Staffordshire and Stoke on Trent Integrated Care Board (ICB); Staffordshire Acute Hospital Trusts (UHDB and UHNM) or any subsequent Partners.
Staff	Means the same definition as 'Personnel' as contained in the clause 1 (Definitions) of the Agreement.
Supervisory Body	Means the body which is responsible for considering a deprivation of liberty request received from a managing authority, commissioning the statutory assessments and, where all the assessments agree, authorising the deprivation of liberty.

Supportive Communities Programme	Programme of activities led by the Council with support from voluntary sector partners to enable people to be better able to manage their own health & wellbeing, achieved through encouraging and supporting vulnerable adults to access and benefit from assets in their local community, as well as good information, advice and guidance.
Trained Representative	Means the person who is appointed by the Supervisory Body to perform the role of the Relevant Person's Representative in a professional capacity.
Trained Representative Visits	Means the visits made by the Representative to the Individual.

1. INTRODUCTION AND SUMMARY PURPOSE OF THE SERVICE

- 1.1** This Service Specification sets out the minimum requirements and standards of the Services to be delivered by the Provider. The Provider shall, where possible, work to exceed these requirements and standards. The Provider shall work transparently and collaboratively with Staffordshire County Council ("the Council") and its partners throughout the term of this Agreement to drive improvements to the Services and to the quality of Outcomes.
- 1.2** The Council is commissioning a Statutory Advocacy Service for the provision of a range of statutory advocacy services. In the provision of the Service, the Provider will:
- a. Provide a single point of access appropriately staffed that promotes a triage approach that ensures Individuals get the right advice, support and/or services needed.
 - b. Ensure it establishes a local office base within the Contract Area (which includes Newcastle-under-Lyme, Staffordshire Moorlands, Stafford, East Staffordshire, Cannock Chase, Lichfield, Tamworth, South Staffordshire), develops and maintains both local knowledge and relationships with other local providers of services (for example, with the voluntary sector) to enhance the broader delivery of the Service, as well as to be aware of any relevant local issues or challenges.
 - c. Provide a Service that reflects the key principles of:
 - i. Making use of digital.
 - ii. Recognising the benefits of strength-based and asset-based approaches to improving health and wellbeing, promoting independence and building community capacity.
 - iii. Targeting and supporting those with greatest need.
 - iv. Encouraging Individuals to build their skills and confidence to self-advocate
 - d. Adopt lean and flexible working practices in order to maximise service reach within the Price paid pursuant to the Agreement. The Provider will demonstrate continual learning and share best practice through local partnerships and forums.
- 1.3** This Service Specification sets out the requirements for the provision of a Statutory Advocacy Service (the Service) for Individuals who are eligible to access the following statutory services across the Contract Area but to also include Out of County Representatives:
- a) Independent Advocacy under the Care Act 2014.

- b)** Independent Advocacy for Prisoners under the Care Act 2014.
- c)** Independent Mental Capacity Advocacy (IMCA) including Deprivation of Liberty Safeguards and Trained Relevant Persons Representatives (RPR). Where the Individual has no family/friends to represent them, an advocate and/or trained person may be appointed to be the Rule 1.2 Representative.
- d)** Independent Mental Health Advocacy (IMHA); and
- e)** Independent Health Complaints Advocacy Service (ICAS).

1.4 The Provider must provide the Service as specified to all Individuals.

1.5 The Provider will support Individuals to build their skills and confidence to be able to self-advocate where appropriate and reduce dependency on the Service.

1.6 The Service shall comprise of the provision of Advocacy to Individuals with effect from the Commencement Date and thereafter throughout the remainder of the Agreement Period by the Provider. The Service will be delivered in accordance with this Service Specification in order to achieve the General Standards in Section 3 and Service Values in Section 4 of this Service Specification.

1.7 The Provider will be expected to work closely with the Council with a focus on frontline delivery and partnership working. The Provider will need to evidence collaborative working with a wide number of local organisations, voluntary sector and community groups to provide advocacy support, information, guidance, signposting and support for people, utilising local Individuals with lived experience to enhance the support offer.

The Provider will share knowledge, raise awareness and advise other providers/professionals to ensure the concept of Advocacy is understood and that support is available to Individuals who may have genuine difficulty in articulating or negotiating their needs and personal goals, enabling more Individuals to self-advocate. The Provider shall be aware of and understand other Advocacy Services operating within Staffordshire (for example the Council's commissioned advocacy service for Children & Young People). In doing so, the Provider will establish a strong Service identity that demonstrates the support offer available.

1.8 In addition the Provider may also:

- a)** seek additional (non-Council) sources of funding to assist with the development of new or enhanced Advocacy Services where gaps or shortcomings have been identified.
- b)** widen social value in accordance with Section 12 (Social Values) of this Service Specification.
- c)** seek to implement innovative and flexible working practices and drive for continuous improvement of the Service.
- d)** Explore the use of non-qualified advocates and volunteers to support the delivery of appropriate aspects of the Service

1.9 The Service is to be accessed through a local single point of access that is provided as a fully integrated model, responding to evidenced need, and with flexibility to respond to any changes in legislation and variations in demand (for example, any new legislation that may significantly either increase or decrease demand levels). The Provider is required to raise matters regarding increased capacity pressures, within the Service, with the Council as

soon as they are identified to discuss and agree how these pressures can be most effectively managed.

- 1.10 The Agreement will enable the Provider, with prior written agreement from the Council to sub-contract specific elements of the Service but within the context of a single service infrastructure which will deliver a uniform process for the receipt, management and monitoring of Advocacy referrals; providing economies of scale and support investment in good quality publicity, training and data management systems.
- 1.11 The Provider may outsource any specific individual referral, that is outside of the Contract Area, to another Advocacy service, local to the referral, provided that they can assure themselves that the alternative provider also meets the required quality standards within the Service Specification and that doing so would provide greater value for money and efficiency of Service delivery. The Provider will include details of any such outsourced referrals within the relevant quarterly performance monitoring report, in accordance with Section 17 (Performance Monitoring).

2. STRATEGIC OUTCOMES

The Service will be delivered in accordance with any of the Council's Strategic Plans and Outcomes as the Council may notify to the Provider from time to time, including;

Staffordshire County Council's Strategic Plan

- 2.1 The [Strategic Plan 2022 to 2026 - Staffordshire County Council](#) sets out the Council's ambitions and priorities. The Council's Strategic Plan has five priorities: growing the economy, climate change, health and wellbeing, digital connections, and offering young people the best start in life and the chance to achieve their potential.

Commissioning Strategies that impact on Statutory Advocacy Services in Staffordshire

- 2.2 For information on how Statutory Advocacy services are being commissioned in Staffordshire, what they cost, their quality and capacity gaps at the time of producing this Service Specification, please see the Council's [Market Position Statements & Discretionary Fee Review - Staffordshire County Council](#)

Within these Market Position Statements, the Council has clearly articulated its own strategic objectives for Health and Care more broadly alongside the strategic objectives it expects services delivering to Individuals with disabilities, mental health conditions and older people. All commissioned services are expected to be aware of these and thinking about how their services and the care and support they offer are enabling Individuals to meet their Individual outcomes and supporting the Council to achieve its strategic outcomes (recognising the links between both of these).

The Council's Market Position Statements operate alongside wider key strategies in Staffordshire, which can be found at the following webpage link: [Commissioning strategies – Staffordshire County Council](#). These strategies consider all Individuals in Staffordshire and Providers are advised to consider the collective responsibility they have in these as providers of personal care and support but also as local businesses and employers considering the role their staff have to play in making the lives of vulnerable people the best that they can be. It is also about the responsibility they hold for Individuals in their care to ensure their lives are meaningful and purposeful. As further new relevant strategies are developed the Council will make the Provider aware.

- 2.3** The Council and its partners recognise the benefits of strength-based and asset-based approaches to improving health and wellbeing. The [Supportive Communities Programme](#) seeks to encourage and enable access to assets within communities, the voluntary and community sector, as well as sharing good quality information advice and guidance to reduce or delay the need for statutory health and care services. To help achieve this ambition, the Provider will be required to demonstrate a commitment to a strengths and Asset-Based Approach and are open to engaging with wider programs of activity that take this approach.

A strengths and Asset-Based Approach values the capacity, skills, knowledge, connections and potential in both the Individual and their local communities.

3. GENERAL SERVICE STANDARDS

- 3.1** The Provider will follow all relevant national and local guidance, legislation, best practice, codes of practice and standards (and any subsequent changes in such documentation during the period of the Agreement), in relation to the delivery of an independent advocacy service, set by the Government or other relevant bodies (e.g. [NICE – Advocacy services for adults with health and social care needs](#)).
- 3.2** The Advocacy Code of Practice (revised edition 2014); Quality Performance Mark, as published by the National Development Team for Inclusion (NDTi) provides a set of guidelines for Advocates (and their managers), aimed at providing clarity, support and boundaries for advocacy practice, outlining the expectations and purpose of the service. The Code provides a clear description of what is and is not expected of an Advocate in their day-to-day work with individuals. The Provider will work to these principles (or equivalent) in the delivery of the Service, in accordance with Section 17.2 Quality Performance Mark.
- 3.3** The Provider shall be responsible for ensuring that the statutory elements of the Service in paragraph 1.3 of Section 1 (Introduction and Summary Purpose of the Service) and paragraphs 7.2.1 to 7.2.5 inclusive, of Section 7 (Service Delivery) are (and are seen to be) independent of the Council and/or it's service Partners, and any other organisations which may participate in the assessment of Individuals

4. SERVICE VALUES

The following values will underpin all activities undertaken by the Provider in the performance of the Service:

- a)** Individuals using the Service must be treated with courtesy, dignity and respect and will be at the centre of all decision-making that impacts on their lives.
- b)** The Provider will take a strengths and Asset-Based Approach and be open to engaging with wider programmes of activity that take this approach, in accordance with paragraph 2.3 of Section 2 (Strategic Outcomes) of this Service Specification. This will include a commitment to the use of volunteers to fulfil some of the roles where it is safe and appropriate to do so and adds value to the Service and provides a valuable experience to the volunteer.
- c)** Promote opportunities for Individuals to be involved with the Service and seek their view in establishing good practice, reviewing policy and procedure and maintaining and continuously improving delivery of the Service.
- d)** The Provider will liaise with other providers of services in order to develop effective and efficient practices and partnerships which will optimise the effectiveness of all services within Staffordshire.

- e) The Provider is to work in partnership with other agencies in order to promote meaningful outcomes for Individuals.
- f) Relationships are to be built with key stakeholders and partners to ensure open communication to meet the provision of local needs and avoiding duplication.
- g) The Provider must promote choice by ensuring that the Individuals are at the centre of all decisions affecting the way they are supported and about the Service provided.
- h) The Service will be delivered whilst ensuring parity of access both demographically and geographically across the Contract Area.
- i) The Provider will seek to offer placements to Social Work students studying locally to support their learning, awareness and understanding of the value of advocacy and further embed and share the importance of this for the future social care practitioner workforce.

5. KEY STATUTORY REQUIREMENTS AND LEGISLATION

As a provider of services, and employer, the Provider will be governed by a complex range of legislative requirements, standards, guidance and codes of practice. The Provider will be required to comply with all relevant legislation that currently relates to the operation of their business.

For the purpose of this Service, Local Authorities also have a number of statutory duties, established in legislation, to ensure people can access independent Advocacy. The Provider will assist the Council in meeting these statutory duties and provide necessary Advocacy provision in accordance with the relevant legislation and demands for Advocacy in the Contract Area. Some key acts and regulations are referred to in this Specification and listed below, this is not an exhaustive list. As new legislation is introduced, or existing legislation is amended from time to time or re-enacted, this should also be considered by the Provider and, where necessary, the Provider will meet with the Council to discuss and agree any impact upon the delivery of the Service.

- a) The Care Act 2014.
- b) NHS England Priorities and Operational Planning guidance.
- c) The Mental Capacity Act 2005, Mental Capacity (Amendment) Act 2019 and the Deprivation of Liberty Safeguards
- d) The Mental Health Act 2007 and the Code of Practice (Mental Health Act 1983) for England.
- e) The Autism Act 2009.
- f) The Health and Social Care Act 2012.
- g) The Human Rights Act 1998.
- h) Local Authority Social Services and National Health Services Complaints (England) Regulations 2009
- i) The Equality Act 2010.
- j) Data Protection Act 2018 and the General Data Protection Regulation (GDPR);
- k) Freedom of Information Act 2000.

- l) Children Act 1989.
- m) Children and Families Act 2014.
- n) Children and Social Work Act 2017.
- o) Working Together to Safeguard Children 2010
- p) NHS and Community Care Act 1990.

6. GENERAL ADVOCACY OUTCOMES FOR INDIVIDUALS USING THE SERVICE

The Provider will work with Individuals to identify the outcomes that are important to them and contribute, where appropriate, to Individuals achieving their personal outcomes. These personal outcomes may relate to (but are not limited to) the following general advocacy services outcomes:

- a) gaining the necessary confidence to advocate for themselves and express their views, where possible.
- b) achieving greater independence through having greater choice over the social care and health services they use and having control over the ways in which those social care and health services are provided to them.
- c) having improved health and quality of life, economic well-being and personal dignity.
- d) making a positive contribution to their community.
- e) living as independently as possible and achieve and maintain a valued lifestyle in an inclusive community.
- f) being free from discrimination and harassment.
- g) managing change or to deal with difficult issues.
- h) standing up for their rights; and
- i) access (via signposting) to appropriate information and other support.

7. SERVICE DELIVERY

The provisions of paragraph 7.1 of this Section 7 (Service Delivery) are general principles that apply to all types of Advocacy provision covered in the Service Specification. Specific requirements for each service area are set out in paragraph 7.2 of this Section 7 (Service Delivery).

The Provider shall deliver the following activities (in no particular order):

7.1 Overarching Service Delivery Principles

- a) The Services consist of the provision by the Provider of a Statutory Advocacy Service for the benefit of Individuals with effect from the Commencement Date and thereafter throughout the remainder of the Agreement Period including any Extension Period. In

addition to the service standards detailed in Section 3 (General Service Standards) of this Service Specification, the Provider will ensure the Service includes:

- i. an appropriate managerial and administrative infrastructure & referral pathway.
- ii. an information/data management system that enables the reporting of a single data set for the entire Service for monitoring purposes.
- iii. one system for ensuring the quality & legal compliance of the Service, including information sharing as required with Commissioners for Quality Assurance purposes.
- iv. delivery in an accessible person-centred manner across the Contract Area. Delivery will include by way of digital applications or solutions and/or if necessary and appropriate, delivery from mutually agreed venues, dependent upon the Individual's circumstances.
- v. following learning from the Covid-19 pandemic, the Provider will take into consideration the latest Government guidance with regards to testing and infection control procedures when delivering the Services.
- vi. the provision of the Service for the benefit of all eligible Individuals (and in accordance with paragraph 16.1 (Indicative Volume Ranges) with the capacity to provide all of the outcomes outlined in this Service Specification.
- vii. the development of a collaborative relationship with referring professionals to ensure the scope of the Service is mutually understood and expectations are managed, to deliver the best possible outcomes for Individuals.
- viii. the Provider will deliver professional, skilled, independent Advocacy, supplemented where possible by the appropriate use of non-advocacy qualified practitioners, volunteers and social work students, who are able to prioritise and manage referrals whilst ensuring a quality service, ensuring that Individuals receive support within timeframes set out in paragraph 7.1.5 (Referral Timescales) of this Section 7 (Service Delivery).
- ix. the recruitment, training, management and supervision of suitable Advocate(s) and volunteers to work across one and/or more of the different Advocacy specialisms.
- x. the deployment of Advocate(s) at short notice and the management of the provision of short-term, issue specific, non-instructed Advocacy by Advocate(s) to carry out the roles and responsibilities as defined in relevant case law.
- xi. the representation by Advocate(s) of the views of Individuals who have no appropriate family or close friend to represent their views.
- xii. the ability to work with and be flexible enough to meet the needs of diverse groups of Individuals for example (but not limited to) those who:
 - have a sensory impairment (including the requirement for British Sign Language – BSL).
 - have advanced dementia.
 - have learning disabilities.
 - are living with autism.
 - have neurodivergences
 - have behaviours that challenge.

- have an acquired brain injury.
 - have mental ill-health.
 - are from non-English speaking communities and/or Ethnic Minority Groups.
- xiii. the provision of assistance and/or written reports provided to the appropriate service professional with a view to seeking a resolution in the best interest of the Individual.
 - xiv. the maintenance of records for the purposes of monitoring the Service by the Council.
 - xv. the participation by the Service Manager (or equivalent role) and the Advocate(s) in regular quarterly Contract Review Meetings and additional issue specific meetings where appropriate and required.
 - xvi. commitment to an open and honest dialogue with representatives of the Council to enable reflective working and develop better ways of working where this will benefit the Service and its users.
 - xvii. an appropriate engagement plan, in accordance with Section 3 (General Service Standards) and Section 4 (Service Values) of this Service Specification, which sets down service delivery and practice requirements for the provision of the Services.

- b)** To ensure that the Service is consistent with the principles which underpin all Social Care services which are commissioned by the Council, the Provider shall ensure that:
- i. the Service is of high quality and delivered by a well-trained, professional and enthusiastic workforce.
 - ii. the Service is well planned and integrated, make the most effective use of available resources and contribute to the meeting of the needs of diverse communities in the Contract Area.
 - iii. the Service will make use of digital solutions to support the successful delivery of the Service as and where appropriate (for example – to connect with, inform and support Individuals).
 - iv. the Service is non-stigmatising and confidential.
 - v. the Service is free of charge to all Individuals (subject only to any express contrary provision of this Agreement).
 - vi. the Service is sensitive and responsive and therefore efficient, flexible and effective when responding to the differing and changing needs of each Individual.
 - vii. the Service is consultative in their operation and development and value the comments and views of Individuals, social care and health care professionals and wider stakeholders.
 - viii. no Individuals are either, excluded from the Service, or discouraged or prevented from accessing the Service, or otherwise discriminated against in relation to or as a consequence of their race, or age, or class, or culture, or gender, or sexual orientation, or religion, or beliefs, or racial origin, or ethnic background, or disabilities.

- c) The Provider is responsible for making all the necessary arrangements to provide the Service at appropriate venues as deemed necessary and for meeting all associated costs.

7.1.1 Time spent on an Advocacy Case

The following activities should be classed as time spent by an Advocate working on a case while:

- a) in contact (including face-to-face contact and contact by telephone, letter and e-mail or via any other virtual/digital platform) with the Individual, or any other relevant persons who are involved with the Individual in question in relation to the specific decision in question.
- b) examining documents and records (such as clinical records, care plans, or social care assessment documents) which relate to the Individual in question and are relevant to the specific decision in question.
- c) travelling to meetings, interviews etc. in relation to the Individual in question.
- d) producing a report for the relevant person in respect of the Individual in question and consequent attendance at meetings (if any).

