

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 Haven School Limited** whose information is as detailed in **A2** of the Particulars (the “**Provider**”).

together known as the “**Parties**”

BACKGROUND

- (A) The Council requires the Provider to provide the Services (as defined below) in accordance with the terms and conditions of this Agreement.
- (B) The Provider agrees to perform the Service in accordance with these terms and conditions.
- (C) C1.1 In December 2024 the Government issued a White Paper on Local Government Re-Organisation entitled the “English Devolution White Paper”.

C1.2 In March 2025 Staffordshire County Council submitted their suggested re-organisation plan to the Government and are awaiting a response.

C1.3 Final proposals will be submitted in November 2025 and implementation of the changes is expected by Government to be by 2028 at the earliest.

C1.4 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.

C1.5 Updates on proposals and changes can be found on the Staffordshire County Council Website and at other media outlets.

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
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 and any formal Variation) at any time during the Agreement Period);
Agreement Period	as defined in Clause 2.1;
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(s)	means the officer(s) authorised to act on behalf of each Party under this Agreement, as specified at A4 of the Particulars (or such other person nominated by the relevant Party from time to time);
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 therefore outside the scope of this Agreement, as may be further detailed in A8 of the Particulars;
BACS	means Bankers' Automated Clearing Services which is an electronic system for making payments directly from a bank to another;
bribery	means the Council's duty to secure continuous improvement, as defined in Section 3 of the 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 by the Provider which in the reasonable opinion of the Council's Authorised Officer has or may cause significant harm to the reputation of the Council or has or may cause significant harm to users of the Services;
Commencement Date	means the date on which the Provider will begin to provide the Services as set out in the Particulars at A3;
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, 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;
Controller	has the same meaning as set out in the UK GDPR;
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: (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 which are available on request from the Council or as detailed in 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 of the obligations of the Provider 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:	as defined by Section 67(3) of the Procurement Act 2023;
End Date	means the date the Agreement ends, as detailed in the Particulars at A3 or as otherwise extended or terminated in accordance with this Agreement;
Extension Period(s)	means the period(s) of extension set out in the Particulars at A3 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	<p>Means any circumstance not within a Party's reasonable control including, without limitation:</p> <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 <p>but excluding any labour or trade dispute, strikes, industrial action or lockouts relating to the Supplier or the Supplier Personnel or any other failure in the Supplier's or a Sub-Contractor's supply chain;</p>
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 during the Agreement Period;
Goods	means the goods to be provided or delivered under this Agreement, as detailed in the Specification (if any) and to which the provisions of Schedule B shall apply;
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 of similar size, scope, nature, value and complexity to the Service under this Agreement;
Implementation Date	means the date the Provider will commence the Implementation Services (if any) as detailed in A3 of the Particulars;
Implementation Period	Means the period from the Implementation Date to the Commencement Date;
Implementation Services	means the work, obligations, undertakings, actions included in the Services that the Provider is required to conduct prior to the Commencement Date in order to prepare for the performance of the Services (if any);
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 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 duly signed by the Parties and attached at Annex 1 of Schedule E that relates to the requirements under Data Protection Legislation and any Security Management requirements of the Council in respect of Council Data;
Insolvency Event	<p>with respect to any person, means:</p> <ul style="list-style-type: none"> (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: <ul style="list-style-type: none"> (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 (ii) (being a partnership) is deemed unable to pay its debts within the meaning of section 222 of the Insolvency Act 1986; (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>(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 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> <ul style="list-style-type: none"> (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; (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; (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 (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>(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>
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)	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 a summary of the main contractual details of the Agreement, and once signed by both Parties forms a legally binding contract incorporating all the terms, conditions, Schedules and Annexes contained within this Agreement;
Party/Parties	the Council and/or the Provider (where applicable in the context of the particular circumstances);
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;
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 (entity directly or indirectly controlled by the Provider), consultants or other professional advisors. Any reference to “ Staff ” in this Agreement shall have the same meaning as this definition.;
Price	as detailed in the Pricing Schedule;
Pricing Schedule	means the document detailing payment of the Price attached at Annex 1 of Schedule C (<i>Financial Provisions</i>);
Prohibited Act	<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

	<p>Protection Legislation; or</p> <p>(ii) under legislation creating offences in respect of fraudulent acts; or</p> <p>(iii) at common law in respect of fraudulent acts in relation to this Agreement or any other agreement with the Council; or</p> <p>(iv) defrauding or attempting to defraud or conspiring to defraud the Council; or</p> <p>(v) under the Counter-Terrorism and Security Act 2015; or</p> <p>(vi) under the Modern Slavery Act 2015;</p> <p>(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	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 stored on whatever medium including but not limited to Personal Data, Data Bases and/or Confidential Information, Employee Liability Information, all expenditure reimbursed by the Council, all payments made by the Council, all payments received by the Provider all contracts relevant to the performance and/or delivery of the Services;
Regulations	means the Procurement Act 2023, the Procurement Regulations 2024 and where applicable the guidance and procurement policy notes (PPNs) issued by Central Government, as they apply to direct award contracts;
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);
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 I 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 H and/or as detailed in the Information Governance Agreement (as applicable);
Security Policies	means those policies 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 H;
Services	means the Services detailed in the Specification to be delivered or performed by or on behalf of the Provider in accordance with its obligations under the Agreement;
Special Category Data	means Personal Data that reveals such categories of data as are listed in Article 9(1) of the UK GDPR;
Specification	means the detailed description of the Services as set out in Schedule B (The 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;
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:	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 Specification) to this Agreement;

1.2.4 Schedule C to I of this Agreement in the order in which they appear;

1.3 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:

1.3.1 any standard short form terms provided to the Provider by the Council as part of their purchase order process; and

1.3.2 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.

1.4 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 Subject to clause 2.2, this Agreement shall take effect on the Commencement Date and shall continue until the End Date, unless extended under Clause 2.3 or terminated earlier in accordance with this Agreement ("**Agreement Period**").

2.2 Where Implementation Services are required before the Commencement Date, this Agreement shall take effect on the Implementation Date, and the Services shall commence on the Commencement Date, save for Clauses 10-13 relating to payment.

2.3 Subject to satisfactory performance of the Agreement by the Provider, the Council may (in

its absolute discretion) extend the Agreement for the Extension Period(s) subject to a minimum of three (3) months notice in writing being given by the Council to the Provider prior to the End Date.

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 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;

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

3.3 The Provider acknowledges that they do 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 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 The Provider shall provide the Implementation Services during the Implementation Period in accordance with this Agreement, and shall perform and deliver the Services as at the Commencement Date (time being of the essence) strictly in accordance with this

Agreement.

- 5.2 Subject always to Clause 24 (Force Majeure) time for delivery 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.
- 5.3 The Provider shall continue to perform all of its obligations under this Agreement and shall not suspend the supply of the Services notwithstanding:
- 5.3.1 any withholding of payment of the Price by the Council due to performance failures in accordance with Schedule D;
 - 5.3.2 any ongoing or unresolved dispute; and/or
 - 5.3.3 any failure by the Council to pay the Price to the Provider due to any acts or omissions by the Provider.
- 5.4 The Council has not consented to any sub-contracting by the Provider, unless otherwise detailed in A5 of the Particulars.
- 5.5 The Provider agrees that they will allow, facilitate and enable the Council, upon service of reasonable Notice 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.
- 5.6 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).
- 5.7 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.
- 5.8 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.
- 5.9 The Provider shall:
- 5.9.1 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);

5.9.2 in performing its obligations under this Agreement comply with all Applicable Laws, statutes, regulations and codes (as amended from time to time) in force in relation to the Service.

5.10 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.

5.11 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 Services that are to be provided are set out in the 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 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, 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

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 be in writing and agreed between the Parties and signed by the Parties' respective authorised representatives.

10. PRICE

- 10.1 Subject to Clause 10.4, 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 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 Services in compliance with the provisions of the Agreement. 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 in 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 by the Council's Authorised Officer.
- 10.6 The Provider acknowledges that the Implementation Services shall be provided at the Providers own cost, and no payment shall be made by the Council for any Implementation Services, unless otherwise specified in the Pricing Schedule.

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 A4 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 A4 of the Particulars.

15. AUDIT

- 15.1 The Provider shall keep and maintain for twelve (12) years after the End Date, or as long as may be agreed between the Parties, full and accurate Records relating to the performance and/or delivery of the Services under this Agreement in accordance with Good Industry Practice and all Applicable Laws.
- 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 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 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.
- 15.4 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:
- 15.4.1 all reasonable information requested by the Council (and/or its designated representatives, agents, and/or professional advisers) within the scope of the audit;
 - 15.4.2 reasonable access to sites controlled by the Provider and to any of the Provider's equipment used in the performance of the Services; and
 - 15.4.3 access to the Personnel.
- 15.5 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 (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.

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

16.2.1. 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 Provider 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

16.2.2 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.

16.2.3 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.

17. INTELLECTUAL PROPERTY RIGHTS

17.1 Unless otherwise indicated at A7 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 Foreground 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 A7 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, 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 A7 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 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 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 and/or agents 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 a confidentiality agreement being in place;
- 18.2.7 provided to its professional advisers on a need-to-know basis and subject to a confidentiality agreement 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.

It is acknowledged by the Parties that Confidential Information will not fall within the exception in this 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.

- 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 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 and signs an agreement with the disclosing party on the same or equivalent terms to those confidentiality terms contained in this Agreement and more particularly this Clause 18 (Confidentiality).
- 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 in the breach of any confidentiality under this Clause 18 (Confidentiality) or otherwise.

19. FREEDOM OF INFORMATION

- 19.1 The Provider shall provide any required Information, at its own cost, within 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 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 E (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 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 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 against any and all losses incurred if the Provider breaches this Clause 20, Schedule E, and/or any Data Protection Legislation

and/or Schedule H.

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 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 A10 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 The Council's total liability to the Provider under this Agreement shall be limited to the Price.
- 21.6 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:
- 21.6.1 the Supplier's or the Supplier's Personnel's breach or negligent performance or non-performance of this Agreement;
 - 21.6.2 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 Supplier or Supplier Personnel;

21.6.3 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 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 A9 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 A9 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 Commencement Date and thereafter each year on the anniversary of the Commencement Date 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 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. 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 propose a Remedial Action Plan for the Provider to follow to remedy the Default. Once such Remedial Action Plan is agreed between the Parties, the Provider must immediately start work on the actions in the Remedial Action Plan at its own cost.

23.3 A Remedial Action Plan should contain as a minimum:

23.3.1 details of performance issues and areas for improvement, with corresponding evidence;

23.3.2 the improvements required and associated timescales;

23.3.3 actions the Provider must take, and required targets or outputs;

23.3.4 clear deadlines for meeting these requirements;

23.3.5 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

23.3.6 the Parties agreement to the terms of the Remedial Action Plan

23.4 If the Provider fails to satisfactorily undertake the actions set out in the Remedial Action Plan or and/or the Remedial Action Plan fails to remedy the Default specified in the Default Notice then the Council shall be entitled to suspend payment under Schedule C (Financial Provisions) or terminate the Agreement in accordance with Clause 26.1.3 (Termination).

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

The Council and Provider shall have the right to terminate this Agreement in whole or in part at any time by giving the other Party the length of Notice specified in A11 of the Particulars.

26. TERMINATION

26.1 The Council may either terminate this Agreement in whole or in part with immediate effect, without penalty by serving Notice and exercise its rights under and in accordance with Clause 27 (Consequences of Termination) in circumstances 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;
- 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 set out in the relevant Default Notice or fails to carry out the actions detailed in the Remedial Action Plan under Clause 23;
- 26.1.4 the Provider commits a Persistent Breach or Catastrophic Failure notwithstanding the process of a Contract Review in accordance with Schedule B (The Specification) and Schedule D (Performance Monitoring, Quality Assurance and Contract Review);
- 26.1.5 an Insolvency Event occurs in respect of the Provider;
- 26.1.6 the Council has evidence or reasonably suspects the Provider or any related entity or person of fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the Council's financial interests. The Provider's attention is drawn to the criminal offences created by the Local Government Act 1972 and the Bribery Act 2010;
- 26.1.7 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; and/or
- 26.1.8 the Provider is in breach of Clause 5.8 (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;
- 26.1.9 there is or may be an actual conflict of interest, or a potential conflict of interest between the interests of the Provider and the duties owed to the Council under clause 39 (Conflicts of Interest) of this Agreement;
- 26.1.10 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;
- 26.1.11 in compliance with section 41 of the Procurement Act 2023, the Provider is or becomes an excluded supplier (as defined by section 57 of the Procurement Act 2023), unless the Council considers that an overriding public interest under section 41(5) of the Procurement Act 2023 applies; and/or
- 26.1.12 the Provider becomes an excludable supplier 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 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.

- 26.3 The Council may deduct any amount due from the Provider under Clause 26.2 from the next or any subsequent payment or otherwise, to the extent that such amounts exceed the subsequent 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.
- 26.4 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 Where 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, damages, costs, and/or 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 26.3 to the extent necessary to reimburse the Council for such losses, costs, and expenses.
- 27.2 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 termination date within a period not exceeding forty (40) Working Days from the termination date.
- 27.3 If this Agreement is terminated in whole or in part under Clause 26.1 then no further payments 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 for the remainder of the Agreement Period.
- 27.4 On expiry or termination, 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 will be handed over immediately to the Council.
- 27.5 If applicable and requested by the Council, all data bases will be returned or handed over to the Council in such form as required by the Council, or shall be otherwise amended, deleted or cleansed by the Provider as determined by the Council, subject the Parties respective obligations under Data Protection Legislation.
- 27.6 Where the Council has appointed a Replacement Provider to continue the performance of services substantially similar to the Services, the Provider shall (at its own cost and expense):

- 27.6.1 work diligently and proactively with the Replacement Provider to handover the Services to the Replacement Provider;
 - 27.6.2 ensure there is no disruption to the Services and/or the Council, and/or its Service Users;
 - 27.6.3 follow, promptly and diligently and comprehensively the directions and requests from either the Replacement Provider and/or the Council as appropriate; and
 - 27.6.4 comply with any and all obligations under Clause 33 (TUPE) (where applicable).
- 27.7 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).
- 27.8 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 26.1 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.
- 27.9 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 13 (Recovery of Sums Due (Set-Off)); Clause 15 (Audit); Clause 17 (Intellectual Property Rights); Clause 18 (Confidentiality); Clause 19 (Freedom of Information); Clause 20 (Data Protection); Clause 21 (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 31 (Modern Slavery); Clause 36 (Prevention of Bribery & Fraud); Clause 36 (Fraud and Prevention of Corruption); Clause 41 (Dispute Resolution Procedures); Clause 45 (Governing law); and Schedule I (Whistleblowing).

28. CONTINUING RIGHTS AND REMEDIES ETC

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 other of any health and safety incidents or material hazards they're 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 set 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 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 shall:

31.1.1 have and maintain throughout the Agreement Period its own policies and procedures to ensure its compliance with the Modern Slavery Act 2015;

31.1.2 implement due diligence procedures within its business to ensure that there is no slavery or human trafficking in any part of its supply chain performing obligations under this Agreement;

31.1.3 where reasonably requested, prepare and deliver to the Council, an annual slavery and human trafficking report setting out the steps it has taken (and are taking) to ensure that slavery and human trafficking is not taking place in any of its supply chains or in any part of its business; and

31.1.4 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.