For the avoidance of doubt, activities spent on an Advocacy case excludes time which is spent by an Advocate in the delivery of training, participation in training, staff supervision and team meetings.

7.1.2 Length of Advocacy Partnership

- a) The Service is primarily aimed at the provision of short-term support; to deal with a one-off crisis or issue that an Individual is experiencing and intended to be enabling and empowering and Individuals should not be encouraged to become dependent upon the Service.
- b) In some circumstances (including advocacy or Trained Representative under DoLS) some Individuals may need longer-term support until issues become resolved.
- c) The Provider will report, as part of quarterly Contract Review Meeting, details of Individual cases requiring longer-term support.

7.1.3 Referrals

- a) The Provider shall develop and have operational, from the Commencement Date, clear referral policy and processes, including pathway in, throughout the Service and discharge from the Service. The Provider shall adopt a single 'triage' arrangement whereby potential Individuals are prioritised according to their identified level of need for Advocacy support. This function will be supported, in accordance with paragraph 9.4 of the Service Specification (Referral Coordinator (or equivalent role) by the Provider appointing a specific role (for example, a referral coordinator or equivalent role) to oversee and manage this function.
- b) The Provider shall not accept any Referral from an Individual who is not eligible except in exceptional circumstances and with the express written agreement of the Council.
- c) The Provider shall be responsible for the co-ordination and allocation of Referrals to Advocates or if appropriate non-qualified advocates or a volunteer and for ensuring effective communication between the Advocates and the Council and/or it's Service Partners (as appropriate) and with Individuals directly dependent on the referral

route. In accordance with paragraph 7.1.3 a) of this Service Specification (Referrals) this may be via a referral coordinator or equivalent role.

- d) The Provider shall not at any time carry out any assessment of any Individuals (although on occasion an advocate may be in attendance at an assessment if this is specifically where the Individual requires Advocacy support). The assessment of each Individual's health and/or social care needs is the exclusive responsibility of the Council and/or its Service Partners (or any other social care and/or health body to which they may delegate their functions during the Agreement Period).

7.1.4 Acceptance of Referrals

- a) Following the acceptance of a Referral by the Provider, the Provider shall designate a named Advocate or if appropriate a non-qualified advocate or volunteer to the Individual in question whilst ensuring continuity of staff when possible.
- b) Within one (1) working day of receipt of each Referral (time being of the essence) the Provider shall advise the Referrer whether the Referral in question is being accepted by the Provider.
- c) Once the Provider has accepted a Referral, the Provider shall ensure that an Advocate or if appropriate a non-qualified advocate or volunteer arranges an appointment with the Referrer and/or the Individual in question as soon as practicable (at a time, date, venue or by other means which is mutually convenient) with a view to discussing the circumstances relating to the specific decision which must be made in relation to the Individual in question.

7.1.5 Referral Timescales

Following the acceptance of a Referral and a triage assessment, the Provider shall ensure that an initial appropriate contact is held with the Individual in question:

- a) if the Referral is not an Emergency Case, as soon as possible but within ten (10) Working Days of the Provider receiving the Referral.
- b) if the Referral is an Emergency Case, within two (2) Working Days of the Provider receiving the Referral.
- c) Note - DoLS IMCA has statutory timescales for assessments and the Provider will need to ensure reports are provided to the Supervisory Body to comply with these
- d) The Provider is required to report, as part of the quarterly Contract Review Meeting and in a way agreed with the Council, their referral response timescales.
- e) where, by reason of capacity of the Service, it becomes necessary for the Provider to operate a waiting list for referrals it is expected that this will be notified to the Council so that any necessary joint action can be taken to minimise the effect on service delivery.

7.1.6 Refusal of Referrals

- a) If an Individual who does not comply with the eligibility criteria is identified by the Provider as being in need of the Service, the Provider shall refer them for a social care assessment, if relevant and appropriate, before commencing the provision of Advocacy.
- b) If the Provider refuses the Referral, then the Provider shall inform the Referrer and shall (upon request) provide the Referrer with a detailed statement of the reasons for its decision.
- c) The Provider shall only be entitled to reject a Referral if:

- i. they can demonstrate that the Individual who has been referred to it does not meet the Eligibility Criteria, or;
- ii. they can demonstrate that there are reasonable grounds to show that the needs of the Individual in question are such that it would be inappropriate to facilitate their access to the Service.
- iii. they do not have capacity to accept the Referral in question. The Provider shall not be entitled to rely on this sub-paragraph unless they have the evidence to prove otherwise.
- iv. they are able to demonstrate to the satisfaction of the Council some other reasonable and substantial reason for refusing the Referral in question.
- v. all rejections of Referrals will be recorded by the Provider and monitored by the Council and considered during Contract Review Meetings. Persistent failure to accept Referrals on the grounds of capacity may result in remedial action being taken in accordance with clause 23 (Default) of the Agreement.

7.1.7 Recording of Referrals and Case Recording

- a) The Provider shall keep detailed records of all Referrals which are received by it, the source and outcome of the Referrals and, if a referred eligible Individual does not access the Service following their referral the Provider shall record the reason for this.
- b) The Provider will keep comprehensive records of Individual contact, in accordance with relevant policies and procedures for making and maintaining such records, which will focus on enabling quantitative and qualitative analysis, and on producing a record which is open and accessible. The Provider will produce and operate to a policy that accommodates these requirements and reflects that in limited circumstances the disclosure of these case records may be required by the courts or the Individuals.

7.1.8 Prioritising Referrals

If the demand for the Service exceeds the Provider's capacity to meet that demand, then the Provider will notify the Council at the earliest opportunity so that the Parties can use all reasonable endeavours to liaise and agree a strategy for the prioritisation of the use of Service (such agreement shall not be unreasonably withheld or delayed by either party). The Provider shall then apply the agreed strategy as and when appropriate throughout the remainder of the Agreement Period.

7.1.9 Supporting Local Integration of Legislation

The Provider's Staff will be a key partner in supporting local integration of the legislation listed in Section 5 of the Service Specification (Key Statutory Requirements and Legislation), into practice. This would include contributing to the local implementation groups and safeguarding board.

7.2 Specific Statutory Advocacy Requirements

This section sets out requirements specific to each area of Advocacy support. The Provider will be required to deliver the following:

7.2.1 Independent Advocacy under the Care Act 2014

a) Purpose and Principles underpinning Independent Advocacy under the Care Act 2014

Local Authorities have a duty to involve Individuals in decisions made about them and their care and support. This means enabling Individuals to understand how they can be involved in the care and support processes, how they can contribute and take part and, in some cases, how they can lead or direct the process. The purpose of Independent Advocacy is to assist and involve Individuals to be active partners in the key care and support processes of assessment, care and support planning, and review including safeguarding procedures.

b) Provision of Independent Advocacy under the Care Act

- i. When instructed, provide Independent Advocacy to undertake the roles set out in the Care Act 2014 and associated regulations.
- ii. Any instructions to the Service must be made in writing.
- iii. Independent Advocate written reports will be provided for the instructor for all instructions made.
- iv. The Independent Advocate will provide written confirmation to the instructor when they have ended their work with the Individual.

c) Eligibility Criteria

A person shall only be entitled to access the Service and shall therefore only constitute an Individual for the purposes of this Service Specification if they are referred into the Service by a social care practitioner and they comply with the following criteria:

They are either:

- i. An Adult with care and support needs.
- ii. The carer, including any young carer (below the age of 18) of the adult referred to above.

And who are currently going through one of the following decision-making processes:

- i. Assessment.
- ii. Planning.
- iii. Review.
- iv. Safeguarding.

And meet the following two (2) criterion:

- v. The Individual in question has substantial difficulty in being fully involved in the decision-making process; **AND**
- vi. There is no appropriate person available to facilitate and represent the Individuals wishes who is not paid or professionally engaged in providing care or treatment to the Individual and their carer.

For clarity, the definition of the decision-making processes is below as described in the Care Act 2014 ("CA"):

- i. a needs assessment under section 9 CA.

- ii. a carer's assessment under section 10 CA.
- iii. the preparation of a care and support or support plan under section 25 CA.
- iv. a review of a care and support, or support plan under section 27 CA.
- v. a child's needs assessment.
- vi. a child's carer's assessment under section 60 CA (therefore some people under 16 years of age).
- vii. a young carer's assessment under section 63 CA.
- viii. a safeguarding enquiry under section 68 CA.
- ix. a safeguarding adult review under section 68 CA.
- x. an appeal against a local authority decision under Part 1 of the CA (subject to further consultation).
- xi. This could include advocacy through the NHS Continuing Healthcare (CHC) process.

d) Exclusions

- i. Young adults aged 18 to 25 years with Special Educational Needs and Disabilities in relation to issues related to the Education, Health and Care Plan process. These individuals will be supported by the Council's Children and Young Person's Advocacy Service.
- ii. Any Individual where it is deemed that they have an appropriate person to support their involvement in any of the decision-making processes stated in paragraph 7.2.1 c) of the Service Specification (Eligibility Criteria), unless it is agreed by the Council and the appropriate person that the involvement of an independent Advocate would be beneficial to the Individual.
- ii. Generic advocacy is no longer commissioned by the Council. The Provider shall report to the Council in the quarterly Contract Review Meetings the numbers of contacts that fall outside the scope of the Service in order to monitor potential unmet need.

7.2.2 Independent Advocacy for Prisoners under the Care Act 2014

a) Purpose and Principles of Independent Advocacy for Prisoners under the Care Act 2014

The Council has the same responsibilities for assessing and meeting the needs of adult prisoners (not just on discharge from prison but also while in custody). All prisoners are treated as if they are a resident in the area for the purposes of the Care Act and for as long as they reside in prison. Prisoners are entitled to the same support of an independent Advocate in the same circumstances as people in the community and the principles are the same as those listed in 7.2.1 c) of the Service Specification (Eligibility Criteria), bar with regards to a safeguarding enquiry whereby the Individual would be subject to the prison's safeguarding processes as opposed to the Council's, referred to in paragraph 7.2.1 c) viii. of the Service Specification (Eligibility Criteria).

b) Provision of Independent Advocacy under the Care Act

- i. When instructed, provide Independent Advocacy for prisoners to undertake the roles set out in the Care Act 2014 and associated regulations.
- ii. Any instructions to the Service must be made in writing.
- iii. Independent Advocate written reports will be provided for the instructor for all instructions made.
- iv. The Independent Advocate will provide written confirmation to the instructor when they have ended their work with the Individual.

c) Eligibility Criteria

Please refer to eligibility for Independent Advocacy under the Care Act 2014 section 7.2.1.c of the Service Specification (Eligibility Criteria).

d) Exclusions

Generic advocacy is no longer commissioned by the Council.

e) Establishments

The following Prisons and Approved Premises in Staffordshire are as follows:

- i. HMP Dovegate
- ii. HMP Drake Hall
- iii. HMP Stafford
- iv. HMP Brinsford
- v. HMP Featherstone
- vi. HMP Oakwood
- vii. HMP Swinfen Hall
- viii. HMP Werrington
- ix. Wenger House Approved Premises
- x. Staitheford House Approved Premises

7.2.3 Independent Mental Capacity Advocacy including Deprivation of Liberty Safeguards Relevant Persons Representatives and Rule 1.2 Representative

a) Purpose and principles underpinning Independent Mental Capacity Advocacy

The purpose is to provide Independent Mental Capacity Advocacy (IMCA) to people covered by the Mental Capacity Act 2005 and the Mental Capacity (Amendment) Act 2019, and the Provider must provide high quality non-instructed Advocacy for Individuals with a variety of communication needs. The Provider shall use all reasonable endeavours to ensure that the provision of Independent Mental Capacity Advocacy is consistent with the following five (5) statutory principles which are set out in Section 1 of the Mental Capacity Act 2005:

- i. every person has the right to make their own decisions and must be assumed to have capacity to do so unless it is proved otherwise.
- ii. every person has the right to be supported to make their own decisions and must be given all appropriate help before anyone concludes that they cannot make their own decisions.

- iii. every person has the right to make what might be seen by others as unwise decisions and should not automatically be labelled as lacking the capacity to make a decision
- iv. anything which is done for, or on behalf of, each Individual must be in their best interests.
- v. anything which is done for, or on behalf of, each Individual must be the least restrictive of their basic rights and freedoms.

b) Provision of Independent Mental Capacity Advocates

- i. When instructed, provide Independent Mental Capacity Advocate to undertake the roles set out in the Mental Capacity Act 2005, MCA Code of Practice and associated regulations.
- ii. Instruction will be made by local authority or health staff as authorised in the Mental Capacity Act 2005. Instructions must be made in writing.
- iii. Independent Mental Capacity Advocate (and Trained Representative) written reports will be provided for the instructor for all instructions made.
- iv. The Independent Mental Capacity Advocate will provide written confirmation to the instructor when they have ended their work with the Individual.

c) Eligibility Criteria

A person shall only be entitled to access an Independent Mental Capacity Advocate and shall therefore only constitute an Individual for the purposes of this Service Specification, if they comply with all of the following criteria:

- i. (at the time of their Referral to the Service) they are located within the Contract Area (Note for DoLS Paid Representative and Rule 1.2 representative eligibility is where the Council is the Supervisory Body (or responsible for the care and accommodation arrangements in the case of 1.2 representatives) this may be out of the County of Staffordshire), and;
- ii. they are aged sixteen (16) or over, and in relation to the Deprivation of Liberty Safeguards (and rule 1.2 Representatives) they are aged eighteen (18) or over, and;
- iii. they have been assessed by an Authorised Officer as lacking mental capacity, and;
- iv. they have no appropriate or suitable family or close friends whom it would be appropriate to consult in determining what would be in their best interests in circumstances for the following decisions:

Medical Treatment

- v. a decision must be made on their behalf regarding either, the provision, or withdrawal, or withholding, of serious medical treatment pursuant to Section 37(6) of the 2005 Act, or;

Change in Accommodation

- vi. a decision must be made on their behalf regarding arrangements as to the accommodation of the Individual in question in a hospital or a care home (or any other relevant setting following the implementation of LPS), or in residential accommodation which is provided in accordance with either the Care Act 2014,

or Section 117 of the Mental Health Act 1983, or subsequent legislation.

Deprivation of Liberty Safeguards

- vii. or they have been referred to a Local Authority in their role as a Supervisory Body as requiring the support of an IMCA in connection with the DoLS;
- viii. Representative to be appointed, or the appointed Relevant Person's Representative or Relevant Person has requested the support of an Independent Mental Capacity Advocate.

Rule 1.2 Representative – Deprivation of Liberty in the Community

- ix. A Rule 1.2 Representative is required when a Community Deprivation of Liberty Safeguards (DoLS) order is put in place. If the individual does not have an appropriate close friend or relative who is independent of their care and treatment to act as their Rule 1.2 Representative, then an independent advocate or paid representative may be required. In such circumstances, the Rule 1.2 Representative will:
 - Visit the Individual regularly to ask their views and wishes and see that they are being cared for well
 - Check that the treatment and care provided is the least restrictive of their basic rights and freedom
 - As far as possible, help the Individual to understand their authorisation, how it affects them and support them to exercise their rights
 - Where deemed necessary, the Rule 1.2 Representative may request a review of the authorisation or make an application to the Court of Protection to request that the authorisation is changed or ended (for example, where the Individual's needs change, or the authorisation is not being followed properly).

d) Exclusions from Independent Mental Capacity Advocacy

For the avoidance of doubt the Council shall use all reasonable endeavours to ensure that no Referral is made to the Provider by a Responsible Body in circumstances where a person who lacks capacity:

- i. has granted either a valid Lasting Power of Attorney (for Health and Welfare);
- ii. has appointed either, a deputy, or a nominee (for Health and Welfare);
- iii. falls under the Mental Health Act 1983.
- iv. needs urgent medical treatment.
- v. is subject to short term changes in their accommodation which is likely to last less than eight (8) weeks in a care home or twenty-eight (28) days in a hospital.
- vi. the arrangements need to be made as a matter of urgency.

7.2.4 Independent Mental Health Advocacy

a) Purpose and Principles underpinning Independent Mental Health Advocacy

The Independent Mental Health Advocacy (IMHA) service is a specialist type of mental health Advocacy Service, granted specific roles and responsibilities under the Mental Health Act, to help qualifying patients to:

- i. Understand the legal provisions to which they are subject under the Mental Health Act 1983
- ii. Understand the rights and safeguards to which they are entitled
- iii. Exercise their rights through supporting their participation in decision-making, noting that IMHAs have legal rights which are not available to other advocates. These rights mean that IMHAs may:
 - meet qualifying Individuals in private
 - consult with professionals concerned with the Individual's care and treatment
 - see any records relating to the Individual's detention, treatment or after-care, for the purpose of providing help to the Individual and where the Individual consents
 - request access to records where the Individual lacks capacity to consent, if accessing the records is necessary to carry out the functions as an IMHA.

b) Provision of Independent Mental Health Advocates

- iv. When instructed, provide Independent Mental Health Advocate to undertake the roles set out in the Mental Health Act 1983 (revised 2007) and associated regulations.
- v. A referral will be made by local authority or health staff as authorised in the Mental Health Act 1983 and such referrals must be made in writing.
- vi. A referral could also be made directly by any eligible Individual and/or their family member/friend etc, who is detained under the Mental Health Act 1983 and such referrals must be made in writing, in accordance with the Provider's referral process.
- vii. Independent Mental Health Advocate written reports will be provided for the referrer for all referrals made.
- viii. The Independent Mental Health Advocate will provide written confirmation to the referrer when they have ended their work with the Individual.

c) Eligibility Criteria

The Provider shall ensure that Independent Mental Health Advocacy is available to the following Individuals as defined in the Mental Health Act 1983 (revised 2007):

- i. Detained under the 1983 Mental Health Act as revised (even if on leave of absence from the hospital), irrespective of age, apart from patients detained under sections 4, 5(2), 5(4), 135 or 136.
- ii. Conditionally discharged or restricted patients.
- iii. Subject to guardianship; or
- iv. Under supervised Community Treatment Order (CTO).

In addition, Individuals not covered by any of the above, who meet any of the following criteria are also eligible:

- v. Being considered for a treatment to which Mental Health Act Section 57 applies (i.e. treatments requiring consent and a second opinion).
- vi. Liable to be detained under the Mental Health Act, even if not actually detained, including those who are currently on leave of absence from hospital or absent without leave, or those for whom an application or court order for admission has been completed.
- vii. Under 18 and being considered for Electro-Compulsive Therapy (ECT) or any other treatment to which Section 58A applies (i.e. treatments requiring consent or a second opinion).

d) Exclusions from Independent Mental Health Advocacy

- i. Individuals not detained under the Mental Health Act 1983.
- ii. Individuals detained under the Mental Health Act 1983, outside the Contract Area.
- iii. Individuals that have been detained in an emergency under Section 4 until a second medical recommendation is received.
- iv. Individuals that are subject to Section 5 (2 and 4) of the Mental Health Act 1983.
- v. Individuals that are subject to Section 135 (1 and 2) or 136 of the Mental Health Act 1983.

e) Establishments for Advocacy Provision

- | | |
|--|---------------|
| i. St Georges' Hospital and Hatherton Centre | Stafford |
| ii. Moorlands Neurological Centre | Cheadle |
| iii. Huntercombe Stafford Hospital | Wheaton Aston |
| iv. Ballington House | Leek |

As required the Provider will provide support to Individuals located in the community within the Contract Area.

7.2.5 Independent Health Complaints Advocacy Service

a) Purpose and Principles of Independent Health Complaints Advocacy

- i. The purpose of Independent Health Complaints Advocacy is to deliver independent complaints advocacy for individuals who wish to pursue a complaint or grievance related to any aspect of healthcare, as described in the Health and Social Care Act 2012, including that which falls under jurisdiction of the Parliamentary and Health Service Ombudsman.
- ii. The Independent Health Complaints Advocacy shall aim to assist people to go through the NHS complaints independent advocacy procedure, should they need to raise issues of poor service or treatment by the NHS in England.

- iii. The Provider will empower Individuals by providing them with information and enabling them to self-advocate as far as they are able, supporting Individuals to get their views heard and in seeking resolution to their concerns.
- iv. The Provider will be part of a representative and responsive local solution that links to the provision of the Healthwatch Staffordshire (or any subsequent equivalent) service and other information, advice and guidance services.

b) Provision of Independent Health Complaints Advocacy

As part of the delivery of the Services, the Provider shall:

- i. empower Individuals by providing them with information, enabling them to decide whether or not they wish to pursue a complaint about an NHS service.
- ii. where needed, support the Individual in making a complaint about the services, care or treatment they have received from the NHS.
- iii. support the Individual to make a complaint on someone else's behalf, including if someone has died or during any judicial inquiry as to the cause of death. This may require working closely with other forms of Advocacy, such as IMCAs or IMHAs to ensure the Individual is represented.
- iv. listen to the Individual concerns.
- v. signpost, where appropriate to information or alternative Advocacy/support services that can provide more specialist advice.
- vi. respond to questions about the complaints procedure and explain options.
- vii. provide a step-by-step guide to the Individual in relation to the complaints process.
- viii. support the Individual through the complaint process, including being kept informed of their complaint and at the local resolution phase by attending meetings or entering into correct correspondence and making complaints to the Parliamentary and Health Service Ombudsman.
- ix. work closely with key partners, including health and wellbeing boards, Integrated Care Boards (ICB), Overview & Scrutiny committee, Healthwatch Staffordshire (or any subsequent equivalent organisation) and complaints teams working across the health system to improve the patient experience.
- x. share and utilise complaint intelligence to promote positive change in the commissioning and delivery of wider health services. This includes working with Healthwatch Staffordshire (or any subsequent equivalent organisation) to improve overall quality of health services in Staffordshire.
- xi. work with other providers delivering wider information, advice and guidance services to share knowledge so that improvements can be made and more people can self-support, reducing the need for Advocacy services.

c) Eligibility Criteria

The Service must be accessible to all Staffordshire residents receiving health services, prioritising those people most in need of complaints Advocacy support. The Service is to support any person under sixteen (16) if they have capacity to reach their own decisions.

d) Exclusions

The Service is not intended to provide ongoing Advocacy for patients and Individuals outside of the health-related complaint. Nor should the Provider help with issues not

covered by the NHS Complaints Regulations. However, Advocates will be required to suggest appropriate referrals for Individuals who require alternative, additional or specialist support.

8. DELIVERY OF THE INTEGRATED ADVOCACY SERVICE

8.1 The Provider shall meet the following targets (time being of the essence):

- a) the Service must be fully operational with effect from the Commencement Date.
- b) the Provider must be able to evidence at Contract Review Meetings that information about the Service is being made readily accessible to Individuals and their families, carers and professionals throughout the Contract Area through use of their engagement and referral protocol.
- c) the Provider must establish and evidence at Contract Review Meetings, strong links that exist between the Service and Health and Social Care Organisations (for example, via attendance at relevant Council and it's partners' staff team meetings to raise awareness of the Service).

8.2 The Provider shall use its best endeavours to secure progressive improvement and the development of the Service throughout the Agreement Period through learning/experience, research and analysis, and ongoing collaborative engagement with users of the Service.

8.3 Level of Service Provision

The Provider shall:

- a) operate the Service on Monday to Friday (inclusive) throughout the Agreement Period (subject to demand and excluding statutory holidays) and between the hours of 08:30 and 17:00 on each day.
- b) ensure that its office premises are equipped with:
 - i) at least two (2) incoming telephone lines, sufficient to meet demand with appropriate facilities for messages to be left.
 - ii) an electronic mail system.
- c) ensure its Service Manager (or equivalent role) is readily accessible to Health and Social Care Officers by telephone at all times between the hours of 08:30 and 17:00 on each Working Day.
- d) Operate flexible facilities to enable access to the Service out of core office hours (including evenings and weekends)
- e) Through the provision of the core hours as per this paragraph 8.3 (Level of Service Provision), the Service shall be available fifty-two (52) weeks per year.

9. RECRUITMENT, SELECTION AND RETENTION OF ADVOCATES AND STAFF

9.1 In providing this Service the Provider will comply with all relevant regulations and/or best practice relating to recruitment, selection and workforce retention, to ensure the following approaches are embedded:

- a) Clear and robust policies and procedures that include recruitment, induction, staff supervision and be able to demonstrate that their processes follow them.
- b) All documentation relating to recruitment including those used for ID checks, training, references and DBS records must be kept up to date in staff files at the Providers premises.
- c) Providers must be able to evidence that appropriate right to work checks have been completed for Advocates and relevant Staff as appropriate.
- d) Providers invest in training and development, develop clear career pathways, recognise and develop talent and provide well-being support for their staff.
- e) Providers encourage and welcome ideas from Advocates and their Staff at all levels about how services can be improved.
- f) Providers are able to flex their staffing models to accommodate fluctuating demand and uncertainty.
- g) The Provider is pro-active in engaging in recruitment campaigns, apprenticeships, volunteer and student placements.

9.2 Specific Staffing Requirements - The Service Manager

The Provider will be required to develop a staffing structure to deliver the Service in accordance with this Service specification and shall, from the Commencement Date and thereafter throughout the Agreement Period, employ and deploy a suitably qualified and experienced person to act as the Service Manager (or equivalent role) to lead the Service and to ensure that all service requirements are delivered and with whom officers at the Council can liaise during core office hours each working day.

9.3 Appointment of the Service Manager (or equivalent role)

The Provider shall:

- a) notify the Council in writing of any proposed change of the Service Manager (or equivalent role) at least one (1) month before the proposed change is to take effect, or otherwise as soon as it becomes aware of the same if the change is at short notice.
- b) within one (1) week of appointing the Service Manager (or equivalent role), notify the Council of their full name, contact details and the date of the commencement of their employment.

9.4 Referral Coordinator (or equivalent role)

In accordance with Section 7.1.3 (Referrals) the Provider will ensure they have a Referral Coordinator, or equivalent, role/function for the purpose of ensuring a single 'triage' arrangement whereby potential Individuals are prioritised according to their identified level of need for Advocacy support. This role/function will also be key for signposting any ineligible referrals to other possible support as well as delivering a robust referral pathway system and monitoring and reporting any potential Service capacity issues.

9.5 Use of Non-Qualified Advocates and Volunteers

- a) In meeting the ambitions identified in paragraph 2.3 of Section 2 (Strategic Outcomes) and paragraph 4 b) of Section 4 (Service Values) the Provider will demonstrate a strengths and Asset-Based Approach to the delivery of the Service and will be open to engaging with wider programmes of activity that take this approach. In fulfilment of this the Provider is to evidence a commitment to a Service delivery model which maximises the use of available resources and which may include, for example, the use of non-qualified practitioners including volunteers etc in their staffing model.
- b) The Provider is encouraged to consider and/or develop a model, such as the use of non-qualified advocacy practitioners and/or volunteers, to fulfil some of the roles where it is safe and appropriate to do so; it adds value to and improves the outcomes of the Service. Some examples of the benefits of adopting such a model are:
 - i. to fully embed the Service in the communities that they serve by harnessing the skills, assets and knowledge of local people.
 - ii. to release qualified Advocates to focus on the delivery of advocacy in more complex cases.
 - iii. to enable a more flexible response to peaks and troughs in demand.

9.6 General Staffing Requirements and Customer Care

- a) It is the Provider's responsibility to ensure that any person recruited to act as an Advocate, non-qualified advocate or volunteer meets the legal appointment requirements concerning training, Disclosure and Barring Service (DBS) checks in accordance with Section K2 of Schedule K (Optional Clauses) of the Agreement, vetting for accessing Health, Social Care, Prison and any other relevant settings and acting independently. The Provider will also ensure compliance with Clause 31 (Modern Slavery Act) and Clause 32 (Counter Terrorism) of the Agreement. Failure to do so will constitute a material breach of the Agreement and will be subject to immediate review which could result in the withdrawal or suspension or termination of this Agreement.
- b) The Provider shall ensure that Advocates are multi-skilled, able to flex across different statutory advocacy provision and able to hold mixed caseloads.
- c) The Provider shall as far as practicable, ensure that its staff reflect the ethnic, cultural and gender composition of the individuals receiving the Service.
- d) The Provider shall ensure that each member of its Staff, including where appropriate non-qualified advocates and volunteers, who is deployed in relation to the Service:
 - i. has a clear understanding of the philosophy, principles and key statutory requirements and legislation for Advocacy, in accordance with Section 5 (Key Statutory Requirements and Legislation) of this Service Specification together with a commitment to apply and promote these principles in practice.
 - ii. has skills, expertise and flexibility to work with vulnerable Individuals who would access the Service in a person centred, strengths and asset-based manner, treating them with dignity and respect.
 - iii. is able to communicate effectively with Individuals using clear information and in ways which Individuals can understand and has good listening skills (for example, the use of British Sign Language).

- iv. is provided with regular supervision and guidance by the Service Manager (or equivalent role) to ensure that the Service operates efficiently, flexibly and effectively throughout the Agreement Period, as well as in the best interest of the Individuals at all times.
- v. gives information and advice about the Service to Individuals and offers choices to people in clear and understandable ways.
- vi. is familiar with raising a safeguarding and/or quality concern, in accordance with Section 10 (Safeguarding) and Section 18 (Quality Assurance) of this Service Specification.
- vii. where relevant, be supported by the Provider to ensure the volunteering role is a positive, attractive and rewarding opportunity. This will include provision and funding of relevant training; appropriate supervision, making reasonable adjustments, access to staff benefit schemes (e.g. expenses payments).

9.7 Staff Training (including Volunteers)

a) The Provider shall (at its own expense):

- i. ensure that all independent Advocates (and where relevant non-qualified advocates and volunteers) have the relevant skills and competencies for the task and are willing to undertake further training and development if required. This will include successfully completing or be working towards the relevant modules of the National Advocacy Qualification, or equivalent, for all relevant Staff within one (1) year of starting employment. Documentary evidence of this may be requested by the Council.
- ii. ensure before undertaking specific advocacy roles (IMCA, IMCA DoLS, Care Act Advocates, IMHA) all Advocates must have completed the relevant module units and training on the relevant law relating to that advocacy service.
- iii. Advocates and/or non-qualified advocates and/or volunteers supporting Deaf people must evidence proficiency in British Sign Language (BSL) at minimum Level 3 of Certificate in British Sign Language, except in circumstances where the Provider elects to sub-contract this provision and/or make use of appropriate interpreters.
- iv. ensure Advocates and where relevant non-qualified advocates and volunteers in a specific advocacy role (e.g. IMCA) undertake relevant continuing professional development each year
- v. ensure that each member of Staff is provided with a comprehensive induction course during the first two (2) weeks of their employment including a values base which incorporates the principles and obligations which are set out in this Specification.
- vi. prepare, develop and implement an ongoing Staff training policy and development programme to attend to the progressive training needs of staff groups and individual employees and also to encourage/assist its Staff to attend appropriate vocational courses and access training.
- vii. provide each member of Staff who has limited experience of working with people who have disabilities with opportunities to acquire appropriate knowledge and skills by implementing systems of shadowing and mentoring.

- viii. ensure that each member of Staff is sufficiently and appropriately trained, to ensure robust delivery of the Service, receiving ongoing learning and personal development, and specifically with regard to:
 - Level 2 ‘Oliver McGowan Mandatory Training on Learning Disability and Autism’
 - the [Council's Supportive Communities training](#), in accordance with paragraph 2.3 of Section 2 (Strategic Outcomes) of this Service Specification.
 - the ‘Prevent’ duty to safeguard people and communities from the threat of terrorism.
 - adult safeguarding awareness training to the relevant level for their role.
- ix. ensure that each member of its Staff who provides face-to-face (or via other appropriate virtual means) support to Individuals has received appropriate training from or via the Provider, in the following fields (without limitation):
 - Ethical Practice: inclusive approach to Individuals, honesty, provision of legal, ethical and accountable practice, openness to scrutiny by peers, commitment to the principles of empowerment and an adherence to confidentiality.
 - Knowledge: rights in health and social care, knowledge of health and social care policy and legislation, human rights legislation, disability rights and how to access information and advice.
 - Advocacy Process: empowerment, self-awareness, being led by Individuals, open and honest appreciation of others, resolution of problems at the earliest opportunity, understanding of boundaries, maintenance of appropriate relationships with Individuals and staff and effective networking.
 - Skills: interpersonal skills with ability to engage with people, communication skills including working with people of differing abilities to communicate, listening and negotiating, mediation, conflict resolution and creative problem solving.
 - Attitude: tenacity, patience, reliability, desire to problem solve and willingness to learn.
- x. maintain a record of all training which is provided or arranged by it for each member of its Staff from time to time during the Agreement Period.

9.8 Disciplinary Matters

The Provider shall:

- a) promptly serve notice to the Authorised Officer of the Council of the particulars of any incident or alleged incident which occurs during the Agreement Period and leads to the Provider:
 - i. undertaking an investigation into allegations of serious or gross misconduct by any member of its Staff in relation to the Service, or;
 - ii. taking disciplinary action against any member of its Staff for serious or gross misconduct in relation to the Service, or;
 - iii. reporting any member of its Staff to the Disclosure and Barring Service.
- b) keep an accurate record of all disciplinary action which is taken by it against any member of Staff during the Agreement Period in relation to the Service.

- c) diligently enter the details of any disciplinary action which it has taken against any member of its Staff, in the personal file of the member of Staff in question.

9.9 General Requirements

The Provider shall also ensure that each member of its Staff who is deployed to provide support to Individuals:

- a) has a good understanding of the needs of the Individuals, including their preferred method of communicating, to whom they are assigned by the Provider from time to time.
- b) recognises the Individuals rights of choice and control.
- c) has an affinity and capacity for providing support to a high quality.
- d) is adequately and effectively trained to deliver their role within the Service.
- e) is familiar with and understands the relevant requirements of this Service Specification which relate to their duties.
- f) is reasonably familiar with the approved complaints procedure.

9.10 Other Working Practices

The Provider will have in place appropriate comprehensive and effective written working policies and procedures for its Staff, and a mechanism to ensure all Staff have read, understand and are applying these, in relation to each of the following subject matter and if requested provide the Council with a copy of each of the same

- a) the prevention of either, the abuse or mistreatment of the Individuals, or the misappropriation or misuse of the Individuals' money and belongings, through a Safeguarding Policy.
- b) the provision of comprehensive supervision for Staff.
- c) the handling and management of complaints in partnership with the Council.
- d) the implementation of anti-racist and anti-discriminatory practices in relation to all aspects of the Service.
- e) Risk Management.
- f) Confidentiality and Data Protection.
- g) Adverse/Untoward Incident Reporting.
- h) Quality Assurance system.
- i) Individual Choice.
- j) Whistle Blowing.

9.11 Good Practice

- a) The Provider shall research good practice from other Local and National Advocacy Organisations and use this to improve delivery of the Services where necessary.
- b) The Provider is to review the need for advocacy provider forums within the Contract Area and to link where appropriate with neighbouring Local Authorities to ensure strong networks are made for the provision of quality Advocacy to ensure a seamless service for Individuals.
- c) The Provider shall ensure that its Staff:
 - i. are aware of and comply with this Service Specification.
 - ii. do not sell items to, or make purchases from, any Individuals.
 - iii. do not borrow money or personal belongings from any Individuals.

- iv. do not use their friends, family or acquaintances to provide services for any Individuals for any consideration.
- v. do not smoke or drink alcohol when providing support.
- vi. are not at any time under the influence of any drugs when engaged in the provision of the Service (provided that this provision shall not apply to medication which is prescribed for any member of staff by their general practitioner in circumstances where the medication does not interfere with the ability of the member of staff in question to carry out their duties efficiently and effectively);
- vii. do not entertain their family or friends in any Individuals home or otherwise encourage such persons to visit any Individuals at their home.
- viii. do not use the facilities in any Individuals home, or any Individuals other personal property, for their own purposes in any circumstances.
- ix. do not take any unauthorised person (including any child) or pets into any Individuals home or otherwise allow any such person or animal to have access to any Individuals home.
- x. declare any conflict of interest with regards to the Individual they are planning to support.

10. SAFEGUARDING

10.1 Subject always to the requirements of Section K2 (Safeguarding and DBS) of the Agreement the Provider shall:

- a) report all safeguarding concerns enquiries within twenty-four (24) hours as set out in section 2 of 'Reporting Abuse and Neglect' from [Staffordshire & Stoke-on-Trent Adult Safeguarding Partnership Board](#). Compliance shall be monitored in accordance with Schedule D (Quality Assurance) to the Agreement.
- b) only recruit and deploy Advocates and, where appropriate volunteers who have been subject to an enhanced DBS check.
- c) employ Advocates, Staff and volunteers who treat Individuals with dignity and respect and keep information about them confidential.
- d) provide appropriate training to all Staff with responsibility for investigating complaints and safeguarding concerns.
- e) train Advocates, Staff and volunteers in safeguarding procedures, including knowing how to recognise signs of abuse and risk, the Mental Health Capacity Act 2005, and the Deprivation of Liberty Safeguarding on a multi-agency basis

11. COMPLAINTS

11.1 The Provider shall have in place a complaints policy and procedure, which sets out clear instructions for dealing with complaints.