- 31.2 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 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 will 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 in a confidential manner and in the native language of such Personnel in respect of workforce conditions, working or employment practices and recruitment practices.

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 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, and (where permitted by law) notify the Council.

33. TUPE

33.1 Where TUPE applies to Personnel on commencement, expiry or termination of this Agreement, the provisions in this Clause 33 and Schedule F (TUPE and Pensions) shall apply and the Parties shall each comply with their respective TUPE obligations.

33.2 Without prejudice to the provisions of Schedule F (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, to ensure that any Personnel and staff of the transferee are not unfairly treated or their rights prejudiced unnecessarily as a result of the change in provider.

33.3 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.

33.4 The Provider will at the Commencement Date and periodically and frequently throughout the Agreement Period, report to the Council regarding the Personnel who are engaged in the performance of 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. 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.

- 33.5 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 or novate, this Agreement without the prior written consent of the Council and shall not subcontract the Services provided under this Agreement at any time, other than specifically detailed in A5 of the Particulars.
- 34.2 Where a Subcontractor is or becomes an excluded supplier (as defined by section 57 of the Procurement Act 2023), then, the Provider shall replace or shall not appoint the Subcontractor(s) unless the Council considers that an overriding public interest applies under section 41(5) of the Procurement Act 2023.

35. WAIVER

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; nor
 - 36.1.2 do or allow anything which would cause the Council, including any of their employees, consultants, contractors, subcontractors or agents to breach the Bribery Act or incur any liability under it.
- 36.2 The Provider must immediately notify the Council in writing if it becomes aware of any breach of Clause 36.1, including:
- 36.2.1 details of the Prohibited Act;
 - 36.2.2 the identity of the Party who has committed the Prohibited Act; and
 - 36.2.3 the action it has decided to take.
- 36.3 The Provider must during the Agreement Period:
- 36.3.1 create, maintain, and enforce adequate policies and procedures to ensure it complies with the Bribery Act; and
 - 36.3.2 keep full records to show it has complied with its obligations under this Clause 36 and give copies to the Council on request.
- 36.4 The Provider shall respond promptly to any further enquiries from the Council and co-

operate with any investigation and allow the audit of any books, records and relevant documentation.

36.5 The Council may:

36.5.1 require the Provider to remove any Personnel from providing the Services if their acts or omissions have caused a Prohibited Act;

36.5.2 immediately terminate this Agreement following a breach of this Clause 36; 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 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

36.6 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:

36.6.1 collusion with members of the staff of the Council, or any other Regulatory Body or Government department;

36.6.2 computer fraud;

36.6.3 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 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).

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, or representative 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.

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 the duties that the Provider owes to the Council under the provision of this Agreement. 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. 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 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 officers, and agents 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 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 A4 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 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 (may be) 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 there is a dispute between the Parties, their senior representatives who have authority to settle the dispute will, within 28 days of a written request from the other Party, meet in good faith to resolve the dispute by commercial negotiation.
- 41.2 If the dispute is not resolved at that meeting, the Parties can attempt to settle it by mediation using the Centre for Effective Dispute Resolution ("CEDR") Model Mediation Procedure current at the time of the dispute. If the Parties cannot agree on a mediator, the mediator will be nominated by CEDR. If either Party does not wish to use, or continue to use mediation, or mediation does not resolve the dispute, the dispute must be resolved using Clauses 41.3 to 41.5.
- 41.3 Unless the Council refers the dispute to arbitration under Clause 41.4, the Parties irrevocably agree that the courts of England and Wales have exclusive jurisdiction.
- 41.4 The Provider agrees that the Council has the exclusive right to refer any dispute to be finally resolved by arbitration under the London Court of International Arbitration Rules current at the time of the dispute. There will be only one arbitrator. The seat or legal place of the arbitration will be London and the proceedings will be in English.
- 41.5 The Council has the right to refer a dispute to arbitration even if the Provider has started or has attempted to start court proceedings under Clause 41.3, unless the Council has agreed to the court proceedings or participated in them. Even if court proceedings have started, the Parties must do everything necessary to ensure that the court proceedings are stayed in favour of any arbitration proceedings if they are started under Clause 41.4.
- 41.6 The Provider cannot suspend the performance of the Agreement during any dispute.

- 41.7 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.

43. BUSINESS CONTINUITY

- 43.1 The Provider shall 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:

- 43.2.1 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 Contract Period);
- 43.2.2 allow the Council (at its discretion) from time to time during the Agreement Period to monitor the Provider's business continuity arrangements;
- 43.2.3 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
- 43.2.4 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.

- 43.3 In the event that the Provider fails to notify the Council of any incident then the Council may reserve the right to terminate under Clause 26.

44. COUNTERPART

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

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.

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 2023	
Schedules to apply:		Schedules A - I	
Title of the contract / outline description of the Services		IA3657 Specialist Placements for Pupils with Education, Health and Care Plans	
<u>A Ref.</u>	<u>Clause Number:</u>	<u>Information Required</u>	<u>To Be Completed to form the Agreement</u>
A1		IA Contract Reference	IA3657
A2	Parties	Full Name of the Provider:	The Haven School Limited
		(i) Company Number of Provider: (ii) Charity Registration Number of Provider (as applicable):	09879870
		Registered Address of the Provider:	2 Lymevale Court Lyme Drive, Parklands, Stoke-On-Trent, England, ST4 6NW
A3	Clause 2	Implementation Date (if any):	N/A
		Commencement Date:	1 September 2025
		End Date:	31 August 2027
		Extension Period(s):	1 September 2027 to 31 August 2028 and 1 September 2028 to 31 August 2029
A4	Clause 14	Details of Authorised Officer for the Council:	Council's Authorised Officer Name: Sam Tomson Title: Education Commissioning Officer Tel no. (DDN): 07773791782 Mobile: 07773791782 Email: sam.tomson@staffordshire.gov.uk Postal Address: Staffordshire County Council, 1 Staffordshire Place, Stafford ST16 2LP
		Details of Authorised Officer for the Provider:	Provider's Authorised Officer Name: John Anderson Title: CEO - Edison Young People

			Tel no: 07538718524 Email: j.anderson@edison-yp.co.uk Postal Address: 2 Lymevale Court Lyme Drive, Parklands, Stoke-On-Trent, England, ST4 6NW	
A5	Clause 5.4 & Clause 34	Subcontractor permitted:	<input type="checkbox"/> check box if permitted to subcontract	
A6	Clause 10 & Schedule C	Provider's Bank Details where payments are to be submitted by the Council:		
		Provider's Name of Bank Account:	The Haven School Limited	
		Provider's Bank Account Number:	65407109	
		Provider's Sort Code:	40-35-18	
		Full Postal Address of Provider's Bank:	26 Clumber St, Nottingham NG1 3GA	
A7	Clause 17	INTELLECTUAL PROPERTY RIGHTS Check this box if the Intellectual Property rights are to be owned by the Provider: Where this box is checked the Provider does not waive its rights under Clause 17.3 and that clause shall not apply.		<input type="checkbox"/>
<i>Where A7 has been checked, specify here in detail any restrictions on the Council's 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.</i>				
A8		Background Intellectual Property Rights exist check the box and specify the details, nature and type of IPR that exists.		<input type="checkbox"/>
INSURANCE				
A9	Clause 22	Insurance type:	Minimum level	
		Employers Liability Insurance	£10,000,000	
		Public Liability Insurance	£10,000,000	
		Professional Indemnity Insurance	£5,000,000	

		Products Liability	Not applicable
		Medical Malpractice	Not applicable
		Motor Vehicle	Fully Comprehensive
		<i>Note: If the Limit of the Provider's Liability is different from the insurance levels above, please amend the above limited liability amounts in this A9</i>	
A10	Clause 21.2	Liability Cap:	
A11	Clause 25	Period of no-fault Notice to terminate under Clause 25 (Break Clause):	Two (2) academic terms

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:



25/584

25/584 (Nov 24, 2025 10:09:20 GMT)

Authorised Signatory:

Paula Dalton

Paula Dalton (Nov 25, 2025 11:55:09 GMT)

Name:

Paula Dalton

Date:

25/11/2025

TWO DIRECTORS

EXECUTED and **DELIVERED** as a **DEED**
by the Provider named in the Particulars
acting by:

Director (Signature):

John Anderson

John Anderson (Nov 13, 2025 14:23:00 GMT)

Name:

John Anderson

Date:

13/11/2025

Director (Signature):

Name:

Richard Craner

Date:

24/11/2025

SCHEDULE B – THE SPECIFICATION

IA3657 Specialist Placements for Pupils with Education, Health and Care Plans

1. Introduction

- 1.1. The Provider, an Ofsted registered, Section 41 approved independent special school will provide twenty-five (25) places to the Council for pupils with an Education Health and Care Plan (EHCP).
- 1.2. The Provider may utilise a satellite centre which has environmental capacity for selected children and young people on roll of The Haven Independent Special School.
- 1.3. The Provider provides education for boys and girls aged 11 to 19 years who may benefit from a therapeutically informed environment to address their needs in the category of Social, Emotional and Mental Health (SEMH).
- 1.4. At the heart of the work in a school based on therapeutic principles is a recognition of the need to understand and address the impact on children of traumatic early experiences. Such experiences may include serious loss, neglect, abuse, or significant attachment difficulties which are likely to have had severe consequences for the young person's capacity to be looked after, to make friends or be part of a group, to learn and be taught, or just to respond appropriately to everyday interactions. As a result of this young people may have been given mental health diagnoses for example such as attachment disorder, anxiety disorder, depression, post-traumatic stress disorder.
- 1.5. It is recognised that not all children necessarily will have had contact with mental health services and therefore may not have received such labels, or the origin of their difficulties may be unknown or not be understood so far. As a result of these experiences young people may present as highly anxious or aggressive with non-compliant or self-harming behaviours or due to medical reasons and may have been out of school for significant periods.

2. Service Principles

- 2.1. The Provider will work in partnership with the Council to ensure that Learners receive the opportunities and support they require to succeed in education, to live an independent life, gain employment and achieve the following five outcomes as set out in the Children Act 2004:
 - Being healthy.
 - Staying safe.
 - Enjoying and achieving.
 - Making a positive contribution.
 - And Economic wellbeing.
- 2.2. The Provider will work in partnership with the Council to ensure that it works in accordance with the Inclusion Standards 2021 and appended to this document as Appendix 3.
- 2.3. The Provider will, together with the Council, support Learners in achieving these outcomes through:

- 2.3.1. Providing a safe, stable and caring environment which supports each Learner's educational and social development.
- 2.3.2. Ensuring Services are tailored to meet the individual needs, strength, and aspirations of each Learner. The voice of the child or young person will be central in decision-making and planning.
- 2.3.3. Safeguarding Learners' welfare by the application of clearly stated operational procedures, established standards of practice and provision, including the use of safe recruitment procedures for staff appointments (as set out in DfE Guidance and Sections 157 and 175 of the Education Act 2002).
- 2.3.4. Promoting the principle of partnership between Learners, parents/carers, the Council and Provider.
- 2.3.5. Being attentive and responsive to the Learner's individual needs and rights in relation to age, gender, ethnicity, sexuality and disability and meet specific cultural and religious needs.
- 2.3.6. Promoting equality of opportunity for all pupils regardless of background, disability, ethnicity, gender, or faith.
- 2.3.7. Actively reducing barriers to learning and participation.
- 2.3.8. Fostering a culture of belonging.
- 2.3.9. Promoting transparency between the Provider and the Council.
- 2.4. The Provider will provide Learners with access to a chartered clinical psychologist to provide direct therapeutic interventions to Learners and support for parents/carers.
- 2.5. The Provider will ensure that there are an appropriate number of suitably qualified and trained staff available at all times including staff with qualified teacher status.
- 2.6. The Provider will ensure that Learners are met on their arrival at the School or satellite centre and staff oversee their departure.
- 2.7. The Provider will work in partnership with parents/carers to provide assistance and, where necessary, individual training in relation to strategies to support and manage the behaviours of young people.
- 2.8. The Provider will work in partnership with the Council's SEND Assessment and Planning Service and Education Commissioning Team to ensure that education and care is provided in accordance with the Provider's stated philosophy.
- 2.9. The Provider and Council will work in accordance with the agreed Admissions Procedure detailed in the Service Specification Appendix 2.
- 2.10. The Provider will challenge pupils to reach their potential and to gain success in accredited examinations at Key Stage 4. As a minimum, the Provider will provide access to GCSEs in English, Mathematics and Science with a range of accredited qualifications also on offer. In response to the higher levels at which children and young people are working, Learners will be given the opportunity to access additional

GCSE subjects, AS Levels, and BTECs. The Provider will also offer vocational courses and Functional Skills qualifications.

- 2.11. The Provider will support Learners, where appropriate, to access lessons at any appropriate mainstream high school located geographically closer to the Learners home address or locality.
- 2.12. The Provider will support Learners, where appropriate, to access work experience opportunities as part of their preparation for adulthood programme.

3. Service Issue Escalation and Reporting to the Council

- 3.1. Where Service issues arise that cannot be resolved through internal processes or may impact the wellbeing, education or safeguarding of the Learner, the Provider must notify the Council representative (Head of SEND) to escalate concerns.
- 3.2. The Council acknowledges the importance of timely, effective collaboration between the Provider and the Council's SEND Team in ensuring best outcomes for children and young people. In instances where the Provider experiences delays, lack of communication, or incomplete actions from the SEND Team that may impact the delivery of support specified in an EHCP, the Council commits to the following:
 - **Named link officer:** Head of SEND
 - **Timely response:** Respond to any formal escalation within five to ten (5 to 10) working days outlining actions taken or proposed resolutions.
 - **Supportive intervention:** Where systemic or repeated issues are identified (e.g. consultation or placement confirmation delays), the Council will investigate and intervene, ensuring duties under the SEND Code of Practice are met.
 - **Joint working:** Promote regular communication between the SEND Team and the Provider, including attendance at annual Reviews.

4. Transport

- 4.1. The Provider will work in partnership with the SEN School Transport Team and in accordance with the Council's Travel Assistance criteria and Home to School general eligibility criteria for Pre and Post 16 transport arrangements. The Provider will provide access to independent travel training as part of its preparing for adulthood programme.

<https://www.staffordshire.gov.uk/Education/School-Transport/Under-16/SEN-travel/SEN-travel-homepage.aspx>

- 4.2. Transport between the main site, satellite centre or any alternative provision commissioned directly by the Provider during the school day will be the responsibility of the Provider.

5. Information to be provided by the Council

- 5.1. The Council will provide the following information at the commencement of each Learner's placement:

- 5.1.1. All necessary information before placement, including a copy of the Learner's EHCP and any other relevant reports or information available e.g. Care Plan and Personal Education Plan (PEP).
- 5.1.2. Named contacts in respect of each Learner including procedures for out of hours contact.
- 5.1.3. Access to any relevant professional advice which it may have available in respect of the educational and care needs of the Learner placed at the school.
- 5.1.4. Copies of all relevant correspondence between the Council and the Learner placed at the School and the parents/carers where appropriate.
- 5.1.5. The Council's "Missing from Care" Protocol.
<https://www.staffscp.org.uk/children-missing-from-home-care/>
- 5.1.6. Staffordshire County Council's model policy Safeguarding in School.
<https://www.staffscp.org.uk/safeguarding-policy-and-procedure-template-for-the-private-and-voluntary-sector/>
- 5.1.7. Notification of relevant Local Authority Designated Safeguarding Lead training sessions and updates, SENCO network meetings and updates and any other applicable Council led briefings.

6. Information to be provided by the Provider

- 6.1. The Provider will ensure the following are available and shared with the Council on request:
 - 6.1.1. School prospectus.
 - 6.1.2. Policies including (but not limited to): Accessibility, Admissions, Administration of Medicines, Anti-bullying, Assessment, Attendance, Business Continuity Plan, all care policies including those on behaviour and discipline, Careers, Child Protection and Safeguarding, Complaints, Curriculum, Disability and Equality Access, Exclusion. On-line Learning, Physical Intervention and Restraint, Risk Assessment, Whistleblowing.
 - 6.1.3. The Provider will ensure that all current policies are available via the school website and that these are reviewed on a regular basis.
 - 6.1.4. Clear and detailed information regarding the ethos and therapeutic model of the School and its general approaches to managing the challenges of their Learners with SEMH as their primary need.
 - 6.1.5. Term dates for each academic year sufficient to satisfy the Council that the Provider is providing education over three hundred and eighty (380) sessions per year.
 - 6.1.6. Details of the school day sufficient to satisfy the Council that the Provider is providing as a minimum an equivalent of twenty-five (25) hours of education across five (5) days a week during accepted school hours per Full Time Equivalent Learner.

- 6.1.7. Where the Provider utilises Alternative Provision for Learners or off-site educational provision, the measures taken to ensure alternative providers comply with the Alternative Provision Statutory Guidance for Local Authorities, Headteachers and Governing Bodies February 2025 and the Provider has completed its own quality assurance checks on the alternative provision utilised.
https://assets.publishing.service.gov.uk/media/67a1ee367da1f1ac64e5fe2c/Arranging_Alternative_Provision_-_A_Guide_for_Local_Authorities_and_Schools.pdf
- 6.1.8. Details of any safeguarding arrangements for Learners who are on a short-term reduced timetable including information about what the Learner is engaged in whilst not attending the School for the statutory minimum number of hours each week.
- 6.1.9. The Home School Agreement.
- 6.1.10. Within one (1) day of a Learner being placed on a reduced timetable, the details of that Learner through the Council's on-line Children Missing from Education (CME) Portal.
<https://www.staffordshire.gov.uk/education/Education-welfare/Children-missing-from-education.aspx>

7. Inspection and regulatory requirements

- 7.1. The Provider will ensure that the Council is notified prior to any planned or unplanned Ofsted visits during the contract period.
- 7.2. Following receipt of the final Ofsted inspection report, a copy is to be provided to the Council within five (5) working days or prior to the publication on the official Ofsted website.
- 7.3. Details of any areas for improvement or unmet independent schools standards in accordance with the DfE Independent School Standards Guidance for Independent Schools April 2019 to be provided to the Council within five (5) working days of receipt.
- 7.4. The Provider will provide to the Council confirmation that the School is included on the annual published list of independent special schools approved by the Secretary of State under Section 41 of the Children and Families Act 2014.
- 7.5. The Provider will inform the Council upon notification of the successful completion of the 3-stage process of application:
 - Stage 1 – specialism and background information
 - Stage 2 – quality of provision
 - Stage 3 – financial health assessment.
- 7.6. The Provider will inform the Council upon receipt of prior notification of any termly review and the outcome of the review in accordance with the Section 41 Guidance – Section 5 - Review of the list of independent special institutions.
- 7.7. The Provider will share with the Council details of any Governance and/or Development Plan that the Provider may have.

8. Meeting Educational Needs

- 8.1. The Provider will provide to each Learner:
 - 8.1.1. A detailed entry and Transition Plan following an agreed admission date, including scheduled taster sessions and target date for the Learners anticipated full-time attendance.
 - 8.1.2. An IEP or Individual Pupil Passport containing targets and timescales within six (6) weeks of admission linked to the provision specified as required in the EHCP.
 - 8.1.3. Education and/or training appropriate to the age, ability, aptitude and special educational needs of the Learner in accordance with their EHCP and taking account of information provided in Reviews.
 - 8.1.4. Such reasonable further services as are detailed and agreed between the Council and Provider from time-to-time following detailed assessment of the Learner's specific needs and confirmed in writing by both Parties.
- 8.2. The Provider will have in place a programme of activities which promote the development of the Learner's social, personal, leisure and life skills and which allows for a positive interaction with the School and wider community and family and is appropriate to support the young person in achieving goals / outcomes set out in the EHCP.
- 8.3. It is the expectation that all Learners will attend School on a full-time basis, however, in the event that a Learner is placed on a short term temporary reduced timetable it is done so with the prior agreement of parents/carers and the Council.
- 8.4. The Provider will have in place evidence of a clear agreed plan to increase the Learner's attendance to the full-time statutory hours over a specified time period.
- 8.5. Information of how the Learner is progressing towards a full-time timetable with any concerns will be shared with parents/carers and the Council.
- 8.6. The Provider will share with the allocated SEND Key Worker, SEND reports on the progress made by each Learner, using an agreed format on a termly basis.

9. Attendance Reporting

- 9.1. Alongside individual monitoring of children's and young people's attendance and sharing any relevant concerns with the Council, the Provider will also submit their weekly attendance for all children and young people placed by the Council, who are either placed with an EHCP, Children in Care or where the EHCP is maintained by Staffordshire County Council.
- 9.2. The Provider will use the Council's Attendance Collection Tool (ACT) that allows Providers to directly submit attendance information. This is currently facilitated via a third-party Provider and completed online via a simple web-based interface.
- 9.3. The Provider is required to use the attendance codes as prescribed by the Department of Education (DfE) guidance Working together to improve school attendance (applies from 19 August 2024).

10. Review of a Learner

- 10.1. Review meetings arranged by the Provider will be planned in consultation with the Council, the Learner and where appropriate the parent/carer and others concerned with a Learner's welfare and education. At least twenty-eight (28) working days' notice of such meetings will be sent to all concerned, including the Council. Wherever possible, reviews for different statutory purposes will be arranged in combination or to follow on from one another. The Provider will supply the Council with all relevant reports at least ten (10) working days before the Review meeting.
- 10.2. The Service provided to each Learner will be reviewed in accordance with the Education Act 1996, the Children and Families Act 2014, and, where appropriate, the Children Act 1989 (s26) and all statutory instruments made under those Acts as well as any statutory and non-statutory guidance made in regard to those Acts (including but not limited to) the SEND Code of Practice January 2015 and any other relevant legislation and guidance. Reviews may be undertaken as and when the Provider considers a review is necessary for example in the event of an emergency situation arising or upon a reasonable request by a Learner, parent/carer or the Council.
- 10.3. The purpose of a Reviews is to consider the needs of the Learner and if those needs have changed since the last Review to:
 - 10.3.1. Consider the provision required to meet those needs.
 - 10.3.2. Ensure that the Services provided continue to be appropriate.
 - 10.3.3. And consider whether the EHCP outcomes are being achieved.
- 10.4. Any recommendations that are made pursuant to a Review will be considered by the Council who have the responsibility to determine whether and in what respects to amend the EHCP.
- 10.5. The Provider shall be responsible for producing and maintaining a written record of Review meetings, with a copy of the record being sent to the Council within ten (10) working days of the meeting. Should the Council wish to amend or otherwise question the record it will do so within a further ten (10) working days.
- 10.6. The persons involved in such reviews will include the Learner, where appropriate parent/carer, Provider representative and other such persons as the Council may consider necessary. Normally, at the discretion of the Provider, staff who are significantly involved in a Learner's welfare will be invited to attend and contribute to Reviews.
- 10.7. A Review carried out in Year 9 for the purpose of creating the Transition Plan should include any relevant assessments under the Disabled Persons (Services, Consultation and Representation) Act 1986 and National Health Service and Community Care Act 1990. Representatives of the relevant Children Services, Council, Health Authority and Skills and Employability Services will be notified of the Review and invited to attend, whether or not the Learner is attending the School.
- 10.8. The Provider acknowledges that the first Review a Learner has in Year 9, and all subsequent Reviews must include preparation for adulthood, including employment,

independent living and participation in society. and in accordance with SEND Code of Practice January 2015 Chapter 8.1 Strategic Planning for the Best Outcomes in Adult Life. A Learner's views, wishes and feelings must be considered in all reviews.

- 10.9. Learners entering the provision in Year 11 will be considered at County Decision Making Group on an individual basis to determine whether agreement in principle for a two (2) year placement can be granted for them to continue in the provision into Year 12.
- 10.10. Whilst the Provider does offer a Post 16 education, there is no automatic continuation of placement for any Learner. Placement Post 16 requires the Council's approval. Approval will be required prior to the start of each academic year and is agreed for a one (1) year period only unless there is clear evidence of a two (2) year accredited course being delivered.
- 10.11. The Provider will undertake a Review of the Learner's EHCP as a matter of urgency if an educational placement is in danger of breaking down.

11. Exclusion on Disciplinary Grounds

- 11.1. The Provider shall take all reasonable steps to resolve problems with respect to misconduct on the part of a Learner, including liaison with the Council before considering the use of formal exclusion procedures.
- 11.2. The Provider will inform the Council at an early stage of any situation or developing problem likely to lead to an exclusion in order to give the Council the opportunity to work with the Provider and the parent/carer to resolve the difficulty.
- 11.3. Where the Learner is a Looked After Child, the Provider must abide by the Children Act 1989 (including Care Planning, Placement and Care Review Regulations 2010) as a minimum.
- 11.4. The exclusion period will be kept to a minimum for any one (1) episode.
- 11.5. The Provider's policy and procedures for a fixed period and permanent exclusion will be described in the Provider's documentation submitted to the Council. The Provider will be expected to comply with the principles and processes set out in Part VII of Education and Inspection Act 2006 and within the statutory guidance "Exclusion from maintained schools, academies and pupil referral units in England" both as amended from time to time.
- 11.6. A fixed period exclusion shall not exceed a total of forty-five (45) school days in any academic year, and the Provider will notify the Council by telephone at the earliest opportunity and confirm their action in writing within twenty-four (24) hours. During this period:
- 11.7. The Provider will provide work for the Learner to undertake and/or guidance regarding activities and occupation of time during the period of exclusion.
- 11.8. The Provider will convene a meeting at the earliest opportunity (and in all cases within five (5) working days) with the Council. The outcome of this meeting will be a strategy plan to be adopted for the Learner's return.
- 11.9. In the case of a Learner who is looked after by the Council the Provider will convene an urgent review meeting to agree the next steps.

- 11.10. In the event of a proposed permanent exclusion the Provider will notify the Council via the Education Inclusion Team by telephone immediately working days.
<https://www.staffordshire.gov.uk/Education/Exclusions.aspx>
- 11.11. Permanent exclusion of a Learner will not be confirmed until both the Council and the Parents/Carers have been given an opportunity to discuss the matter, with such discussions to take place within fifteen (15) working days. The Provider will take a further five (5) working days to consider their representations and to determine whether the exclusion should be upheld.
- 11.12. Exclusion is deemed permanent upon expiry of the twenty (20) working day period during which the Provider can consider representations and determine whether the exclusion should be upheld, unless before expiry of that period the Provider shall notify the Council's Education Inclusion Team that the exclusion is not upheld.

12. Health Services

- 12.1. The Provider, together with the Council, the local Integrated Care Board (ICB) and the parent/carer shall seek to ensure early identification and appropriate action in the event of a Learner's ill health, including appropriate care and treatments as prescribed by an appropriate health professional.
- 12.2. The Provider will ensure that:
- 12.2.1. It has and implements a written policy, procedures, and operational guidelines to promote the health of Learners and which encourages Learners to feel that their health is important.
 - 12.2.2. Local health services are alert to the specific and/or special health needs of the Learners and provide positive support to identify and address any health needs.
 - 12.2.3. Staff exercise effective controls over substance abuse, and where appropriate, smoking, drinking and sexual behaviour, and provide positive guidance to Learners in relation to these issues.
 - 12.2.4. It implements policies of non-smoking, prevention of substance abuse and consumption of alcohol which are consistent with the Department of Health's guidance on smoking and alcohol.
 - 12.2.5. All statutory health assessments are carried out within the prescribed period.
 - 12.2.6. Records are kept on the Learner's health, treatment, medication and assistance is given to a Learner's Key Worker where relevant in maintaining a comprehensive record of the Learner's medical history and any ongoing healthcare needs.
 - 12.2.7. Parents/carers and significant others are engaged where possible in promoting the healthcare of the Learners.
 - 12.2.8. Vaccination, immunisation, hearing and screening provision are undertaken when appropriate.

- 12.2.9. Learners receive health education which covers smoking, sex and relationships education, alcohol and substance abuse, sexually transmitted diseases, HIV Aids and personal hygiene.
- 12.2.10. Older Learners are consulted and their consent sought for medical examination and treatment.
- 12.2.11. The written agreement of the Learner and parent/carer (where appropriate) will be sought for the use of anaesthetics or psychotropic drugs on Learners, other than in life threatening situations, such medication to be administered only in accordance with the advice of fully qualified medical or dental practitioners.
- 12.2.12. All medication will be stored securely and safely handled by staff. Learners should not hold or administer drugs/medication unless expressly agreed to at a Review or admission meeting or with the express consent of the parents/carers and/or the Council. Appropriate advice and guidance will be sought from fully qualified medical or dental practitioners prior to agreement being given.
- 12.3. The Provider must carry out a detailed individual risk assessment for Learners over the age of sixteen (16) years who wish to administer / hold their own drugs / medication.
- 12.4. The Provider will have a policy on the administration of medication.
- 12.5. Where staff of the Provider administer medication and they are not qualified medical staff, the Provider will ensure that they have the appropriate knowledge and training. Records will be kept on the content and dates of course(s) and of attendees.

13. The Learner's Rights and Responsibilities

- 13.1. The Learner's welfare will be central to all aspects of the Providers' purpose, function, policies and procedures and the Provider will encourage Learners to accept their rights and responsibilities as members of the School and wider community. In meeting this obligation, the Provider will:
 - 13.1.1. In all aspects of its functioning ensure that Learners have every reasonable opportunity to exercise reasonable choice, where appropriate and subject to EHCP and Review decisions.
 - 13.1.2. Ensure Learners have the opportunity for privacy. While the Provider must balance this right with supervision for safety there will be no unnecessary intrusion or public attention in relation to Learners and their affairs.
- 13.2. The Provider will strive to ensure that the Learner's right to be treated with equality irrespective of race, gender, ethnicity, disability, national origin, age, religion, sexuality, or economic status is respected.
- 13.3. The School will provide for the Learner's individual and culturally appropriate dietary needs through the provision of an appropriate, balanced and nutritionally sound diet using discretion at all times when addressing the needs of a Learner with eating disorders.