11.2 Where the complaint has been received by the Council, MPFT or any other organisation acting on behalf of the Council, the appropriate complaints procedures will be instigated, where necessary. Information on the [Council's complaints process](#) can be found on Staffordshire County Council's website.

- 11.3** Any person, who qualifies under the relevant complaints legislation to make a complaint, shall not be denied the right to make a complaint through either procedure.
- 11.4** The Provider shall maintain a written record of all complaints received, including numbers and types received and their outcomes, in a format agreed with the Council. The monitoring of complaints will be discussed at Contract Review Meetings. The record of complaints received must be available to the Contract Management Officer on request. The record will be used by the Council when monitoring service quality and compliance in tandem with other sources of feedback.
- 11.5** Where complaints are received by the Council, which require information from the Provider in order to address the complaint, the Provider shall respond with all information required within an agreed timescale.
- 11.6** The Provider shall fully co-operate with the Council, or any other agency appointed by the Council, in enquiries or investigations carried out in connection with the provision of the Services and work with the Council to ensure any Council recommendations are implemented.

12. SOCIAL VALUE OUTCOMES

- 12.1** The Council is committed to its responsibilities under the Social Value Act 2012. All parties shall agree during the Implementation period the most appropriate method to measure and report on how the Service contributes to social value measures, including but not limited to:
- a)** the number of local direct employees (FTE) hired or retained (NT1 of the National TOMS framework);
 - b)** initiatives to engage the community in health and wellbeing (NT26 of the National TOMS framework);
 - c)** policy and programme to achieve net zero carbon by 2050 or before (NT44 of the National TOMS framework).
- 12.2** The Council intends to further develop its role in promoting social value through its procurement and commissioning activities and will expect the Provider to meet any new or emerging requirements in how social value outcomes are monitored and reported.

13. TRANSPORT AND USE OF MOTOR VEHICLES

- 13.1** In circumstances where any member of Staff uses any vehicle to transport any Individuals pursuant to the provision of the Service, then the Provider shall use its best endeavours to ensure compliance with the following provisions:
- a)** the driver of the vehicle in question must have a valid driving licence.
 - b)** the vehicle in question must have a current M.O.T Certificate (if this is required by law) and be in a good roadworthy condition.
 - c)** the vehicle must be suitable for each of the Individuals who are transported.
 - d)** staff must ensure that the seatbelts in the vehicle are in good working order and are used by the driver and the passengers throughout each journey.

- e) staff must drive carefully with reasonable consideration to the needs of the Individuals whom they are transporting, including the making of allowances for breaks in each journey where reasonably necessary.
- f) there must be a properly trained escort for any Individual who is likely to require assistance during a journey.
- g) wherever practicable the journey in the vehicle should be via the most direct route and should not exceed one (1) hour in duration (with the exception of DoLS out of county cases).
- h) must have adequate motor vehicle insurance (including use of the vehicle for business purposes).
- i) requirements relating to the response to any pandemic type scenario (for example, Coronavirus (Covid-19))

14. CLIMATE CHANGE RESPONSIBILITY AND ENERGY RESILIENCE

14.1 Climate change considerations are a growing concern for all businesses. These span a shared responsibility of all businesses to contribute to 'net zero' carbon emissions. For social care businesses, it is also about coping with current and future impacts of climate change (resilience from flooding, water shortages and temperature extremes) and protection of vulnerable Individuals in such circumstances. The Ukraine conflict has also raised concerns about business continuity and resilience against power costs and risks of outages across all housing and care-based services. The Provider is expected to:

- a) Share a commitment to achieving net zero carbon emissions by 2050 or before.
- b) Share good practice with other providers to support compliance with CQC Regulation 17.
- c) Understand the risk and vulnerability climate change poses and have regularly reviewed and tested business continuity plans in place that ensures the safety of Individuals and Staff due to the changing climate, including in adverse weather conditions, water shortage and power outages.

For more information on the Staffordshire commitment to Climate Change and guidance and good practice for social care, please visit:

- i. [Climate change - Staffordshire County Council](#)
- ii. [Delivering social care in a changing climate \(climatexchange.org.uk\)](https://www.climatexchange.org.uk)
- iii. [Business continuity planning guidance and template - Care Provider Alliance](#)

15. INDIVIDUAL AND STAKEHOLDER FEEDBACK

15.1 In order for the Council to ensure that the Provider is actively seeking Individual feedback and to identify areas of learning and good practice in the development and delivery of the Service, the Provider shall undertake activities that gather Individuals' feedback on a regular basis. This will include encouraging Individuals to use independent Advocacy and

empowerment services to help them respond effectively. The content and format shall be agreed between the Council and Provider as part of the Contract Review process.

- 15.2 The Provider will also explore appropriate methods of gaining independent feedback for the Service from relevant stakeholders.
- 15.3 The Provider will report, at a frequency agreed with the Council and as part of the Contract Review process, the outcomes of any feedback received from Individuals and wider stakeholders.
- 15.4 The Provider shall permit the Council to use the information which is generated by these activities to assist it in future commissioning and procurement activities.

16. KEY PERFORMANCE INDICATORS

16.1 Indicative Volume Ranges

- a) Based upon historical activity for the provision of the Integrated Advocacy Service (IA2419) in Staffordshire, the table below identifies the Indicative Volume Ranges that the Provider shall deliver per annum (or proportionately for any part of a year):

Advocacy Type	Range per annum (new referrals)
Independent Advocacy Under the Care Act, including for Prisoners	375 - 475
Independent Mental Capacity Advocacy (IMCA)	150 - 200
DOLS (IMCA)	80 - 150
Representatives	750 - 850
Independent Mental Health Advocacy	350 - 450
Independent Health Complaints Advocacy Service (ICAS)	80 – 110

- b) The Provider is expected to deliver the above Indicative Volume Ranges throughout the Agreement Period including any Extension Period that may be agreed.
- c) The Council will endeavour to communicate to the Provider, in a timely manner, any anticipated or known potential increases in new referrals as a result of any targeted work it is undertaking.

17. PERFORMANCE MONITORING

- 17.1 In accordance with Section D3 of Schedule D (Performance Monitoring, Quality Assurance and Contract Review) of the Agreement, a performance monitoring report will need to be completed by the Provider and submitted quarterly highlighting progress towards key performance measures. The Provider will provide the Council with detailed performance reporting as part of this Agreement and the Provider will collect and present relevant information from the Commencement Date as may be determined by the Council. The exact format of this information will be decided and agreed between the Council and the Provider as part of the Contract Review process. However, as a minimum, the measures below will be included in quarterly reporting for each Advocacy Service area, together with an accompanying narrative report. Please note this list is not exhaustive and may be subject to change, jointly agreed between the Council and the Provider:

Activity levels	Case management
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New referrals to the service	Cases by reason for Advocacy
Source of Referral	Cases by Provider Type (ICAS – GP, Dentist, Trust etc)
	Cases by Thematic Issue (ICAS - Access, Treatment, Care etc)
Cases by district	Initial response time
Cases by type of advocacy	Time taken for allocation to an Advocate
Cases by location of Individual	Waiting list data (if relevant)
Returning/repeat Individuals	Average time spent per case (case type)
Number of inappropriate Referrals	Average time spent per case (by activity)
Signposting/Information Advice Guidance	Average length of advocacy relationship
Number of Referrals Signposted	Numbers of cases closed
Where Signposted to	Reason for closed cases
	Ongoing/Active cases
	Volunteers and Non-Qualified Advocates
Individual profile	Number of volunteers and non-qualified advocates supporting the Service
Advocacy cases opened by age, gender, ethnicity, need	Number of direct advocacy support hours provided by volunteers and non-qualified advocates
Outcomes	Quality
Proportion of Individuals with an agreed personal outcome who Progressed, Regressed or Sustained against that outcome	Individual and Stakeholder feedback on the Advocacy Service
Proportion of Individuals who have indicated that their general wellbeing has increased, decreased or stayed the same as a result of the Advocacy support	Complaints and Compliments received about the Service and the outcome

17.2 Financial Reporting

In the fourth (4th) quarter of each Agreement year the Provider will submit, as part of the Contract Review reporting, a breakdown of how the Agreement budget has been apportioned in the preceding twelve (12) months. The format of this report will be agreed between the Council and the Provider but will include as a minimum expenditure against key areas such as salaries, salary on-costs, overheads, premises and IT costs to align with the headings set out in the Pricing Matrix.

17.3 Individual Outcome Measures

In delivering the Service the Provider will work and where appropriate contribute to the Section 6 (General Advocacy Service Outcomes for Individuals) of this Service Specification.

However, many of the Individuals being supported by the Service will have an idea of the personal outcomes they want to achieve. As a result of taking a person-centred, strengths and Asset-Based Approach the Provider will work in partnership with the Individual to agree and document these personal outcomes.

The agreed personal outcomes will form a key part of the agreement between the Individual and their Advocate (or non-qualified advocate or volunteer) and will be used to track the work they have done together.

These will be reported as part of the Contract Review Meeting process on an aggregated basis to evidence the progress Individuals have made, from start to end, in achieving their personal outcomes. In addition, the Provider will be required to report an aggregated figure showing the number of Individuals who have indicated that their general wellbeing has increased, decreased or stayed the same as a result of the Advocacy support. The minimum personal outcome areas for Individuals are in Section 6 (General Advocacy Outcomes for Individuals Using the Service) of this Service Specification

The Provider must also request feedback from the Individual on exit from the Service and reported to the Council as part of the Contract Review process.

17.4 Failure to meet agreed Timescales and Indicative Volume Ranges

In the event that it can be evidenced that the Provider continues to fail to meet the Acceptance of Referrals timescales in paragraph 7.1.4 and/or Referral Timescales in paragraph 7.1.5 of Section 7 (Service Delivery) and/or the Indicative Volume Ranges in paragraph 16.1 of Section 16 (Key Performance Indicators) of this Service Specification, then the provisions contained in clauses D2.1 to D2.3 of Schedule D Performance monitoring, quality assurance and contract review of the Agreement may apply.

18. QUALITY ASSURANCE

18.1 Quality Assurance Policy and Systems

The Provider shall:

- a) develop a comprehensive quality assurance policy to ensure that the Service is operated to a high quality in accordance with this Service Specification and to the Council's reasonable satisfaction throughout the Agreement Period, by promoting:
 - i. best value;
 - ii. each Individual's quality of life and thus maximising their independence and social inclusion.
- b) ensure that its quality assurance policy is consistent with the requirements of this Agreement (in particular this Service Specification) and incorporates a requirement for an annual review of all of the Provider's management/working practices in relation to the Service, to enable such practices to be modified (as necessary) in order to achieve the objectives which are specified in sub-paragraph (a) of this paragraph;
- c) ensure that its quality assurance systems and procedures are capable of capturing statistical and other information in order to demonstrate that the Service is being delivered by it in accordance with sub-paragraph (a) of this paragraph;
- d) modify its working practices (upon request in writing from the Council from time to time, acting reasonably) in order to improve or rectify any weaknesses or faults in its working practices which are identified to it by the Council;
- e) be diligent in implementing its quality assurance policy (in the form approved by the Council, acting reasonably) throughout the Agreement Period.
- f) ensure the Service has adequate risk management processes to identify, record, monitor and manage risks within the Service, including but not limited to health and safety, staff recruitment and safeguarding.

- g)** ensure the Service maintains knowledge and understanding of how to report concerns to the Council including safeguarding, in accordance with Section 10 (Safeguarding) of this Service Specification, and quality concerns. The Service should raise these concerns in accordance with the relevant guidance or procedures. Details of how to raise a safeguarding concern can be found on the [Staffordshire and Stoke-on-Trent Adult Safeguarding Partnership Board](#) webpage. Details of how to raise a quality concern can be found on the Council's [Share Your Experience](#) webpages.

18.2 Quality Performance Mark

- a)** The Provider will have and maintain the Advocacy Quality Performance Mark (QPM) or equivalent quality standards/accreditation for the duration of the Agreement Period. However, if the Provider does not have this quality mark at the point of award, they must achieve the QPM within one (1) year from the Commencement Date and maintain the award throughout the remaining Agreement Period.
- b)** In the event that the Provider is unsuccessful in achieving the award within the required period, the Provider must inform the Council, with a report detailing the areas which need to be developed to achieve the QPM Award, including a plan to be reassessed and achieve the QPM award.
- c)** Failure to achieve (including commitment to achieve) or to maintain the QPM Award, will be deemed to be a material Default and may result in termination of Agreement under Clause 27 (Consequences of Termination) of the Agreement.

18.3 Monitoring

In addition to the Performance Monitoring arrangements set out in Section 17 (Performance Monitoring) of this Service Specification above, the Council shall be entitled to monitor the Provider's performance of its obligations under this Agreement by whatever reasonable means that it considers appropriate (including unannounced spot inspections) provided that the Council exercises this right in a reasonable and considerate manner, so as not to cause any unreasonable disturbance or inconvenience to either the Provider or the day to day operation of the Services.

SCHEDULE C – FINANCIAL PROVISIONS

C1 Administration of Payments

C1.1 The Council shall pay the Provider during the Agreement Period the Price as set out in the Pricing Schedule in Annex A by BACS payment into the bank account details supplied upon receipt of the invoice quarterly in arrears.

C1.2 The Provider shall invoice the payment due as Instalments to the Council as set out in the Pricing Schedule. This shall include all costs incurred by the Provider as agreed with the Council in the delivery of the Services .

C1.3 The Provider shall ensure that each invoice is submitted as an Electronic Invoice in the Required Electronic Form and sent by electronic email in PDF format to the Accounts Team at apinvoices@staffordshire.gov.uk. Each invoice shall include all reasonable supporting information required by the Council to verify the accuracy of the invoice.

C1.4 Each invoice must contain as a minimum the following information, in compliance with Section 68(9) of the Procurement Act 2023:

C1.4.1 Purchase order number (unique identification number issued by the Council)

C1.4.2 the name of the Provider;

C1.4.3 Address;

C1.4.4 Date of Invoice;

C1.4.5 Invoice Number;

C1.4.6 Company Registration Number;

C1.4.7 the sum requested and VAT number (if applicable);

C1.4.8 a description of the Services (including the period it covers) which the invoice relates to;

C1.4.9 any other information which the Council reasonably notified to the Provider in writing from time to time

C1.5 Where the Supplier submits a Valid Invoice in accordance with paragraphs C1.2 to C1.4, the Council will consider and verify that invoice within seven (7) days.

C1.6 Subject to paragraph C1.7, the Council shall pay the Provider any sums due under a Valid Invoice before the end of the period of thirty (30) days beginning with:

a) the day on which a Valid Invoice is received by the Council in respect of the sum; or

b) if later, the day on which the payment falls due in accordance with the Valid Invoice.

Save that nothing in this paragraph C1.6 shall prohibit the Council and Provider agreeing that a sum may be repaid earlier than would be required by this paragraph.

C1.7 Paragraph C1.6 shall not apply if the Council considers the invoice invalid or disputes the invoice in accordance with paragraph C1.8.

C1.8 If the invoice is considered invalid and/or disputed by the Council then the Council shall set

out the reasons to the Provider in writing without undue delay. If the Provider is unable to satisfactorily respond to the reasons set out by the Council for the sum raised on the invoice within five (5) Working Days and this still remains in dispute then the Dispute Resolutions Procedures shall apply.

C1.9 Where the Council fails to comply with paragraph C1.8, the invoice shall be regarded as valid and undisputed 7 days after the date on which it is received by the Council.

C1.10 Where the Provider enters into a Subcontract, the Provider shall include in that Subcontract:

- a) provisions having the same effect as this paragraph C1; and
- b) a provision requiring the counterparty to that Subcontract to include in any Subcontract which it awards provisions having the same effect as this paragraph C1.

C2 Suspension of Price

C2.1 The Council may at its discretion withhold or suspend payment of the Price if one or more of the following applies:

- a. the Provider materially breaches any of the terms or conditions of the Agreement;
- b. the Council, acting reasonably, has concerns about the standard of Services that the Provider is delivering or has delivered;
- c. the Council has reasonable grounds to suspect fraud, financial irregularity, dishonesty, negligence or practice by the Provider and/or its Personnel;
- d. the Council has concerns about the completeness, accuracy or promptness of any information or data submitted by the Provider in relation to the Agreement;
- e. any member of Personnel has acted or failed to act in a way which, in the reasonable opinion of the Council, brings or is likely to bring the Council's name, brand or reputation into disrepute;
- f. there occurs, in respect of the Provider, any Insolvency Event which, in the reasonable opinion of the Council, may affect the Provider's ability to comply with its obligations under the Agreement;
- g. the Provider fails to rectify a Default under Clause 23.6; and/or
- h. a right to withhold, suspend and / or require repayment of the Price is set out in other provisions in the Agreement, including Clause 36.6, paragraph D2.3 of Schedule D, and paragraph K3.3 of Schedule K.

C2.2 Where the Council suspends the Price in accordance with paragraph C2.1, it shall notify the Provider in writing of the suspension and its duration as well as the intervals at which the suspension will be reviewed to see whether the suspension should be withdrawn or extended.