- 13.4. The Provider will ensure that Learners have access to a computer and the internet. This can be a shared computer/ device, but it must enable safe usage and effective studying.
- 13.5. The School will have procedures to record, explain and review decisions which restrict a child's self-determination. Any restriction or sanction to be imposed, e.g. to control extreme behaviour seriously affecting the child's safety (or that of other children or staff) will be clearly stated in a Learner's Care Plan in order that staff know what action is permissible.

14. Management Systems

14.1. Control and Discipline of Children:

- 14.1.1. The Provider will have and make available its written policies on control and discipline. This will make explicit what are permitted and what are prohibited measures within the provision, including restrictive physical intervention any physical contact. Staff will be fully aware of these policies and how to apply them in practice.
- 14.1.2. Any such policy shall be compatible with DfE guidance on managing behaviour in school.

15. Protection of Children

- 15.1. The Staffordshire Safeguarding Children Partnership (SSCP) website <https://www.staffsscp.org.uk/> includes a wealth of procedures and guidance in relation to Staffordshire processes in line with current legislation and statutory guidance.
- 15.2. All Personnel within the Service must be aware of the organisational and individual responsibilities they have with regards to Safeguarding. For further details and clear outline of these expectations regarding the responsibilities and duties please refer to Keeping children safe in education (KCSIE) and Working together to safeguard children.

<https://www.gov.uk/government/publications/keeping-children-safe-in-education--2>

<https://www.gov.uk/government/publications/working-together-to-safeguard-children--2> and your organisation's Safeguarding Policy.

15.3. The Provider will:

- 15.3.1. Maintain up to date knowledge of emerging SSCP priorities.
- 15.3.2. Ensure the Provider Designated Safeguarding Lead (DSL) has completed Level 1 Safeguarding Training, Level 2 Working Together training, and Level 3 DSL training.
- 15.3.3. Ensure that the DSL/Deputy Designated Safeguarding Lead (DDSL) completes the Level 3 training within two (2) years of starting the role of DSL and PREVENT training within six (6) months.
- 15.3.4. Ensure all Personnel have completed Level 1 Safeguarding Training which is kept up to date.

- 15.3.5. Report appropriate safeguarding concerns where threshold has been met to the Staffordshire Children's Advice and Support Service (SCAS).
- 15.3.6. Ensure that safeguarding risk assessments and/or safety plans are in place where appropriate.
- 15.3.7. Complete relevant accident and injury records where necessary.
- 15.3.8. Ensure a lone working policy where applicable is implemented to ensure the welfare of Personnel.
- 15.3.9. Ensure that accurate safeguarding records are kept, where appropriate. These records must be confidential and stored securely and when appropriate, transferred in a timely manner in line with KCSIE.
- 15.4. The Provider will record occasions where restraint and/or restrictive intervention is used, whether planned or unplanned in accordance with regulatory and Ofsted guidance. The Provider should set out, in their behaviour policy the circumstances in which restraint and/or restrictive intervention might need to be used and should acknowledge the Provider's legal duty to make reasonable adjustments for disabled children.
- 15.5. Any use of restraint and/or restrictive intervention should be followed by the Provider conducting a post-include review, with the child/young person and parents and a staff debrief, providing opportunities to reflect on what has happened.
- 15.6. The Provider will immediately inform the Council of allegations of ill-treatment or abuse which involve any Learner whom the Council has placed in the care of the Provider, and which falls within the remit of the Staffordshire Safeguarding Children Partnership Procedures. It will inform other parties as required by those procedures.

16. Absence of Headteacher

- 16.1. The Provider will inform the Council in writing four (4) weeks in advance of any planned absence of more than four (4) weeks duration of the Headteacher where this is not part of normal leave arrangements. The arrangements for running the School which will apply during such absence and those which will apply on the Headteacher's return will ensure that the quality of education is not adversely affected.

17. Notifications to and from the Council

- 17.1. The Provider agrees to notify the Council's key contact/s as soon as possible and within twenty-four (24) hours in any of the following circumstances:

Notifications	
The Provider is required to notify the Council as follows:	
"Without Delay" in the event of:	Within forty-eight (48) hours in the event of:
Serious illness or accident sustained by the Learner.	A formal complaint being received from the Learner / young person.
Outbreak of any infectious disease which may be considered sufficiently serious to be so notified in the opinion of a registered medical practitioner.	There is fear for the safety of the Learner whilst in the care of the Service Provider.

An allegation that a Learner has committed a serious offence.	Any situation which threatens the Learner's well-being including self-harm or attempted self-harm.
Serious incident necessitating calling the Police to the School.	All holidays granted to a Learner outside academic terms or those extending beyond the two (2) weeks that can be given as authorised absence in special circumstances.
Absence by the Learner from the School for any reason unless pre-arranged and agreed with the Council.	Any significant circumstance which affects the Provider's ability to provide the Service to a Learner in accordance with this Agreement.
Any serious complaint about the School, Provider or persons working there.	
Instigation and outcome of any child protection enquiry involving a Learner at the School.	
Referral to the Secretary of State pursuant to section 2(1)(a) of the Protection of Children Act 1999(a) of an individual working at the School or in line with requirements under Vetting and Barring / Independent Safeguarding Authority.	

N.B. In the case of these circumstances, it is possible to contact the Council's Out of Hours Service via the local Police if necessary.

Absence of a Learner without authority:

- 17.2. In the event of a Learner being absent from the Provider's premises without authority for a significant period, determined in relation to the Learner's individual circumstances and age, the Provider will take all actions which would be expected of a reasonable parent and will notify the parents/carers and the Council in all cases. In the case of a Child in Care, the Provider must follow the advice set out in the Council's "Missing from Care" protocol.

18. Change of a Learner's Circumstances:

- 18.1. Should the Provider or the Council feel that a particular Learner's circumstances have changed to the extent that the Provider or the School's provision is no longer suitable or is unable to provide the required standard of Service for that Learner then this should be discussed between the Provider and the Council to agree a course of action.

19. Complaints and Representations

- 19.1. The Provider shall have a written procedure consistent with legislation and guidance appropriate to education and care of Learners to enable a Learner and/or their parent/carer to make complaints and representations about the Provider and this should be provided to the Council.
- 19.2. Prior to placement, Learners and their parents/carers must be given information about the complaints procedure and how it works. This must be in an easily understood and appropriate form. All staff should be familiar with the procedure and know how to

assist a Learner and/or their parent/carer or other advocate in the making of a complaint or representation.

- 19.3. The procedure must include provision for the involvement in the instigation of complaints of an appropriately experienced individual or agency such as mediation or disagreement resolution services independent of the day to day functioning of the Provider.
- 19.4. The procedure should allow the involvement of an advocate acting on behalf of a Learner or Parent/Carer and the procedure must establish a process of referral to an advocate if the Learner or parent/carer wishes, at no cost to the Council or the Provider. If advocacy services are not available a referral may be made back to the Council.
- 19.5. The existence of the procedure does not remove a Learners or parent's/carers right of access to the Council's complaints and representation procedure where they are eligible to do so. Written details of the same and the identity of the Council's officer to whom applications should be made will be provided by and at the expense of the Council to all parents/carers.

20. Personnel and DBS Requirements

- 20.1. The Provider shall employ sufficiently trained, suitably qualified and experienced staff to ensure that the Services are provided throughout the Contract Period in compliance in all respects with the Contract Standards.
- 20.2. The Provider shall ensure that it has sufficient Personnel to provide the Service to the Contract Standards during any period of absence due to sickness, maternity leave, and personnel holidays or otherwise.
- 20.3. The Provider shall ensure that the Personnel employed in and about the provision of Service shall always exercise due care and diligence in the execution of their duties.
- 20.4. The Provider shall:
 - 20.4.1. Employ an equal opportunities policy when selecting its Personnel, provided that the ability to provide a good quality service shall be the main criterion.
 - 20.4.2. Ensure it only recruits and deploys Personnel that have been subject to an appropriate level of DBS check in line with the activity undertaken as set out in Part 3 of KCSIE.
 - 20.4.3. Implement safe and thorough recruitment practices by requiring the completion of a comprehensive written job application form which requires the applicant to disclose full details of the following to ensure their suitability to provide the Service to Learners:
 - 20.4.3.1. Their individual qualifications, employment experience and character information.
 - 20.4.3.2. A complete record of employment must be obtained with any gaps in employment fully accounted for.
 - 20.4.3.3. Details of any criminal convictions, regardless of whether or not the convictions are classified as spent under the Rehabilitation of Offenders

Act 1974 (having regard to the application of Sub-section 4(3)(a) of the said Act and Clause 12 of Schedule 1 of the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975).

- 20.4.4. Obtain at least two (2) written references for each potential Personnel appointee, one (1) of which must be from their immediate previous employer (or each immediate previous employer if the person in question had more than one (1) job in the period of six (6) months immediately prior to them becoming employed by the Provider). In obtaining written references the Provider will:
 - 20.4.4.1. Diligently follow up each written reference by a telephone call to the relevant referee in order to verify the reference.
 - 20.4.4.2. Not appoint any person as a member of its Personnel if the Provider is unable to secure a satisfactory and reliable reference from the relevant individual's immediate previous (subject to any contrary written approval from the Council's Authorised Officer).
- 20.4.5. Comply with the requirements of Section 8 of the Asylum and Immigration Act 1996 and the Immigration (Restrictions on Employment) Order 2004 (as amended and re-enacted from time to time and will confirm each job applicant's legal right to work in the United Kingdom.
- 20.4.6. Not allow any member of Personnel to commence employment in relation to the provision of the Service prior to the Provider's receipt of a satisfactory DBS.
- 20.4.7. Give Notice to the Council immediately if any member of Personnel who, subsequent to his/her commencement of employment as a member of Personnel, receives a conviction or whose previous convictions become known to the Provider (or any employee of a Sub-contractor(s) involved in the provision of the Service.
- 20.4.8. Comply diligently throughout the Contract Period with the DBS requirements.
- 20.5. The Provider may engage a person in a Standard DBS Position or an Enhanced DBS Position (as applicable) pending the receipt of the Standard DBS Check or Enhanced DBS Check or Enhanced DBS & Barred List Check (as appropriate) with the prior agreement of the Council.
- 20.6. The Provider will ensure that until the Standard DBS Check or Enhanced DBS Check or Enhanced DBS & Barred List Check (as appropriate) is obtained, the following safeguards will be put in place:
 - 20.6.1. An appropriately qualified and experienced member of Personnel is appointed to supervise the new member of staff.
 - 20.6.2. Wherever it is possible, this supervisor is on duty at the same time as the new member of Personnel or is available to be consulted.
 - 20.6.3. The new member of Personnel is accompanied at all times by another member of Personnel, preferably the appointed supervisor, whilst providing Services under this Agreement.

- 20.7. The Council's Authorised Officer (acting reasonably) shall be entitled to require the Provider to remove immediately from the provision of the Services any member of staff.
- 20.8. The Provider shall, however, have the right to make representations to the Council's Authorised Officer about any such requirement.
- 20.9. After taking any representations into account, the Council's Authorised Officer shall be entitled to confirm, revoke or vary his decision on behalf of the Council and the Provider shall comply diligently with any such decision.
- 20.10. The Provider shall bear the cost or costs arising from any Notice, instruction or decision of the Council under this clause provided that the Council acts reasonably.

21. Social Value

- 21.1. The Council requires the Provider to utilise a framework to measure and report on Social Value.
- 21.2. An example of a basic tool which could be used is the National TOMS Framework <https://socialvalueportal.com/national-toms/> , however, it is recognised that the Provider may already have a preferred, robust mechanism for identifying, tracking and calculating Social Value.
- 21.3. The Provider must focus any Social Value on: -

Theme	Outcomes	
Social	Healthier, Safer and More Resilient Communities	<ul style="list-style-type: none"> • Creating a healthier community. • More working with the Community. • Engaging and empowering children and young people through education. • Improving children and young people's emotional health and wellbeing. • Developing the social and independence skills of children and young people. • Supports Care Leavers and the Care Leaver Covenant https://mycovenant.org.uk/about-the-care-leaver-covenant/
Jobs	Promoting Local Skills and Employment	<ul style="list-style-type: none"> • More local people in employment. • More opportunities for disadvantaged people (e.g. Care Leavers). • Improved skills for local people. • Improved employability of children and young people.
Innovation	Promoting Social Innovation	<ul style="list-style-type: none"> • Promoting new ideas and finding solutions to better improve the educational outcomes for children and young people within Staffordshire. • Developing and implementing innovative measures to enable healthier, safer and more resilient communities.

Environmental	Promote environmentally friendly practice	<ul style="list-style-type: none"> • Raising awareness of environmental factors and climate change. • Promoting environmentally friendly practices which reduce carbon emissions. • Using recyclable materials to reduce waste.
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22. Performance Monitoring, Quality Assurance and Contract Review

- 22.1. Arrangements for performance monitoring, quality assurance and contract review shall be subject to review and development by the Council during the contract period. The parties accept and acknowledge that the arrangements set out in this Schedule B may change and that the Council may reasonably introduce new tools, measures and processes to satisfy itself that the Services are delivered effectively, offer best value and satisfy the requirements of this agreement. Where such a change is deemed by the Council to be material in nature, a variation to the agreement shall be made in accordance with the variation procedure.
- 22.2. The Provider acknowledges the right of the Council to monitor the provision made for the education and care of a Learner placed by the Council. Such monitoring will include monitoring all aspects of the provision provided, irrespective of the funding arrangements.
- 22.3. Monitoring may include visits (unannounced or arranged by appointment) to the Provider by suitably qualified representatives of the Council provided that the number of representatives visiting at any one time is no more than necessary for inspection purposes. Every effort shall be made by the Parties to ensure the continued privacy of Learners and minimal disruption to the education of Learners.

23. Performance Indicators

- 23.1. The Performance Indicators which shall be used to measure the performance of the Services by the Provider are set out in Appendix 1 Performance Overview.
- 23.2. The Provider shall monitor Learners against each performance indicator and shall send the Council a report detailing the level of Service actually achieved.
- 23.3. The Provider shall monitor Learners against the individual outcomes detailed in their EHCP. Under statutory requirements, the EHCP is reviewed on an annual basis to ensure progress is made against outcomes. The type and nature of SEND provision is revisited as appropriate should a Learner fail to meet their individual outcomes as detailed in the EHCP.

24. Performance Monitoring and Reporting

- 24.1. The Provider shall monitor and report its performance at termly intervals.
- 24.2. Within ten (10) working days of the end of each service period, the Provider shall submit to the Council a report which will include as a minimum:
- 24.2.1. Whole school and individual attendance levels.
- 24.2.2. Individual progress against short term plans and targets.

- 24.2.3. Level of engagement from each Learner.
 - 24.2.4. The views, wishes and feelings of each Learner.
 - 24.2.5. Feedback from parents/carers.
 - 24.2.6. A summary of the support the Provider has offered to parents/carers.
 - 24.2.7. Good news stories.
 - 24.2.8. Relevant reports from the governing body meetings.
 - 24.2.9. Destination/exit information on all leavers.
 - 24.2.10. Completion of the data set in Appendix 1 of this Schedule.
- 24.3. The Provider will attend termly contract performance monitoring meetings with the Council and submit the information below in advance of the meeting and will contain the minimum above information.
- 24.4. In addition to the contract monitoring information the Provider shall submit individual attendance data on a weekly basis for the current Learners on roll via the Council's on-line platform and at least once each academic term the Provider will provide the Council with detailed information regarding the steps it has taken to address non-attendance of Learners and the outcomes of those steps.
- 24.5. At the end of each academic year, the Provider will, in respect of each Learner placed by the Council and who is leaving the School, provide the Family Practitioner Lead (SEND and Education) or appropriate nominated SEND Officer with a detailed report which includes:
- 24.5.1. The future educational arrangements in place.
 - 24.5.2. An account as to whether the EHCP outcomes have been met and if not the reason(s) why.
 - 24.5.3. Detailed education plans for the next academic in respect of all Learners for the subsequent academic year.
- 24.6. The monitoring arrangements in this clause shall be in addition to and shall not prejudice any statutory inspection undertaken by any agency of government.
- 24.7. Where in the Council's reasonable opinion, the Provider is in Default, the Council may unilaterally deduct and set off a sum from and against any instalment or any other sum which is due to the Provider under this Agreement. Where the Council invokes this clause, it will notify the Provider accordingly. Any sum set off will be an amount that in the reasonable discretion of the Council equates to the value of the provision of the part of the Service which is the subject of the Default.
- 24.8. If the Service, or any part of it, is subject to inspection by the relevant inspectorate and is assessed as having any area on its Ofsted report card rated 'Causing Concern' or 'Attention Needed', or if safeguarding is rated as 'Not Met', the Council may, following consultation with the Education and Skills Funding Agency (ESFA) where appropriate, exercise its sole discretion to take any action it considers necessary. This may include, but not limited to, the imposition of additional funding conditions or the

termination of this Agreement in respect of the whole Service or that part which is assessed as causing concern.

Service Specific Definitions Table

Word/Phrase	Definition
Alternative Provision	Means education a child receives elsewhere other than the school premises.
AS Levels	Means Advanced Subsidiary Level – a qualification typically taken by students in the first year of post-16 education.
Attendance Collection Tool (ACT)	Means a digital system or platform used to record, monitor, and report pupil attendance data in educational settings.
BTECs	Means Business and Technology Education Council qualifications that combines practical learning with subject and theory content.
Care Leaver	Means a care-experienced young person.
Care Plan	Means a document detailing a Learner's specific care needs and requirements for which the Council is responsible, or a plan drawn up by the responsible authority, for a Looked After Child under the terms of the Children's Act and which may be amended from time to time.
Children in Care	Means children who are being looked after by a local authority, either through a care order or with parental agreement (voluntary accommodation).
County Decision Making Group	Means a panel at county level that makes decisions about education placements for children and young people with SEND (Special Educational Needs and Disabilities).
Deputy Designated Safeguarding Lead (DDSL)	Means an individual appointed to support the Designated Safeguarding Lead (DSL) in safeguarding and child protection duties within an organisation.
Education, Health and Care Needs Assessment EHCNA	Means legal documents outlining the support a child or young person will receive to meet their special needs across education, health and social care and achieve positive outcomes. The focus is very much on what is important for children and young people – what they want to achieve now and in the future. Children and young people aged from birth to twenty-five (25) years of age with special educational needs and/or a disability may be eligible for an EHCP.
Education, Health and Care Plan (EHCP)	Means legal documents outlining the support a child or young person will receive to meet their special needs across education, health and social care and achieve positive outcomes. The focus is very much on what is important for children and young people – what they want to achieve now and in the future. Children and young people aged from birth to twenty-five (25) years of age with special educational needs and/or a disability may be eligible for an EHCP.
Family Practitioner Lead	Means a senior practitioner responsible for supervising and coordinating a Key Worker approach across children and family services, including early help, child protection, children in need, SEND assessments an EHCP reviews.
Full-Time Equivalent	Means a measure used to represent how many pupils are attending on a full-time basis, adjusting for those on

	reduced or part-time timetables. Typically, 25-30 hours for secondary aged pupils.
Functional Skills	Means nationally recognised qualifications in English, Mathematics, and ICT that focus on practical, real-world skills needed for work, life and learning.
GCSE(s)	Means General Certificate of Secondary Education.
Headteacher	Means the person designated in charge of the School and who acts in loco parentis.
Home School Agreement	Means an agreement that is issued to parents when their child enters the school to ensure parents and teachers are informed of the expectations of each other and their separate duties and responsibilities.
Individual Education Plans (IEP) or Individual Pupil Passport	Means a highly individualised document tailored to the specific needs of the pupil. Individual Education Plans are typically developed through collaboration among teachers, pupils, parents / carers and SEND professionals.
Inspectorate	Means the regulatory body or organisation responsible for inspecting and monitoring the quality, safety, and effectiveness of education and care provided in special independent schools.
Key Stage 4	Means the two (2) years of school education which incorporate GCSE's, and other examinations in schools in England normally known as Year 10 and Year 11 when pupils are aged between fourteen (14) and sixteen (16) by 31st August.
Key Worker	Means the designated member of staff from the Local Authority who is co-ordinating the assessment of need and the development of an EHCP.
Learners	Means any child whose educational health and care needs are the responsibility of the Council who is the subject of a placement.
Looked After Child	Means as set out in section 22(1) Children Act 1989.
Personal Education Plan (PEP)	Means the plan for the education of a Looked After Child.
Review(s)	Means the statutory annual or other review of a Learners EHCP. For Looked After Children Reviews are meetings held at intervals governed by the Children's Act 1989, which are fully recorded and which include consultation with the child, parent/carer, significant other (including the Provider).
SEN School Transport Team	Means a specialised local authority team responsible for arranging and managing transport provision for children and young people with SEN or disabilities who require support to access education.
SEND Code of Practice	Means statutory guidance issued by the Department for Education (DfE) and Department for Health and Social Care (DHSC) that explains how the Children and Families Act 2014 should be implemented for children and young people with special educational needs and disabilities (SEND).
SEND Team	Means a specialist team within a local authority responsible for coordinating services and support for children and young people with Special Educational Needs and Disabilities (SEND).
School	Means The Haven School located at Log Cabins 24, 25, 26, Dunston Business Village, Stafford, ST18 9AB.

Social, Emotional and Mental Health (SEMH)	Means social emotional and mental health difficulties as described within the Special Educational Needs and Disability Code of Practice 2015.
Special Educational Needs (SEN)	Means when a child or young person has been identified as having Special Educational Needs and have effective special educational provision in place.
Special Educational Needs Coordinator (SENCO)	Means a School teacher who is responsible for assessing, planning and monitoring the progress of Children/Young People with SEND.
Special Educational Needs and Disabilities (SEND)	Means a child or young person with a learning difficulty or disability which calls for special educational provision to be made for them. Disabilities under the Equality Act 2010 means, a physical or mental impairment which has a long-term and substantial adverse effect on their ability to carry out normal day-to-day activities.
Transition Plan	Means a structured, personalised plan to support a child or young person with special educational needs or disabilities (SEND) in moving from one educational setting to another, or from school to adulthood.
Virtual School	Means the team who advocate for children and young people in care to ensure that they have access to excellent education and achieve their potential.

Appendix 1 Performance Overview

Overview

	LAC	Adopted	Neither	Total
Current number of pupils on roll				

	This Term	Academic Year to Date
Number of new pupils this term		
Number of leavers		

Attendance

	Current pupils	
	Number	%
Number of pupils attending from home location		
Number of pupils attending in school		

Number of pupils increasing time		
Number of pupils full time		

Number of pupils with more than 50% of sessions off site and/or AP		
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	This Term		Academic Year to Date	
	Number	%	Number	%
Current pupils achieving 75% or above full-time attendance				
Current pupils achieving 75% or above expected attendance				

Academic Progress of current pupils
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	Summary of progress			
	Below Target	On Target	Above Target	Not yet reviewed
Number of current pupils with progress in:				
Maths GCSE				
Maths Functional Skills				
English GCSE				
English Functional Skills				
Science GCSE				
Science Entry Level				

	Number of subjects			
	1 to 2	3 to 4	5 to 6	7 to 8
Number of Pupils working towards				
Level 1				
Level 2				
Level 3				

	Current pupils		All pupils	
	Number	%	Number	%
Number of pupils where local authority attended the latest review (where a review has occurred)				

Destination on departure

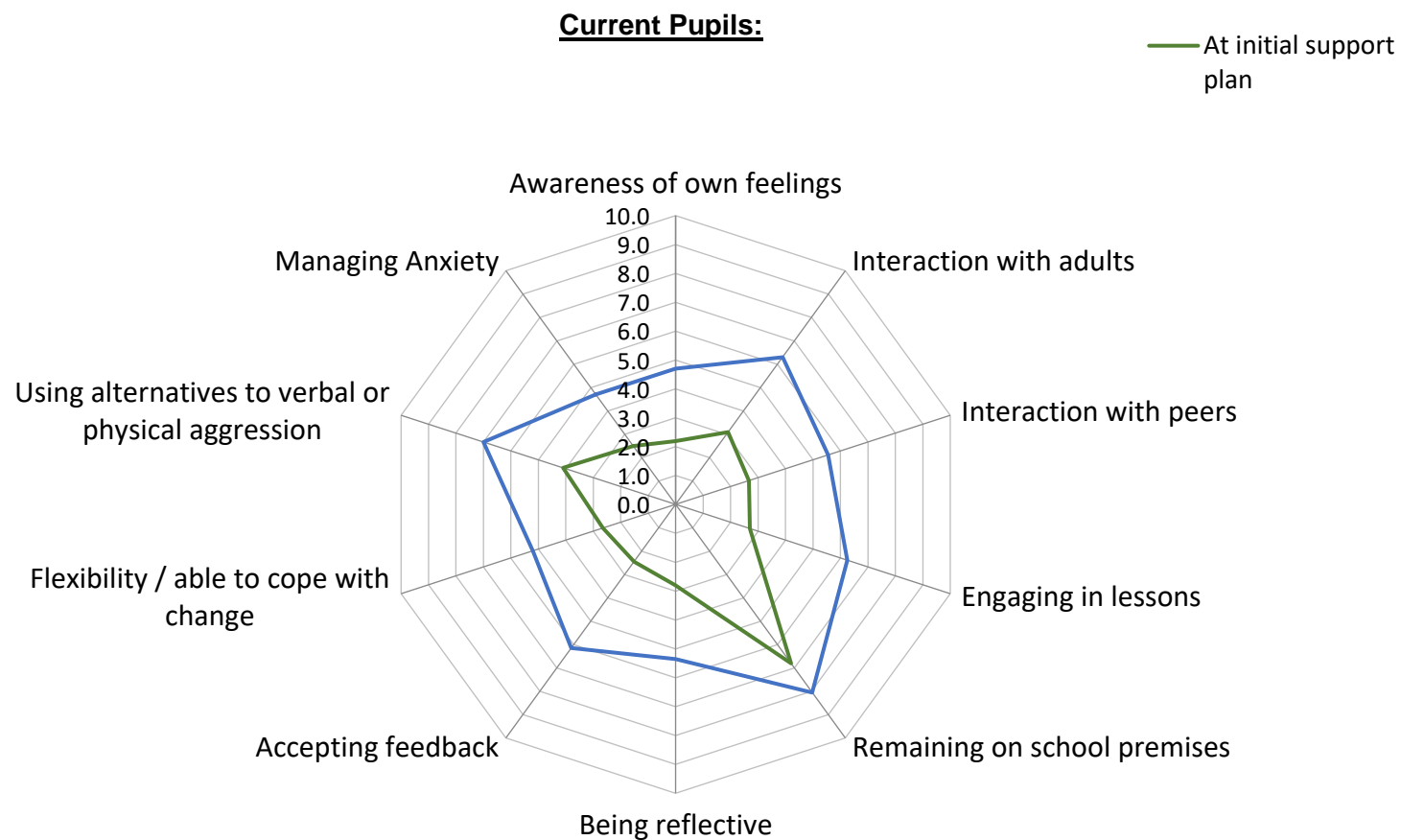
Destination:	Leavers this academic year		Leavers	
	Number	%	Number	%
Supported Internship				
Apprenticeship				
Training provider				
College				
Employment				
University				
NEET				
Other				
Moved out of area				
Moved to Tier 2				
Total				

Pupil progress against outcomes

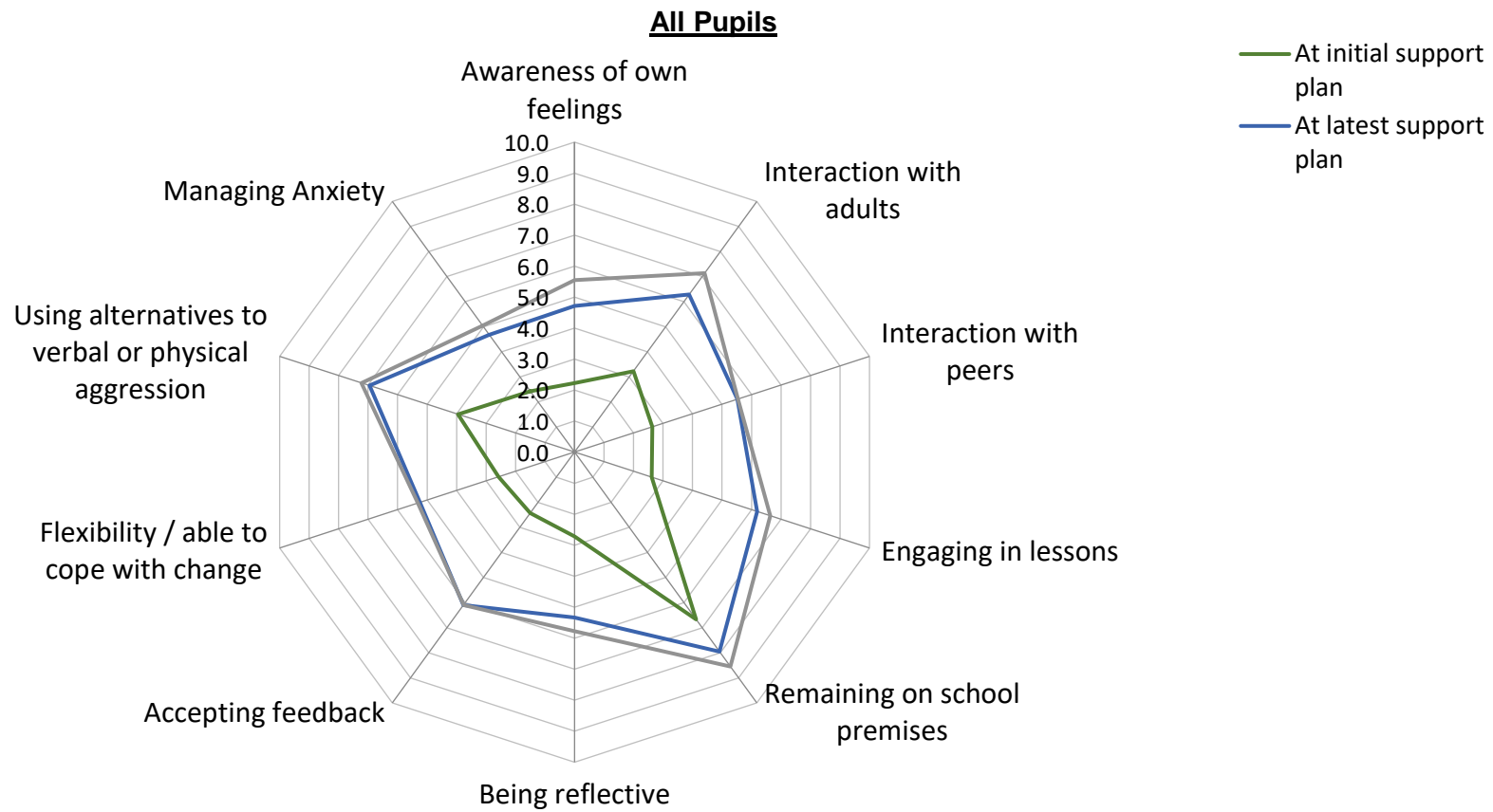
		Current Pupils		All Pupils (open and closed cases)	
		No.	%	No.	%
Awareness of own feelings					
Pupils with an identified outcome in this area					
Of which, how many:	Regressed				
	Sustained				
	Progressed				
Interaction with adults					
Pupils with an identified outcome in this area					
Of which, how many:	Regressed				
	Sustained				
	Progressed				
Interaction with peers					
Pupils with an identified outcome in this area					
Of which, how many:	Regressed				
	Sustained				
	Progressed				
Engaging in lessons					
Pupils with an identified outcome in this area					
Of which, how many:	Regressed				
	Sustained				
	Progressed				
Remaining on school premises					
Pupils with an identified outcome in this area					
Of which, how many:	Regressed				
	Sustained				
	Progressed				
Being reflective					
Pupils with an identified outcome in this area					
Of which, how many:	Regressed				
	Sustained				
	Progressed				
Accepting feedback					
Pupils with an identified outcome in this area					
Of which, how many:	Regressed				
	Sustained				
	Progressed				