ANNEX A TO SCHEDULE C

PRICING SCHEDULE

YEAR 1 1 APRIL 2026 TO 31 MARCH 2027

Annual Contract Price	£To be inserted upon Contract Award
Payment Terms	BACS in arrears on submission of an invoice

Quarter	Dates covered	Instalment amount	Provider to issue Invoice from
Quarter 1	1 April to 30 June	£To be inserted upon Contract Award	1 July
Quarter 2	1 July to 30 September	£To be inserted upon Contract Award	1 October
Quarter 3	1 October to 31 December	£To be inserted upon Contract Award	1 January
Quarter 4	1 January to 31 March	£To be inserted upon Contract Award	1 April

YEAR 2 1 APRIL 2027 TO 31 MARCH 2028

ANNUAL CONTRACT PRICE	£To be inserted upon Contract Award
PAYMENT TERMS	BACS IN ARREARS ON SUBMISSION OF AN INVOICE

QUARTER	DATES COVERED	INSTALMENT AMOUNT	PROVIDER TO ISSUE INVOICE FROM
Quarter 1	1 April to 30 June	£To be inserted upon Contract Award	1 July
Quarter 2	1 July to 30 September	£To be inserted upon Contract Award	1 October
Quarter 3	1 October to 31 December	£To be inserted upon Contract Award	1 January
Quarter 4	1 January to 31 March	£To be inserted upon Contract Award	1 April

YEAR 3 1 APRIL 2028 TO 31 MARCH 2029

ANNUAL CONTRACT	£To be inserted upon Contract Award
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PRICE	
PAYMENT TERMS	BACS IN ARREARS ON SUBMISSION OF AN INVOICE

QUARTER	DATES COVERED	INSTALMENT AMOUNT	PROVIDER TO ISSUE INVOICE FROM
Quarter 1	1 April to 30 June	£To be inserted upon Contract Award	1 July
Quarter 2	1 July to 30 September	£To be inserted upon Contract Award	1 October
Quarter 3	1 October to 31 December	£To be inserted upon Contract Award	1 January
Quarter 4	1 January to 31 March	£To be inserted upon Contract Award	1 April

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SCHEDULE D – PERFORMANCE MONITORING, QUALITY ASSURANCE AND CONTRACT REVIEW

D1. KPIs

- D1.1 The KPIs which shall be used to measure the performance of the Services by the Provider are set out in Schedule B (The Service Specification). This also sets out where a minimum level of performance for each KPI is required by the Council.
- D1.2 Not used.
- D1.3 An assessment of the Provider's performance against the above KPIs will be published at least once every twelve (12) months and again at the end of the Agreement in accordance with section 71(2) of the Procurement Act 2023.
- D1.4 The Provider acknowledges that publication of a poor performance notice is a discretionary ground under the Procurement Act 2023, which could result in the Agreement being terminated under clause 26.1.11 and the Provider being excluded from future procurements and added to the Government's debarment list.

D2. Performance Failure

- D2.1 If the Provider fails to meet any of the KPIs set out in Schedule B (The Service Specification) for a period of two (2) consecutive quarters or two (2) separate quarters during the Agreement Period, then the Council shall be entitled to:
- a. initiate a Contract Review to remedy the performance failure whereby Clause 23 of the Agreement shall apply;
 - b. deduct a proportionate amount of the Price for failure to meet the relevant KPI, as detailed in the Specification, or as reasonably determined by the Council in the circumstances; and/or
 - c. make alternative arrangements for the provision of Goods and/or Services and the Council will not be liable to make any payments due to the Provider for the provision of the Services during the period in which alternative arrangements are in place.
- D2.2 The Council shall be entitled to recover from the Provider all reasonable costs incurred in respect of the provision of any part of the Services by the Council and/or an alternative provider and no further payment shall be payable by the Council to the Provider under this Agreement until the Provider has reimbursed the Council for the total cost of making such alternative arrangements.
- D2.3 If the Provider fails to meet the KPIs for a period of two (2) consecutive quarters or two (2) separate quarters during the Agreement Period, then the Provider shall be deemed to be in Persistent Breach and the Council may withhold or suspend payment of the Price under paragraph C2 of Schedule C or terminate the Agreement with immediate effect.

D3. Performance Monitoring and Reporting

D3.1 The Provider shall provide appropriate reporting on its performance in such format as agreed in writing between the Parties from time to time and shall contain the following information:

D3.1.1 for each KPI, the actual performance achieved over the specified periods as agreed between the Parties;

D3.1.2 such other details as the Council may reasonably require from time to time;

D3.2 The performance monitoring report shall be reviewed and the contents agreed by the Parties at Contract Review meetings. The frequency and format of the Contract Review meetings shall be agreed between the Parties.

D4. Contract Review

D4.1 The purpose of Contract Review meetings shall be:

D4.1.1 for the Parties to discuss operational issues with the provision of the Services ;

D4.1.2 to assure that the Provider is meeting Contract Standards and the requirements of this Agreement;

D4.1.3 to review performance monitoring reports;

D4.1.4 to consider service improvements and Best Value;

D4.1.5 to address any issues relating to quality, performance and delivery of the Services .

D5. Quality Assurance

D5.1 The Provider shall meet or exceed Contract Standards and the quality/regulatory/industry standards set out in Schedule B (The Service Specification).

D5.2 The Parties accept and acknowledge that the arrangements set out in this Schedule may change and that the Council may reasonably introduce new tools, measures and processes in order to satisfy itself that the Services are delivered effectively, offer Best Value and satisfy the requirements of this Agreement. Any changes considered by the Council shall be notified to the Provider in writing.

SCHEDULE E - TENDER DOCUMENTS

As attached to this Schedule and/or includes the Council's Form of Tender and the Provider's Tender contained within the Council's eProcurement system which are incorporated into this Agreement by reference. **[To be completed at contract award]**

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SCHEDULE F – COUNCIL’S CONTRACT AWARD LETTERS

[To be inserted at contract award]

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SCHEDULE G – DATA PROTECTION PROVISIONS AND INFORMATION GOVERNANCE AGREEMENT

Controller	has the same meaning as set out in the UK GDPR;
Data Loss Event	any event that results, or may result, in unauthorised access to Personal Data held by the Processor under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach;
Data Protection Impact Assessment	means an assessment by the Controller carried out in accordance with Section 3 of the UK GDPR and sections 64 and 65 of the DPA 2018;
Data Protection Officer	has the same meaning as set out in the UK GDPR and in respect of the Parties under this Agreement such officer shall be as detailed in Annex 1 of this Schedule G or as otherwise notified in writing by one Party to the other;
Data Subject Access Request	means a request made by, or on behalf of, a Data Subject in accordance with the rights granted pursuant to the Data Protection Legislation to access their Personal Data;
Data Subject	has the same meaning as set out in the UK GDPR;
Independent Controller	a Party which is Controller of the same Personal Data as the other Party and there is no element of joint control with regards to that Personal Data, as applicable under this Schedule G;
Joint Controllers	where two or more Controllers jointly determine the purposes and means of processing, as applicable under this Schedule G;
Personal Data Breach	has the same meaning as set out in the UK GDPR;;
Processor	has the same meaning as set out in the UK GDPR;
Processor Personnel	means all directors, officers, employees, agents, consultants and contractors of the Processor and/or of any Sub-Processor engaged in the performance of its obligations under this Agreement;
Protective Measures	means appropriate technical and organisational measures designed to ensure compliance with obligations of the Parties arising under Data Protection Legislation and this Agreement, which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability

	of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it including those outlined in Schedule J (Security Management);
Special Category Data	means Personal Data that reveals such categories of data as are listed in Article 9(1) of the UK GDPR;
Sub-Processor(s)	means any third Party appointed and authorised by the Provider and/or the Council as appropriate to process Personal Data related to this Agreement on behalf of the Processor.

G1. STATUS OF THE CONTROLLER

G1.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the nature of the activity carried out by each of them in relation to their respective obligations under this Agreement dictates the status of each party under the DPA 2018. A Party may act as:

G1.1.1 “Controller” in respect of the other Party who is “Processor”;

G1.1.2 “Processor” in respect of the other Party who is “Controller”;

G1.1.3 “Joint Controller” with the other Party;

G1.1.4 “Independent Controller” of the Personal Data where the other Party is also “Controller”,

in respect of certain Personal Data under this Agreement and shall specify in Annex 1 of this Schedule G (Information Governance Agreement) which applies in each situation. The term “processing” and any associated terms are to be read in accordance with Article 4 of the UK GDPR.

G2. DATA CONTROLLER AND DATA PROCESSOR

G2.1 Not used.

G3. JOINT CONTROLLERS

G3.1 With respect to Personal Data under Joint Control of the Parties, the Parties envisage that they shall each be a Controller in respect of that Personal Data in accordance with the terms of this Schedule G. Accordingly, the Parties each undertake to comply with the applicable Data Protection Legislation in respect of their processing of such Personal Data as Controllers.

G3.2 Both Parties shall:

G3.2.1 be the exclusive point of contact for Data Subjects and are each responsible for using all reasonable endeavours to comply with the UK GDPR regarding the exercise by Data Subjects of their rights under the UK GDPR;

G3.2.2 direct Data Subjects to its Data Protection Officer or suitable alternative in connection with the exercise of their rights as Data Subjects and for any enquiries concerning their Personal Data or privacy;

- G3.2.3 retain sole responsibility for complying with all duties to provide information to Data Subjects under Articles 13 and 14 of the UK GDPR;
 - G3.2.4 be responsible for obtaining the informed consent of Data Subjects, in accordance with the UK GDPR, for Processing in connection with the Services where consent is the relevant legal basis for that processing; and
 - G3.2.5 make available to Data Subjects the essence of this Schedule (and notify them of any changes to it) concerning the allocation of responsibilities as Joint Controller and its role as exclusive point of contact, the Parties having used their best endeavours to agree the terms of that essence. This must be outlined in each Parties privacy policy (which must be readily available by hyperlink or otherwise on all of its public facing services and marketing).
- G3.3 Notwithstanding the terms of paragraph G3.2, the Parties acknowledge that a Data Subject has the right to exercise their legal rights under the Data Protection Legislation as against the relevant Party as Controller.

G3.4 Undertakings of both Parties

G3.4.1 The Council and the Provider each undertake that they shall:

G3.4.1.1 report to the other Party every three (3) months on:

G3.4.1.1.1 the volume of Data Subject Access Request (or purported Data Subject Access Requests) from Data Subjects (or third parties on their behalf);

G3.4.1.1.2 the volume of requests from Data Subjects (or third parties on their behalf) to rectify, block or erase any Personal Data;

G3.4.1.1.3 any other requests, complaints or communications from Data Subjects (or third parties on their behalf) relating to the other Party's obligations under applicable Data Protection Legislation;

G3.4.1.1.4 any communications from the Information Commissioner or any other regulatory authority in connection with Personal Data; and

G3.4.1.1.5 any requests from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by any Applicable Law,

that it has received in relation to the subject matter of the Agreement during that period;

G3.4.1.2 notify each other immediately if it receives any request, complaint or communication made as referred to in paragraphs G3.4.1.1 to G3.4.1.5;

G3.4.1.3 provide the other Party with full cooperation and assistance in relation to any request, complaint or communication made as referred to in paragraphs G3.4.1.3 to G3.4.1.5 to enable the other Party to comply with the relevant timescales set out in the Data Protection Legislation;

G3.4.1.4 not disclose or transfer the Personal Data to any third party unless necessary for the provision of the Services and, for any disclosure or transfer of Personal Data to any third party, (save where such disclosure or transfer is specifically authorised under the Agreement or is required by Applicable Law) that disclosure or transfer of Personal Data is otherwise considered to be lawful processing of that Personal Data in accordance with Article 6 of the UK GDPR. For the avoidance of doubt, the third party to which Personal Data is transferred must be subject to equivalent obligations which are no less onerous than those set out in this Schedule;

- G3.4.1.5 request from the Data Subject only the minimum information necessary to provide the Services and treat such extracted information as Confidential Information;
- G3.4.1.6 ensure that at all times it has in place appropriate Protective Measures to guard against unauthorised or unlawful processing of the Personal Data and/or accidental loss, destruction or damage to the Personal Data and unauthorised or unlawful disclosure of or access to the Personal Data;
- G3.4.1.7 use all reasonable endeavours to ensure the reliability and integrity of any of its Processor Personnel who have access to the Personal Data and ensure that its Processor Personnel:
 - G3.4.1.7.1 are aware of and comply with their duties under this Schedule and those in respect of Confidential Information
 - G3.4.1.7.2 are informed of the confidential nature of the Personal Data, are subject to appropriate obligations of confidentiality and do not publish, disclose or divulge any of the Personal Data to any third party where that Party would not be permitted to do so;
 - G3.4.1.7.3 have undergone adequate training in the use, care, protection and handling of Personal Data as required by the applicable Data Protection Legislation;
- G3.4.1.8 ensure that it has in place Protective Measures as appropriate to protect against a Data Loss Event having taken account of the:
 - G3.4.1.8.1 nature of the data to be protected;
 - G3.4.1.8.2 harm that might result from a Data Loss Event;
 - G3.4.1.8.3 state of technological development; and
 - G3.4.1.8.4 cost of implementing any measures;
- G3.4.1.9 ensure that it has the capability (whether technological or otherwise), to the extent required by Data Protection Legislation, to provide or correct or delete at the request of a Data Subject all the Personal Data relating to that Data Subject that the Provider holds; and
- G3.4.1.10 ensure that it notifies the other Party as soon as it becomes aware of a Data Loss Event;
- G3.4.1.11 where the Personal Data is subject to UK GDPR, not transfer such Personal Data outside of the UK unless the prior written consent of the non-transferring Party has been obtained and the following conditions are fulfilled:
 - G3.4.1.11.1 the transfer is in accordance with Article 45 of the UK GDPR or DPA 2018 Section 73; or
 - G3.4.1.11.2 the transferring Party has provided appropriate safeguards in relation to the transfer (whether in accordance with Article 46 of the UK GDPR or DPA 2018 Section 75) as agreed with the non-transferring Party which could include the International Data Transfer Agreement (the “**IDTA**”), or International Data Transfer Agreement Addendum to the European Commission’s SCCs (the “**Addendum**”), as published by the Information Commissioner’s Office from time to time, as well as any additional measures;
 - G3.4.1.11.3 the Data Subject has enforceable rights and effective legal remedies;
 - G3.4.1.11.4 the transferring Party complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound,

uses its best endeavours to assist the non-transferring Party in meeting its obligations); and

G3.4.1.11.5 the transferring Party complies with any reasonable instructions notified to it in advance by the non-transferring Party with respect to the processing of the Personal Data; and

G3.4.1.12 Each Joint Controller shall use its reasonable endeavours to assist the other Data Controller to comply with any obligations under applicable Data Protection Legislation and shall not perform its obligations under this Schedule in such a way as to cause the other Joint Controller to breach any of its obligations under applicable Data Protection Legislation to the extent it is aware, or ought reasonably to have been aware, that the same would be a breach of such obligations

G3.5 Data Protection Breach

G3.5.1 Without prejudice to paragraph G3.6, each Party shall notify the other Party promptly and without undue delay, and in any event within forty-eight (48) hours, upon becoming aware of any Data Loss Event or circumstances that are likely to give rise to a Data Loss Event, providing the Council and its advisors with:

G3.5.1.1 sufficient information and in a timescale which allows the other Party to meet any obligations to report a Data Loss Event under the Data Protection Legislation;

G3.5.1.2 all reasonable assistance, including:

G3.5.1.2.1 co-operation with the other Party and the Information Commissioner investigating the Data Loss Event and its cause, containing and recovering the compromised Personal Data and compliance with the applicable guidance;

G3.5.1.2.2 co-operation with the other Party including using such reasonable endeavours as are directed by the Council to assist in the investigation, mitigation and remediation of a Data Loss Event;

G3.5.1.2.3 co-ordination with the other Party regarding the management of public relations and public statements relating to the Data Loss Event; and/or

G3.5.1.2.4 providing the other Party and to the extent instructed by the other Party to do so, and/or the Information Commissioner investigating the Data Loss Event, with complete information relating to the Loss Event, including, without limitation, the information set out in paragraph G3.6.

G3.5.2 Each Party shall use all reasonable endeavours to restore, re-constitute and/or reconstruct any Personal Data where it has lost, damaged, destroyed, altered or corrupted as a result of a Personal Data Breach as it was that Party's own data at its own cost with all possible speed and shall provide the other Party with all reasonable assistance in respect of any such Personal Data Breach, including providing the other Party, as soon as possible and within 48 hours of the Personal Data Breach relating to the Personal Data Breach, in particular:

G3.5.2.1 the nature of the Personal Data Breach;

G3.5.2.2 the nature of Personal Data affected;

G3.5.2.3 the categories and number of Data Subjects concerned;

G3.5.2.4 the name and contact details of the Provider's Data Protection Officer or other relevant contact from whom more information may be obtained;

G3.5.2.5 measures taken or proposed to be taken to address the Personal Data Breach; and

G3.5.2.6 describe the likely consequences of the Personal Data Breach.

G3.6 Audit

G3.6.1 The Provider shall permit:

G3.6.1.1 the Council, or a third-party auditor acting under the Council's direction, to conduct, at the Council's cost, data privacy and security audits, assessments and inspections concerning the Provider's data security and privacy procedures relating to Personal Data, its compliance with this G3 of Schedule G and the Data Protection Legislation; and/or

G3.6.1.2 the Council, or a third-party auditor acting under the Council's direction, access to premises at which the Personal Data is accessible or at which it is able to inspect any relevant records, including the record maintained under Article 30 UK GDPR by the Provider so far as relevant to the Agreement, and procedures, including premises under the control of any third-party appointed by the Provider to assist in the provision of the Services.

G3.6.2 The Council may, in its sole discretion, require the Provider to provide evidence of the Provider's compliance in lieu of conducting such an audit, assessment or inspection.

G3.7 Impact Assessments

G3.7.1 The Parties shall:

G3.7.1.1 provide all reasonable assistance to each other to prepare any Data Protection Impact Assessment as may be required (including provision of detailed information and assessments in relation to processing operations, risks and measures); and

G3.7.1.2 maintain full and complete records of all processing carried out in respect of the Personal Data in connection with the Agreement, in accordance with the terms of Article 30 UK GDPR.

G3.8 ICO Guidance

G3.8.1 The Parties agree to take account of any guidance issued by the Information Commissioner and/or any relevant Central Government Body. The Council may on not less than thirty (30) Working Days' notice to the Provider amend the Agreement to ensure that it complies with any guidance issued by the Information Commissioner and/or any relevant Central Government Body.

G3.9 Liabilities for Data Protection Breach

G3.9.1 If financial penalties are imposed by the Information Commissioner on either the Council or the Provider for a Personal Data Breach ("**Financial Penalties**") then the following shall occur:

G3.9.1.1 if in the view of the Information Commissioner, the Council is responsible for the Personal Data Breach, in that it is caused as a result of the actions or inaction of the Council, its employees, agents, contractors (other than the Provider) or systems and procedures controlled by the Council, then the Council shall be responsible for the payment of such Financial Penalties. In this case, the Council will conduct an internal audit and engage at its reasonable cost, when necessary, an independent third-party to conduct an audit of any such Personal Data Breach. The Provider shall provide to the Council and its third-party investigators and auditors, on request and at the Provider's reasonable cost, full cooperation and access to conduct a thorough audit of such Personal Data Breach;

- G3.9.1.2 if in the view of the Information Commissioner, the Provider is responsible for the Personal Data Breach, in that it is not a Personal Data Breach that the Council is responsible for, then the Provider shall be responsible for the payment of these Financial Penalties. The Provider will provide to the Council and its auditors, on request and at the Provider's sole cost, full cooperation and access to conduct a thorough audit of such Personal Data Breach; or
- G3.9.1.3 if no view as to responsibility is expressed by the Information Commissioner, then the Council and the Provider shall work together to investigate the relevant Personal Data Breach and allocate responsibility for any Financial Penalties as outlined above, or by agreement to split any financial penalties equally if no responsibility for the Personal Data Breach can be apportioned. In the event that the Parties do not agree such apportionment then such Dispute shall be referred to the Dispute Resolution Procedure set out in Clause 41 of the Agreement (Dispute Resolution Procedure).
- G3.9.2 If either the Council or the Provider is the defendant in a legal claim brought before a court of competent jurisdiction ("**Court**") by a third party in respect of a Personal Data Breach, then unless the Parties otherwise agree, the Party that is determined by the final decision of the court to be responsible for the Personal Data Breach shall be liable for the losses arising from such Personal Data Breach. Where both Parties are liable, the liability will be apportioned between the Parties in accordance with the decision of the Court.
- G3.9.3 In respect of any losses, cost claims or expenses incurred by either Party as a result of a Personal Data Breach (the "**Claim Losses**"):
- G3.9.3.1 if the Council is responsible for the relevant Personal Data Breach, then the Council shall be responsible for the Claim Losses;
- G3.9.3.2 if the Provider is responsible for the relevant Personal Data Breach, then the Provider shall be responsible for the Claim Losses: and
- G3.9.3.3 if responsibility for the relevant Personal Data Breach is unclear, then the Council and the Provider shall be responsible for the Claim Losses equally.
- G3.9.4 Nothing in either paragraph G3.9.2 or G3.9.3 shall preclude the Council and the Provider reaching any other agreement, including by way of compromise with a third party complainant or claimant, as to the apportionment of financial responsibility for any Claim Losses as a result of a Personal Data Breach, having regard to all the circumstances of the Personal Data Breach and the legal and financial obligations of the Council.

G3.10 Termination

- G3.10.1 If the Provider is in material Default under any of its obligations under this G3 of Schedule G (*Joint Controllers*), the Council shall be entitled to terminate the Agreement by issuing a termination Notice to the Provider in accordance with Clause 26.1.1 of the Agreement (Termination).

G3.11 Sub-Processing

- G3.11.1 In respect of any processing of Personal Data performed by a third-party on behalf of a Party, that Party shall:
- G3.11.1.1 carry out adequate due diligence on such third-party to ensure that it is capable of providing the level of protection for the Personal Data as is required by the Agreement, and provide evidence of such due diligence to the other Party where reasonably requested; and
- G3.11.1.2 ensure that a suitable agreement is in place with the third-party as required under applicable Data Protection Legislation.

G3.12 Data Retention

G3.12.1 The Parties agree to erase Personal Data from any computers, storage devices and Storage Media that are to be retained as soon as practicable after it has ceased to be necessary for them to retain such Personal Data under applicable Data Protection Legislation and their privacy policy (save to the extent (and for the limited period) that such information needs to be retained by the Party for statutory compliance purposes or as otherwise required by the Agreement), and taking all further actions as may be necessary to ensure its compliance with Data Protection Legislation and its privacy policy.

G4. INDEPENDENT CONTROLLERS

G4.1 Not used.

G5. GENERAL

G5.1 Without prejudice to paragraphs G2 – G4, the Provider shall indemnify in full on demand and keep indemnified in full and on demand the Council from and against:

G5.1.1 the costs of any investigative, corrective or compensatory action required by the ICO, or of defending proposed or actual enforcement taken by the ICO;

G5.1.2 any costs, charges, damages, losses, expenses (including all legal and other professional expenses), claims, judgments or any other liabilities suffered or incurred by, awarded against, or agreed to be paid by, the Council pursuant to a claim, action or challenge made by a third party against the Council (including by a Data Subject); and

G5.1.3 except to the extent that paragraphs G5.1.1 to G5.1.2 (inclusive) apply, any costs, charges, damages, losses, expenses (including all legal and other professional expenses), claims, judgments or any other liabilities suffered or incurred, awarded against, or agreed to be paid by the Council,

in each case to the extent arising as a result of a breach by the Provider, its Personnel or any of its Subcontractors of this Agreement and/or its obligations under the Data Protection Legislation

G5.2 Nothing in this Agreement will exclude, limit or restrict the Provider's liability under the indemnity set out in paragraph G5.1.

G5.3 The Council shall indemnify and keep indemnified the Provider from and against:

G5.3.1 the reasonable costs of an investigative, corrective or compensatory action required by the ICO, or of defending proposed or actual enforcement taken by the ICO;

G5.3.2 any costs, charges, damages, losses, expenses (including all legal and other professional expenses), claims, judgments or any other liabilities suffered or incurred by, awarded against, or agreed to be paid by, the Provider pursuant to a claim, action or challenge made by a third-party against the Provider (including by a Data Subject); and

G5.3.3 except to the extent that paragraphs G5.3.1 to G5.3.2 (inclusive) apply, any costs,

charges, damages, losses, expenses (including all legal and other professional expenses), claims, judgments or any other liabilities suffered or incurred, awarded against, or agreed to be paid by, the Provider,

in each case to the extent arising as a result of a breach by the Council of this Agreement and/or its obligations under the Data Protection Legislation.

G5.4 The Parties shall:

G5.4.1 notify each other in writing as soon as reasonably practicable after becoming aware of any matter in respect of which a Party indemnifies the other Party pursuant to paragraphs G5.1 or G5.3.

G5.4.2 use its reasonable endeavours to avoid and mitigate its losses; and

G5.4.3 allow the Party full conduct of the defence of any third-party claim in respect of which a Party indemnifies the other Party pursuant to paragraphs G5.1 or G5.3; and

in no event shall the Council's liability under the indemnity set out in paragraph G5.3 in respect of any claim or series of claims exceed the limits of liability set out in [Clause 21.5](#).

G5.5 Each Party shall perform its obligations under this Schedule G and comply with the Information Governance Agreement at Annex 1 of this Schedule G (if applicable) at its own cost.

G5.6 Notwithstanding anything in this Agreement to the contrary, this Schedule G shall continue in full force and effect for so long as either Party processes any Personal Data on behalf of the other or provides Personal Data to the other in accordance with this Agreement.

ANNEX 1 TO SCHEDULE G

INFORMATION GOVERNANCE AGREEMENT

Information Sharing Agreement

In relation to: Statutory Advocacy Service:

Staffordshire County Council

and

(Full name of Provider)

1. Introduction

1.1 Basis for sharing

The overall aim of the Service is to provide commissioning and delivery of the Statutory Advocacy Service. The Service will be operated by an independent and/or voluntary sector/charitable organisation and the Service will be accessed through a single point of access model. The Provider will be fulfilling the local authority's statutory duty relating to Advocacy but acting as an independent body.

As part of their Adult Social Care assessment, the assessor will indicate to the Individual or their nominated representative that they will be making a referral for Advocacy support. This should only be done once consent/agreement has been received or, if appropriate, a Best Interest decision made on their behalf. The provision of advocacy support will enable the Individual to have their voice heard and their thoughts shared/documented, relating to a specific adult social care process for/about them (e.g. their support plan).

The following legislation sets out the statutory powers under which personal information can be shared and processed under this Agreement:

- Care Act (2014)
- Mental Capacity Act 2005 and Mental Capacity (Amendment) Act 2019
- Mental Health Act 2007 and the Code of Practice (Mental Health Act 1983) for England
- Health and Social Care Act 2012
- Human Rights Act 1998
- Local Authority Social Services and National Health Services Complaints (England) Regulations 2009
- Equality Act 2010
- Coronavirus Act 2020
- Data Protection Act 2018

The lawful basis, as per Article 6 of the GDPR, identified for processing Personal Data under this Agreement is as follows:

- Article 6 (lawfulness of processing) 1, (e) performance of a task carried out in the public interest or in the exercise of official authority vested in the controller.

The lawful basis, as per Article 9 of the GDPR, identified for processing Special Category Data under this Agreement is as follows:

- Article 9 (processing of special categories of personal data) 2, (h) provision of health or social care services.

And reinforced by:

- Data Protection Act, Schedule 1, Part 1, 2 (2) (e) the provision of social care.

In respect of Personal Data under and in respect of the Data Protection Legislation, the Parties are both Data Controllers which has the same meaning as set of in the DPA 2018.

When a referral is made to the Provider to deliver a Service to an Individual, their information will then be shared with the Provider.

This Agreement does not circumvent any statutory limits or prohibitions on disclosure of information.

1.2 Purpose for the sharing

The Provider will collate data on cases referred to them, needing advocacy support, via an agreed referral process.

The Provider will also be in receipt of open cases (including any cases held on a waiting list) which have been transferred from the outgoing provider (and where the Individual wishes for their support to continue with the new Provider).

For any data that is required to transfer from the outgoing provider regarding Individuals currently receiving support (or awaiting commencement of support), this will only be done with the prior consent of the Individual and in an agreed format - i.e. electronic or paper.

The referrals which the Provider receives, and the subsequent information that the Provider will collect is needed in order for the Provider to deliver the Statutory Advocacy Service on behalf and fulfilling the statutory duty of the local authority.

1.3 Length of Agreement

This Information Sharing Agreement will commence in line with the Service Commencement Date and will remain in place for the duration of the Services Agreement Period or until terminated.

As a joint Data Controller, the Provider will be responsible for maintaining and keeping records that they create as a result of providing this Service.

1.4 Key Contacts

Staffordshire County Council	
Name	Richard Deacon
Title	Commissioning Officer
Tel No	01785 277108
Email Address	richard.deacon@staffordshire.gov.uk
Postal Address	Staffordshire Place 1, Tipping Street, Stafford. ST16 2DH

Staffordshire County Council	
Name	Jan Cartman-Frost
Title	Senior Commissioning Manager
Tel No	01785 276851
Email Address	jan.frost@staffordshire.gov.uk
Postal Address	Staffordshire Place 1, Tipping Street, Stafford. ST16 2DH

(Provider Details)	
Name	

Title	
Tel No	
Email Address	
Postal Address	

2. Information Sharing

2.1 Type of information that may be shared

Basic personal data

Name
Address
Date of Birth
Personal Email Address
Personal Telephone/Mobile Number
Financial Details

Unique Identifiers

Care Director Reference Number (For those Individuals receiving support)
Care Provider's Name, Telephone Number and Email Address
NHS Number

Specialised Category Information

Physical/Mental Health
Ethnic origin
Religion/philosophical beliefs
Sexual Life (Including orientation)

2.2 How the information will be shared

The Individuals' information may be shared either by the Council's internal Adult Social Care teams or by our social care practitioner partners at Midlands Partnership Foundation Trust (MPFT), to the Service Provider. The Service will also be set up to accept referrals from other agencies such as Health, as well as for self-referrers.

The personal data if being shared electronically with the Provider it must be shared using a Secure File Transfer (SFT) facility (which encrypts the data in transit) or via email if it is confirmed that encryption such as Transport Layer Security (TLS) is enforced between email domains.

Information shared by the Council will be transferred using either their Secure File Transfer application or via standard email if Transport Layer Security is enforced between the two (2) email domains.

Any parties sharing Personal Data under this Agreement must do so using secure methods which protect data in transit.

If there is a requirement to share manual records between the parties, in these cases, an appropriate level of security must be applied (such as special delivery, delivery in person etc).

The information collated by the Council and/ or its partners, shall be proportionate and relevant to support the Council's statutory duty to identify an Individual's assessed eligible social care needs for which the Council is then responsible for sourcing and/or funding.

Personal Data must only be shared on a strict need to know basis and only processed by staff in order for them to perform their duties in accordance with one or more of the defined purposes.

Under no circumstances should Personal Data be processed in any way that is insecure or left unattended. It is the responsibility of the sender to ensure that the method is secure and that they have the correct contact details for the receiver.

2.3 Recipients and other organisations that the information may be shared with

None

2.4 Data Quality

The data collected in respect of Statutory Advocacy Services will comply with 2.1 above and no excessive data will be collected/ shared. This will be collected as part of the Provider's delivery of the Service and shared with the Council for contract management purposes.

All parties must ensure they follow the principles of data protection as set out in article 5 (c) (Data minimisation) of the General Data Protection Legislation (GDPR). This includes ensuring only the minimum amount of data required to fulfil the Service is shared, data shared is not excessive and records are kept accurate and up to date.

Only those who need access and process the Personal Data shared under this Agreement will do so in accordance with their specific roles.

Any issue with data quality and accuracy will be dealt with between the parties including ensuring the data is sent in a compatible format.

All parties will ensure any information shared is accurate and limited to only what is necessary for the intended purpose.

As per paragraph 2.5 (Retention & Destruction) in this schedule G, where the provider is unable to meet the needs of an Individual(s), then it shall ensure that it immediately destroys all copies of any personal data and/or sensitive personal data in whatever form or medium relating to the Individual in question and, if required by the Council, the Provider shall certify in writing to the Council that it has done so.

2.5 Retention and Destruction

Each party will be responsible for the appropriate retention and secure disposal of any data they act as a controller for, in accordance with any statutory or agreed provisions in accordance with each Parties own retention schedules.

As Data Controllers for the information collated and held, where the Service terminates and is replaced by a new service, the Provider must ensure they store records securely for the minimum amount of time required as set out in law and in accordance with their own agreed retention periods. In addition, the following retention periods will apply:

- Seven (7) Years to incorporate any children advocacy post their 18th birthday. Alternatively, the Council may direct the Provider to destroy any data in relation to that Individual and in which instance the Provider shall confirm such destruction.
- The Council will retain all records relating to the Services and/or and Individual in accordance with the Council's Corporate Retention Schedules.

As Data Controllers for the information collated and held, where the Service terminates and is not replaced by a new service, the Provider must ensure they store records securely for the minimum amount of time required as set out in law and in accordance with their own agreed retention periods.

2.6 Data subject rights

Where a data subject exercises their rights under the Data Protection Act, for data processed and held by the Provider, those requests will be dealt with by the organisation they are made to and will comply within the timescales of one (1) calendar month.

If a Party receives a request which relates to information which they do not hold or do not act as a Data Controller for then they must instruct the requester to direct their request to the relevant party.

The Provider and Council shall offer reasonable assistance to one another in order to assist in achieving compliance, and provide professional opinion where required.

Any complaint received regarding Personal Data will be forwarded to the relevant organisation to investigate under their own complaints procedure.

2.7 Data Security

All parties will ensure that, in compliance with Article 32 of the GDPR (Security) they have in place appropriate technical and organisational measures to ensure the security of the Personal Data and to guard against unauthorised access or unlawful processing and against accidental loss or destruction of, or damage to, the Personal Data.

All parties will ensure that their staff/ Personnel, who are involved in the information sharing process are aware of, and comply with, their responsibilities and obligations in regard to:

- The confidentiality of personal information
- The commitment of the relevant organisation to only share information legally and within the terms of the Information Sharing Agreement
- The relevant policies in place
- Staff training on Data Protection
- Information security and processes to cover access control

Technical solutions must include measures such as:

- Appropriate firewalls to protect Personal Data
- Adequate Access controls

Electronic copies of information will only ever be held on encrypted devices or servers and will not be emailed outside of the organisation.

Paper copies of information (including print outs of electronic information) will be held securely and shredded upon disposal and buildings and areas where personal data can be accessed from will have adequate physical security in order to prevent unauthorised access.

3. General Obligations

Both parties must ensure they are both registered as data controllers with the Information Commissioners Office.

3.1 Obligations to an individual party

Should a security incident occur which involves data pertaining to this Agreement the party discovering the breach will inform the Data Controllers of that data by contacting the key contact. The breach will be investigated under that organisation's security procedure and will be done in a timely manner as certain breaches must be reported to the ICO within seventy-two (72) hours.

All parties will report any queries or complaints involving data pertaining to this agreement immediately to the key contacts.

The Provider shall not store, copy, disclose, or use the Council Data except as necessary for the performance of its obligations under this Agreement or as otherwise expressly authorised in writing by the Council.

In signing this Agreement, both Parties accept that they will follow the procedures within it when processing information in a manner compliant with statutory and legal requirements.

4. Review of Agreement

This Information Sharing Agreement will be reviewed yearly until the end of the Contract Term or until the Provider ceases to provide Services, or until a Notice of termination is served.

5. Signatures

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

Name:

.....

Position:

.....

Signature:

.....

Date:

.....

If applicable, please also complete the below:			
ICO Registration No.	Z4986215	Date of expiry:	15 th October 2025
DSP IG Toolkit Code	413	Rating and Score:	PASS

Signed for and on behalf of **Provider**

Name:

.....

Position:

.....

Signature:

.....

Date:

.....

If applicable, please also complete the below:			
ICO Registration No.		Date of expiry:	
DSP IG Toolkit Code		Rating and Score:	

SCHEDULE H

TUPE AND PENSIONS PROVISIONS

The terms used here in this Schedule are defined in Clause 1 of the Agreement (Definitions), save where otherwise defined below:

1. Definitions

Cessation Date	the date on which the Employing Body ceases to participate in the Public Sector Pension Scheme;
Effective Date	the date on which the Transferring Employees transfer to the Provider or a Subcontractor as a Relevant Transfer;
Eligible Employee	the Transferring Employees who are active members of or have the right to acquire benefits under a Public Sector Pension Scheme immediately before the Effective Date, for so long as they are employed in connection with the provision of the Services or part of such Services;
Employee Liability Information	the information that a transferor is obliged to notify to a transferee under Regulation 11(2) of TUPE as amended from time to time;
Employing Body	the Provider as an admitted body to the Public Sector Pension Scheme;
Fair Deal 2	means the non-statutory policy for dealing with pension issues in staff transfers out of the public sector;
Losses	all damages, losses, liabilities, claims, actions, costs, expenses (including the cost of legal or professional services, legal costs being on an indemnity basis), proceedings, demands, charges and any other liabilities caused directly or indirectly whether arising under statute, contract or at common law;
New Employees	those employees employed on or after the Effective Date by the Provider to provide the Services in addition to the Transferring Employees;
Provider's Final Staff List	the list prepared by the Provider of all the Provider's Personnel engaged in, or wholly or mainly assigned to, the provision of the Services or any part of the Services at the Service Transfer Date;
Provider's Provisional Staff List	the list prepared and updated by the Provider of all the Provider's Personnel engaged in, or wholly or mainly assigned to, the provision of the Services or any part of the Services at the date of the preparation of the list;

Provider Scheme	the registered occupational pension scheme (within the meaning of Part 4 of the Finance Act 2004) reasonably acceptable to the Council and certified by the Government Actuary's Department (or an actuary appointed by the Council) as providing benefits which are the same as, broadly comparable to or better than those benefits provided by any relevant Public Sector Pension Scheme as at the Effective Date;
Public Sector Pension Scheme	occupational pension schemes including but not limited to Local Government Pension Scheme;
Relevant Employees	the employees who are the subject of a TUPE transfer;
Relevant Transfer	a relevant transfer for the purposes of TUPE;
Relevant Transfer Date	means the date a Relevant Transfer takes effect;
Replacement Services	any services that are identical or substantially similar to the Services or any part of the Services and which the Council receives in substitution for the Services or any part of the Services following the termination or expiry of this Agreement;
Replacement Provider(s)	any third party supplier of Replacement Services appointed by the Council from time to time;
Service Transfer Date	the date on which the Services (or any part of the Services), transfer from the Provider to any Replacement Provider or the Council;
Staffing Information	in relation to all persons detailed on the Provider's Provisional Staff List or the Provider's Final Staff List (as applicable), in an anonymised format, such information as the Council may reasonably request, including the Employee Liability Information and details of whether the Personnel are employees, workers, self-employed, contractors or consultants, agency workers or otherwise, and the amount of time spent on the provision of the Services;
Third-Party Employee	employees of Third-Party Employers whose contract of employment transfers with effect from the Relevant Transfer Date to the Provider by virtue of the application of TUPE;
Third-Party Employer	a service provider engaged to provide services equivalent or fundamentally the same to the Services to the Council and whose employees will transfer to the Provider on the Relevant Transfer Date;
Transferring Employees	Third-Party Employees and Relevant Employees whose contract of employment transfers with effect from the Effective Date to the Provider by virtue of the application of

	TUPE. A list of the Transferring Employees, as at the date of execution of the Agreement, is attached at Annex 1 to this Schedule H;
TUPE	the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246), as amended.