Flexibility / able to cope with change						
Pupils with an identified outcome in this area						
Of which, how many:	Regressed					
	Sustained					
	Progressed					
Using alternatives to verbal or physical aggression						
Pupils with an identified outcome in this area						
Of which, how many:	Regressed					
	Sustained					
	Progressed					
Managing Anxiety						
Pupils with an identified outcome in this area						
Of which, how many:	Regressed					
	Sustained					
	Progressed					

Outcomes
Average Distance Travelled:



Overall changes in outcomes position (between initial support plan and latest support plan)



**Overall change in outcomes position:
(between initial support plan and final support plan):**

Appendix 2

ADMISSIONS PROCEDURE

This sets out the procedure to be followed in respect of admission to the School.

Admission where the School is named within an EHCP

1. It is the expectation that Learner's will be admitted following the naming of School in the Learners EHCP Section I, Educational Placement and following formal consultation in accordance with the Children and Families Act 2014 S38 and S 39 and the SEND CoP 2015. Where this is the case the admission pathway is as set out below:
 - 1.1. Consultation/referral from the Council to the Provider.
 - 1.2. Provider to complete information gathering including but not limited to health needs and history, risk assessments, achievement data, additional services that might be needed.
 - 1.3. Learner, parent/carer invited to visit school.
 - 1.4. Formal response to consultation confirming that the provision and outcomes within the Learner's EHCP can be met.
 - 1.5. Confirmation from the Council that funding approval has been given for the placement of the Learner.
 - 1.6. Headteacher and Deputy Headteacher to meet Learner, parents/carers and admission meeting in school.
 - 1.7. Clinical Psychologist to meet with Learner and parent/carer.
 - 1.8. Appropriate induction arrangements agreed and shared with the Council including a confirmed start date/admission date.
 - 1.9. The Parties will adhere to the principles and vision within the Staffordshire SEND Strategy 2021 – 2026 published March 2021, which, at the date of this Agreement may be accessed at the following web address:

https://search3.openobjects.com/mediamanager/staffordshire/hub/provider_docs/final_-_send_strategy_approved_at_cabinet_.pdf

Admission where the School is not named within an EHCP

2. In exceptional circumstances there may be occasions upon which it is appropriate for consideration for a Learner to be placed at the School when a School has not been named in the relevant EHCP. This may include a Learner who has moved into the Local Authority and requires specialist SEMH provision or a Learner who is undergoing an EHCNA. In such cases the admission pathway would be:
 - 2.1. Referral from the Council.
 - 2.2. Provider to complete information gathering including but not limited to health needs and history, risk assessments, achievement data, additional services that might be needed.
 - 2.3. Learner, parent/carer invited to visit school.

- 2.4. Formal response to the Council confirming that the provision and outcomes within the referral can be met, along with proposed length of placement.
- 2.5. Confirmation from the Council that funding approval has been given for the placement of the Learner.
- 2.6. Express agreement from the Authorised Officer for any Learner without an EHCP to be placed at the School in a commissioned place.
- 2.7. Headteacher and Deputy Headteacher to meet Learner, parents/carers and admission meeting in school.
- 2.8. Clinical Psychologist to meet with Learner and parent/carer
- 2.9. Appropriate induction arrangements agreed and shared with the Council.
- 2.10. The Parties will adhere to the principles and vision within the Staffordshire SEND Strategy 2021 – 2026 published March 2021, which, at the date of this Agreement may be accessed at the following web address:

https://search3.openobjects.com/mediamanager/staffordshire/hub/provider_docs/final_-_send_strategy_approved_at_cabinet_.pdf

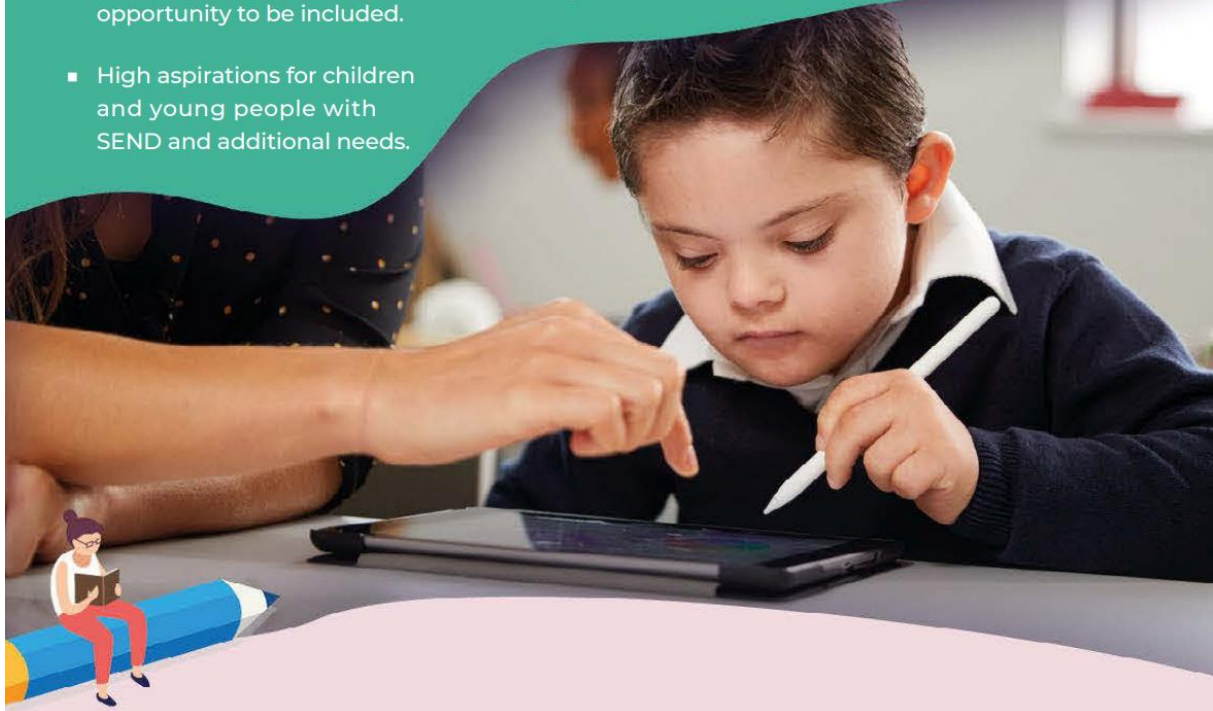
Induction Period

3. It is expected that the Learner will be offered an induction period upon commencement of their placement. The induction process will include baseline assessments by teaching staff and/or Clinical Psychologist.
4. The period of induction will vary on a case by case basis in consultation with the parent/carer, SEND Team and, in the case of Children in Care, the Key Worker and the Virtual School, however, the Council's expectation is that full-time attendance will commence within four (4) weeks of the agreed start date.
5. The Provider's aim will always be to work towards full-time attendance within the 4-week period. It is recognised that because of the complex needs of Learners to be placed at the School, in some circumstances this may take longer.
6. The Provider will notify the Council where the induction period is likely to be in excess of the four (4) week period.

Inclusion Standards

1. Principles

- Children and young people with SEND and additional needs are central to all decisions.
- Inclusive practice is at the heart of everything we do, where differences are recognised and celebrated, and everyone has the opportunity to be included.
- High aspirations for children and young people with SEND and additional needs.
- A highly skilled and well supported workforce able to support children with SEND and additional needs.
- Promoting equal opportunities to access play, learning, leisure and all aspects of life.
- Proactive approach to identifying and removing barriers to access for all children and young people.



2. What does this look like

- Staff take time to listen and understand the needs of all children and young people.
- Learning environments are inclusive, with all children and young people able to access services and take part fully.
- Children and young people with SEND and additional needs are empowered to reach their full potential.
- There is an asset-based approach – this means a focus on the strengths of all children and young people and support in the local community.
- The individual needs of children and young people with SEND and additional needs are identified early and they get support to meet these needs.
- Reasonable adjustments are made to meet the needs of children and young people with SEND and additional needs, with adaptations and aids used where necessary.
- Information is easy to access and available in a range of formats.
- There are clear transition routes/pathways to support with preparing for adulthood.
- Children and young people with SEND and additional needs are supported to develop their independence skills.
- Children and young people with SEND and additional needs, along with their families actively take part in decision-making with their views being taken into account.
- Children and young people with SEND and additional needs, along with their families are involved in the review and development of services.



3. Aims

- Children and young people with SEND and additional needs can fully access services.
- The physical environment is easy to access.
- Information is easy to access.



4. What children and young people will say

- I can access the service fully and feel included.
- I feel the staff understand my needs.
- I feel my needs are met.
- I know who to go to ask for help and get it.
- I get information in the way I can understand.
- My support is adapted to meet my needs.
- I am asked my views on the support I get.
- My voice is listened to in ways to make the service better.
- I feel my differences are celebrated and seen as an opportunity to create new ways of doing things.



5. What parents will say

- I feel my child/young person gets the help they need.
- I feel staff understand the needs of my child/young person.
- I am asked my views on the support my child/young person gets.
- Timescales are met.
- I feel services are accountable.
- My voice is listened to in improving the service.



Legislation

The Equality Act 2010 sets out service providers legal responsibilities.

COP2267/21



SCHEDULE C – FINANCIAL PROVISIONS

1 Administration of Payments

- 1.1** The Provider shall issue the Council with an invoice for payment of the Price in accordance with the Pricing Schedule. This shall include all costs incurred by the Provider as agreed with the Council in the delivery of the Services.
- 1.2** The Council shall pay the Provider by BACS payment into the bank account details supplied by the Provider (and detailed in A6 of the Particulars), within 30 days of receipt of a substantiated invoice.
- 1.3** 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.
- 1.4** Each invoice must contain as a minimum the following information, in compliance with Section 68(9) of the Procurement Act 2023:
- 1.4.1** Purchase order number (unique identification number issued by the Council)
 - 1.4.2** the name of the Provider;
 - 1.4.3** Address;
 - 1.4.4** Date of Invoice;
 - 1.4.5** Invoice Number;
 - 1.4.6** Company Registration Number;
 - 1.4.7** the sum requested and VAT number (if applicable);
 - 1.4.8** a description of the Services (including the period it covers) which the invoice relates to;
 - 1.4.9** any other information which the Council reasonably notified to the Provider in writing from time to time
- 1.5** Where the Supplier submits a Valid Invoice in accordance with paragraphs 1.2 to 1.4 above, the Council will consider and verify that invoice within 7 days.
- 1.6** Subject to paragraph 1.7, 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 1.6 shall prohibit the Council and Provider agreeing that a sum may be repaid earlier than would be required by this paragraph.
- 1.7** Paragraph 1.6 shall not apply if the Council considers the invoice invalid or disputes the invoice in accordance with paragraph 1.8.
- 1.8** If the invoice is 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.

- 1.9** 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.
- 1.10** Where the Provider enters into a Subcontract, the Provider shall include in that Subcontract:
- a) provisions having the same effect as this paragraph 1; 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 1.

2 Suspension of Price

- 2.1** 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; 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 36.8, Schedule D, and Schedule I.
- 2.2** Where the Council suspends the Price in accordance with paragraph 2.1, 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 1 OF SCHEDULE C – PRICING SCHEDULE

Academic Year	Contract value
1 September 2025 to 31 August 2026 (Year 1)	£1,113,010.53
1 September 2026 to 31 August 2027 (Year 2)	£1,135,270.74
1 September 2027 to 31 August 2028 (Year 3 optional extension period)	£1,169,328.75
1 September 2028 to 31 August 2029 (Year 4 optional extension period)	£1,204,408.75
Total Contract Value including optional extension periods	£4,622,018.75

Payments to be made termly in advance on submission of an invoice.

Termly	Dates covered	Instalment amount
Year 1 Term 1	Autumn Term 2025 1 September – 19 December 2025	£371,003.51
Year 1 Term 2	Spring Term 2026 5 January 2026 – 27 March 2026	£371,003.51
Year 1 Term 3	Summer Term 2026 13 April 2026 – 20 July 2026	£371,003.51
Year 2 Term 1	Autumn Term 2026 2 Sept 2026 – 18 December 2026	£378,423.58
Year 2 Term 2	Spring Term 2027 4 January 2027 – 25 March 2027	£378,423.58
Year 2 Term 3	Summer Term 2027 12 April 2027 – 21 July 2027	£378,423.58
Extension Year 1		
Ext Year 1 Term 1	Autumn Term 2027 3 Sept 2027 – 17 December 2027	£389,776.25
Ext Year 1 Term 2	Spring Term 2028 4 January 2028 – 7 April 2028	£389,776.25
Ext Year 1 Term 3	Summer Term 2028 24 April 2028 – 21 July 2028	£389,776.25
Extension Year 2		
Ext Year 2 Term 1	Autumn Term 2028 – Staffordshire term dates tbc	£401,469.58
Ext Year 2 Term 2	Spring Term 2029 – Staffordshire term dates tbc	£401,469.58
Ext Year 2 Term 3	Summer Term 2029 – Staffordshire Term dates tbc	£401,469.59

SCHEDULE D – PERFORMANCE MONITORING, QUALITY ASSURANCE AND CONTRACT REVIEW

1. KPIs

- 1.1 The KPIs (if any) used to measure the performance of the Services by the Provider are set out in Schedule B (The Specification). This also sets out where a minimum level of performance for each KPI is required by the Council.
- 1.2 Not used.
- 1.3 Not used.
- 1.4 Where the Provider is not performing the Agreement to the Council's satisfaction, and a Remedial Action Plan under clause 23 has failed to improve performance, the Council 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 26.1.3.
- 1.5 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.

2. Performance Failure

- 2.1 If, in the reasonable opinion of the Council, the Provider fails to deliver the Service requirements set out in the Specification, including any KPIs, and/or commits a Persistent Breach or Catastrophic Failure, then the Council may:
 - a. initiate a Contract Review Meeting under clause 23 of the Agreement to remedy the performance failure;
 - b. withhold or suspend payment of the Price under paragraph 2 of Schedule C (Suspension of Price); and/or
 - c. make alternative arrangements for the provision of the Services. The Council will not be liable to make any payments due to the Provider during the period in which alternative arrangements are in place.
- 2.2 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.

3. Performance Monitoring and Reporting

- 3.1 The Provider shall provide appropriate reporting on its performance as detailed in the Specification and in such format as reasonably required by the Council.

- 3.2 The Provider will attend Contract Review Meetings on such frequency as detailed in the Specification or as reasonably requested by the Council, particularly relating to any performance failures under paragraph 2 of this Schedule.

4. Quality Assurance

- 4.1 The Provider shall meet or exceed Contract Standards and the quality/regulatory/industry standards set out in the Specification.
- 4.2 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 – DATA PROTECTION PROVISIONS AND INFORMATION GOVERNANCE AGREEMENT

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

Definitions

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 Schedule E 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 Schedule E;
Joint Controllers	where two or more Controllers jointly determine the purposes and means of processing, as applicable under Schedule E;
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;
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 (and the term “processing” is to be read in accordance with Article 4 of the UK GDPR);
Processor Personnel	means all directors, officers, employees, agents, consultants and contractors of the 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 H (Security Management);

1. STATUS OF THE CONTROLLER

- 1.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, a Party may act as:
 - 1.1.1 “Controller” in respect of the other Party who is “Processor”;
 - 1.1.2 “Processor” in respect of the other Party who is “Controller”;
 - 1.1.3 “Joint Controller” with the other Party;
 - 1.1.4 “Independent Controller” of the Personal Data where the other Party is also “Controller”.

Annex 1 of this Schedule E (Information Governance Agreement) shall specify the Parties roles under Data protection Legislation, and the following provisions shall apply to this Agreement.

2. DATA CONTROLLER AND DATA PROCESSOR – Not Used

3. JOINT CONTROLLERS

- 3.1 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 E. Accordingly, the Parties each undertake to comply with the applicable Data Protection Legislation in respect of their processing of such Personal Data as Controllers.
- 3.2 The Parties agree that the Council:
 - 3.2.1 is the exclusive point of contact for Data Subjects and is 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;
 - 3.2.2 shall 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;
 - 3.2.3 is solely responsible for the Parties’ compliance with all duties to provide information to Data Subjects under Articles 13 and 14 of the UK GDPR;
 - 3.2.4 is 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
 - 3.2.5 shall 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 the Provider’s privacy policy (which must be readily available by hyperlink or otherwise on all of its public facing services and marketing).
- 3.3 Notwithstanding the terms of paragraph 3.2, 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.
- 3.4 **Undertakings of both Parties**
 - 3.4.1 The Council and the Provider each undertake that they shall:
 - 3.4.1.1 report to the other Party every 3 months on:
 - 3.4.1.1.1 the volume of Data Subject Access Request (or purported Data Subject Access Requests) from Data Subjects (or third parties on their behalf);

- 3.4.1.1.2 the volume of requests from Data Subjects (or third parties on their behalf) to rectify, block or erase any Personal Data;
 - 3.4.1.1.3 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;
 - 3.4.1.1.4 any communications from the Information Commissioner or any other regulatory authority in connection with Personal Data; and
 - 3.4.1.1.5 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;
- 3.4.1.2 notify each other immediately if it receives any request, complaint or communication made as referred to in paragraphs 3.4.1.1 to 3.4.1.5;
 - 3.4.1.3 provide the other Party with full cooperation and assistance in relation to any request, complaint or communication made as referred to in paragraphs 3.4.1.3 to 3.4.1.5 to enable the other Party to comply with the relevant timescales set out in the Data Protection Legislation;
 - 3.4.1.4 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;
 - 3.4.1.5 request from the Data Subject only the minimum information necessary to provide the Services and treat such extracted information as Confidential Information;
 - 3.4.1.6 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;
 - 3.4.1.7 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:
 - 3.4.1.7.1 are aware of and comply with their duties under this Schedule and those in respect of Confidential Information
 - 3.4.1.7.2 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;
 - 3.4.1.7.3 have undergone adequate training in the use, care, protection and handling of Personal Data as required by the applicable Data Protection Legislation;
 - 3.4.1.8 ensure that it has in place Protective Measures as appropriate to protect against a Data Loss Event having taken account of the:
 - 3.4.1.8.1 nature of the data to be protected;
 - 3.4.1.8.2 harm that might result from a Data Loss Event;

- 3.4.1.8.3 state of technological development; and
- 3.4.1.8.4 cost of implementing any measures;
- 3.4.1.9 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
- 3.4.1.10 ensure that it notifies the other Party as soon as it becomes aware of a Data Loss Event;
- 3.4.1.11 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:
 - 3.4.1.11.1 the transfer is in accordance with Article 45 of the UK GDPR or DPA 2018 Section 73; or
 - 3.4.1.11.2 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;
 - 3.4.1.11.3 the Data Subject has enforceable rights and effective legal remedies;
 - 3.4.1.11.4 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
 - 3.4.1.11.5 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
- 3.4.1.12 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

3.5 Data Protection Breach

- 3.5.1 Without prejudice to paragraph 3.6 of this Schedule E, each Party shall notify the other Party promptly and without undue delay, and in any event within 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:
 - 3.5.1.1 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;
 - 3.5.1.2 all reasonable assistance, including:
 - 3.5.1.2.1 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;

- 3.5.1.2.2 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;
- 3.5.1.2.3 co-ordination with the other Party regarding the management of public relations and public statements relating to the Data Loss Event; and/or
- 3.5.1.2.4 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 3.6.

3.5.2 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:

- 3.5.2.1 the nature of the Personal Data Breach;
- 3.5.2.2 the nature of Personal Data affected;
- 3.5.2.3 the categories and number of Data Subjects concerned;
- 3.5.2.4 the name and contact details of the Provider's Data Protection Officer or other relevant contact from whom more information may be obtained;
- 3.5.2.5 measures taken or proposed to be taken to address the Personal Data Breach; and
- 3.5.2.6 describe the likely consequences of the Personal Data Breach.

3.6 Audit

3.6.1 The Provider shall permit:

- 3.6.1.1 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 paragraph 3 of Schedule E and the Data Protection Legislation; and/or
- 3.6.1.2 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.

3.6.2 The Council may, in its sole discretion, require the Provider to provide evidence of the Provider's compliance with paragraph 3.7 in lieu of conducting such an audit, assessment or inspection.

3.7 Impact Assessments

3.7.1 The Parties shall:

- 3.7.1.1 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

- 3.7.1.2 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.

3.8 ICO Guidance

- 3.8.1 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.

3.9 Liabilities for Data Protection Breach

- 3.9.1 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:
 - 3.9.1.1 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 Council's reasonable cost, full cooperation and access to conduct a thorough audit of such Personal Data Breach;
 - 3.9.1.2 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
 - 3.9.1.3 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).
- 3.9.2 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.
- 3.9.3 In respect of any losses, cost claims or expenses incurred by either Party as a result of a Personal Data Breach (the "**Claim Losses**"):
 - 3.9.3.1 if the Council is responsible for the relevant Personal Data Breach, then the Council shall be responsible for the Claim Losses;

- 3.9.3.2 if the Provider is responsible for the relevant Personal Data Breach, then the Provider shall be responsible for the Claim Losses: and
- 3.9.3.3 if responsibility for the relevant Personal Data Breach is unclear, then the Council and the Provider shall be responsible for the Claim Losses equally.
- 3.9.4 Nothing in either paragraph 3.9.2 or 3.9.3 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.
- 3.10 Termination**
- 3.10.1 If the Provider is in material Default under any of its obligations under this 3 of Schedule E (*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). If the Council is in material Default under any of its obligations under this 3 of Schedule E (*Joint Controllers*), the Provider shall be entitled to terminate the Agreement with immediate effect by issuing a termination Notice.
- 3.11 Sub-Processing**
- 3.11.1 There is to be no sub-processing of Personal Data performed by a third party on behalf of the Provider.
- 3.12 Data Retention**
- 3.12.1 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.

4. INDEPENDENT CONTROLLERS – Not used.

5. GENERAL

- 5.1 Without prejudice to paragraph 3 of this Schedule E, the Provider shall indemnify in full on demand and keep indemnified in full and on demand the Council from and against:
 - 5.1.1 the costs of any investigative, corrective or compensatory action required by the ICO, or of defending proposed or actual enforcement taken by the ICO;
 - 5.1.2 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
 - 5.1.3 except to the extent that paragraphs 5.1.1 to 5.1.2 (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, or its Personnel

of this Agreement and/or its obligations under the Data Protection Legislation

5.2 Nothing in this Agreement will exclude, limit or restrict the Provider's liability under the indemnity set out in paragraph 5.1.

5.3 The Council shall indemnify and keep indemnified the Provider from and against:

5.3.1 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;

5.3.2 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

5.3.3 except to the extent that paragraphs 5.3.1 to 5.3.2 (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.

5.4 The Parties shall:

5.4.1 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 5.1 or 5.3.

5.4.2 use its reasonable endeavours to avoid and mitigate its losses; and

5.4.3 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 5.1 or 5.3; and

in no event shall the Council's liability under the indemnity set out in paragraph 5.3 in respect of any claim or series of claims exceed the limits of liability set out in Clause 21.5.

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

5.6 Notwithstanding anything in this Agreement to the contrary, this Schedule E 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 E

INFORMATION GOVERNANCE AGREEMENT

IA3657 Specialist Placements for Pupils with Education, Health and Care Plans

This Information Sharing Agreement is between:

Staffordshire County Council

and

The Haven School Limited

1. Introduction

1.1 Basis for sharing/ processing

All children and young people are entitled to an appropriate education, one that is appropriate to their needs, promotes high standards and the fulfilment of potential, this should enable them to:

- achieve their best,
- become confident individuals living fulfilling lives, and
- make a successful transition into adulthood, whether into employment, further or higher education or training.

(SEND Code of Practice, Pg 92, 6.1).

https://assets.publishing.service.gov.uk/media/5a7dcb85ed915d2ac884d995/SEND_Code_of_Practice_January_2015.pdf

The Council have an aspiration of improving the way children and young people are supported to learn and achieve in their local schools.

The Council has a statutory duty under the Special Educational Needs and Disability Code of Practice 0:25 years and The Children and Families Act 2014 (Section 38 – 39) to secure a particular school or other institution as named in an Education, Health and Care Plan (EHCP).

This duty extends to providing both the draft and final EHCP, whereby the Council must formally consult with the governing body, proprietor of the school or other institution to ensure that they are able to meet the young person's special educational needs and outcomes.

The formal consultation process is, by law, time limited, with any provider, school or other institution having a fifteen (15) day period in which to confirm to the Council whether they are able to meet a young person's needs.

The Council has commissioned places from the Provider for children and young people with SEMH needs.

Referrals outside of these agreed arrangements are not accepted by the Provider without the express consent of the Authorised Officer.

The legal basis upon which information will be processed is consent.

GDPR Article 6 (a) the data subject has given consent to the processing and sharing of their personal data for one or more specific purposes.

1.2 Purpose for the sharing

The Council has a statutory duty to secure provision to meet the needs of children and young people with EHCPs. This includes the requirement to share the final or draft EHCP along with

appendices from parents and professional advice givers, to ensure that Providers are fully appraised of the needs of child or young person.

The Council via an employed SEND Key Worker produces the statutory draft EHCP and final EHCP and as such, has the role of Data Controller until such time as the child/young person is taken onto the roll of the school at which time, the Provider would become the Data Controller in their own right and as such, would be utilising their own policies and procedures in relation to this.

The Provider is required to confirm formally with the Council whether they are able to meet the needs of the young person.

The Provider also has a duty to arrange and complete an annual Review of the child/young person.

The Provider is further required, on a termly basis, to complete a data set of information in accordance with the performance management elements of the Agreement to monitor the effectiveness of the education offer, outcomes achieved and inform commissioning arrangements, alongside monitoring trends and themes.

1.3 Length of agreement

This Information Sharing Agreement will be valid for the duration of the Agreement Period as per A3 in Schedule A The Particulars.

1.4 Key Contacts

Sam Tomson, Education Commissioning Officer
sam.tomson@staffordshire.gov.uk

Carolyn Stedeford, Commercial Contract Manager
Carolyn.stedeford@staffordshire.gov.uk

John Anderson, Director, The Haven School Limited
j.anderson@edison-yp.co.uk

Zoie Stevenson, Headteacher, The Haven School
headteacher@thehavenschool.com

2. Information Sharing

2.1

The Council will share information to support the Provider to make a decision on suitability of placements and to ensure it meets its statutory duty under the Children and Families Act 2014 to formally consult with schools and share statutory documentation to ensure the Provider can meet specified needs.

The Council will share information with the Provider in common with establishing placements for children/young people with EHCPs with all other schools/education providers to ensure providers can meet the needs of children/young people as specified in their EHCP.

Information provided will include:

- Name of child/young person
- Date of birth of child/young person
- Address of child/young person
- Gender

- Primary SEN/Disability
- Copy of EHCP
- Appendices to the EHCP from advice givers (which will include but is not limited to information from current school and educational psychology).

Information that may be shared as part of the Agreement and performance review process:

- For children and young people who are being supported through the Agreement, the Provider will be asked to attend a review meeting to demonstrate the outcomes achieved through the provision. Information associated to these meetings will be shared with the Council via the County Council's Secure File Transfer System.
- Performance data will also be shared on a termly basis however this will be statistical aggregated data and will not refer to any individual service user accessing the Service. Case studies that are submitted as part of performance data will be anonymised. All performance data will be shared with the Council via the County Council's Secure File Transfer System.

2.2 How the information will be shared

The information will be shared between the Council via designated named contacts using Secure File Transfer. Initials of pupils only will be used in any covering email. The Provider will designate a key contact and email address for use only for the purposes of formal consultation for placement.