Transfer of Employees to the Provider on the Effective Date

- 1.1. The Council and the Provider agree that where the identity of the provider of the Services or part of the Services changes, this shall constitute a Relevant Transfer and the contracts of employment of any Transferring Employees shall transfer to the Provider or any Subcontractor. The Provider shall comply, and shall procure that each Subcontractor(s) shall comply with their obligations under TUPE.
- 1.2. The Council shall give no warranty as to the accuracy or completeness of the Employee Liability Information or Staffing Information supplied by any Third Party Employers.
- 1.3. The Provider shall be responsible for all remuneration, emoluments, benefits, entitlements and outgoings for the Transferring Employees and any other person who is or will be employed or engaged by the Provider in connection with the provision of the Services, including without limitation, all wages, holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions, pension contributions and otherwise from and including the Effective Date.
- 1.4. The Provider shall as soon as reasonably practicable and in any event within five (5) Working Days following a written request from any Third Party Employer, provide details of any measures that the Provider or any Subcontractor envisages it will take in relation to any Transferring Employees. If there are no measures, the Provider will give confirmation of that fact, and shall indemnify the Council and any Third Party Employer against all Losses resulting from any failure by it to comply with this obligation.
- 1.5. The Provider shall indemnify and keep indemnified in full the Council against any Losses incurred by the Council in connection with or as a result of:
 - 1.5.1. any claim by any Transferring Employee that any proposed or actual substantial change by the Provider or any Subcontractor to the relevant employees working conditions or terms and conditions of employment or any proposed measures of the Provider or of any Subcontractor are to that employee's detriment whether such claim arises before or after the Effective Date;
 - 1.5.2. any claim arising out of misrepresentation or misstatement whether negligent or otherwise made by the Provider or any Subcontractor to the Transferring Employees or their representatives whether before or after the Effective Date and whether liability for any such claim arises before on or after the Effective Date.
 - 1.5.3. any failure to meet all remuneration, benefits, entitlements and outgoings for the Transferring Employees, and any other person who is or will be employed or engaged by the Provider or any Subcontractor in connection with the provision of the Services, including without limitation, all wages, holiday pay, bonuses, commissions, payments of PAYE, National Insurance contributions, pension contributions, termination costs and otherwise from and including the Effective Date; and
 - 1.5.4. any change in identity of the Transferring Employees' employer as a result of the operation of TUPE.

2. Union Recognition

- 2.1 The Provider shall in accordance with TUPE recognise the trade unions representing the Transferring Employees, where applicable.
- 3. Employment Exit Provisions**
- 3.1. The identity of the provider of the Services (or any part of the Services) may change (whether as a result of expiry or termination or otherwise) resulting in a transfer of the Services in whole or in part ("**Service Transfer**"). If a Service Transfer is a Relevant Transfer then the contracts of employment of any Relevant Employees shall transfer to any Replacement Provider(s) or the Council.
- 3.2. Subject to paragraph 3.1 above, the following provisions will apply:
- 3.2.1.** The Provider shall be responsible for all remuneration, benefits, entitlements and outgoings in respect of the Relevant Employees, including without limitation, all wages, holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions, pension contributions and otherwise, up to the Service Transfer Date.
- 3.2.2.** The Provider shall indemnify and keep indemnified in full the Council and every Replacement Provider against all Losses incurred by the Council or any Replacement Provider(s) in connection with or as a result of any claim or demand against the Council and/or any Replacement Provider(s) by:
- 3.2.2.1.** any person who is or has been employed or engaged by the Provider or any Subcontractor in connection with the provision of any of the Services; or
- 3.2.2.2.** any trade union or staff association or employee representative (where such claim arises as a result of any act, fault or omission of the Provider and/or any Subcontractor);
- arising from or connected with any failure by the Provider or any Subcontractor to comply with any legal obligation, whether under regulation 13 or 14 of TUPE or any award of compensation under regulation 15 of TUPE or otherwise, whether any such claim arises or has its origin before, on or after the Service Transfer Date.
- 3.3. The Provider shall on request from any Replacement Provider(s) or the Council, and/or at such times as required by TUPE, provide in respect of any person engaged or employed by the Provider or any Subcontractor in the provision of the Services, the Provider's Provisional Staff List and the Staffing Information together with any additional information required by the Replacement Provider(s) or the Council, including information as to the application of TUPE to the employees. The Provider shall notify any Replacement Provider(s) or the Council of any material changes to this information as and when they occur.
- 3.4. The Council shall in its discretion and subject to Data Protection Legislation, be permitted to use and disclose the Provider's Provisional Staff List, the Provider's Final Staff List and the Staffing Information for informing any tenderer or other prospective Replacement Providers for any services that are substantially the same type of services as (or any part of) the Services.
- 3.5. At least twenty eight (28) days prior to the Service Transfer Date, the Provider shall prepare and provide to the Replacement Provider(s) or the Council, the Provider's Final Staff List and the Staffing Information, which shall be complete and accurate in all material respects. The Provider's Final Staff List shall identify which of the Provider's staff named are Relevant Employees.
- 3.6. The Provider warrants that the Provider's Provisional Staff List, the Provider's Final Staff List and the Staffing Information will be true and accurate in all material respects and that no persons are employed or engaged in the provision of the Services other than those included on the Provider's Final Staff List.

- 3.7. The Provider shall be liable to the Replacement Provider(s) or Council for, and shall indemnify and keep the Replacement Provider(s) or Council indemnified against, any Losses that arise or result from any deficiency or inaccuracy in the information which the Provider is required to provide under this Agreement.
- 3.8. The Provider shall ensure at all times that it has the right to provide these records under Data Protection Legislation.
- 3.9. Notwithstanding the early termination provisions in this Agreement, in the six (6) months prior to the expiry of this Agreement, the Provider shall not materially increase or decrease the total number of staff listed on the Provider's Provisional Staff List or the proportion of working time spent by those staff on the Services (or any part), their remuneration, or make any other change in the terms and conditions of those employees without the Replacement Provider's prior written consent (such consent not to be unreasonably withheld or delayed).
- 3.10. The Parties shall co-operate as far as possible to ensure that any requirement to inform and consult with the employees and or employee representatives in relation to any Relevant Transfer will be fulfilled.

4. Pensions

- 4.1. Where the Provider employs any Eligible Employees from the Effective Date and wishes to or must offer those Eligible Employees membership of a Public Sector Pension Scheme, the Provider shall procure that it shall or shall procure that it and/or each relevant Subcontractor shall become an employing body in that scheme and before the Effective Date.

Provider Ceases to be an employing body

- 4.2. Where the Provider or Subcontractor does not wish to or is otherwise prevented from offering all or some of the Eligible Employees membership or continued membership of a Public Sector Pension Scheme, the Provider shall or shall procure that it and any relevant Subcontractor(s) shall offer the Eligible Employees membership of an occupational pension scheme with effect from the Effective Date and the provisions of paragraph 4.3 shall apply.

Provider Scheme

- 4.3. Where this paragraph 4.3 applies pursuant to paragraph 4.2, the following shall apply:
 - 4.3.1. the Provider shall not later than the Cessation Date nominate to the relevant Public Sector Scheme in writing the pension scheme which shall be the Provider Scheme.
 - 4.3.2. the Provider undertakes to the Council that it shall procure that:
 - 4.3.2.1. the Eligible Employees shall be offered membership of the Provider Scheme with effect from and including the Cessation Date;
 - 4.3.2.2. the Provider Scheme shall continue to be provided throughout the term of the Agreement and any certificate issued by the Government Actuary's Department shall be renewed as and when required;
 - 4.3.2.3. the benefits provided by the Provider Scheme shall not be detrimentally amended and must comply with statutory requirements;
 - 4.3.2.4. if the Provider Scheme is terminated, a replacement Provider Scheme shall be provided with immediate effect for those Eligible Employees who are still employed by the Provider;
 - 4.3.2.5. any Eligible Employees who become members of the Provider Scheme will be offered the opportunity to transfer their benefits from the pension scheme of which they were a member immediately prior to the Cessation Date into the Provider Scheme.

- 4.4. Where any Eligible Employee elects to transfer accrued benefits in accordance with paragraph 4.3.2.5, and the Provider has relevant employing body status the Parties shall use their respective best endeavours to agree the terms on which that transfer will be made and the value of the assets to be transferred as soon as practicable.

Undertaking from the Provider

- 4.5. The Provider undertakes that it shall offer any Eligible Employees who cease to be engaged in the provision of the Services and thereby cease to be eligible for membership of a Public Sector Pension Scheme, membership of the Provider Scheme as soon as reasonably practicable after ceasing to be so engaged unless such an Eligible Employee has voluntarily agreed to the loss of their Public Sector Pension Scheme membership as part of the change or unless such an Eligible Employee has voluntarily ceased to be engaged in the provision of the Services.

Provider Indemnity

- 4.6. The Provider shall indemnify and keep indemnified in full the Council and at the Council's request each and every Replacement Provider against:
- 4.6.1. all Losses suffered or incurred by it which arise from claims by Eligible Employees or by any trade unions, elected employee representatives or staff associations in respect of all or any such Eligible Employees in respect of periods of employment on and after the Effective Date; and
 - 4.6.2. any Losses arising from a breach by the Provider and/or any Subcontractor of paragraphs 1 to 4 (as applied to any Subcontractor by paragraph 5).

Pension Issues on Expiry or Termination

- 4.7. The Provider shall:
- 4.7.1. maintain such documents and information as will be reasonably required to manage the pension aspects of any onward transfer and shall promptly provide to the Replacement Provider(s) such documents and information which the Replacement Provider(s) may reasonably request in advance of the expiry or termination of the Agreement; and
 - 4.7.2. fully co-operate and procure that, where paragraph 4.3 (Provider Scheme) applies, the trustees of the Provider Scheme shall fully co-operate with the reasonable requests of the Council and/or the Replacement Provider(s) relating to any administrative tasks necessary to deal with the pension aspects of any onward transfer of any person engaged or employed by the Provider in the provision of the Services on the expiry or termination of the Agreement (including, but not limited to the transfer of any accrued rights of the Eligible Employees).

5. Subcontracting

- 5.1. Where a Subcontractor employs any Transferring Employees, the Provider shall procure that the Subcontractor shall deal with the transfer of employees and the provision of pension benefits in accordance with this Schedule as though references in this Schedule to the Provider were references to the Subcontractor and references to the Effective Date were references to the date of the transfer to the Subcontractor. The Provider shall indemnify and keep indemnified the Council against any breach by the Provider or Subcontractor of this Schedule.

6. New Employees

- 6.1. The Provider shall provide New Employees with pension benefits in accordance with the Cabinet Office principles of good employment practice for government, contracting authorities and suppliers, and Fair Deal 2 as applicable.

ANNEX 1 TO SCHEDULE H

LIST OF TRANSFERRING EMPLOYEES

[Insert Contract Award]

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SCHEDULE I – EXIT MANAGEMENT

In this Schedule, the following defined terms shall have the meanings shown against them:

Exit	means the cessation of this Agreement by way of expiry or termination (as the case maybe);
Exit Manager	the person appointed by each Party in accordance with this Schedule for managing the Parties' respective obligations pursuant to this Schedule I;
Exit Plan	the plan produced and updated by the Provider to facilitate the Exit during the Agreement Period in accordance with this Schedule I;
Termination Assistance	means the support and cooperation the Provider will provide the Council during the process of terminating this Agreement, to ensure a smooth and orderly transfer of services, data, and any relevant information to the Council or a new provider;
Termination Assistance Notice	means the Notice given to the Provider by the Council notifying the Provider that the Council requires Termination Services;
Termination Assistance Period	the period specified in the Termination Assistance Notice in which the Provider shall provide the Termination Services as may be extended pursuant to this Schedule I;
Termination Services	means the services and activities to be performed by the Provider pursuant to the Exit Plan, including those set out in this Schedule I and any other services and/or activities which are required by the Council pursuant to the Termination Assistance Notice.

Overview

1. The Provider is required to ensure the orderly transition of the Services to any Replacement Provider in the event of termination (including partial termination) or expiry of the Agreement. This Schedule I sets out the principles of the exit and service transfer arrangements that are intended to achieve such orderly transition and which shall form the basis of the Exit Plan. For the avoidance of doubt, the Provider shall be responsible for the overall management of the exit and service transfer arrangements.

Contract Life Obligations

2. During the Agreement Period the Provider shall maintain a document (the "**Register**") detailing how the Services (including details of how any Services are performed by any Subcontractors) will be performed by the Provider and the Provider shall ensure that such Register shall contain sufficient detail to ensure that a smooth and timely transfer between the Provider and any Replacement Provider is facilitated.
3. The Provider shall update the Register from time to time (but in any event no less frequently than every six (6) months following the Commencement Date). Any breach of this provision shall constitute a material breach of this Agreement.

4. The Provider shall use its reasonable endeavours to procure that all Subcontracts and any other agreements with third parties to which the Provider is party which are necessary to enable the Replacement Provider to perform the Services in accordance with this Agreement shall be assignable and/or capable of novation at the request of the Council to the Replacement Provider upon the Provider ceasing to provide the Services (or any part of them) without restriction (including any need to obtain any consent or approval) or payment by the Council.
5. Each Party will appoint an Exit Manager and provide written notification of such appointment to the other Party within three (3) months of the Commencement Date. The Provider's Exit Manager will be responsible for ensuring that the Provider and its Personnel comply with this Schedule. The Provider will ensure that its Exit Manager has the requisite authority to arrange and procure any resources of the Provider as are necessary to enable the Provider to comply with the requirements set out in this Schedule. The Parties' Exit Managers will liaise with one another in relation to all issues relevant to the termination or expiry of this Agreement and all matters connected with this Schedule and each Party's compliance with it.

Obligations to assist on re-tendering the Services

6. Subject to paragraph 7 of this Schedule, on reasonable notice, the Provider shall provide to the Council and/or (subject to any potential Replacement Provider entering into reasonable written confidentiality undertakings) to its potential Replacement Provider, such material and information as is reasonably required by the Council in order to facilitate the preparation by the Council of any invitation to tender and/or to facilitate any potential Replacement Provider undertaking due diligence. Such information may include (but is not limited to):
 - 6.1 details of the Services;
 - 6.2 an inventory of all Council Data and any other relevant data with respect to the Services in the Provider's possession of control;
 - 6.3 a copy of the Register, updated in full by the Provider up to the date of delivery of such Register; and
 - 6.4 subject to the Data Protection Legislation, all information relating to Transferring Employees (as defined in Schedule H) required to be provided by the Provider under this Agreement.
7. The Provider shall not be required to comply with the provision of paragraph 6 before service of a Notice to terminate this Agreement or in the period which is more than twelve (12) months before the expiry of the Agreement Period.

Exit Plan

8. The Provider will, within six (6) months after the Commencement Date, deliver to the Council an Exit Plan which sets out the Provider's methodology for achieving an orderly, seamless and timely transition of the Services from the Provider to any Replacement Provider on the expiry or termination of this Agreement and which complies with the requirements set out in paragraphs 9 and 10 of this Schedule below. Within thirty (30) days after the submission of the Exit Plan, the Parties will use their respective reasonable endeavours to agree the contents of the Exit Plan. If the Parties are unable to agree the contents of the Exit Plan then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure set out in Clause 41 of the Agreement.
9. The Exit Plan will contain, as a minimum:

- 9.1 mechanisms for dealing with Exit and the provision for the supply by the Provider of all such reasonable assistance as the Council shall require to enable the Replacement Provider or any applicable Subcontractors to provide the Services;
- 9.2 the management structure to be employed during both the transfer and cessation of the Services upon Exit; and
- 9.3 a detailed description of both the transfer and cessation processes, including an Exit timetable.

Termination Services

10. During the Termination Assistance Period or such shorter period as the Council may require, the Provider will continue to provide the Services (as applicable) and will, at the request of the Council, provide the Termination Services.
11. The costs of providing these Termination Services shall be agreed by the Parties on the basis of the Price and the Agreement varied in accordance with Clause 9 of the Agreement (Variations).
12. During the Termination Assistance Period, the Provider will, in addition to providing the Services and the Termination Services, provide to the Council any reasonable assistance required by the Council to allow the Services to continue without interruption following the termination or expiry of this Agreement and to facilitate the orderly transfer of responsibility for and conduct of the Services to the Replacement Provider.
13. Within thirty (30) days after service of Notice of termination by either Party, or not more than seven (7) and no less than twelve (12) months prior to the expiry of this Agreement, the Provider will submit for the Council's approval the Exit Plan in a final form that could be implemented immediately.
14. The Parties will meet and use their respective reasonable endeavours to agree the contents of the final Exit Plan.

Notification of Requirements for Termination Services

15. The Council shall be entitled to require the provision of Termination Services by notifying the Provider in writing ("**Termination Assistance Notice**") at least four (4) months prior to the date of termination or expiry of this Agreement or as soon as reasonably practicable. The Termination Assistance Notice shall specify the:
 - 15.1 date from which Termination Services are required which shall be no earlier than twelve (12) months prior to the expiry of this Agreement or from the service by either Party of any Notice to terminate (as the case may be);
 - 15.2 the nature of the Termination Services required; and
 - 15.3 the period which it is anticipated that any Termination Services will be required which shall continue no longer than twenty four (24) months or such other period as is agreed by the Parties after the date the Provider ceases to provide the Services.