Termly monitoring information and data collection will be anonymised, using only children/young people's initials and no other identifying information. This will be forwarded to the designated Commissioning Officer and Commercial Contract Manager of the Council only via Secure File Transfer for the purposes of contract management.

The Provider is required to submit attendance data on a weekly basis to the Council. This is submitted virtually by the Provider direct to ACT (Attendance Collection Tool) which is administered via the Capita Team.

Under no circumstances should personal data be processed in any way that is unsecure 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

The Council will share the information with a designated named contact at the Provider. It is the expectation of the Council that the Provider will share the information within their Senior Leadership Team (SLT). The SLT is made up of permanent members of staff at the Provider and will include, the Headteacher, Referrals Consultant, Executive Head (Edison Young People) and Clinical Psychologist.

The information will not be shared outside of this group unless a placement offered, and an admission start date is agreed for the child/young person. If this happens, then information will be shared with key permanent members of staff for the purposes of transition and programme planning to ensure all needs are considered and key staff are fully aware of the child/young person's Special Educational Needs.

The EHCP is a document that is "owned" by the parents/carers and young person. Prior consent is required by them before sharing with any other professionals who may request sight of a copy. Therefore, the EHCP and supporting appendices should, under no circumstances be shared with other organisations and recipients without the express consent of the parents/carers.

Consent will only be gained from the child/young person/family by the Provider before personal information is sent to other organisations, if the lawful bases detailed in item 1.1 above are not applicable. Where there is an overriding safeguarding concern consent would not be applicable.

2.4 Data Quality

The information is largely governed by legislation; The Children and Families Act 2014 and the SEND Code of Practice 2015 which details that the draft EHCP and/or final EHCP should be shared with the named school or other institution named in Section I of the EHCP.

As the Council is legally required to secure this provision there is a legal duty to share the information.

Information is collated and produced by the Council via a secure platform known as the EHC Hub.

On occasion, the Provider may contact parent/carers and children/young people to gather additional views, particularly around wishes and feelings about the proposed placement. It is important that these details are recorded by the Provider for accuracy and they should ensure they have their own processes in place for the recording and storage of this information. There is no expectation that the Provider must share additional information gathered with the Council.

UK GDPR Article 5 a (d) personal data shall be accurate and where necessary kept up to date. The Provider must take reasonable steps to ensure that the Personal Data they hold and process is accurate.

Information shared must be kept to the minimum required in order to achieve the effective delivery of this service and must only be used for the purposes under which it was shared (Article 5.1 (b) General Data Protection Regulations).

2.5 Retention and destruction

In accordance with best practice guidance, should the child/young person be admitted and attend The Haven School, the retention period for special education needs files, reviews and Education, Health and Care Plans including advice and information provided to parents should be the date of the birth of the child/young person plus thirty-one (31) years (EHCP is valid until the individual reaches the age of twenty-five (25) years – the retention period adds an additional six (6) years from the end of the plan in line with the Limitation Act.

Following this retention period the information should be securely destroyed.

Records shared under this Agreement must be kept in accordance with any statutory requirements.

For information shared where a placement for the child/young person is not considered appropriate, the Provider should securely dispose of the information within one (1) month of this being confirmed by the Council. The Council may ask for express confirmation that this has been done by the Provider.

2.6 Data subject rights

If a subject access request (article 15 GDPR) is received by either Party, then the Party holding the requested information will be responsible for managing and processing the request. If the request is for data held by the two (2) Parties, then the receiving Party must ensure that any request is sent to the other Party within two (2) working days to ensure that a response is provided within the statutory timeframe (one (1) calendar month).

If any other data subject rights requests are received such as a “right to erasure”, “right to rectification” or “right to restrict processing” (as per Articles 16 – 19 GDPR) then the receiving

Party must notify the other Party as soon as possible (and no later than two (2) working days) to ensure any information shared as part of this Agreement is also included in such a request.

Any requests for information, including requests for information under the Freedom of Information Act 2000, must be processed under each Parties' internal processes and policies. Any requests received or forwarded by the Provider must be forwarded to the Council's Access to Information Team within the Information Governance Unit.

2.7 Data Security

Initial sharing of information will be done by the designated Key Worker to the designated contact at the Provider via Secure File Transfer. Covering emails and consultations will be limited to initials only.

Any further sharing of information covered by the Agreement, such as termly reports and performance monitoring will be sent via the Council's Secure File Transfer system (SFT).

Any data held and processed by either Party must be kept in accordance with the requirements of Article 32 of the GDPR (Security) and have appropriate technical and organisational measures in place to protect personal data from unauthorised access or loss. Manual based records should be kept securely (in locked cabinets, locked offices) with appropriate security controls in place. Electronic data must be held on secure networks.

Both parties must have appropriate organisational measures in place such as appropriate data protection and security related policies and mandatory training for staff on data protection and information security.

3. Review and Audit

This Information Governance Agreement shall be reviewed by the Council on an annual basis from the Commencement Date and will remain in force irrespective of whether it has been officially reviewed for the Agreement Period or until terminated.

4. General Obligations

All parties should have registered with the Information Commissioners Office

4.1 Obligations to an individual Party

The Council is responsible for ensuring that the initial referral documentation only contains the minimum personal and Special Category Data as is required for the Provider to determine whether they are able to meet the service users' needs.

All Parties must take into consideration that an individual could still be identifiable from a combination of other information, excluding direct identifiers such as name etc.

5. Review of Agreement

This Information Sharing Agreement shall be reviewed by the Council on an annual basis from the Agreement Commencement Date and will remain in force irrespective of whether it has been officially reviewed for the Agreement Period or until terminated.

Each Party shall promptly notify the other Party upon it becoming aware of any Personal Data Breach relating to Personal Data provided by the other Party.

SCHEDULE F

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 F;

TUPE	the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246), as amended.

Transfer of Employees to the Provider on the Commencement 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

The Provider shall in accordance with TUPE recognise the trade unions representing the Transferring Employees, where applicable.

3. Transfer of Employees to a Replacement Provider on expiry or termination

- 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, 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 F

LIST OF TRANSFERRING EMPLOYEES - *Not used.*

SCHEDULE G – 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 G

Exit Plan: the plan produced and updated by the Provider during the Agreement Period in accordance with this Schedule G

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 Period: Means the period from the date of Service of the Notice of termination of the Agreement until the termination of this Agreement, during which time the Provider will comply with Paragraph 7 (Exit Plan) and Paragraph 9 (Termination Assistance Period) of Schedule G.

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 G 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. The Provider shall liaise and effectively communicate with the Council and/or any Replacement Provider to ensure that a smooth and timely transfer between the Provider and any Replacement Provider is facilitated. Any breach of this provision shall constitute a material breach of this Agreement.
3. The Provider shall use its reasonable endeavours to procure that any other agreements with third parties, to which the Provider is party and 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.
4. 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 tendering the Services

5. Subject to paragraph 6 of this Schedule, on reasonable notice, the Provider will 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):

- 5.1** details of the Services;
 - 5.2** an inventory of all Council Data and any other relevant data with respect to the Services in the Provider's possession of control;
 - 5.3** a copy of the Register, updated in full by the Provider up to the date of delivery of such Register; and
 - 5.4** subject to the Data Protection Legislation, all information relating to any Transferring Employees (as defined in Schedule H) required to be provided by the Provider under this Agreement.
- 6.** The Provider shall not be required to comply with the provision of paragraph 5 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

- 7.** 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 paragraph 8 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.
- 8.** The Exit Plan must contain, as a minimum:
- 8.1** 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 to provide the Services;
 - 8.2** the management structure to be employed during both the transfer and cessation of the Services upon Exit; and
 - 8.3** a detailed description of both the transfer and cessation processes, including an Exit timetable.

Termination Assistance Period

- 9** During the Termination Assistance Period or such shorter period as the Council may require, the Provider will:
- 9.1** continue to provide the Services;
 - 9.2** provide to the Council any reasonable assistance required to allow the Services to continue without interruption until the termination or expiry of this Agreement;
 - 9.3** facilitate the orderly transfer of responsibility for and conduct of the Services to the

Replacement Provider.

- 10 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.
- 11 The Parties will meet and use their respective reasonable endeavours to agree the contents of the final Exit Plan.

Termination Obligations

- 12 The Provider shall comply with all of its obligations contained in the Exit Plan.
- 13 At the end of the Termination Assistance Period (or earlier if this does not adversely affect the Provider's performance of the Services and its compliance with the other provisions of this Schedule):
 - 13.1 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;
 - 13.2 the Provider will return to the Council such of the following as is in the Provider's control:
 - 13.2.1 all copies of any Council software and any other software licensed by the Council to the Provider under this Agreement;
 - 13.2.2 all materials created by the Provider under this Agreement in which the Council owns the Intellectual Property Rights;
 - 13.2.3 any equipment or property which belongs to the Council; and
 - 13.2.4 any items that have been on-charged to the Council such as consumables.
 - 13.3 the Provider shall vacate any premises owned or occupied by the Council.

SCHEDULE H – 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 Supplier to process any Council Data which is classified as OFFICIAL, OFFICIAL-SENSITIVE or any Personal Data, 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 Supplier 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"

SCHEDULE I

1 WHISTLEBLOWING

- 1.1 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.
- 1.2 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.
- 1.3 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.
- 1.4 As soon as it is aware, 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 11.4 to the Council or any other Regulatory Body.

2 SAFEGUARDING AND DBS

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;
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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- 2.1 If any part of the Services provided by the Provider are a Regulated Activity, the Provider will ensure that all of the Personnel are properly registered and DBS checked (or where required have had an Enhanced DBS Check), 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.
- 2.2 The Provider shall 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.
- 2.3 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.
- 2.4 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 2.5.
- 2.5 The Provider shall notify the DBS where, in its opinion, any Personnel has harmed or poses a risk of harm to vulnerable persons.
- 2.6 The Provider shall immediately provide the Council with any information that it reasonably requests to enable it to be satisfied that the obligations of this paragraph 2 have been met.
- 2.7 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.

3 SUSPENSION OF SERVICES

- 3.1 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 this paragraph 3.1.

- 3.2 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.
- 3.3 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 2.1 of Schedule C 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.
- 3.4 Any suspension of the Services (or any part thereof) under paragraph 3.1 above shall be reviewed by the Council not later than three (3) months after the service of the relevant Suspension Notice (subject to paragraph 3.5 below).
- 3.5 The Council shall ensure that any investigation which is carried out under paragraph 3.1 of this Schedule I 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.
- 3.6 The Council shall make available to the Provider a copy of the report of the findings of any investigation undertaken pursuant to paragraph 3.1 of this Schedule I (as soon as practicable) after the investigation has been completed.
- 3.7 Upon either the cessation by the Council of any suspension of the Services (or any part thereof) which is implemented under paragraph 3.1, or the closure of any investigation which is initiated by the Council under paragraph 3.1 of this Schedule I, the Council shall serve Notice on the Provider to confirm the lifting of the suspension in question.
- 3.8 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, including the right to terminate under Clause 26.

4 STEP-IN RIGHTS

- 4.1 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 I4 and setting out:
- 4.1.1 whether it will be taking action itself or with the assistance of a third party;
 - 4.1.2 what required action the Council will take during this step-in process ("**Required Action**");
 - 4.1.3 when the Required Action will begin and how long it will continue for;
 - 4.1.4 whether the Council will require access to any premises where the Services are delivered; and
 - 4.1.5 what impact the Council anticipates that the Required Action will have on the Provider's obligations to provide the Services.
- 4.2 For as long as the Required Action is taking place:
- 4.2.1 the Provider will not have to provide the Services that are the subject of the Required Action;

- 4.2.2 no deductions will be made to the Price relating to the Services that are the subject of the Required Action; and
 - 4.2.3 the Council will pay the Price to the Provider after subtracting any applicable deductions and the Council's costs of taking the Required Action.
- 4.3 The Council will give notice to the Provider before it ceases to exercise its rights under the step-in process in this paragraph 4 and within twenty (20) Working Days of this notice the Provider will develop a draft Step-Out Plan for the Council to approve.
- 4.4 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.
- 4.5 The Provider shall bear its own costs in connection with any step-in by the Council under this paragraph 4, 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:
 - 4.5.1 limbs (f) or (g) of the definition of a Step-In Trigger Event; or
 - 4.5.2 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 4.1 above is identified as not being the result of the Provider's Default).

“Step-in Trigger Event” means:

- (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 this paragraph 4 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 Provider to take action due to any Applicable Law or to discharge a statutory duty.

“Step-out Plan” 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.

5 TERMINATION OF CENTRAL GOVERNMENT FUNDING OR OTHER PUBLIC BODIES

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

5.1.1 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

5.1.2 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).

5.2 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.

5.3 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 this paragraph 5 applies.

5.4 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).

6. GOODS – not used.

7. ENVIRONMENTAL OBLIGATIONS

7.1 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.

7.2 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.

7.3 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.

7.4 On each anniversary of the Commencement Date, the Provider shall complete and submit to the Council a Sustainability Report in relation to the Services being provided, which shall contain information on the overall sustainability impact of the Services, including improvements identified by the Provider, new policies or targets adopted to reduce the environmental impact of the Provider's operations and contributions towards any Council environmental policies or targets.












IA3657 Terms & Conditions of Contract final


Final Audit Report


2025-11-25


Created:	2025-11-07
By:	Helen Fry (helen.fry@staffordshire.gov.uk)
Status:	Signed
Transaction ID:	CBJCHBCAABAAVwFUj26Y-fi22OcGG5XXzpgqfAEITdH

"IA3657 Terms & Conditions of Contract final" History


-  Document created by Helen Fry (helen.fry@staffordshire.gov.uk)
2025-11-07 - 3:28:32 PM GMT
-  Document emailed to John Anderson (j.anderson@edison-yp.co.uk) for signature
2025-11-07 - 3:33:23 PM GMT
-  Email viewed by John Anderson (j.anderson@edison-yp.co.uk)
2025-11-13 - 2:18:05 PM GMT
-  Document e-signed by John Anderson (j.anderson@edison-yp.co.uk)
Signature Date: 2025-11-13 - 2:23:00 PM GMT - Time Source: server
-  Document emailed to Richard Craner (rcraner@edison-yp.co.uk) for signature
2025-11-13 - 2:23:04 PM GMT
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2025-11-13 - 2:30:16 PM GMT
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2025-11-24 - 9:38:53 AM GMT
-  Email viewed by Richard Craner (rcraner@edison-yp.co.uk)
2025-11-24 - 9:39:02 AM GMT
-  Document e-signed by Richard Craner (rcraner@edison-yp.co.uk)
Signature Date: 2025-11-24 - 9:39:12 AM GMT - Time Source: server
-  Document emailed to legalservices.signingsealing@staffordshire.gov.uk for signature
2025-11-24 - 9:39:16 AM GMT
-  Email viewed by legalservices.signingsealing@staffordshire.gov.uk
2025-11-24 - 9:43:30 AM GMT


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2025-11-24 - 10:09:18 AM GMT


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Signature Date: 2025-11-24 - 10:09:20 AM GMT - Time Source: server

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2025-11-25 - 11:55:07 AM GMT

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