Termination Obligations

16. The Provider shall comply with all of its obligations contained in the Exit Plan and if required pursuant to the scope of the Termination Services shall, upon termination or expiry of this Agreement provide to the Council an up-to-date business process manual.

- 17.** At the end of the Termination Assistance Period (or earlier if this does not adversely affect the Provider's performance of the Services and the Termination Services and its compliance with the other provisions of this Schedule):
- 17.1** the Provider will erase from any computers and Storage Media that are to be retained by the Provider following the end of the Termination Assistance Period any software containing any Council Data;
 - 17.2** the Provider will return to the Council such of the following as is in the Provider's control:
 - 17.2.1** all copies of any Council software and any other software licensed by the Council to the Provider under this Agreement;
 - 17.2.2** all materials created by the Provider under this Agreement in which the Council owns the Intellectual Property Rights;
 - 17.2.3** any equipment or property which belongs to the Council; and
 - 17.2.4** any items that have been on-charged to the Council such as consumables.
 - 17.3** the Provider shall vacate any premises owned or occupied by the Council.

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SCHEDULE J – SECURITY MANAGEMENT

The technical security requirements set out below provide an indication of the types of security measures that might be considered, to protect Personal Data. More, or less, measures may be appropriate depending on the subject matter of the Agreement, but the overall approach must be proportionate. The technical requirements must also be compliant with legislative and regulatory obligations for content and data, such as UK GDPR.

The technical security requirements set out here are intended to supplement, not replace, any security schedules that will detail the security obligations and requirements that the Provider will be held to account to deliver under this Agreement. The Provider is also required to ensure sufficient 'flow-down' of legislative and regulatory obligations to any third-party Subcontractors.

External Certifications e.g. hold at least Cyber Essentials Plus certification and ISO 27001:2013 certification if proportionate to the Service.

Risk Assessment e.g. perform a technical information risk assessment on the Service and be able to demonstrate what controls are in place to address those risks.

Security Classification of Information e.g. If the provision of the Services requires the Provider to process any Council Data which is classified as OFFICIAL, OFFICIAL-SENSITIVE the Provider shall implement such additional measures as agreed with the Council from time to time in order to ensure that such information is safeguarded in accordance with the applicable legislative and regulatory obligations.

End User Devices e.g.

- The Provider shall ensure that any Council Data which resides on a mobile, removable or physically uncontrolled device is stored encrypted using a product or system component which has been formally assured through a recognised certification process agreed with the Council except where the Council has given its prior written consent to an alternative arrangement.
- The Provider shall ensure that any device which is used to process Council Data meets all of the security requirements set out in the NCSC End User Devices Platform Security Guidance, a copy of which can be found at: <https://www.ncsc.gov.uk/guidance/end-user-device-security>.

Testing e.g. The Provider shall at their own cost and expense, procure a CHECK or CREST Certified Provider to perform an ITHC or Penetration Test prior to any live Council Data being transferred into their systems. The ITHC scope must be agreed with the Council to ensure it covers all the relevant parts of the system that processes, stores or hosts Council Data.

Networking e.g. The Provider shall ensure that any Council Data which it causes to be transmitted over any public network (including the Internet, mobile networks or un-protected enterprise network) or to a mobile device shall be encrypted when transmitted.

Personnel Security e.g. All Personnel shall be subject to a pre-employment check before they may participate in the provision and or management of the Services. Such pre-employment checks must include all pre-employment checks which are required by the HMG Baseline Personnel Security Standard or equivalent including: verification of the individual's identity; verification of the individual's nationality and immigration status; and, verification of the individual's employment history; verification of the individual's criminal record. The Provider may be required to implement additional security vetting for some roles.

Identity, Authentication and Access Control e.g. The Provider must operate an appropriate access control regime to ensure that users and administrators of the Service are uniquely identified. The Provider must retain records of access to the physical sites and to the Service.

Data Destruction/Deletion e.g. The Provider must be able to demonstrate they can supply a copy of all data on request or at termination of the Service, and must be able to securely erase or destroy all data and media that the Council Data has been stored and processed on.

Audit and Protective Monitoring e.g. The Provider shall collect audit records which relate to security events in delivery of the Service or that would support the analysis of potential and actual compromises. In order to facilitate effective monitoring and forensic readiness such Provider audit records should (as a minimum) include regular reports and alerts setting out details of access by users of the Service, to enable the identification of (without limitation) changing access trends, any unusual patterns of usage and/or accounts accessing higher than average amounts of Council Data. The retention periods for audit records and event logs must be agreed with the Council and documented.

Location of Authority/Buyer Data e.g. The Provider shall not, and shall procure that none of its Subcontractors, process Council Data outside the EEA without the prior written consent of the Council and the Provider shall not change where it or any of its Subcontractors process Council Data without the Council's prior written consent which may be subject to conditions.

Vulnerabilities and Corrective Action e.g. The Provider shall procure and implement security patches to vulnerabilities in accordance with the timescales specified in the NCSC Cloud Security Principle 5 (where applicable). The Provider must ensure that all COTS Software and Third Party COTS Software be kept up to date such that all Provider COTS Software and Third Party COTS Software are always in mainstream support.

Secure Architecture e.g. The Provider should design the Service in accordance with:

- NCSC "Security Design Principles for Digital Services"
- NCSC "Bulk Data Principles"
- NSCS "Cloud Security Principles"

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SCHEDULE K – OPTIONAL CLAUSES

K1 WHISTLEBLOWING

- K1.1** The Provider shall ensure that it has a ‘whistleblowing’ procedure and the Provider shall diligently apply this procedure to its Personnel throughout the Agreement Period.
- K1.2** The Provider confirms that the Council is authorised as a person to whom the Personnel may make a qualifying disclosure under the Public Interest Disclosure Act 1998 and the Provider declares that any of its Personnel who make a protected disclosure (as defined by the said Act) shall not be subjected to any detriment and that it will make its Personnel aware of this provision.
- K1.3** In default of the Provider having its own whistleblowing policy it may utilise the Council’s whistleblowing Policy a copy of which is available from the Council.
- K1.4** The Provider shall send a copy of its whistleblowing Policy to the Council within 7 days of the Commencement Date of this Agreement if requested.
- K1.5** As soon as it is aware of it the Provider and Provider’s Personnel must report to the Council any actual or suspected breach of:
- (a) Any Applicable Law;
 - (b) Clause 36 (Prevention of Bribery); or
 - (c) Clause 31 (Modern Slavery)
- and the Provider must not retaliate against any of the Personnel who in good faith reports a breach listed in this paragraph K1.5 to the Council or any other Regulatory Body.
- K1.6** The Provider further declares that any provision in any contract purporting to preclude a member of its Personnel from making a protected disclosure is void.

K2 SAFEGUARDING AND DBS

DBS	means the Disclosure and Barring Service established under section 87 the Protection of Freedoms Act 2012 or any successor regulatory regime;
Enhanced DBS Check	means a disclosure of information comprised in a Standard DBS Check together with any information held locally by police forces that it is appropriate to the post applied for;
Standard DBS Check	means an in-depth background DBS check used by employers on behalf of applicants to verify if a candidate is suitable to hire for work in a specific industry. It will show an individual’s convictions, cautions, reprimands or warnings recorded on police central records and includes both ‘spent’ and ‘unspent’ convictions;
Regulated Activity	means the term used to describe certain job functions carried out by an employee as defined by the DBS;

Regulated Activity Provider	means an organisation or individual responsible for the management or control of Regulated Activity (paid or unpaid) and makes arrangements for people to work in that activity. This will usually be an employer or a voluntary organisation;
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- K2.1 The Council has a duty to ensure that any contracted services are discharged having regard to the need to safeguard and promote the welfare of children, young people and vulnerable adults. The Provider will ensure that its performance of the Services proactively assists and supports the Council is achieving and complying with this duty.
- K2.2 The Provider will where required in the Specification ensure that all of the Personnel and/or Subcontractors are properly registered and DBS checked and that such registration and checks are up to date and monitored as being up to date on a regular and frequent basis during the Agreement Period.
- K2.3 The Authorised Officer must be notified immediately in writing by the Provider of all instances of suspected Abuse of any person which comes to the attention of the Provider by any means under and/or in accordance with the operation and/or performance of this Agreement.
- K2.4 Notwithstanding paragraph K2.5, the Parties acknowledge that the Provider is a Regulated Activity Provider with ultimate responsibility for the management and control of the Regulated Activity provided under this Agreement and for the purposes of the Safeguarding Vulnerable Groups Act 2006.
- K2.5 The Provider shall:
- K2.5.1 ensure that all individuals engaged in Regulated Activity are subject to a valid Enhanced DBS Check for Regulated Activity undertaken through the DBS; and
 - K2.5.2 monitor the level and validity of the checks under paragraph K2.5.1 for each member of Personnel; and
 - K2.5.3 not employ or use the services of any person who is barred from, or whose previous conduct or records indicate that he or she would not be suitable to carry out Regulated Activity or who may otherwise present a risk to vulnerable persons.
- K2.6 The Provider warrants that at all times for the purposes of this Agreement it has no reason to believe that any person who is or will be employed or engaged by the Provider in the provision of the Services is barred from the activity in accordance with the provisions of the Safeguarding Vulnerable Groups Act 2006 and any regulations made thereunder, as amended from time to time.
- K2.7 The Provider shall immediately notify the Council of any information that it reasonably requests to enable it to be satisfied that the obligations of paragraph K2.5 have been met.
- K2.8 The Provider must ensure that the Council is kept advised at all times of any Personnel who subsequent to their commencement of employment or engagement with the Provider receives a relevant conviction, caution, reprimand or warning or whose previous relevant convictions, cautions, reprimands or warnings become known to the Provider or any member of its Personnel and the Provider must immediately notify the Council where a

referral is made to the DBS in relation to future barring of any member of its Personnel in accordance with paragraph K2.9.

- K2.9 The Provider shall refer information about any person carrying out the Services to the DBS where it removes permission for such person to carry out the Services (or would have, if such person had not otherwise ceased to carry out the Services) because, in its opinion, such person has harmed or poses a risk of harm to vulnerable persons.

K3 SUSPENSION OF SERVICES

- K3.1** The Council may serve a Suspension Notice upon the Provider at any time if:

- a. the Council wishes to investigate any alleged Default by the Provider, or other alleged event, which if substantiated would entitle the Council to terminate the Agreement; and/or
- b. a Regulatory Body directs an inquiry into the Provider's affairs on the grounds of actual or alleged misconduct or mismanagement.

"Suspension Notice" means any notice which is served by the Council pursuant to paragraph K3.1

- K3.2** If the Council serves a Suspension Notice upon the Provider, then the Council may either suspend the provision of the Services (or any relevant part thereof) or suspend the provision of Services and the Provider shall comply diligently with any such suspension from and including the relevant specified date.

- K3.3** If the Council serves a Suspension Notice upon the Provider, then the Council may suspend the provision of payment of the Price (or any relevant part thereof) under paragraph C2.1 and as specified by the Council in the Suspension Notice (acting reasonably) and the Provider shall comply diligently with any such suspension from and including the relevant specified date.

- K3.4** Any suspension of the Services (or any part thereof) under paragraph K3.1 shall be reviewed by the Council not later than three (3) months after the service of the relevant Suspension Notice (subject to paragraph K3.5).

- K3.5** The Council shall ensure that any investigation which is carried out under paragraph K3.1 is undertaken as quickly and diligently as possible and the provider shall co-operate with any such investigation, including by providing information promptly to the Council if requested.

- K3.6** If during the suspension either, the Council shall request information from the Provider with respect to the investigation, and/or the Council shall request a written undertaking from the Provider to take particular steps and/or to refrain from particular action in order to avoid the repetition of any Default, then in calculating and applying the three (3) month time limit which is stated in paragraph K3.4, the period of time which is taken by the Provider to meet the request shall be disregarded.

- K3.7** The Council shall make available to the Provider a copy of the report of the findings of any investigation which is undertaken pursuant to paragraph K3.1(b) (as soon as practicable) after the investigation has been completed.

- K3.8** Upon either the cessation by the Council of any suspension of the Services (or any part thereof) which is implemented under paragraph K3.1, or the closure of any investigation which is initiated by the Council under paragraph K3.1(b), the Council shall serve Notice

on the Provider to confirm the lifting of the suspension in question.

K3.9 If the Council confirms any alleged Default or other alleged event pursuant to this section, or a Regulatory Body finds the Provider responsible for misconduct or mismanagement in relation to this Agreement then the Council may take further action in accordance with (but not restricted to) this Agreement.

K4 STEP-IN RIGHTS

<p>Step-in Trigger Event</p>	<p>means:</p> <ul style="list-style-type: none"> (a) the Provider's level of performance constituting a Persistent Breach or Catastrophic Failure; (b) the Provider committing a material Default which is irremediable; (c) where a right of termination is expressly reserved in this Agreement; (d) an Insolvency Event occurring in respect of the Provider or any financial difficulties or other events arising that prevents the Provider from performing the Services or paying its Personnel to deliver the Services; (e) a Default by the Provider that is materially preventing or materially delaying the provision of the Services or any material part of them; (f) the Council considers that the circumstances constitute an emergency despite the Provider not being in breach of its obligations under this Agreement; (g) the Council being advised by a Regulatory Body that the exercise by the Council of its rights under paragraph K4 is necessary; (h) the existence of a serious risk to the health or safety of persons, property or the environment in connection with the Services; and/or (i) a need by the Buyer to take action due to any Applicable Law or to discharge a statutory duty.
<p>Step-out Plan</p>	<p>means the Provider's plan that sets out how the Provider will resume the provision of the Service and perform all its obligations under the Agreement following the completion of the Step-In Process.</p>

K4.1 If a Step-In Trigger Event occurs, the Council may give notice to the Provider that it will be taking action in accordance with this paragraph K4 and setting out:

K4.1.1 whether it will be taking action itself or with the assistance of a third party;

K4.1.2 what required action the Council will take during this step-in process ("**Required Action**");

K4.1.3 when the Required Action will begin and how long it will continue for;

K4.1.4 whether the Council will require access to any premises where the Services are

delivered; and

- K4.1.5 what impact the Council anticipates that the Required Action will have on the Provider's obligations to provide the Services.
- K4.2 For as long as the Required Action is taking place:
- K4.2.1 the Provider will not have to provide the Services that are the subject of the Required Action;
- K4.2.2 no deductions will be made to the Price relating to the Services that are the subject of the Required Action; and
- K4.2.3 the Council will pay the Price to the Provider after subtracting any applicable deductions and the Council's costs of taking the Required Action.
- K4.3 The Council will give notice to the Provider before it ceases to exercise its rights under the step-in process in this paragraph K4 and within twenty (20) Working Days of this notice the Provider will develop a draft Step-Out Plan for the Council to approve.
- K4.4 If the Council does not approve the draft Step-Out Plan, the Council will give reasons and the Provider will revise the draft Step-Out Plan and re-submit it for approval.
- K4.5 The Provider shall bear its own costs in connection with any step-in by the Council under this paragraph K4, provided that the Council shall reimburse the Provider's reasonable additional expenses incurred directly as a result of any step-in action taken by the Council under:
- K4.5.1 limbs (f) or (g) of the definition of a Step-In Trigger Event; or
- K4.5.2 limbs (h) and (i) of the definition of a Step-in Trigger Event (insofar as the primary cause of the Council serving a notice under paragraph K4.1 is identified as not being the result of the Provider's Default).

K5 TERMINATION OF CENTRAL GOVERNMENT FUNDING OR OTHER PUBLIC BODIES

- K5.1** Where any payment of the Price which is to be provided or made by the Council pursuant to this Agreement is either:

K5.1.1 Dependent (directly or indirectly) upon receipt or availability of finance from central government or other public body, and such finance ceases to be available to or receivable by the Council; or

K5.1.2 Becomes limited or no longer payable in the same amounts to the Council or at all by reason of central government impositions;

then the Council shall no longer be bound or required to make any payments of the Price to the Provider pursuant to the Agreement (at the absolute and unfettered discretion of the Council).

- K5.2** It is acknowledged, understood and agreed by the Parties that insofar as may be permitted by any Applicable Law the Council shall not be in breach or default of its duties and obligations under the Agreement and nor shall it be guilty of any tort, breach of statutory duty or other cause of action by reason of the implementation or impact of this provision.

K5.3 The Council shall have no indebtedness or liability for any loss, damage, expense, action, claim or demand arising from any person or legal entity if paragraph K5.3 applies.

K5.4 Where funding ceases or becomes limited, the Council shall not make any further payments to the Provider or be bound to pay the same. The Council, shall serve notice on the Provider to that effect and with effect from the date of service of the notice the Council shall not be obliged to accept any Services from the Provider under the Agreement and the Council shall only be obliged to pay the Provider for any Services already delivered to or received by the Council on a quantum meruit basis, as determined by the Council (acting reasonably).

K6. GOODS CLAUSES

K6.1 Not used.

K7. ENVIRONMENTAL OBLIGATIONS

K7.1 The Provider shall ensure that:

- (a) its operations comply with all applicable environmental laws, including in relation to waste disposal, GHG emissions and the handling of hazardous and toxic materials;
- (b) the goods it manufactures (including the inputs and components that it incorporates into its goods) comply with environmental laws;
- (c) it will only use packaging materials that comply with applicable environmental laws.

K7.2 The Provider shall have in place a suitable environmental management system for managing its environmental risks, which as a minimum must:

- (a) assess the environmental impact of all past, current and future operations;
- (b) specify steps to continuously improve environmental performance, and reduce pollution, emissions and waste;
- (c) specify measures to reduce the use of all raw materials, energy and supplies;
- (d) require Provider Personnel to be trained in environmental matters.

K7.3 The Provider shall, in performing its obligations under the Agreement:

- (a) comply with any environmental related KPIs (if applicable);
- (b) not provide to the Council any goods or deliverables comprising wholly or partly of single use plastic items;
- (c) not use any goods or deliverables which comprise wholly or partly of a single use plastic item to provide the Services unless the use is either related to management of the Provider's general operations, or otherwise agreed in writing with the Council;
- (d) minimise the release of GHG emissions, air pollutants and other substances damaging to health and the environment in providing the Services taking into account factors including the locations from which materials are sourced, transport of materials, work-related travel by Provider Personnel, emissions from Provider offices and equipment.

K7.4 Not used.

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